

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 15 SEPTEMBER 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

Annelise Tuor	Chair
Robert Hussey	Town Planner
Lisa Bella Esposito	Town Planner
Andrew Doherty	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 15 September 2021

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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 1 SEPTEMBER 2021

The Panel note that the Minutes of the Northern Beaches Local Planning Panel held 1 September 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	MOD2021/0362 - 24 WANDEEN ROAD, CLAREVILLE - MODIFICATION OF DEVELOPMENT CONSENT DA2020/1163 GRANTED FOR CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2021/625229
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination or decision made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0362 for Modification of Development Consent DA2020/1163 granted for construction of a dwelling house including a swimming pool at Lot 102 DP 13760, 24 Wandeen Road, Clareville subject to the conditions set out in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0362
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 102 DP 13760, 24 Wandeen Road CLAREVILLE NSW 2107
Proposed Development:	Modification of Development Consent DA2020/1163 granted for construction of a dwelling house including a swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Krystal Ann Pszczonka
Applicant:	Rise Projects Pty Ltd
Application Lodged:	08/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/06/2021 to 25/06/2021
Advertised:	Not Advertised
Submissions Received:	14
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The application seeks to modify DA2020/1163 which was approved by the Northern Beaches Local Planning Panel (NBLPP) on 3 February 2021.

The NBLPP was not satisfied that the applicant's designed provide sufficient privacy levels to the adjoining western neighbour. Subsequently, a specific condition (No.8) was imposed on the consent which required changes to the Ground Floor window openings on the western elevation.

This application seeks amendments to the approved design and to remove the specific privacy condition. As a result, the amended design proposes Ground Floor windows on the western elevation with clear glazing.



A review of the original privacy assessment was undertaken and the findings that the proposal would have an adverse impact to the western adjoining property is affirmed. The submission concerns in respect to privacy impacts (in the original assessment and in those received for this review application) are hence still valid.

The amended design has also been assessed against the planning controls of the Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan. The additional built form/roofing on the First Floor creates a further building height non-compliance at 9.1m (RL42.997), however, this non-compliance is 1.0m less than the maximum building height of RL43.997. Whilst additional minor variations to the building height and building envelope are proposed, these variations are found to be consistent with the relevant controls objectives and requirements. In this regard, the built form will continue to be of a reasonable bulk and scale that will integrate into the landscape, and streetscape and will relate positively to adjoining and surrounding dwellings.

The notification of the application resulted in fourteen (14) submissions each objecting to the development.

The assessment concludes that the amended design is an appropriate modification to the original approval, and further conditions will ensure the amenity of the subject site is maintained without unreasonable impacts on the streetscape or neighbouring properties.

Accordingly, the application is referred back to the NBLPP with a re-affirmed recommendation for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for design modifications to **DA2020/1163**, for the construction of a new dwelling house and swimming pool.

The modified works include the following:

Swimming Pool Level :

- Storage area below Rumpus Room
- Pool Storage Area under Stairs to Pool Area
- Deep Seat added to Swimming Pool
- Pool size increase 4.4mx4.3m (incorrectly noted on DA2020/1163 plans as 5.5m x 4.0m)

Lower Level (FFL 3.780):

- New sliding door to Bedroom 5
- New Paved area servicing Bedroom 5
- New fixed Louvered window to northern elevation Rumpus
- Window 3 on western elevation servicing Rumpus position adjusted
- New rear door on western elevation servicing Rumpus
- New retaining walls up to in height 0.9m in height
- Window 5 (W5) and Window 6 (W6) to be louvered/frosted/security mesh
- New garden shed 2.0mx3.0m servicing the new paved area adjoining Bedroom 5

Ground Level (FFL 36.8):



- Louvered privacy screen along east elevation in lieu of a solid wall
- Louvered privacy screen to the eastern elevation servicing the landing to the access stairs
- Front porch extended a further 1.5m
- Windows W9, W10 and W11 to be clear glazing (as a result of removing Condition No. 8)
- Window W25 servicing the master bedroom location adjusted
- Internal doors to service the garage
- New cellar added to under the internal stairs
- Privacy louvers added to windows W16 and W17 servicing the Kitchen
- Privacy louvers added to windows W18 servicing the Laundry
- New Solid Fuel Fireplace

First Floor (FFL 39.82):

- Two (2) new skylights
- Five (5) new solar panels
- Additional footprint to create new void area over the internal stairs
- New roofline over the additional void area
- New window openings W72 on the northern and western elevation servicing new void area
- Privacy louvers added to window W55 servicing the en-suite
- New windows on the northern elevation above W68 servicing the master bedroom

External

- Retaining wall to driveway rearranged
- Boulder retaining wall in rear yard
- Screening to the underside of the dwelling house on the north/eastern and western elevations

The application also seeks to remove Condition No. 8 applied by the Northern Beaches Local Planning Panel (NBLPP) to reduce the privacy impacts to the western adjoining subject site.

The condition to be removed reads as follows:

Condition No. 8 Amendments to the approved plans

The vertical window to the stairwell on the ground floor western elevation shall be opaque and all other windows on the ground floor level on the western elevation shall be opaque to a height of at least 1.6m (when measured from the finished floor level).

Amended plans are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: to protect the amenity of the adjoining property to the west

Consistent with the proposed removal of Condition No. 8 all window openings on the western elevation of the amended design display clear glazing.

Amended plans were received during the assessment process, however, there was no change to the proposed works or built form, rather additional information was provided on the submitted plans, for example additional shadow diagrams and corrections for the titles.

Consistent with the Northern Beaches Council Community Participation Plan, these plans were not



required to be re-notified.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
 Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D1.11 Building envelope
 Pittwater 21 Development Control Plan - D1.20 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 102 DP 13760 , 24 Wandeen Road CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Wandeen Road. The site is located within the E4 Environmental Living zone as mapped within the Pittwater Local Environment Plan 2014. The site is irregular in shape with a surveyed area of 853.6m². The frontage to Wandeen Road measures 19.4m with eastern and western side boundaries of 53.19m and

59.13m respectively.

The site has a southerly orientation and is located on a considerable cross-fall slope between 33% and 50%. The site slopes from the south-eastern corner at the street frontage towards the rear north-west corner.

The site is currently under construction for a three storey dwelling house, with swimming pool with specific significant canopy trees retained onsite.

Surrounding sites consist of multi-storey dwelling houses, of varying ages, within a landscaped setting.

Map:



SITE HISTORY

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

- Development Application **DA2020/1163** for the construction of a dwelling house including a swimming pool was approved by the Northern Beaches Local Planning Panel (NBLPP) on the 3 February 2021.

The minutes of the NBLPP meeting state:

*That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, approves Application No. **DA2020/1163** for construction of a dwelling house including a swimming pool at Lot 102 DP 13760, 24 Wandeen Road, Clareville subject to the conditions set out in the Assessment Report, subject to the following:*

1. The addition of the following condition:

Amendment to approved plans

The vertical window to the stairwell on the ground floor western elevation shall be opaque and all other windows on the ground floor level on the western elevation shall be opaque to a height



level of at least 1.6m (when measured from the finished floor level).

Amended plans are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: to protect the amenity of the adjoining property to the west.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1163, in full, with amendments detailed and assessed as follows:

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

Section 4.55(2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application of minimal environmental impact for the following reasons: The proposed changes maintain the approved use and do not alter the intent of the lot to be developed. The approved building height, and bulk and scale of the building remains generally consistent with the consent as approved. The minor amendments to the approved dwelling are not significantly altered, and the impacts are limited to a consideration of the associated layout addition of the void area over the first floor stairs. The design revisions are generally confined within the volume of the structure as originally approved with the physical appearance of the structure remaining consistent with the original approval. The amended design has not incorporated the privacy mitigation requirements required in condition 8 of the

Section 4.55(2) - Other Modifications	Comments
	consent. This means that there remains adverse privacy impacts to the western neighbouring property. This issue is addressed via conditions to ensure the circumstances relating to the issuance of the original development consent are not compromised as a result of the proposed modifications.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those approved under DA2021/1163.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2011 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the additional built form changes, and an amended Arborist Report. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 'Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/06/2021 to 25/06/2021 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 14 submission/s from:

Name:	Address:
Mr David Robert Evans	4 Wandeen Road CLAREVILLE NSW 2107
Kate Ponton	40 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mr Michael Anthony Henry	59 Dress Circle Road AVALON BEACH NSW 2107
Mr Terry Douglas Crawford	12 Wandeen Road CLAREVILLE NSW 2107
Mr Martin Maynard	203 Hudson Parade CLAREVILLE NSW 2107
Mr Nicholas Clark	3 Mia Place CLAREVILLE NSW 2107
Sarel Roets	22 Wandeen Road CLAREVILLE NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Leigh McGaghey	Address Unknown
Clareville & Bilgola Plateau Residents Association	PO Box 292 AVALON BEACH NSW 2107
Mrs Katharine Dianne Stanning	26 Wandeen Road CLAREVILLE NSW 2107
Mr Arthur Rodman Bashford Mrs Margaret Dawn Bashford	19 Wandeen Road CLAREVILLE NSW 2107
Mrs Jocelyn Allen	36 Wandeen Road CLAREVILLE NSW 2107



Name:	Address:
Mr Paul Anthony Gregsonn	21 Wandeen Road CLAREVILLE NSW 2107

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

- **Building Height**
- **E4 Environmental Zone compatibility**
- **Undesirable precedent**
- **Bulk and Scale**
- **Tree Removal**
- **Privacy**
- **Pollution/Solar Panels**
- **Overshadowing**
- **Definition of Development**

The matters raised within the submissions are addressed as follows:

- ***Concern has been raised that the modified height of the dwelling house creates further a non-compliance that is higher than the approved building height.***

Comment:

The amended design to create a new void area on the First Floor has a maximum building height of 9.1m (RL42.997), 1.0m less than the overall building height of RL 43.997.

With respect to the permitted 8.5m building height referred to in the submission, the applicant seeks to rely upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the height of buildings may reach up to 10m in height, subject to consistency with certain criteria.

The assessment of the criteria has also been considered elsewhere in this report (see Clause 4.3 - 'Height of Buildings').

In the consideration of the variation prescribed by 4.3(2D) of PLEP 2014 it was found that the additional works, and the development as a whole achieved consistency with the objectives of the clause and E4 Environmental Living zone, as well as demonstrating that overall variation continues to be considered as minor. As a result, there are sufficient environmental planning grounds to justify the variation and support the non-compliance.

This issue does not warrant refusal or further amendment of the application.

- ***Concern has been raised that the modified proposal is not consistent with the E4 Environmental Living zone, or compatible with the existing and future character of the area.***

Comment:

The subject site for the proposed dwelling house development is within the E4 Environmental Living zone (E4 zone) and dwelling houses are "Permitted with Consent" in the E4 zone under the Pittwater Local Environment Plan (PLEP) 2014. Therefore, there is no inconsistency between the proposed development and the PLEP in this case.

The proposal is limited to a single dwelling house, with 5 bedrooms, and a swimming pool. The



proposal generally complies with the requirements of the Pittwater 21 Development Control Plan to ensure it is of a scale and intensity that is compatible with the surrounding land use pattern of development.

In consideration of this issue, the amended proposal is regarded as satisfactory in terms of its design response that is not 'jarring' or out of character with the residential setting, and continues to provide appropriate landscape setbacks, external colours and materials, acceptable residential amenity and a visual impact that is consistent with various housing development adjacent and surrounding the site.

Therefore, the proposal (as conditioned) is a suitable and compatible for residential use for the site and this issue is not considered to warrant refusal of the application

- ***Concern that this dwelling house will create an undesirable precedent due to design proposed.***

Comment:

Dwelling house development is permissible with consent in the surrounding low density residential area under the Pittwater Local Environmental Plan (LEP) 2014. This includes the zone objectives and development standards and other controls to ensure a suitable and appropriate character, design, scale and density.

The amended proposal is considered to be consistent with the objectives for landscaped open space, front and side setbacks, including building envelope and height. The building incorporates variations in roof form and style, including articulation and materials used to provide a compatible style with the character (roof form, materials and general appearance).

Therefore, this issue has been addressed and does not warrant refusal of the application.

- ***Concern that the amended building bulk is excessive for the site and will adversely affect the surrounding amenity by being inconsistent with the pattern and scale of existing residential housing near the site.***

Comment:

This issue is specifically discussed in detail under the heading Clause 4.3 Height of Buildings of the PLEP and Part D1.11 Building Envelope of the P21DCP within this report. The proposal is considered acceptable in terms of its bulk and scale with the additional non-compliance satisfying the relevant requirements.

There is no change to the previously approved front, rear or side setbacks, nor the landscape areas. As a result, the bulk and scale of the proposal is considered to be consistent with the original consent and continues to be consistent with the surrounding residential character along Wandeen Road (visual catchment near the site) and when viewed from properties adjacent in Hudson Parade.

It is considered that the proposal continues to satisfy the P21 DCP design requirements including building bulk, landscaped open space and side and rear setbacks.

In summary, the proposal has addressed building bulk and scale considerations and does not create an unreasonable visual streetscape impact.

This issue has been addressed and does not warrant refusal of the application.

- ***Concern has been raised that the amended proposal will result in further tree removal.***



Comment:

Councils Landscape Advisors have reviewed the amended design and Arborist Report, and have not raised any issues. There is no change to the previous consent that required retention of specific canopy trees. The previously approved recommendations within the Arborist Report and the landscape design (L-01 - L-07 (inclusive)), Issue G, remains as previously conditioned.

The approved Landscape Plan provides for the retention of existing ground levels to preserve the existing native trees within the rear of the property and conditions of consent are imposed requiring ground levels to be maintained within the tree protection zone of trees.

Whilst a new sandstone retaining wall is proposed in close proximity to existing native trees such as T2 - Spotted Gum, T3 - Bangalay Gum, and T4 - Bangalay Gum, and neighbouring trees identified as N1 - Spotted Gum and N2 - unidentified tree, recommendations within the amended Arborist Report ensure that construction method of the proposed retaining wall will not impact the structural root zone of the native trees.

The proposal will continue to provide a mix of small and medium trees and mixed species that have a height commensurate with the landscape setbacks and are suitably spaced around the perimeter of the dwelling to provide a landscape setting.

In summary, it is considered that the amended Arborist Report combined with existing landscape plan will not create an unreasonable impact on the amenity of surrounding land, subject to additional and previous conditions as recommended.

This issue is not considered to warrant refusal of the application.

- ***Concern is raised by the removal of conditioned privacy mitigation design features and its impact on No. 22 Wandeen Road.***

Comment:

This issue is specifically discussed in detail under the heading Part C1.15 Privacy of the P21 DCP within this report. This issue has been considered to ensure no unreasonable privacy impacts arise in relation to surrounding land.

Additional louvered privacy screening are appropriately located for the Ground Floor alfresco area, and Ground Floor windows on the eastern elevation to ensure no unreasonable impact.

High use areas such as dining/living/kitchen on the Ground Floor and the First Floor stairway void areas have not been appropriately designed to maintain privacy to adjacent land with the principal outlook towards the west and private open space areas of to No. 22 Wandeen Road.

The deletion of condition 8 is not supported.

- ***Concern has been raised in regards to the pollution of the solid fuel fireplace and the visual impact of the solar panels on No. 26 Wandeen Road.***

Comment:

The solid fuel fireplace has been assessed by Councils Environmental Health advisors who support the make and model and proposed flue height. A condition will be applied to ensure that the installation must be carried out in accordance with the relevant provisions of AS2918:2001, and that the system is compliant with all relevant legislation, including the Building Code of Australia, and Australian Standards to ensure the system operates in a legislatively compliant manner.



The solar panels are located on the First Floor roofline. The panels are located forward of the dwelling house at No. 26 Wandeen Road, and therefore it is not anticipated that the solar panels would create unreasonable amenity or visual impacts. However, a condition will be applied to the modified consent to ensure that the solar panels are mounted flat against the roof and not elevated in order to maintain view lines to the adjoining / nearby properties.

Therefore, this issue does not warrant refusal of the application.

- **Concern has been raised that the amended design will have unreasonable impact on solar access.**

Comment:

The applicant has provided shadow diagrams which demonstrate compliance with Council's solar access requirements under Pittwater DCP 21 that apply to the site.

Overall, the amended design provides sufficient stepping/transition down the slope of the site to break-up the scale and mass of the building and assist in maintaining solar access/minimising the shadow cast from the building over neighbouring private properties. The property at No. 22 Wandeen Road and the subject site have northerly aspects and solar access to private open space areas will not be unreasonably affected by the proposal pursuant to Part C1.4 Solar Access of the P21 DCP.

In summary, the proposal is compliant and has been addressed to ensure no unreasonable overshadowing. Therefore, this issue does not warrant refusal of the application.

- **Concern is raised that the modified proposal is for a multi-unit dwelling, not a dwelling house due to the incorrect heading title on the "Sheet Page" of the submitted plans.**

Comment:

The heading title of the "Sheet Page" was "Multi Dwelling" which was corrected by the applicant to display the correct heading of "Proposed Dwelling" which is consistent with approved dwelling house of development consent DA2020/1163.

The modified design makes no change to the intent of the use of the subject site. As detailed within this report, dwelling houses are a permissible form of development in this location. The scale of the amended development is considered acceptable in the context of the site and the developments general consistency with the relevant built form controls results in an reasonable form of development.

Therefore, this issue is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	General Comments Further information on the type of heater and flue details have been submitted which would be supported by Environmental Health for approval of the Kemlan Celestial 900 with fan inbuilt solid fuel heater subject to conditions and amended plans with the flue height at least 1 metre above the eaves of the neighbouring property. As a result, the application is approved subject to conditions.

Internal Referral Body	Comments
	<u>Planner Comment:</u> The proposed solid fuel heater flue is approximately 8.376m in height, and is shown to be located 1.126m above the eaves of No. 22 Wandeen Road, as represented in the submitted plan titled "Fire Place Flue Section", Drawing Number - 103.1.
Landscape Officer	<u>Initial Comments</u> The application is for modification of development consent DA2020/1163. The modification plans include the proposal to construct boulder retaining walls to the rear of the property and cut/fill to a maximum of 1 metre. These walls and associated cut or fill are located in close proximity to existing native trees within the site identified in the Arboricultural Impact Assessment submitted with DA2020/1163 as T2 - Spotted Gum, T3 - Bangalay Gum, and T4 - Bangalay Gum, and neighbouring trees identified as N1 - Spotted Gum and N2 - unidentified tree. The approved Landscape Plan provides for the retention of existing ground levels to preserve the existing native trees within the rear of the property and conditions of consent are imposed requiring ground levels to be maintained within the tree protection zone of trees. The proposed modification proposes sandstone block walling across the rear of the property in close proximity to existing trees, and Landscape Referral expressed initial concerns that the plans noted cut and fill as part of the sandstone block walling. The amended plans continue to shown the notation for "landscape block retaining wall to assist with cut/fill max. 1m high" and this proposal is not supported due to lack of detailed information on levels and the impact to the existing native trees in close proximity. <u>Amended Comments</u> An arborist report has been provided in support of the proposed sandstone block walling subject to the following recommendations: the walls are constructed and infilled in a manner which does not require soil cuts below existing grade, and excavation of soils below existing grade is not permitted; the location of retaining walls is kept outside the structural root zones of trees to be retained; and any soil infilling must not change the existing soil levels around the base of any tree except for replacing soil lost due to erosion. These recommendations are acceptable as no changes to existing ground levels will be permitted and the structural root zone area shall not support any sandstone block retaining. The placement of the sandstone block walling shall be placed onto a levelling bed of sand on top of the existing grades. It is advised that to reduce any soil erosion to existing grades this area of the landscape shall be

Internal Referral Body	Comments
	completed with approved works for garden bed planting and lawn in accordance with the approved Landscape Plan. Subject to additional conditions the modified design is supported.
NECC (Bushland and Biodiversity)	This application was previously assessed against relevant biodiversity planning controls, and it was concluded that a significant impact to biodiversity is unlikely and several impact mitigation requirements applied via conditions as part of the original development application DA2020/1163. Therefore, as no additional biodiversity impacts are considered likely, the modifications are recommended for approval without conditions.
NECC (Development Engineering)	<u>Initial Comments 29 July 2021 & updated comments as a result of Amended plans August 2021</u> No objections are raised to the proposed modification. No modification to Development Engineering conditions required. Existing Development Engineering conditions for DA2020/1163 are considered to still be relevant and adequate. The proposal is therefore supported.

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. 1135681S_04 and 21



May 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 1135681S_04 and 21 May 2021).

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

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

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.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	9.1m (No change to maximum RL 43.997)	7.1% -	No* No**



**The proposed development continues to be non-compliant with the 8.5m maximum building height prescribed by clause 4.3(2) of PLEP 2014. However, The applicant seeks to rely upon a variation prescribed by 4.3 (2D) of PLEP 2014, which provides that the building may reach up to 10m in height, subject to consistency with certain criteria. The objectives of the height of buildings development standard, and relevant criteria are assessed within the 4.3 Height of buildings section of the report.*

***Maximum RL previously approved.*

Compliance Assessment

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

Detailed Assessment

Zone E4 Environmental Living

The proposed modified works are consistent with the objectives of the E4 Environmental Living zone. The development will continue to have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values.

The additional void area over the first floor internal access stairs and associated roofing is not redibly visible from the Wandeen Road frontage, with the new dwelling house continuing to modernises and contributes to the Wandeen Road streetscape and reflect the predominant character of residential development in the immediate Wandeen Road area.

Overall, the proposal is consistent with the desired objectives and future character of the E4 Environmental Living zone.

4.3 Height of buildings

Height of Building

Pursuant to Clause 4.3, subclause 2D of the PLEP 2014, the maximum building height of consent **2020/1163** was approved at 9.6m, with a maximum overall building height of RL43.997.

The proposed First Floor amendments are also non-compliant with the 8.5m maximum building height prescribed by clause 4.3(2) of PLEP 2014, as follows:

- Maximum overall height of the roof line additional area of the First Floor is 8.0m - 9.1m (max. RL42.997)

Note: that whilst a chimney flue is proposed at a height of 8.376m, consistent with the Building Height



(or Height of Building) definition within the PLEP 2014 the flue is excluded from the assessment under building height.

The additional building height non-compliance is demonstrated in Figure 1 & Figure 2 below.

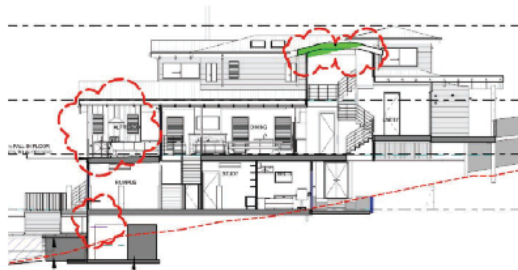


Figure 1: Extent of the additional building height non-compliance shown in green.



Figure 2: Extent of additional building height non-compliance circled in red (source: Rise Projects).

Whilst the maximum overall height of the dwelling house is was approved RL43.997. The maximum overall height of the new First Floor void area is lower at 9.1m or RL42.997.

The applicant continues to rely upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the height of buildings may reach up to 10.0m in height, subject to consistency with certain criteria.

One of the relevant criteria is to ensure that the objectives of the clause are achieved. The objectives of the height of buildings development standard are considered as follows:

- To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.

Comment:

The proposal reflects the established built form character of the immediate Wandeen Road area where multi-level, variably stepped dwelling houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access. The proposed additional works to the First Floor have been designed to accommodate the steep slope of the site, while continuing to reflect the predominant character of residential development in the immediate Wandeen Road area.

The proposal is for a three (3) level level dwelling house, with the modified design to include an additional void area over the internal access stairs of the First Floor. It is the new void area/roof form that contributes to the additional non-compliance.

Although the design of the alterations is more contemporary and architecturally unique when compared to the more traditional style of surrounding dwelling houses and parking structures,



the residential nature of the development and the non-compliance, is considered to be consistent with the objectives of the zone and the urban context of the local area.

The amended development continues to satisfy this objective.

- *To ensure that buildings are compatible with the height and scale of surrounding and nearby development.*

Comment:

The development is located on the downward slope of the Wandeen Road which is characterised by undulating topography towards the Pittwater water area. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with.

Notwithstanding, the overall height of the development is below the 10m requirement, and is representative of a three (3) storey development when viewed from properties to the north, east and west, and a two (2) storey development when viewed from the upslope of Wandeen Road.

The non-compliance is located at the western edge of the roofline (demonstrated in figure 1 & 2 above) due to the topographical nature of the site.

The non-compliance is considered to be relatively minor and lower than the overall ridge line approved in the original consent. The additional area of non-compliance does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed overall height non-compliance is considered to be compatible.

The amended development continues to satisfy this objective.

- *To minimise any overshadowing of neighbouring properties.*

Comment:

The western roof element (where the additional building height protrusions occurs) do not contribute to any unreasonable overshadowing of adjoining properties.

The amended development continues to satisfy this objective.

- *To allow for the reasonable sharing of views.*

Comment:

It is acknowledged that the non-compliance along the western edge of the proposed roof does not impact the viewing angle from the properties to the east, No. 26 Wandeen Road due to the location on the western elevation of the proposed void area. The view lines established and identified within DA2020/1163 will remain intact.

The height non-compliance does not have an unreasonable impact upon the existing views from further up the escarpment to Wandeen Road due to the higher placement/vantage point of these properties.

The amended development continues to satisfy this objective.

- *To encourage buildings that are designed to respond sensitively to the natural topography.*

Comment:

The amended proposal makes no change to the minor volume of excavation under the footprint of the dwelling house. As a result, the proposal continues to present as a dwelling that has been sited to sympathetically follow the natural slope of the land.

The proposals additional void area on the first floor is a fairly minor area, and is not visually concernable when the dwelling house is viewed in its entirety. The proposal will continue to provide open style rear balcony areas, via varied setbacks continues to provided a "stepped" look when viewed from the sides and rear and the neighbouring properties.

The amended proposal continues to reflect the established built form character of the immediate Wandeen Road area where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

The development satisfies this objective.

- *To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment:

Despite the topographical constraints of the site, the developments design provides reasonable articulation, and visual interest and the additional First Floor area floor is sufficiently setback from the boundaries such that the visual impact of the additional area of the building will be appropriately managed.

All previously approved significant trees and proposed landscaping is to be retained as per the approved consent, and will continue to soften and filter the new built form. Therefore, the amended proposal will be sufficiently integrated into the existing landscaped setting.

The development satisfies this objective.

The remainder of the criteria prescribed by clause 4.3(2D) of PLEP 2014 have been considered, as follows:

- *The consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor.*

Comment:

The portions of the development that exceed the 8.5m building height plane are limited in height and depth, as demonstrated in Figure 1 and 2 above. The protrusions are reasonably described as minor.

The development satisfies this objective.

- *The building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%).*

Comment:

The footprint of the proposed dwelling house is sited on a slope of approximately 33 degrees to 50 degrees.

The development satisfies this objective.



- *The buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Comment:

The amended proposal continues to display a minor volume of excavation that is not unreasonable in the context of the site.

The development satisfies this objective.

The amended proposal will continue to be consistent with the criteria of clause 4.3(2D) of PLEP 2014, and the application of the 9.1m variation is supported. As such, the proposed development is consistent with the maximum building height prescribed for the site.

7.2 Earthworks

A Geotechnical Assessment Addendum has been prepared by White Geotechnical Group, Reference No. J2913D, dated 2 August 2021. This addendum and its recommendations are included within the conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required additional excavation.

Accordingly, Councils Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.

7.6 Biodiversity protection

An amended Arborist Report from Blues Bros Arboriculture, dated 26 July 2021 was received as part of the modification documentation to address the amended works, specifically in regards to the rear retaining walls. As a result, Councils Landscaping and Biodiversity officers have assessed the amended proposal and consider the impact of the development on the existing biodiversity to be reasonable, subject to conditions.

7.7 Geotechnical hazards

A Geotechnical Assessment Addendum has been prepared by White Geotechnical Group, Reference No. J2913D, dated 2 August 2021. This addendum and its recommendations are included within the conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required additional excavation.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Dwelling: 9.0 - 14.0m	Dwelling: No Change	Yes
Rear building line	6.5m	Swimming Pool: 13.9 - 16.0m Dwelling: 20.7m - 24.1m	Swimming Pool: No Change Dwelling: No Change	Yes
Side building	2.5m (Western	Dwelling: 3.6m	Dwelling 3.6m (Void Area)	Yes

line	Boundary)	Swimming Pool: 3.6m	Swimming Pool: No Change	
	1m (Eastern Boundary)	Landing: 0.2m Dwelling Lower Ground: 3.0 - 7.2m Ground Floor: 2.0m Dwelling First Floor: 2.0m - 2.6m	Landing: No Change Dwelling Lower Ground: No Change Dwelling Ground Floor: No Change Dwelling First Floor: No Change	No* Yes Yes Yes
Building envelope	3.5m (Western Boundary)	Outside envelope: Nil - 0.2m for a distance of 0.8m Nil - 1.1m for a distance of 6.4m	Additional Encroachment for a height of 0.8m and length of 1.9m	No
	3.5m (Eastern Boundary)	Outside envelope: Nil - 0.5m for a distance of 3.1m Nil - 0.5m for a distance of 2.8m Nil - 1.5m for a distance of 6.4m	No Change	No*
Landscaped area	50%	57.6% (492.10m ²)	No change	No*

* Previously approved (DA2020/1163)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
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	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	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
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The development is consistent with the Desired Character statement of the Avalon Beach Locality with exception of the third storey element of the dwelling.

Specifically, the locality statement provides that the *"locality will remain primarily a low density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

However, the third storey element was approved in the previous consent, as it was determined that the three levels are consistent with the very sloping topography and the surrounding residential dwelling houses.

In this regard, the amended built form will continue to sit comfortably with adjoining and surrounding two, and three storey residential development. Also, consistent with adjoining development, the built form is located downslope in steep topography and therefore proposed landscaping, in conjunction with existing and required landscaping contained within previous consent will continue to assist to visually screen the bulk and scale of the amended built form and integrate the built form into the landscape.

On balance, the proposal is considered consistent with the desired future character of the Avalon Beach locality.

C1.5 Visual Privacy

Concern was raised by the Northern Beaches Local Planning Panel in the assessment of the original scheme in relation to the potential overlooking of adjoining properties. Overlooking was associated with the Ground Floor western window opening areas with regard to potential overlooking into No. 22



Wandeen Road existing private open space.

As a result, the Northern Beaches Local Planning Panel applied condition 8 that requires :
The vertical window to the stairwell on the ground floor western elevation shall be opaque and all other windows on the ground floor level on the western elevation shall be opaque to a height of at least 1.6m (when measured from the finished floor level).

The modified design seeks to delete this condition and the plans show that the window openings on the western elevation to be of clear glazing.

The amended development plans have made no attempt to further resolve overlooking of No. 22 Wandeen Road to the west of the existing site and the provision of clear glazing results in unacceptable privacy impacts. See Figure 3 below.

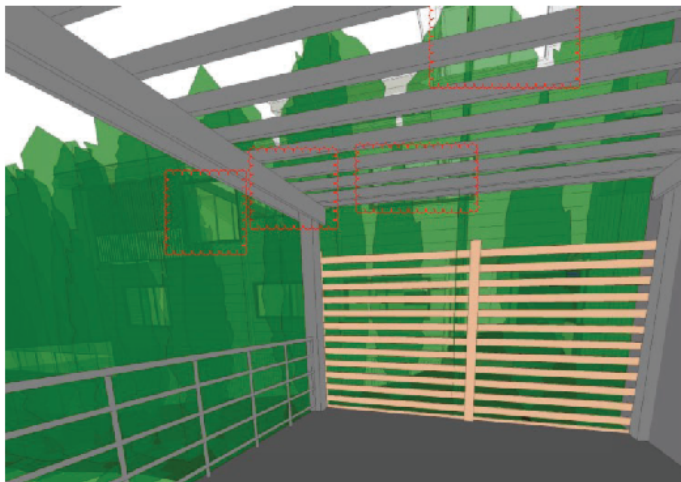


Figure 3: View lines from No. 22 Wandeen Road private open space area toward the window openings which are circled in red. (Source: Rise Projects)

It is acknowledged that the general orientation of properties along Wandeen Road have openings to capture the Pittwater waterway views towards the north and north-west. However, an absence of privacy screening devices in these areas so to maintain view lines across the side boundaries is not considered reasonable, nor satisfies the outcomes C1.5 Privacy control.

Therefore, the direct overlooking into the neighbouring private open space areas is not effectively mitigated by the additional landscaping along the western boundary, and no additional privacy mitigation measures have been incorporated into the amended design.

It is recognised that the amended design seeks to relieve existing privacy concerns by providing additional privacy screening, via external louvers to the eastern windows of W16, W17 and W18.

However, as there are no proposed design changes to minimise the potential privacy impacts from the western elevation window openings, there are no grounds to change the assessment and determination in relation to privacy impacts.

As a result, condition 8 will be retained and amended to reference the additional window, W72, to protect the amenity of the adjoining property to the west.

C1.14 Separately Accessible Structures



The applicant seeks to retain the existing floor plan on the lower ground floor, and introduce a paved recreational area servicing Bedroom 5.

Whilst the assessment report for the development consent detailed that during the assessment amended plans were submitted that removed the paved recreational area of the Lower Level to reduce the usability of the lower ground floor level as separate habitation, it is the current evaluation that the addition of the 8sqm paved area does not sufficiently indicate that this area is to physically provide for separate habitation.

Whilst external access is provided at two entry points on this level with access from the rumpus room to the lower deck alfresco area, and another access entry from the private alfresco area into Bedroom 5, the level contains no contains cooking facilities and is also freely internal accessed from the ground floor of the dwelling.

As such, the amended development does not readably provide for separate habitation, nor is granted approval for separate habitation including a secondary dwelling or dual occupancy.

D1.1 Character as viewed from a public place

The amended development is of a consistent scale with the existing dwelling houses within the visual catchment of the site. Whilst the amended development has minor areas that exceeds the Building Height Development Standard of 8.5m within the PLEP and the Building Envelope built form controls prescribed by P21 DCP, overall, it can be said that the bulk and scale of the amended design does not exhibits excessive bulk, scale and mass and is consistent with the built form of low-density "detached" style housing in the surrounding area as shown below.



Figure 4: Amended development as viewed from the upslope of Wandeen Road (source: Rise Projects).



Figure 5: Amended development as viewed from the downslope of Wandeen Road (source: Rise Projects).

Additionally, the amended proposal is able to achieve consistency with the outcomes of this clause which aim to ensure that new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment and that buildings do not dominate the streetscape and are of a "human scale".

D1.11 Building envelope

Description of non-compliance

The amended development involves one minor area that protrudes beyond the required building envelope on the western elevation.

The side envelope breach area is as follows:

- West Elevation: up to 0.8m (height) and 1.9m (width).

The figure below shows the location and extent of the non-compliance.

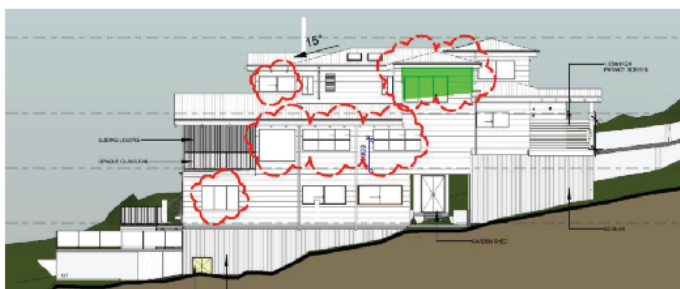


Figure 6: Extent of additional building envelope non-compliance on the western elevation shown in green.

As stated within the control "where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis".

Consequently, consideration of the proposed breach against the relevant outcomes of the control is provided below:



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

Comment:

The non-compliance is significantly influenced by the sloping topography of the site, and the maintenance of the existing setbacks of the approved built form. The proposal is well articulated along side setbacks, with a varied roof line. The area of encroachment demonstrates consistency with the desired future character of the locality with the siting of the amended dwelling maintaining the landforms, landscapes and other features of the natural environment.

The amended proposal complies with this outcome.

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

Comment:

The amended area of development is situated predominately over the existing approved building footprint and does not alter the existing topography of the site. The minor encroachment is not visible predominate or "jarring" from the Wandeen Road frontage. The minor encroachment is considered satisfactory in regards to the design, scale, bulk and the height of the proposal.

Furthermore, the resultant built form will continue to respond to the natural land form of the site, with the encroachment area being below the height of the trees of the natural environment.

The proposal complies with this outcome.

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

Comment:

The facade of the dwelling on the west elevation is sufficiently modulated to respond aspect of the site and its steep slope. The resultant amended development is considered to be a sensitive design response in consideration of the natural characteristics of the site, with the retention of existing canopy trees and the enhancement of landscaping.

The proposal complies with this outcome.

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

Comment:

In light of the steep topography, the significant articulation along the western facade attempts to ensures the bulk and scale of this portion of the development has been minimised. The proposed resultant dwelling is of comparable building bulk and scale to existing and approved developments in the locality.

The proposal will continue to include adequate vegetation in order to screen the built form of the proposed development from the neighbouring sites, the Wandeen Road street view and from the Pittwater waterway.

The development complies with this outcome.

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

Comment:

The proposed development will not result in any significant view loss that would warrant refusal of the application.

The development complies with this outcome.

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

Comment:

There will be no adverse amenity impact in regard to privacy or solar access (subject to conditions) as a result of the proposed breach of the Building Envelope.

The development complies with this outcome.

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

Comment:

The amended dwelling design is sited in a manner that will continue to retain significant existing vegetation and enhance the future viability of the vegetation community that exists on the site.

The development complies with this outcome.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.20 Scenic Protection Category One Areas

The property is located in a Scenic Protection Area Category One under Pittwater21 DCP. This requires all new development to minimise its visual impact on the natural environment when viewed from any waterway, road or public reserve.

The amended development is situated well back from the road reserve whilst not being sited in close proximity to the upper ridges, mitigating its visual presence. It can be said that the proposed development has been designed to minimise bulk and scale, and lessen the visual impact of the proposed development as viewed from Wandeen Road, or adjoining properties.

Overall, the proposal(as amended) is consistent with the desired future character of the Avalon Beach Locality and therefore, the Scenic Protection Area Category One requirements.

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 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, and other documentation supporting the application and public submissions.

The assessment of the proposed development against the provisions of PLEP 2014 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the PLEP 201 which permits a maximum building height of 8.5m within the E4 Environmental Management zone. However, the applicant continues to rely upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the height of buildings may reach up to 10m in height, subject to consistency with certain criteria.

In this case, the additional non-compliance is located at the new void area, along the western edge of the roofline and wall plane of the First Floor level. Whilst the building height variation is to a maximum of 9.1m, the overall height of the additional void area is below the existing RL43.997. The non-compliance is largely unavoidable due to the steep slope of the site, minor in size and is supported.

In addition, the assessment of the amended development against the provisions of the P21 DCP has found that the proposal does not comply with the Building envelope. Given the constraints on the development by virtue of the steep topography and the presence of significant environmental features, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity



impacts on adjoining properties and the proposal will be consistent with the vegetated character of Wandeen Street and the Locality.

The critical concerns relating to the privacy impacts as a result of the windows on the Ground Floor of the western elevation continues to create unacceptable and unreasonable privacy, and amenity impacts to the adjoining western property.

As a result, the previous condition applied by the NBLPP (condition 8) will be retained on the consent and modified to include the additional First Floor window on the western elevation.

Recommendation - Approval

In summary, the application is referred back to the NBLPP and is recommended for approval subject to amended and additional conditions.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0362 for Modification of Development Consent DA2020/1163 granted for construction of a dwelling house including a swimming pool on land at Lot 102 DP 13760,24 Wandeen Road, CLAREVILLE, subject to the conditions printed below:

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

The development must be carried out in compliance with DA2020/1633 approved on the 3 February 2021 (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plans 1.0 Rev I	21/5/2021	Rise Projects
Driveway 1.1 Rev I	21/5/2021	Rise Projects
Driveway Gradient 1.2 Rev I	21/5/2021	Rise Projects
Driveway Cross-Section 1.3 Rev I	21/5/2021	Rise Projects
Fire Place Flue Section 103.1	Undated	Rise Projects
Retaining Wall Location 1.4 Rev I	21/5/2021	Rise Projects
Retaining Wall Location 1.5 Rev I	21/5/2021	Rise Projects
Gabion Wall Setout Plan 1.6 Rev I	21/5/2021	Rise Projects
Cut and Fill Plan 1.7 Rev I	21/5/2021	Rise Projects
Pier Layout Plan 1.8 Rev I	21/5/2021	Rise Projects
Pool Level Layout 1.9 Rev I	21/5/2021	Rise Projects

Lower Level Layout 2.0 Rev I	21/5/2021	Rise Projects
Ground Floor Layout 2.1 Rev I	21/5/2021	Rise Projects
First Floor Layout 2.2 Rev I	21/5/2021	Rise Projects
Roof Plan 2.3 Rev I	21/5/2021	Rise Projects
Elevations 3.01 Rev I	21/5/2021	Rise Projects
Elevations 2 3.2 Rev I	21/5/2021	Rise Projects
External Window Schedule 1 3.3 Rev I	21/5/2021	Rise Projects
External Window Schedule 2 3.4 Rev I	21/5/2021	Rise Projects
Window and Door Schedule 3.5 Rev I	21/5/2021	Rise Projects
Section 1 4.1 Rev I	21/5/2021	Rise Projects
Section 2 4.2 Rev I	21/5/2021	Rise Projects
Section Void 4.3 Rev I	21/5/2021	Rise Projects
Pool Level Slab Layout 5.1 Rev I	21/5/2021	Rise Projects
Lower Level Floor Slab Layout 5.2 Rev I	21/5/2021	Rise Projects
Ground Floor Slab Layout 5.3 Rev I	21/5/2021	Rise Projects
Driveway Slab Plan 5.4 Rev I	21/5/2021	Rise Projects
Skylight detail 9.3 Rev I	21/5/2021	Rise Projects
Skylight detail 9.4 Rev I	21/5/2021	Rise Projects
Fire Place and Flue Detail 9.6 Rev I	21/5/2021	Rise Projects
Pool details 9.7 Rev I	21/5/2021	Rise Projects
Pool Detail 9.8 Rev I	21/5/2021	Rise Projects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Addendum	26/7/2021	Blues Bros Arboricultural
Geotechnical Addendum J2913D	2/8/2021	White Geotechnical Group

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

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

B. Modify Condition No. 8 Amendments to the approved plans to read as follows:

The windows on the western elevation are to be treated as follows:

- Vertical window (W11) to the stairwell on the ground floor western elevation shall be opaque glazing and/or incorporate external fixed vertical privacy screening over the entire window
- Windows W9 & W10 on the western elevation shall be opaque to a height of at least 1.6m (when measured from the finished floor level) and/or incorporate external fixed vertical privacy screening over the entire window.
- Window W72 on the western elevation shall be opaque glazing and/or incorporate external fixed vertical privacy screening over the entire window.

Amended plans are to be submitted to the Certifying Authority for approval prior to the issue of the



Construction Certificate.

Reason: to protect the amenity of the adjoining property to the west.

C. Add Condition 19A Updated Plan Layout of Sandstone Block Walling

Amended Plans to indicate the alignment and extent of the sandstone block walling shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) retention of the existing natural ground levels as shown on the approved Landscape Plan issue G dated 17.12.2020, with no reduced or raised natural ground levels permitted,
- ii) the alignment shall not encroach upon the structural root zone (SRZ) of T2 *Corymbia maculata* (minimum 2.8m SRZ), T3 *Eucalyptus botryoides* (minimum 3.5m SRZ), and T4 *Eucalyptus botryoides* (minimum 2.2m SRZ),
- iii) notes shall be included that the sandstone block walling shall be placed upon natural ground levels on a coarse sand / cement levelling bed only.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

D. Add Condition 42A Installation of Solid/Fuel Burning Heaters to read as follows:

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

E. Add Condition 42B Certification of Solid Fuel Burning Heaters to read as follows:

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

F. Add Condition 42C Sandstone Block Retaining Wall to read as follows:

The sandstone block retaining walling shall be completed in layout in accordance with approved updated plan layout of sandstone block walling.

Advice is given that the completion of the works as approved under the Landscape Plan should be completed as soon as possible to prevent ongoing soil erosion from works or from surface runoff, as the proposed garden planting lawn will limit any erosion.

Certification shall be provided to the Certifying Authority that the works have been completed in accordance with the updated plan layout of sandstone block walling.

G. Add Condition 42D Solar Panels to read as follows:

The installation of any solar panels on the roof shall be mounted flat against the roof and not demonstrate an elevated mounting.



Reason: In order to maintain view lines to the adjoining / nearby properties.

Reason: Landscape amenity.

H. Add condition 46 Operation of Solid Fuel Burning Heaters to read as follows:

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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

I. Add Condition 47 Maintenance of Solid Fuel Burning Heaters to read as follows:

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

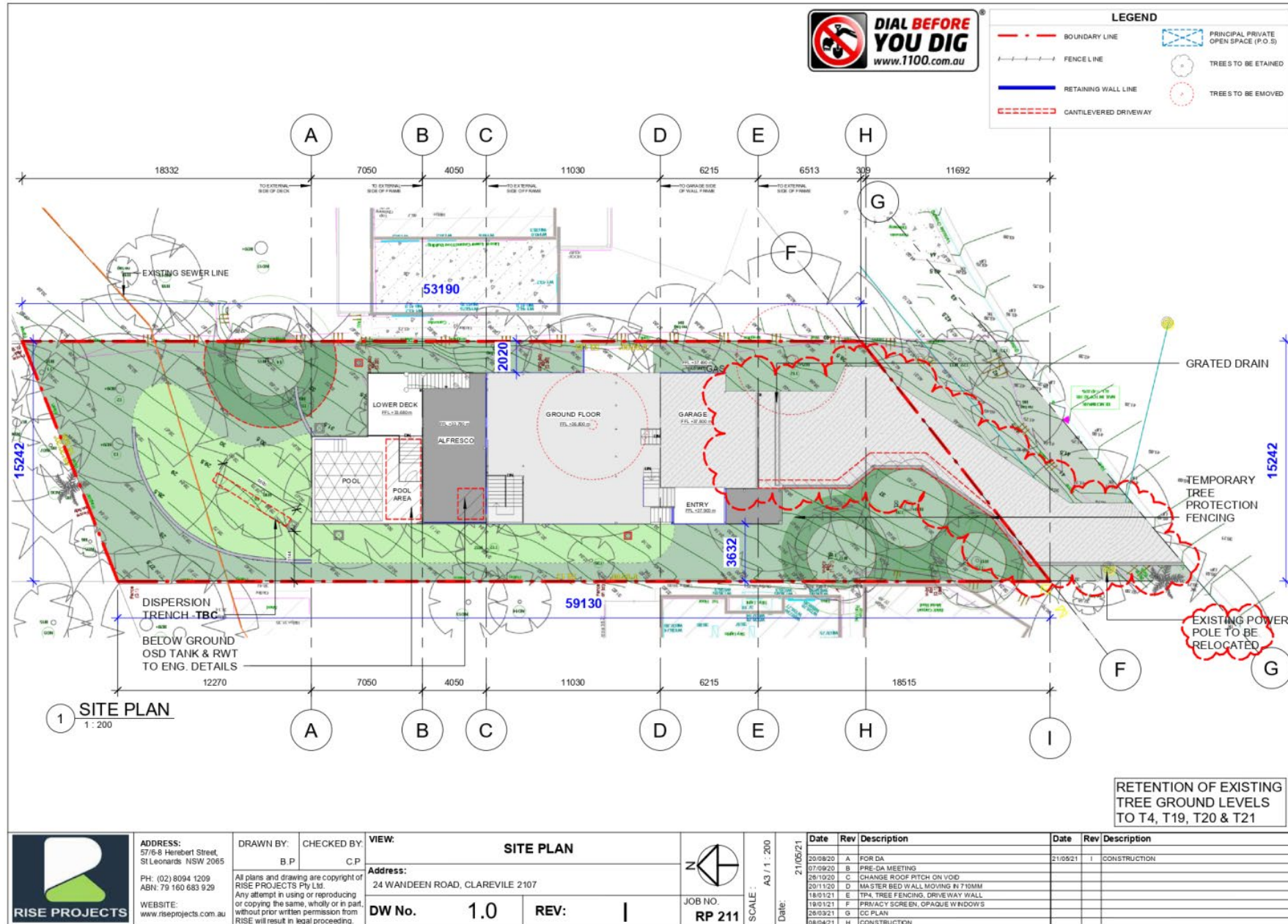
In signing this report, I declare that I do not have a Conflict of Interest.

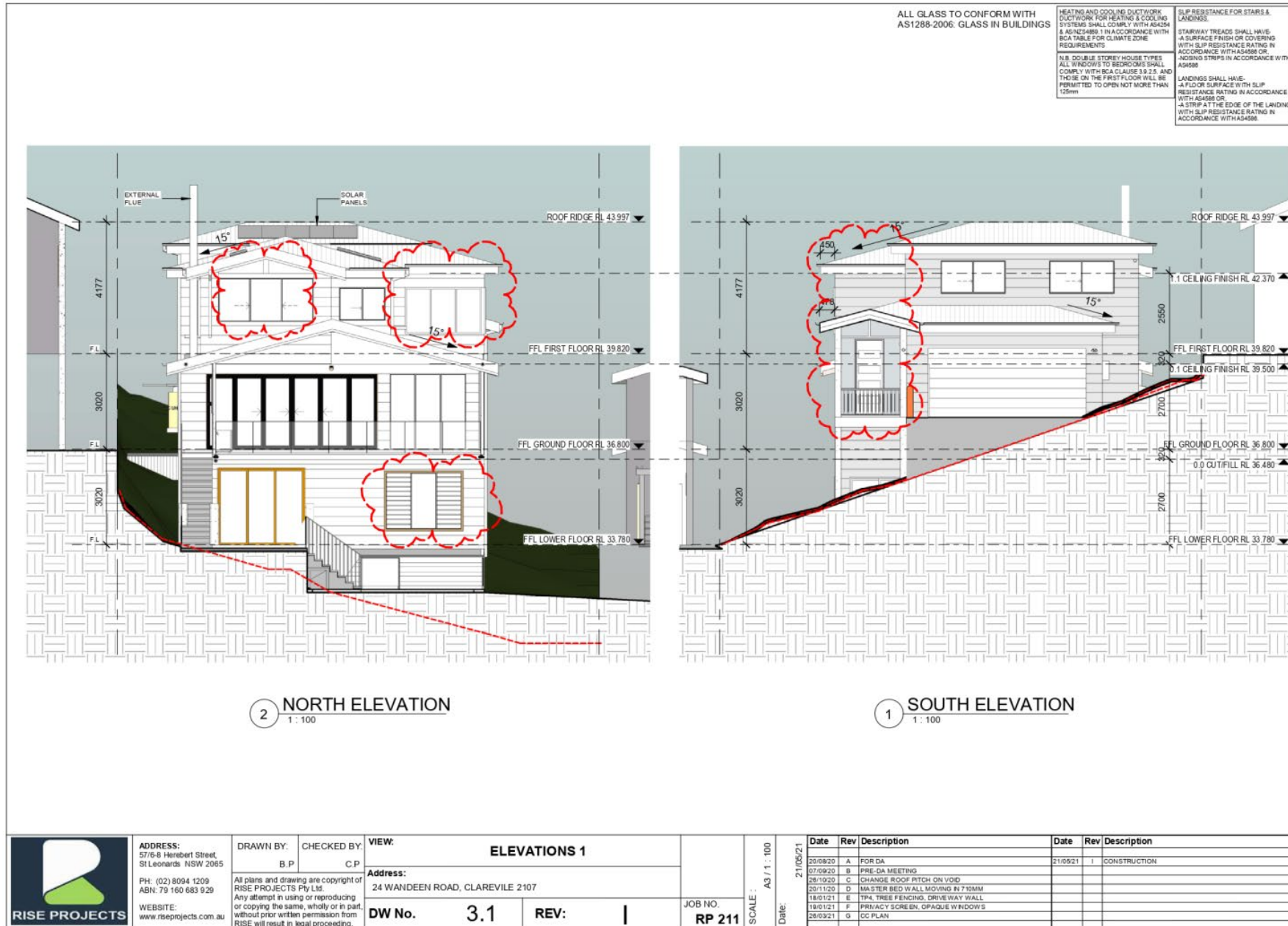
Signed

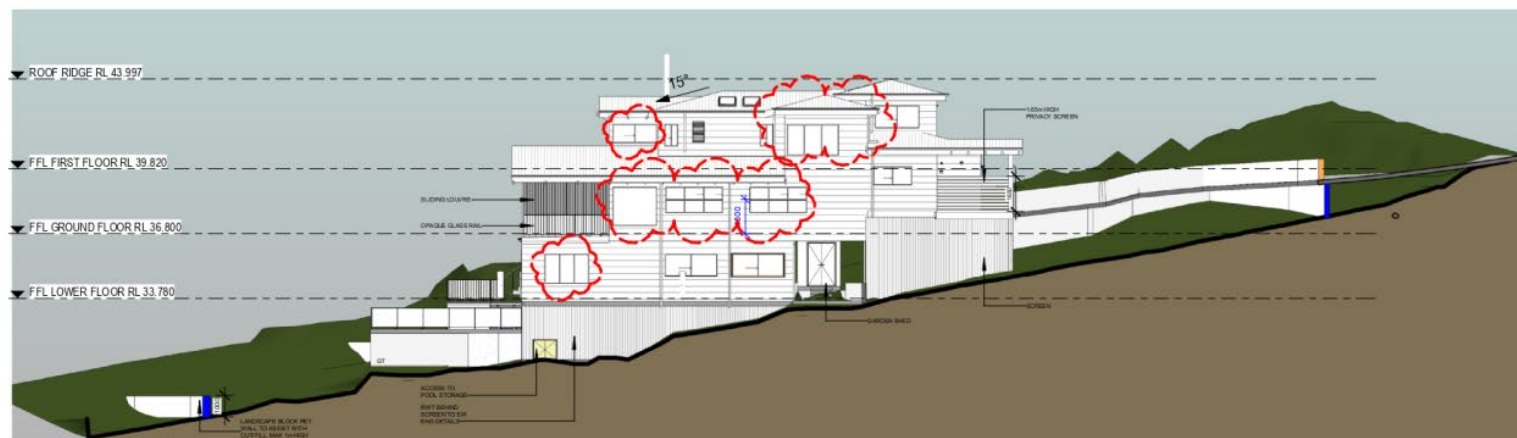
The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments

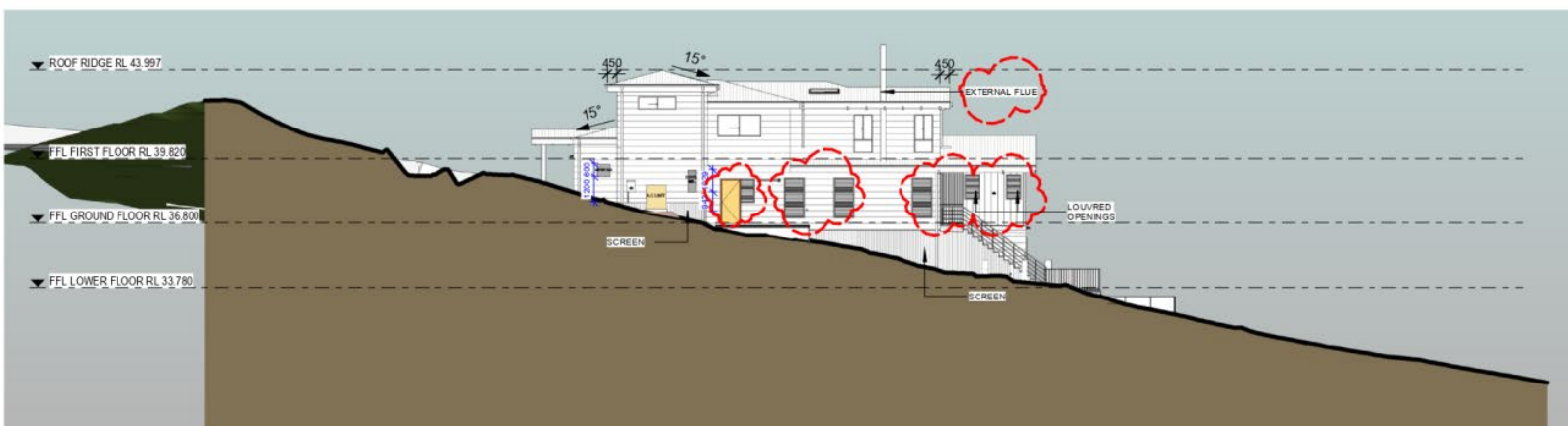
Peter Robinson, Executive Manager Development Assessment







3 WEST (LEFT)
1 : 200



4 EAST (RIGHT)
1 : 200

ALL GLASS TO CONFORM WITH
AS1288-2006. GLASS IN BUILDINGS

HEATING AND COOLING DUCTWORK
DUCTWORK FOR HEATING & COOLING
SYSTEMS SHALL COMPLY WITH AS4254
& AS/NZS4465.1 IN ACCORDANCE WITH
BCA TABLE FOR CLIMATE ZONE
REQUIREMENTS

N.B. DOUBLE STOREY HOUSE TYPES
ALL WINDOWS TO BEDROOMS SHALL
COMPLY WITH BCA CLAUSE 3.9.2.5. AND
THOSE ON THE FIRST FLOOR WILL BE
PERMITTED TO OPEN NOT MORE THAN
125mm

SLIP RESISTANCE FOR STAIRS &
LANDINGS

STAIRWAY TREADS SHALL HAVE:
-A SURFACE FINISH OR COVERING
WITH SLIP RESISTANCE RATING IN
ACCORDANCE WITH AS4586 OR
-HOISING STRIPS IN ACCORDANCE WITH
AS4586

LANDINGS SHALL HAVE:
-A FLOOR SURFACE WITH SLIP
RESISTANCE RATING IN ACCORDANCE
WITH AS4586 OR
-A STRIP AT THE EDGE OF THE LANDING
WITH SLIP RESISTANCE RATING IN
ACCORDANCE WITH AS4586



ADDRESS:
57/6-8 Herebert Street,
St Leonards NSW 2065

PH: (02) 8094 1209
ABN: 79 160 683 929

WEBSITE:
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DRAWN BY: B.P.
CHECKED BY: C.P.

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VIEW: **ELEVATIONS 2**

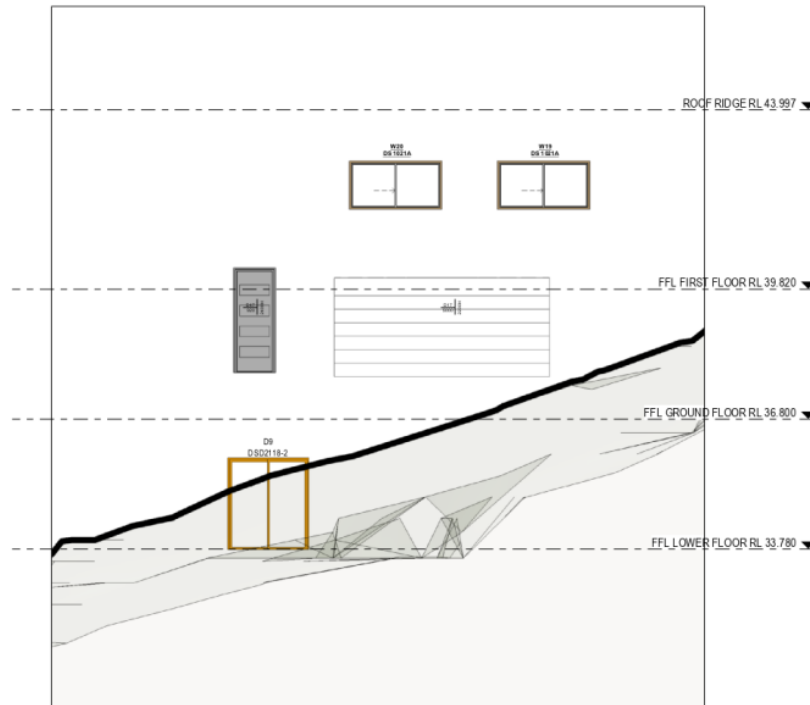
Address:
24 WANDEEN ROAD, CLAREVILLE 2107

DW No. **3.2** **REV:** **I**

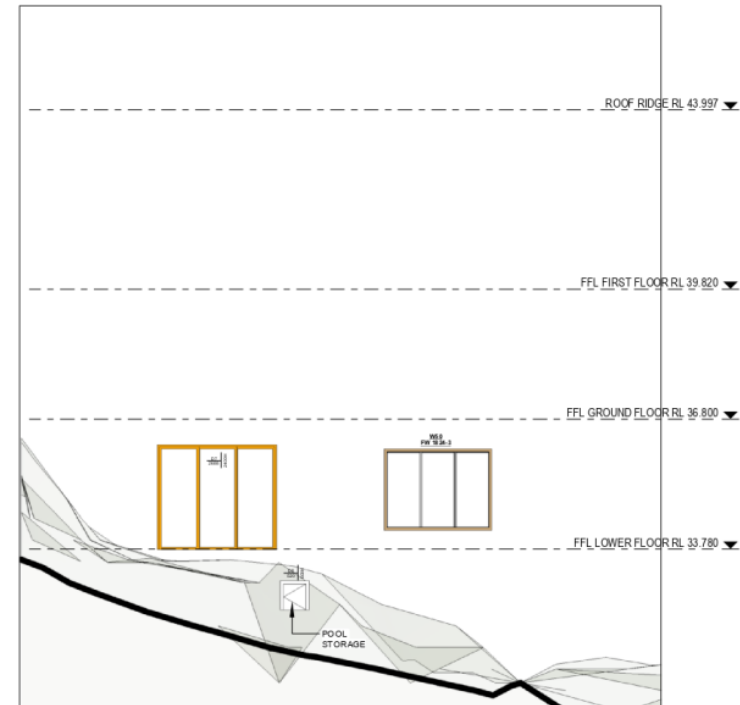
JOB NO.
RP 211

SCALE:
A3 / 1 : 200

Date	Rev	Description	Date	Rev	Description
20/08/20	A	FOR DA	21/09/21	I	CONSTRUCTION
07/09/20	B	PRE-DA MEETING			
26/10/20	C	CHANGE ROOF PITCH ON VOID			
20/11/20	D	MASTER BED WALL MOVING IN 710MM			
18/01/21	E	TP4 TREE FENCING DRIVEWAY WALL			
19/01/21	F	PRIVACY SCREEN, OPAQUE WINDOWS			
26/03/21	G	CC PLAN			
08/04/21	H	CONSTRUCTION			



1 SOUTH ELEVATION
1 : 100



2 NORTH ELEVATION
1 : 100

 RISE PROJECTS	ADDRESS: 57/6-8 Herbert Street, St Leonards NSW 2065	DRAWN BY: B P	CHECKED BY: C P	VIEW: EXTERNAL WINDOW SCHEDULE 1	SCALE: A3 / 1 : 100	Date: 21/05/21	<table><tr><th>Date</th><th>Rev</th><th>Description</th></tr><tr><td>18/01/21</td><td>E</td><td>TP4, TREE FENCING, DRIVEWAY WALL</td></tr><tr><td>18/01/21</td><td>F</td><td>PRIVACY SCREEN, OPAQUE WINDOWS</td></tr><tr><td>28/03/21</td><td>G</td><td>CC PLAN</td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></table>	Date	Rev	Description	18/01/21	E	TP4, TREE FENCING, DRIVEWAY WALL	18/01/21	F	PRIVACY SCREEN, OPAQUE WINDOWS	28/03/21	G	CC PLAN																			<table><tr><th>Date</th><th>Rev</th><th>Description</th></tr><tr><td>21/05/21</td><td>I</td><td>CONSTRUCTION</td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></table>	Date	Rev	Description	21/05/21	I	CONSTRUCTION																											
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PH: (02) 8094 1209 ABN: 79 160 683 929	All plans and drawing are copyright of RISE PROJECTS Pty Ltd Any attempt in using or reproducing or copying the same, wholly or in part, without prior written permission from RISE will result in legal proceeding.			Address: 24 WANDEEN ROAD, CLAREVILLE 2107	JOB NO. RP 211																																																																		
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ITEM 3.2**DA2020/1759 - 51 ARTHUR STREET, FORESTVILLE -
DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP
HOUSING DEVELOPMENT****AUTHORISING MANAGER** Lashta Haidari**TRIM FILE REF** 2021/625248**ATTACHMENTS**
1 Assessment Report
2 Site Plan & Elevations
3 Clause 4.6
4 Design & Sustainability Advisory Panel Report**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1759 for Demolition works and construction of a shop top housing development at Lot 2 DP 233083, 51 Arthur Street, Forestville for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1759
----------------------------	-------------

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 2 DP 233083, 51 Arthur Street FORESTVILLE NSW 2087
Proposed Development:	Demolition works and construction of a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gabrielian Holdings Pty Ltd
Applicant:	Gabrielian Holdings Pty Ltd

Application Lodged:	23/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	08/03/2021 to 22/03/2021
Advertised:	08/03/2021
Submissions Received:	13
Clause 4.6 Variation:	4.3 Height of buildings: 22.4%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 3,550,429.00
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EXECUTIVE SUMMARY

The proposal seeks consent for a three (3) storey shop top housing development with one (1) level of basement parking. The proposal seeks to maximise site coverage and includes four (4) split level two (2) bedroom apartments above four (4) ground level retail / commercial units. The proposal includes a 22.4% breach to the 8.5m maximum height control. The clause 4.6 statement submitted with the application does not adequately address the matters required by clause 4.6, nor does it adequately justify that compliance with the LEP development standard is unreasonable or unnecessary in the circumstances

The height breach, combined with the nil side set back of the development on all levels, will result in a a

building which fails to transition to the adjacent R2 zoned low density development. The excessive height, scale and massing of the development will result in unreasonable visual impacts to neighbouring properties and the streetscape as well as unreasonable impacts on the residential amenity. In addition, issues are raised regarding insufficient landscaping to meet the requirements of SEPP 65 and access and water management issues.

The application was referred to the Design and Sustainability Advisory Panel (DSAP) who recommended design changes to address issues in relation to the scale, built form and articulation, access, privacy, landscaping, transport and sustainability. While it is acknowledged that some attempt was made by the applicant to address the recommendations of the Panel with draft amended plans the issues raised by the Panel remain unresolved as the Panel recommendations were not fully considered. The draft plans were not formally submitted as amended plans, and this assessment is therefore based on the original scheme.

Thirteen (13) submissions have been received which raise issues regarding the excessive height, scale, bulk, the design being out of character with low density residential area, amenity impacts (privacy and overshadowing), transport, excavation and construction, water management and landscaping. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

Based on the detailed assessment contained in this report, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing commercial development and construction of a three storey shop top housing with four (4) x residential split-level apartments above a retail ground level. The proposal includes excavation to a depth of 4m with a nil setback to the boundaries for a basement car park. In detail the development seeks consent for:

Basement Level RL 107,975

- Entrance ramp via Duke Street
- Five (5) retail parking spaces
- Five(5) residential parking spaces
- Six (6) bicycle parking spaces
- Storage and plant rooms
- Lift and stair access

Ground Level RL 111,740

- Four (4) shops which vary in size from 67sqm, 68sqm and 100sqm with frontage to Arthur Street. Shop 4 has a dry store and cool room to the rear;
- Residential entry via Duke Street with lobby, access corridor lift and stairs;
- Back of shop comprising common bin storage area, residential bin store, male and female toilets and accessible toilet;
- Vehicular ramp and pedestrian ramp to basement via Duke Street, and
- 14sqm deep soil area within the rear.

First Floor Level RL 115,940

- Lower level of four (4) residential units comprising open plan living kitchen and dining, bathroom

- and 13sqm balcony. Each unit is accessed via internal steps;
- Ramped corridor providing access to the units;
- Stair and lift, and
- Two areas of non-trafficable roof to the southern corner. Area 1 measures 63sqm and area two measures 41sqm.

Second Floor Level RL 118,240

- Upper level of four (4) residential units comprising two bedrooms (one with an ensuite and WIR), storage area and winter gardens, and
- AC units installed to the southern elevation with a screen to the south.

External

- Awning to the Arthur and Duke Street frontage;
- Materials: white brick work, dark grey and off-white aluminium screens and clear louvres, and
- Public domain: five (5) new tree pits / trees along the Duke Street and Arthur Street frontages, kerb side planter beds and new cross over on Duke Street.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D10 Building Colours and Materials
Warringah Development Control Plan - D18 Accessibility and Adaptability
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 2 DP 233083 , 51 Arthur Street FORESTVILLE NSW 2087
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Arthur Street. The site is a corner site, and is irregular in shape with a frontage of 27.89m along the primary frontage of Arthur Street and 19.31m along the secondary frontage of Duke Street. The site has an area of 581.7m². The site is located on land zoned B1 Neighborhood Center zone and the site currently accommodates a single storey commercial building containing 6 tenancies which has almost 100% site coverage. Vehicular access to the site is from Duke Street via a concrete driveway which provides for parking and loading and unloading of goods. There are 8 Council car parks along the site frontage of Arthur Street. Surrounding development consists of low density residential development ranging from one - two storey dwellings located on land that is zoned R2 – Low Density Residential. The site has a fall towards the west with no topographical constraints and no onsite vegetation.

Map:



SITE HISTORY

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

Application **DA2013/1278** for Use of premises as a medical centre (physiotherapy clinic) and associated signage was approved on 18/12/2013.

Application **DA2015/0255** for Subdivision of an existing building (retail premises) was approved on 05/06/2015.

Application **DA2015/1116** for Fitout and use of premises as a take-away food and drink premises (shop 6) was approved on 08/02/2016.

Pre-lodgement Meeting PLM2019/0061 was held on 18/04/2019 for Construction of a Demolition and construction of a Shop Top Housing and medical centre development 2019 in relation to the development of the site and the adjoining site at 49 Arthur Street. The issues raised relate to height, parking arrangements, building bulk and inconsistency with the surrounding low density residential context of the site.

Design and Sustainability Advisory Panel DSAP

The application was presented to the DSAP on 29 April 2021 who concluded:

"Significant changes to building massing, roof form, access arrangements, setbacks on the upper level and improved relationship to the adjoining residence on no 49 Arthur Street are required."

Further discussion on the issues raised by the DSAP are contained throughout this report and the minutes of the DSAP meeting are contained in the attachment to this report.

On 1 June 2021, a letter was sent to the applicant raising issues with regards to the height, bulk, scale and massing, setbacks and overshadowing, common open space and landscaping, amenity and privacy, eastern facade articulation and detailing and access.

On 28 June 2021, the applicant submitted some draft amendments which included a significant change in the design resulting in an increase in the setback of the upper floor from the side boundaries and an increase in the height of the development. The amended design whilst attempting to resolve some concerns is considered unsuitable for the following reasons:

- Height breach of (up to) 3m significant and CI 4.6 justification using public benefits provided by development is nil.
- The setback to top roof area should be 3m clear to roof eaves from east, west and north boundaries.
- Slope corridor to rear of shops so that disabled access to toilets is accessible.

*Note: The application was not formally amended and this report is based on an assessment of the original design.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
Provisions of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. A contamination report has been submitted with the DA which identifies no historical or current land use that would alert to concerning contamination onsite. Subject to the recommendations of the report Council's Health Unit have no objections to the development.
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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to issues with the design, landscaping, access and transport. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should consent be granted this matter can be addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia

Section 4.15 Matters for Consideration'	Comments
	(BCA). This matter can be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the area. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be generally suitable for a shop top housing development. However, as discussed throughout this report, the application is recommended for refusal based on various factors including non-compliance with building height development standard, insufficient side setbacks of the upper floor and the resultant excessive scale and bulk which is out of character with the adjoining low density residential area.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the WLEP and WDCP, including the height development standard and will result in a bulk and scale that is out of character with the existing and desired future character of the surrounding area. The proposal will result in a development which will create an undesirable precedent and be contrary to the expectations of the community. Due to the excessive height, bulk and scale and insufficient side setbacks, particularly to the eastern boundary, the development fails to transition to the surrounding low density residential area. The proposal will result in unreasonable amenity impacts to neighbouring residents in terms of overshadowing and loss of privacy. The proposal is also deficient in terms of the provision of areas for deep soil planting that would support planting to help soften the built form and provide screening to neighbours. In summary, 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 08/03/2021 to 22/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mrs Vicki Michelle Hewat	33 Duke Street FORESTVILLE NSW 2087
Mr William Siu Lum Wong	41 Duke Street FORESTVILLE NSW 2087
Mrs Leona Pauline Spencer	29 Willunga Crescent FORESTVILLE NSW 2087
Fy Kok	Address Unknown
Vicken Semerdjian	37 Duke Street FORESTVILLE NSW 2087
Brett Leo Ryan	37 Milham Crescent FORESTVILLE NSW 2087
Mrs Adele Katherine Spence	28 Duke Street FORESTVILLE NSW 2087
Claire Elizabeth Hovagimian	34 Duke Street FORESTVILLE NSW 2087
Mrs Viviana Lina Oliver	39 Duke Street FORESTVILLE NSW 2087
Mr John Mathew Farrant Mrs Jolene Michelle Farrant	47 Arthur Street FORESTVILLE NSW 2087
Mrs Margaret Kolotas	42 Duke Street FORESTVILLE NSW 2087
Harry Kolotas	44 Arthur Street FORESTVILLE NSW 2087
Gregor Riese	20 Duke Street FORESTVILLE NSW 2087

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

- **Excessive height, bulk and scale**
- **Zero setbacks**
- **Privacy**
- **Overshadowing**
- **Architecture is out of character**
- **Transport and parking**
- **Stormwater and flooding**
- **Devalue property**
- **Excavation and construction**
- **Landscaping and trees**
- **Un-authorised use of tenancy**

While the majority of submissions support some form of redevelopment on the site the matters raised within the submissions with the current design are addressed as follows:

- **The height and bulky appearance of the proposed development is concerning it is out of character with the surrounding low density area. There are height encroachments between 14.6% - 22.4% of a substantial nature and appearance. The proposal should be amended to reduce the density to bring this more into alignment with the streetscape and character of the local area. An option would be to reduce the height of the units to single storey nature rather than 4 units of a vertical, bulky nature.**

Comment:

It is agreed that the height, bulk and scale of the development is out of character with the surrounding low density area. The clause 4.6 variation for the breach of the building height is not supported. Refer to detailed discussion under Clause 4.6 of this report. The applicant has not amended the proposal to address the issues in respect of height, bulk and scale.

- **The nil setback will result in a 3 storey wall reaching 10.4m in height which is out of character with the surrounding low density housing which comprises one and two storey houses. To exacerbate the lack of setback, the top 2 storeys of this proposed development are not stepped back from the street, there has been no attempt along Duke St to reduce the bulk of the building and ensure that development does not dominate existing buildings and public spaces. The 3D montage is a misrepresentation of the scale and bulk of the building in the surrounding area. The trees are overstated and some do not exist. The excessive bulk is further exacerbated by the location of the property on a visually prominent corner allotment of Arthur and Duke Street. The removal of the upper level will reduce the impacts.**

Comment:

It is agreed that the nil setbacks of the upper floor will result in an inappropriate relationship / transition to the single storey dwelling at No. 49 Arthur Street. Similarly, the building is not stepped back to Duke Street and as a result of the topography of the site the impacts of the excessive height are amplified on the prominent corner. The montage includes trees which are proposed in the public domain as part of the subject application and it is noted that these trees do not currently exist. The applicant has not amended the proposal to address the issues in relation to the transition of the development to the adjacent and neighbouring low density residential area.

- **Overlooking and loss of privacy to neighbouring properties including areas of private open space and windows. The proposed development will have sightlines directly into kitchen window, bedrooms and bathrooms.**

Comment:

Windows to habitable rooms are proposed in the eastern elevation with no setback. Privacy screens are proposed to the windows, however, the design of the screens are not suitable as they add to the excessive height of the development on the eastern elevation. In addition, there is no screening to the southern edge of the elevated breezeway and insufficient soil depth to the landscaped roof to allow for screen planting to protect the privacy of the southern neighbour.

- **The contemporary design of the proposed development is out of place with the Forestville area and the streetscape with the unsightly large square frames that overwhelm all surrounding dwellings. The design is not sympathetic to existing houses in the suburb.**

Comment:

Generally the proposed development represents a development of design merit, however, the merit of the design proposal does not outweigh the substantial breach of the height control.

- **The proposal will overshadow neighbouring residential properties, including areas of private open space and a pool.**

Comment:

The proposal will increase the amount of shadow cast to the southern and eastern neighbours. The additional shadow affects the area around the pool to No.34 Duke Street, refer to discussion under Clause D6 of the WDCP.

- **The proposal will negatively impact property values.**

Comment:

Impacts on property value is not a material planning consideration.

- **Traffic generated and impacts on the availability of on street parking and add to issues with traffic congestion at the traffic light intersection of Albert Ave and Warringah Road. We will also require the street parking out the front of our home to be restricted for residence only as we are concerned this area on our street front will become a permanent carpark.**

Comment:

Council's Transport Engineer has confirmed that the proposed parking provision is acceptable. Refer to further comments in this report.

- **Inadequate provision of the storm water run disposal to Duke Street which could lead to potential flooding and encroachment on surrounding properties. Flood management systems do not appear to be integrated in detail into this site design. Concern is raised about the potential flooding of the underground carpark and the adverse affects this will have given the size of the hole in the ground proposed which will be directly next to our property. Frequent and heavy rain seems to be a commonplace occurrence and we believe the underground carpark will be subject to flooding and overland flow during heavy rains. Having below street level potential flooding directly next to our land is greatly unsettling. We do not support the proposal to excavate for a carpark of any size.**

Comment:

Insufficient information has been submitted to address water management issues. Refer to the comments from Council's Development Engineer.

- **Underground basement parking is out of character with the low density area and requires significant excavation. There are concerns about the construction and demolition periods and impacts on neighbouring amenity in terms of noise, dust and air pollution in addition to concerns about the structural impacts of the excavation. The site is within an Area A Landslip category and the extent of excavation required may adversely affect surrounding properties. Dilapidation Report are required prior to commencement of the proposed work at the cost of the Developer. Removal of asbestos needs to be remediated and there is no provision for this plan or cost.**

Comment:

The principle of the excavation for the construction of the basement is acceptable; however, the

excavation extends to the eastern and southern boundary with no setback from boundaries and the concern from neighbours is therefore valid. Should consent be granted conditions will be required to manage construction, excavation and the removal of asbestos in accordance with the recommendations of the geotechnical report and the contamination report. Additional conditions can also be imposed relating to asbestos removal and the need for dilapidation reports.

- **There is also a history of other un-authorised work to the existing building including the lease of a tenancy as a recreational use which is prohibited in the zone.**

Comment:

A search of Council's record has confirmed that there has been a compliance matter regarding the unauthorised use of a commercial tenancy as an indoor recreation facility. There was no evidence of any unauthorised use of the tenancies at the time of the site inspection.

- **The proposal may impact on neighbouring trees. There is no landscaping to soften the visual impact of the development from the street.**

Comment:

Council's Landscape Officer has also raised a concern about the potential impacts on an existing neighbouring tree, refer to comments in this report. There are insufficient deep soil zones to meet the requirements of the SEPP which is required to allow for sufficient screen planting to soften the visual impacts of the development. The proposal does however include some street tree planting within the public domain which will help reduce the visual impacts to the street.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Not Supported This application is for the demolition of existing site structures, and the construction of a new shop top housing development accommodating basement car parking, four ground floor retail spaces, as well as four two-storey residential apartments above. Council's Landscape Referral section has considered the application against the following relevant controls and policies: • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development 2002, • NSW Department of Planning - Apartment Design Guide 2015, specifically <i>Parts 3C Public Domain Interface, 3E Deep Soil Zones, 4O Landscape Design, and 4P Planting on Structures</i>, • Warringah Local Environment Plan 2011, • Warringah Development Control Plan 2011 - <i>C7 Excavation and Filling, D1 Landscaped Open Space and Bushland Setting, D2 Private Open Space, and E1 Preservation of Trees or Bushland Vegetation.</i> •

Internal Referral Body	Comments
	A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, grasses and groundcovers in the public domain, as well as in-ground planting of palms, grasses and groundcovers and on-slab planting of grasses and groundcovers within private areas of the proposed site. Concern is raised regarding the limited proposed deep soil areas within the site. The design criteria within <i>Part 3E Deep Soil Zones</i> of the Apartment Design Guidelines states that for developments less than 650m² in size, they shall be required to have deep soil zones totaling 7% of the site. In its current form, the proposed site would require a total of 41m² of deep soil areas, however only 14m² is provided, totaling 2% of the site. This is well below the 7% minimum requirement, and also provides insufficient area for suitable canopy tree planting to help mitigate the bulk and scale of the development. Currently, two palms (<i>Howea fosteriana</i>) are proposed within the area, and due to the growth habit of these palms, they are not likely to provide meaningful landscape amenity and canopy coverage, and will do little in regards to providing screening and built form mitigation. In addition to this, <i>Howea fosteriana</i> is an exempt species, and the planting of this would not be supported. It is noted that a landscaped roof has also been provided adjacent to this deep soil zone, however concern is raised regarding the provided soil depth and plant species used. Currently, the soil depth is proposed to be 300mm and is to be planted with a variety of low grasses and groundcovers. The intention of this landscaped roof as per the Statement of Environmental Effects is to provide a visual buffer between the proposal and neighbouring buildings. The use of low-lying grasses and groundcovers is not expected to provide an adequate visual buffer, particularly in relation to views from adjoining properties. It would be recommended that the soil depth on this landscaped roof be increased, at minimum, to 1000mm to support the planting of small/medium trees. This would satisfy the required soil depths as outlined in <i>Part 4P Planting on Structures</i> of the Apartment Design Guidelines. This increase in soil depth would go a long way in regards to providing valuable screening and built form mitigation, a key aspect of control D1, as well as offsetting the limited deep soil zone that is currently proposed. The State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development 2002, specifically <i>Clause 28 (2) (b)</i> requires the design quality of the development to be assessed in relation to the nine design quality principles. With regards to landscape, <i>Principle 5 - Landscape</i>, is the key principle to be assessed. A key outcome of good design within <i>Principle 5</i> is proposed developments to provide a positive image and contextual fit, which is achieved by contributing to the landscape character of the streetscape and neighbourhood. Although the proposed landscape works within the site boundaries do not contribute high levels of landscape amenity, the proposed landscape works within the public domain do provide benefits to the broader community. The public domain plan provides for the retention of existing parking facilities, but also the addition of new street trees and low-lying grasses and

Internal Referral Body	Comments
	groundcovers. Once established, this planting shall provide valuable shading for the future retail spaces, as well as a general increase in greening, as the existing site provides little to none landscape amenity at the moment. The proposed public domain works would therefore be supported. Further concern is raised regarding the impact of the proposed works on existing trees, specifically those located on the adjoining property to the south. In order to construct the basement car park and associated driveway, excavation works are likely to be within both the Tree Protection Zone and Structural Root Zone of existing trees located at the front of No. 34 Duke Street. It is noted that these trees are already located within raised planting areas, with walls located on both the north and west boundaries. Although these walls are expected to restrict the existing roots, the walls are approximately 500mm high, and roots are likely to be located below the existing driveway within the proposed site. It is recommended an Arboricultural Impact Assessment be provided with the application, alongside a tree root investigation, to further analyse and investigate the effects and impacts of the proposed works on long term tree health and retention values. Works that would see the decline of overall tree health would not be supported, as these trees are located within the neighbouring property and as a result shall be protected accordingly. The protection of these trees on the adjoining property are vital to satisfy control E1 of the Warringah Development Control Plan, as a key objectives of the control include "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as "to effectively manage the risks that come with an established urban forest through professional management of trees". The landscape component of the proposal is therefore not supported in its current state, as a total deep soil area of 14m², or 2% of the site, has been provided which does not satisfy the Apartment Design Guidelines requirements. In addition, the impacts of the proposed development on existing trees is not fully known at this stage. It is therefore recommended that Arboricultural advice be sought regarding the impacts on the proposed works on existing trees in adjoining properties, as well as further design exploration be made in relation to increasing the total amount of deep soil areas. This increase in soil depth can provide a positive outcome for adjoining properties as it can support small/medium tree planting, with the intention of mitigating the bulk and scale of the proposed built form. Should additional information be provided, further assessment can be made.
NECC (Development Engineering)	Not Supported The proposal is not supported as the development requires the submission of a stormwater drainage plan detailing the provision of On site stormwater detention in accordance with Councils water management policy for development . A DRAINS hydraulic model is to

Internal Referral Body	Comments
	be also prepared to support the sizing of a detention system.
Road Reserve	Supported Limited impact on existing road assets. Development engineering to require Road Act consent for public domain improvements as per Council's public domain guidelines. Upgrades to streetscape should include physical barrier (eg bollards) to prevent vehicles in 90 deg parking entering the footway, given likelihood of area being used for outdoor dining.
Strategic and Place Planning (Urban Design)	Not Supported <u>Summary</u> The property is located in a B1 neighbourhood centre and sits within the context of 1 and two storey residential development. Proposed as shop top housing with 4 x residential split level apartments of two storeys above a retail ground level the development seeks to maximise the site coverage. The site is constrained by its topography and fall across the site from east to west and north to south. The impacts of the development at the western boundary are amplified due to this constraint. As such the proposed two level apartments with a reduced floor to floor height in addition to the proposed reduced floor to floor height for the ground level retail demonstrates the additional level being the upper level of the apartments is in clear breach of the height of buildings and would be exacerbated further if recommended floor to floor level under the ADG were adhered to. Notwithstanding this, the development has the potential to re-invigorate the local context and provide an updated commercial/retail offering to the local neighbourhood. Generally the proposed development represents a development of design merit. Unfortunately the merit of the design proposal does not outweigh the substantial breach of the height control and further design testing to reduce the height through either deletion of the upper level to that of a single storey and reduced yield of residential suites to break up the mass across the development is recommended. WLEP Cl. 4.3 Height of Buildings Floor to Floor (and Ceiling) Heights Current proposal of 2.9m floor to floor including minimum dimension of 200mm slab leaves insufficient room for ceiling lining and in ceiling servicing. The upper storey residential should have a minimum 3.1m standard floor to floor dimensions Current proposal of 3.4 metre floor to ceiling height for the ground floor commercial is insufficient and does not meet the recommendation of the ADG for ground floor commercial floor to ceiling heights. The implementation of the recommended 4.2m floor

Internal Referral Body	Comments
	to floor at ground level demonstrates an additional 800mm shortfall in dimension for ground floor retail. Similarly if an additional 200mm for each residential floor above ground level were implemented an increase in height of 1200mm on top of the current 1380 mm breach of height would bring the overall breach of height to a minimum 2.580 metres over the 8.5m height plane representing an overall height of 11.80m. (Refer DA402 for dimensioned levels) WDCP 2011 B1 Wall Height There are insufficient dimensions on the drawings to demonstrate a clear indication of the wall heights relative to the 7.2m height control. A calculation of the spot levels provided on drawing DA401 Section A demonstrates a height of 10.02 at the point of cross section demonstrating the breach of the height control. B3 Side Boundary Envelope There is a minor encroachment of the side boundary envelope to the southern boundary, not representing a major breach of the control. B9 Rear Boundary Setback The nil setback proposed does not provide sufficient area to allow for a transition to the adjacent residential building to the south. A minimum 2m setback to allow for a significant mature tree planting buffer would assist to break down the bulk and scale of the building presentation to the street and adjoining property. D9 Building Bulk The mass and excessive bulk is exacerbated at the eastern boundary where nil setback is provided and the increase height with no stepping back of the built form of the upper adding to the perceived bulk and scale where development should seek to minimise the visual impact. F1 Local and Neighbourhood Centres <i>(6) 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.</i> The eastern boundary elevation presents the most issues with regard to transitioning to the adjacent single storey residential development. Upper levels should be reduced to provide a softer transition to the eastern boundary by removal of the upper storey or the entire unit to the east so the building reads as a single storey transitioning to a perceived two storey development. Additionally; Solar Access The shadow diagrams indicate increased overshadowing to the property to the south during the winter months. Access Ramp to Apartments

Internal Referral Body	Comments
	The access ramp to the southern elevation is comprised six ramps with interstitial landings both at doorways and at the central point of the apartment walls. Is there an opportunity with the gradient of the fall across the site to rationalise the ramp to reduce number of ramps and provide more generous landings at the doorway, noting that the ramps are at the maximum fall of 1:10 and the maximum length of ramp is 9metres before the requirement of the landing. Streetscape and Urban Design The townhouse style and form of building goes some way to demonstrating a building that could be read as 2 storeys and not three. However the significant breach of the height control needs to be acknowledged. The general design and articulation can be supported in that it demonstrates a good design response to the neighbourhood typology with abstraction of pitched rooves articulation and material use adding to the upper level articulation. Rear Terrace Garden Concern is raised with the potential for overlooking the neighbouring property to the south. Noting the roof is annotated as non trafficable, meaning it cannot be occupied by residents as a communal open space, however regular maintenance will require the roof to be trafficable. Clarification of the use and intent of this space The green roof does represent merit in the development. Similarly there is a question as to the useability and the life span of the small garden to the south at ground level which serves no real function or provides any contribution to the streetscape, being it is located in the south eastern sector abutting a three storey wall and a dry store and cool room enclosing the space. There is no clear point of access to the space other than through an enfilade arrangement through the dry store or cool room. Streetfront Access to Tenancies The drawings demonstrate a 1m wide access point to the three tenancies on the Arthur Street elevation. Further details on the pavement profile that demonstrates access into and across the frontage will be compliant with AS1428.1 is required. Further details showing the pavement plan, falls across the retail frontage and adequate circulation and compliant access can be achieved is required. Materials The general material palette of face brick and screening elements generally can be supported. The material distribution of the face brick and the vertical 'non-combustible' screening detail to the eastern elevation has the effect of amplifying the verticality of the elevation, and whilst it provides a modernist articulation to the development it may be considered quite monolithic. <u>Planner comments</u> For clarification the Clause B1 Wall Height and B3 Side Building

Internal Referral Body	Comments
	Envelope of the WDCP do not apply to the development.
Traffic Engineer	Supported subject to conditions <u>Description of proposal:</u> This application seeks for the demolition of the existing site structures and the construction of a shop top housing development comprising the following: - 4 ground floor retail tenancies with a total GLFA of 321m² - 4 x 2 bedroom residential units. Each unit are 2 storey - Single level basement parking for 11 spaces accessed from Duke Street. The spaces comprise 5 for residents, 1 visitor, and 5 commercial spaces for staff - 6 bicycle spaces in the basement carpark <u>Parking:</u> Applying the parking rate required by Warringah DCP, the total parking spaces required for the proposed development is 26 spaces. This includes 6 parking spaces for the residential component and 20 spaces for the retail area. The proposal includes the parking provision of 6 spaces for the residential component which satisfies the residential parking requirements, and 5 staff parking spaces for the retail component. Taking into consideration the parking availabilities around the site including the 10 parking spaces immediately at the frontage of the proposed development, the reliance on the street parking for the customers can be acceptable. Deliveries to the development is proposed to be undertaken by a variety of light commercial vehicles up to and including the size of a B99 design vehicle. Given the size of retail area, the provision of a loading dock accommodating the minimum size of Small Rigid Trucks (SRVs) will be required. This can be provided as an indented bay at Duke Street frontage. <u>Vehicular Access:</u> Vehicular access to the off-street car parking facilities is proposed to be provided via a single-lane, two-way vehicular entry/exit driveway located at the southern end of the Duke Street site frontage. This is considered satisfactory. <u>Traffic Generation:</u> That projected nett change in traffic generation of the development is considered negligible, and will not have adverse traffic implication on the road network. <u>Conclusion:</u> In view of the above, the proposal is supported subject to conditions.
Waste Officer	Supported subject to conditions Proposal is approved with conditions.
External Referral Body	Comments

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

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.

The subject site has been used for commercial purposes for an extended period of time. A contamination report has been submitted with the application which identifies no historical or current land use that would alert to concerning contamination onsite. The report did identify possible asbestos, lead paint and PCB and concludes there is a Low Risk of Contamination that may affect the proposed development and that the site can be made suitable for the proposed development, subject to implementation of:

1. Completion of a targeted soil assessment which may result in an Environmental Management Plan and
2. Completion of a hazardous materials assessment to assess the presence of hazardous material

Council Health Officer has reviewed the report and agrees with the findings of this report. Should the Panel decide to approve the DA a condition can be include requiring compliance with the recommendations of the contamination report.

Council's Health Officer have also conducted a search of Council records which did not indicate this site may have potential contamination.

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 and commercial land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a three (3) storey 'shop top' housing development plus basement car parking for the provisions of four (4) self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

The application was referred to the Design Advisory and Sustainability Panel (DSAP) on 29 April 2021 and the Panel concluded that *the application cannot be supported in its current form and significant changes are required to the massing, roof form, access arrangements, setbacks on the upper level and improved relationship to the adjoining residence on no 49 Arthur Street*. The DSAP report is provided as an attachment to this report and a summary of the Panel recommendations is provided below:

Scale built form and articulation

1. Reduce the overall bulk of the building. Any breaches of the height controls should be in the centre of

the building while keeping the extremities as low as possible.

2. Reduce the height of the building at the eastern end by introducing a set back above the ground level.

3. Floor to ceiling heights should comply with the ADG and floor to floor should be sufficient to achieve this with adequate tolerance for construction; 3.1m floor to floor is general practice.

4. Reconsider the need for a second bathroom and the need for 'wintergardens' in the apartments.

5. More clearly define a 2-storey form with the third level set back. The panel notes that the PLM scheme had this form but also presented a monolithic appearance. It is not at all clear how the curved forms in the PLM scheme, or the double storey form of the apartments relate to the local area.

6. The Panel does not support the roof forms and recommends that alternative approaches be explored to reduce the apparent height, in passing noting the re-orientation of the roofs would also provide a better solar orientation and avoid box gutters.

Access

7. Replan the access to all for direct level access to shops and apartments wherever possible.

8. Rearrange the internal circulation in apartments

Landscape

9. Provide further detail on the landscaping of the 'green roof'.

10. Consider enhancing the public domain design and landscape character to further complement the landscape context.

Vehicular movement and car parking

11. Consider a reduction in the amount of car parking on site.

Sustainability

12. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.

13. The Panel recommends increasing the capacity of PV.

14. Add external windows to bathrooms and utility rooms wherever possible including ground level retail toilets.

While it is acknowledged that some attempt was made by the applicant to address the recommendations of the Panel with draft amended plans the majority of the issues raised by the Panel remain unresolved. The draft plans were not formally submitted, and this assessment is therefore based on the original scheme. All issues raised by the Panel therefore remain valid and unresolved in the subject design.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The corner site is located on land zoned B1 Neighbourhood Centre and is surrounded by Low Density Residential development on land zoned R2 Low Density Residential consisting primarily of one and

two storey detached dwellings set back from the street in landscape settings. A single storey brick residence is located to the immediate east at No 49 Arthur Street and a two storey detached dwelling with a garage and pool is located to the immediate south at No 34 Duke Street.

The Design Panel, Council and Public are very supportive of the principle of a shop-top housing development which is seen to provide an upgrade of essential retail service in the area while increasing and diversify housing supply. However, the development needs to fit in and complement the surrounding area and adjoining properties as required by SEPP 65 and the WLEP and WDCP controls.

The proposed shop top housing development that proposed 4 residential split level apartments two storeys in height located above ground level retail seeks to maximise the site coverage. The proposal breaches the 8.5m height development standard and proposes no step back of the upper floor to the east or west boundaries. The eastern boundary elevation presents the most issues regarding transitioning to the adjacent single storey residential development at No. 49 Arthur Street. Upper levels should be reduced to provide a softer transition to the eastern boundary. In addition, the proposal has a repetitious form and the row of apartments with strong vertical expression serves to emphasis the height of the building rather than moderate it. The removal of the upper storey or the entire unit to the east has been suggested as a design solution to allow the building to read as a single storey transitioning to a perceived two storey development.

In summary, the proposal does not appropriately respond to, or fit comfortably within, the context, due to its height, scale bulk and mass and is therefore inconsistent with Principle 1.

Principle 2: Built Form and Scale

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

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

Comment:

The height, bulk and scale of the development is excessive, as expressed by the breach of the built form controls including the maximum height limit. The scale, bulk and height fail to relate to the existing and desired low density character of the surrounding area. The mass and excessive bulk is exacerbated at the eastern boundary where nil setback is provided and the increase height with no stepping back of the built form of the upper adding to the perceived bulk and scale where development should seek to minimise the visual impact. The topography and fall across the site from east to west and north to south amplifies the impacts of the development at the western boundary.

In summary, the built form does not respond to its context and is therefore inconsistent with Principle 2.

Principle 3: Density

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

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

Comment:

The internal amenity of the residential units is generally compliant with the Apartment Design Guide (ADG), refer to discussion below.

The subject site is located within a Neighbourhood Centre which is well serviced by infrastructure and public transport. This area also enjoys the use of nearby public spaces. There is no density prescribed by the WLEP or WDCP for this area. However, it can reasonably be expected that the principle of a development of this type can be supported within the local centre. Furthermore, the Northern Beaches Section 7.12 Contributions Plan 2019 provides a mechanism for Council to provide required infrastructure

The proposal generally satisfies Principle 3.

Principle 4: Sustainability

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

Comment:

As noted above, the internal amenity of the residential units is generally acceptable in terms of cross ventilation and access to sunlight. The proposal is also supported by a BASIX Certificate that confirms that the development can achieve the water, energy and thermal comfort requirements. It is however noted that the sustainability recommendations of the Design Panel remain outstanding, refer above.

Should the Panel decide to approve the application conditions can be imposed to address the recommendations and satisfy Principle 4.

Principle 5: Landscape

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

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

Comment:

While it is acknowledged that the existing site has almost 100% site coverage and the 14sqm of deep soil zone in the south-east corner is a slight improvement to the current arrangement. Nonetheless, the deep soil zones will provide limited opportunities to support any significant planting, refer to comments from Council's Landscape Officer.

In addition, the landscaped roof does not provide sufficient soil depth to allow planting to provide a landscape buffer as is intended. Council's Landscape Officer has also raised concern regarding the impact of the proposed works on existing trees, specifically those located on the adjoining property to

the south. In order to construct the basement car park and associated driveway, excavation works are likely to be within both the Tree Protection Zone and Structural Root Zone of existing trees located at the front of No. 34 Duke Street.

The proposed landscape works within the public domain do provide benefits to the broader community. The public domain plan provides for the retention of existing parking facilities and the addition of new street trees and low-lying grasses and groundcovers. The public domain works has the potential to provide shading for the future retail spaces, as well as a general increase in greening, as the existing site currently provides little to no landscape amenity.

In summary, the proposal fails to fully comply with Principle 5.

Principle 6: Amenity

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

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

Comment:

The proposed four residential units will achieve good amenity in terms of room dimensions, access to sunlight and natural ventilation, outlook and visual and acoustic privacy and private open space generally in accordance with the objectives of the ADG as discussed below.

The proposal however results in unreasonable impacts on the amenity of neighbouring residential properties as a result of excessive height and insufficient setbacks.

In summary, the proposal fails to fully comply with Principle 6.

Principle 7: Safety

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

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

Comment:

The proposal allows for casual surveillance from the balconies of the upper floor units to the street and the entry to the residential units and shops is well defined. The Design Panel however note that there are issues of shared use of the lift between customers and residents which remains unresolved.

In summary, the proposal fails to fully comply with Principle 7.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics,

living needs and household budgets.

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

Comment:

There is no mix of apartments, all four units are two bedroom units which the applicant justifies on the basis of the small scale of the development and the demographic and market in the area.

The applicant also notes that units 1 and 4 have been designed to meet Silver Level of the Liveable Housing Guidelines requirements with little modification. Access to the units is via an accessible ramp along the southern boundary and then up the internal stairs which in practice will make the units inaccessible. In addition, access to the 'accessible' toilet is unclear as is the access between the lift and lobby and retail.

In summary, the proposal fails to fully comply with Principle 8.

Principle 9: Aesthetics

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

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

Comment:

The range of facade compositions, materials and colours are generally supported. However, the material distribution of the face brick and the vertical 'non-combustible' screening detail to the eastern elevation has the effect of amplifying the verticality of the elevation, and whilst it provides a modernist articulation to the development it may be considered quite monolithic.

The proposal fails to fully comply with Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The surrounding area consists of low density one and two storey dwellings set back from the street in landscaped gardens. The

		proposed three storey development maximises the site coverage and has no set back of the upper floors to the east or west boundaries. The excessive height, bulk and scale expressed as non-compliance with the built form controls, including the height development standard, is out of character with the surrounding area. The proposal, in particular the eastern elevation, fails to transition or relate well to its context, including the single storey dwelling at No. 49 Arthur Street to its immediate east.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent in part The general design, articulation and materiality of the street frontages can be supported. The orientation of the lot ensure that the units receive good solar access from the north. The proposal however increases the shadow impact to the dwelling to the south No. 34 Duke Street.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Generally Consistent The development provides active street frontages and has the potential to enhance the amenity of the public domain. It is however noted that the Design Panel had some concern about the shared use of lifts between the retail and residents.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: Communal open space has a minimum area equal to 25% of the site	Inconsistent The proposal includes a 104sqm (17.8% of the site) landscaped roof which is not accessible. There is no

	2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	communal open space and the applicant relies on the development being located in close proximity to Angophora Reserve 75m to the west and the fact that all units have areas of private open space in excess of the minimum standards. The applicants justification has some merit, especially given the small 583.2sqm size of the allotment and the B1 Neighbourhood zone. However, the design requires further amendment including the provision of sufficient soil depth to the landscaped roof to allow screen planting. The proposal in its current form has not addressed this issue or satisfied the clause.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Inconsistent An area of 14sqm deep soil zone (2%) is proposed within the south-east rear corner which breaches the control by 27sqm (5%). While it is acknowledged that there is no landscaping currently on the site the deep soil zone area is well below the 7% minimum requirement. The area will not support suitable canopy tree planting to help mitigate the bulk and scale of the development from the southern neighbour. In addition, the proposed 300mm depth on the landscaped roof will not allow sufficient screen planting to provide a landscape buffer to the rear.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

		A redesign of the landscape roof may help support some merit exception to the requirements for deep soil planting. However, the proposal in its current form has not addressed this issue or satisfied the clause.												
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Inconsistent Living room and bedroom windows to unit 4 are positioned at level 1 and 2 in the eastern elevation with no setback to the common boundary. In addition the level 1 common circulation corridor / breezeway has a zero setback from the eastern boundary. The breezeway has a compliant 7.4m - 10m setback to the southern boundary. However, as it is elevated it would benefit with a privacy screen along the southern edge. The separation distance of habitable windows and the corridor to the east is inconsistent with the control. In order to address this issue vertical screens are proposed along the openings and the eastern edge of the common circulation space as a privacy treatment. The design of the vertical screen is not acceptable and will amplify the height breach.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent in part The pedestrian access to the shops and residential entry is clearly defined. However, the Design Panel has raised concerns with regards to accessible												

		access to the units and the accessible toilet, refer above.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Generally Consistent Vehicular access to the off-street car parking facilities is proposed to be provided via a single-lane, two-way vehicular entry/exit driveway located at the southern end of the Duke Street site frontage. This is considered satisfactory.
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	Inconsistent (assessed as acceptable on merit) The proposed parking is inconsistent with the parking rate required by WDCP, i.e. 26 (6 spaces for the residential component and 20 spaces for the retail area). The proposal includes the parking provision of 6 spaces for the residential component which satisfies the residential parking requirements, and 5 staff parking spaces for the retail component. Taking into consideration the parking availabilities around the site including the 10 parking spaces immediately at the frontage of the proposed development, the reliance on the street parking for the customers can be acceptable. The proposal provides bicycle parking spaces as per the WDCP. The vehicular access to the site is integrated into the design of the development and will not result in any unreasonable visual or environmental impacts within the locality. Given the size of retail

		area, the provision of a loading dock accommodating the minimum size of Small Rigid Trucks (SRVs) will be required. This can be provided as an indented bay at Duke Street frontage.								
Part 4 Designing the Building										
Amenity										
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Consistent The living areas and private open space (POS) receive compliant solar access.								
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent								
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent All units are naturally cross ventilated.								
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent The depth of the units are 8.7m.								
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Residential unit consistent The floor to ceiling height of the upper floor varied with a minimum height of 2.4m to 3.3m. The floor to ceiling heights in the lower level is a compliant 2.7m. On merit the floor to ceiling heights of the units are assessed as acceptable. Retail units inconsistent Both the Design Panel and								
	<table><tr><td colspan="2">Minimum ceiling height</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
	Minimum ceiling height									
	Habitable rooms		2.7m							
Non-habitable	2.4m									
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area									

	<table><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Council's Urban Designer express a concerned that the 2.9m floor to floor dimension for the retail units will prove inadequate floor to floor height.						
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent The 106.07sqm size of the two bedroom units exceeds the minimum area. The excessive size, including winter gardens and second bathroom, add to the bulk of the development.
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
	2 bedroom	70m ²										
	3 bedroom	90m ²										
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies All units receive adequate daylight.										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies The control requires the depth of the room to not to exceed 6.75m. The proposal generally complies with this requirement.										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies The proposal generally complies with this requirement.										
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Complies The size of the bedrooms is compliant.										
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Complies The size of the bedrooms is compliant.											
Living rooms or combined living/dining rooms have a minimum width of:	Complies All units are 5.7m in width.											

	• 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments																
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies All units are 5.7m in width.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent All units have balconies which exceed the minimum 10sqm being 13sqm. In addition, winter gardens are proposed on the top floor.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.																
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent The proposal is for four (4) residential units.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent All units have compliant storage areas.					
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															
	1 bedroom apartments	6m ²															
	2 bedroom apartments	8m ²															
	3+ bedroom apartments	10m ²															
	At least 50% of the required storage is to be located within the apartment.																
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent An acoustic report has been submitted with the application which confirms that subject to conditions there will be no acoustic issues.															

Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent Subject to conditions external noise and pollution impacts can be mitigated.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Inconsistent There is no unit mix, all apartments are 2 bedroom.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent to streetscape The facades to the public streets are generally acceptable and provide visual interest. Inconsistent to eastern facade The eastern facade is visually dominate given that it lacks any transition to the adjoining single storey dwelling in terms of its excessive height and nil setback of the upper floors.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Inconsistent The Design Panel raised issues with the roof design and pitch which they note <i>"serves to emphasis height, requires valley gutters and unnecessarily exceeds the height limit at the street and rear alignment"</i> .
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Inconsistent For the reasons discussed throughout this report the landscape design is not acceptable, refer to detailed comments on the referral section of this report.
Planting on	When planting on structures the following are	Inconsistent

Structures	recommended as minimum standards for a range of plant sizes:					Soil depth is insufficient to support planting on structures, refer to detailed comments on the referral section of this report.
	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features					Inconsistent The applicant suggests that unit 1 and 4 meet the Livable Housing silver level requirements. However, all units have internal stairs which suggests that they cannot be adaptable.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.					N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					Consistent The mixed use development generally contributes positively to the public domain with the commercial use on the ground level. The proposal also includes an upgrade of the public domain with new street trees and kerb

		side garden beds. The site has connections to public transport.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent An awning is proposed along the Arthur and Duke Street frontage in compliant with the clause which will enhance the streetscape and public amenity in terms of providing weather protection.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent A BASIX certificate was submitted with the application
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent The applicant has not submitted a storm-water drainage plan detailing the provision of on site stormwater detention in accordance with Councils water management policy for development or a DRAINS hydraulic model to support the sizing of a detention system. Council's Engineer does not support the proposal.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent Council's Waste Management Officer has no objections to the proposal subject to conditions of consent if the development is approved.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The building is of a suitable design to minimise building maintenance.

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who advised that a response was not required.

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

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m - 10.4m

Percentage variation to requirement:	14.69%- 22.4%
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Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

Comment:

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

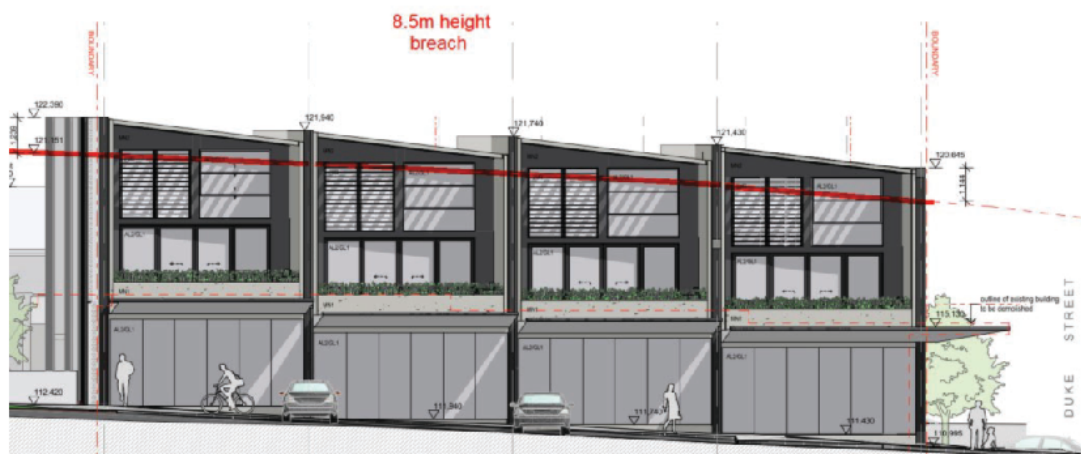
- *The development has been cleverly designed to step down the site in response to topography*

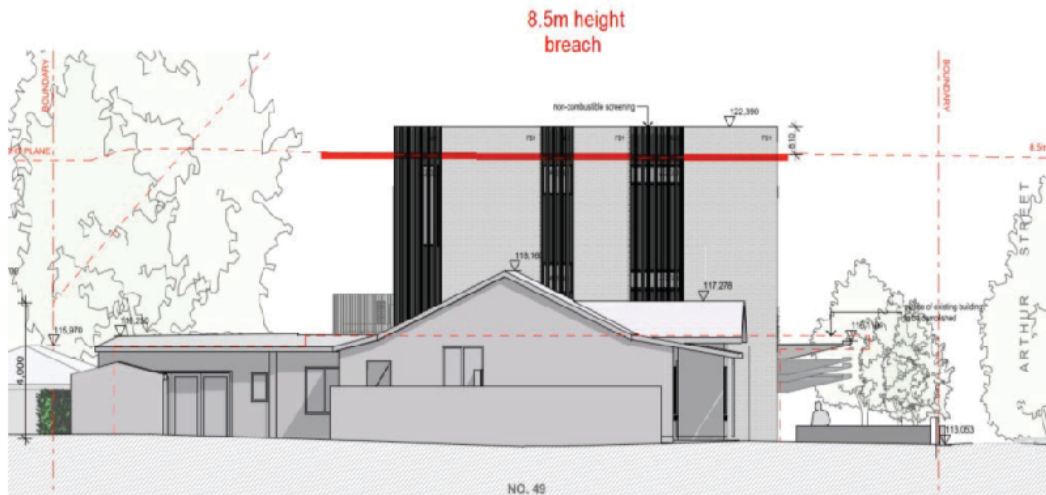
the topographical characteristics to make strict compliance difficult to achieve whilst providing a building of high design quality, amenity and streetscape appearance.

- *The development has been designed to provide through a contextually responsive building form maintaining appropriate amenity to adjoining properties and a high level of amenity to future occupants.*
- *The 2 storey mezzanine style apartments above ground level retail spaces have been designed to present as 2 storey elements to both street frontages with the split level floor plates enabling the development to step down the Arthur Street frontage in response to topography. This design approach also keeps the building low in the streetscape and minimises the building height breach. The facades are otherwise appropriately articulated in both the horizontal and vertical planes.*
- *Particular attention has been given to achieving a contextually appropriate human scale consistent with that established by 2 storey dwelling houses in the locality with the skillion roof forms adopted also reflecting a complimentary and compatible residential form and scale.*
- *The proposal will not give rise to adverse residential amenity or land use conflicts with the future development of the subject site for either commercial or shop top housing land uses anticipated, through the provision of a highly articulated and modulated façade presentation to this property which responds to the residential character of the area in a contemporary fashion. The proposal has taken into consideration the adjoining residential zone and does not create any conflict between land uses on adjoining properties or the amenity of residential uses within adjoining zones.*
- *The proposal achieves the objectives of the zone and the height control.*

Comment

The proposal will result in a height of between 9.7m and 10.4m which equates to a breach of the height control of 14.6% - 22.4% as illustrated in the diagrams below:





Eastern elevation (source Ramsay Architects)

The applicant's argument that the proposed design provides an appropriate contextual response to the surrounding area is not supported. The excessive height, bulk and scale and insufficient set backs of the upper floor to the eastern boundary results in a development that lacks any transition to the low density scale of the adjoining single storey dwelling at No. 49 Arthur Street. The excessive height is emphasised with the vertical louvres along the eastern elevation. In addition the site is constrained by its topography and fall across the site from east to west and north to south. The impacts of the development at the western boundary are amplified due to this constraint.

The applicant's argument that the proposal will not give rise to any unreasonable amenity impacts to neighbouring properties is not concurred with. Due to insufficient setback of the upper floors of unit 4 to the eastern boundary the proposal will have the potential to cause unreasonable amenity impacts on the adjoining residential dwelling in terms of loss of privacy. Windows to habitable rooms are proposed in the eastern elevation with no setback to the boundary. In addition, the eastern edge of the shared elevated breezeway directly adjoins the eastern boundary with no setback. As noted above, the vertical louvred screens are not considered to be an appropriate method of privacy treatment to the windows and the breezeway. No screen is provided along the southern edge of the elevated breezeway and the proposal may also impact on the privacy of the neighbour to the rear.

The proposal also increased the amount of shadow cast on the adjoining southern and eastern neighbour. This issue is discussed under Clause D6 of the WDCP.

The applicant's argument that the proposal meets the objectives of the height control and zone is not concurred with as discussed below.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives of

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The corner site is zoned B1 Neighbourhood Centre and is surrounded by a Low Density R2 Residential zone comprising one and two storey detached dwellings setback from the street in landscape settings. The adjoining site to the immediate east at No. 49 Arthur Street is a single storey detached dwelling.

The applicants Clause 4.6 variation suggests that the development meets the compatibility Principle established in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*. In this matter the Senior Commissioner formed the following opinion:

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

The applicant argues that the height and form is consistent with the 2 storey development in the surrounding area and the height breach will not give rise to any unreasonable physical impacts in terms of view loss, privacy or overshadowing. Further the applicant argues that the resultant building form will contribute positively to the streetscape quality of the area given the design initiatives adopted including its highly articulated and modulated building facades and introduction of balcony edge landscape treatments. The 2 storey mezzanine style apartments above ground level retail spaces have been designed to present as 2 storey elements to both street frontages with the split level floor plates enabling the development to step down the Arthur Street frontage in response to topography. This design approach also keeps the building low in the streetscape and minimises the building height breach. The facades are otherwise appropriately articulated in both the horizontal and vertical planes

The applicants argument regarding compatibility is not fully supported. While it is agreed that the townhouse style and form of building goes some way to demonstrating a building that could be read as 2 storeys and not three, the significant breach of the height control needs to be acknowledged. The general design and articulation can be supported in that it demonstrates a

good design response to the neighbourhood typology with abstraction of pitched rooves articulation and material use adding to the upper level articulation. However, the proposal occupies the entire site with no setback of the upper floors to the eastern boundary. The height and scale of the development, particularly to the eastern boundary, fails to transition, relate or be compatible with the height and scale of the adjoining development. In addition, the vertical screens proposed on the eastern elevation amplify the verticality of the elevation and its inappropriate relationship to the existing low density neighbouring character. The site is also constrained by its topography and fall across the site from east to west and north to south. The impacts of the development at the western boundary are amplified due to this constraint.

As such, the proposal is not consistent with Objective 1.

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

Comment:

As a result of the excessive height, bulk and scale of the building and the lack of transition to the low density dwellings there will be unreasonable visual impact from the neighbouring property at No. 49 Arthur Street. The height, bulk and scale of the proposal will also have unreasonable visual impacts on the streetscape.

Windows to habitable rooms and the edge of the common breezeway are sited within the eastern boundary with no setback. It is noted that vertical screens are proposed to the windows and edge of the breezeway, however, the design of the screen is not supported, refer above. The proposal will increase shadow impacts to the southern neighbour, refer to further discussion under Clause D6 of the WDCP.

It is agreed that the proposal will not give rise to view loss.

In summary, the proposal is inconsistent with Objective b (with the exception of impacts on view loss).

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

Comment:

It is agreed that the non-compliant building height elements will not have any discernible impact on the bush environment in the local area. The proposal achieves this objective.

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

Comment:

As noted above, the proposal fails to transition appropriately to the low density scale of the eastern neighbour. The non-compliant height combined with insufficient setback of the upper floor from the eastern boundary will result in unreasonable visual impacts as view from the adjoining property and the streetscape. The proposal is therefore inconsistent with this objective.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment:

It is agreed that the proposed mixed use development provides small scale ground floor retail/business tenancies that are able to accommodate a range of uses that serve the needs of people who live or work in the surrounding neighbourhood. The proposal achieves this objective.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposal generally meets this objective as it includes an awning along the two street frontages that will add to the comfort of pedestrians offering weather protection. The proposal also has the potential to enhance the public domain and allows for passive surveillance to help ensure the safety of pedestrians. Insufficient details have however been submitted in terms of pavement profile, fall across the retail frontage and adequate circulation and compliant access to demonstrate compliance.

- *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:

Due to the excessive height bulk and scale of the development to the eastern boundary and insufficient setbacks of the upper floor the proposal fails to provide a suitable transition between the low density residential land use on the adjoining zone with unreasonable visual impacts and amenity impact in terms of overlooking. As such, the proposal does not satisfy the objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objective 3 of the B1 Neighbourhood Centre zone.

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B6 Merit Assessment of Side Boundary Setbacks	merit assessment	Nil to east and west boundaries on all levels	N/A	No
B7 Front Boundary Setbacks	Nil	Nil	N/A	Yes
B9 Rear Boundary Setbacks (merit assessment)	merit assessment	Basement - Nil Ground - Nil to boundary wall / ramp to basement, 2m to wall of store and approximately 5.1m to edge of fire stair and lift First - Nil to boundary wall and landscaped roof, 2m, approximately 5.1m to edge of fire stairs and lift, 7.4m to breezeway 10m to southern wall of development Second - Between 6.4m band 9.2m to the southern wall of the development.	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
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	No
D7 Views	Yes	Yes
D8 Privacy	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

Clause B6 requires:

- Side boundary setbacks will be determined on a merit basis and will have regard to:*
 - streetscape;*
 - amenity of surrounding properties; and*
 - setbacks of neighbouring development*
- Generally, side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.*

Comment

With the exception of a small setback to the south-east corner for a 14sqm area of deep soil the proposal has a nil setback to the side boundaries on all levels.

The application is assessed against the objectives of the control as discussed below:

- To provide ample opportunities for deep soil landscape areas.*

Comment:

A 14sqm area of deep soil is provided with the setback to the south-east corner which is the only area proposed for deep soil landscaping. The size of the area is assessed as too small to support sufficient landscaping to help soften the visual bulk of the development and maintain residential amenity to neighbouring properties. Refer to comments within this report from Council's Landscape Officer and discussion under SEPP 65. In summary, the proposal is inconsistent with objective 1.

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

Comment:

The nil setback on all levels to the eastern boundary will result in a development which is visually

dominate as viewed from neighbouring properties and the streetscape. As a result of the topography the development at the western corner is also visually dominate. In summary, the proposal is inconsistent with objective 2.

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

Comment:

As result of the nil setback on all levels to the boundaries the scale, bulk and height of the building is assessed as excessive particularly given the low density one and two storey scale of the surrounding area. In summary, the proposal is inconsistent with objective 3.

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

Comment:

As a result of the nil setback on all level of the building to the east the proposal results in insufficient building separation. Windows are proposed in the eastern elevation with no setback to the boundary. The design of the vertical screens to the windows will add expression to the excessive height of the building and for this reason the screens are not supported. As such, the proposed location of the window and the elevated breezeway will result in unreasonable impacts on neighbouring amenity in terms of loss of privacy.

In addition the proposal cast additional shadow impacts over the neighbouring properties to the south and east. In summary, the proposal is inconsistent with objective 4.

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

Comment:

There are no views that will be affected by the proposal. In summary, the proposal is consistent with objective 5.

B10 Merit assessment of rear boundary setbacks

Clause B10 requires

1. Rear boundary setbacks will be determined on a merit basis and will have regard to:

- *streetscape;*
- *amenity of surrounding properties; and*
- *setbacks of neighbouring development.*

Comment:

The setback of the rear boundary varies on all levels as detailed below:

- Basement: nil
- Ground - Nil to boundary wall / ramp to basement, 2m to wall of store and approximately 5.1m to edge of fire stair and lift
- First - Nil to boundary wall and landscaped roof, 2m, approximately 5.1m to edge of fire stairs and lift, 7.4m to breezeway 10m to southern wall of development
- Second - Between 6.4m and 9.2m to the southern wall of the development.

The proposal has been assessed, on merit, against the objectives of the control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

As discussed above the 14sqm area of deep soil provided with the setback to the south-east corner is assessed as insufficient to support sufficient landscaping to help soften the visual bulk of the development and help maintain residential amenity to neighbouring properties. Refer to comments within this report from Council's Landscape Officer and discussion under SEPP 65. In summary, the proposal is inconsistent with objective 1.

- *To create a sense of openness in rear yards.*

Comment:

The 2m setback provides a limited sense of openness to the development. The landscaped roof is acceptable in principle which could help meet this objective, however, there is insufficient deep soil proposed to support any planting which may help provide for the amenity of the development and protection to neighbours. In summary, the proposal is inconsistent with objective 2.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The shared elevated breezeway is setback between 6.3m and 1m from the southern (rear) boundary with no privacy protection / screening. The elevated breezeway will have unreasonable impacts on neighbouring privacy. As discussed above, there is also insufficient deep soil to support planting of the landscaped roof which will help protect the privacy of the neighbouring properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The site is zoned B1 Neighbourhood Centre zone and the existing building is generally built to the boundaries. The site is surrounded on all sides by the R2 Low Density Residential zone which has a distinct pattern of buildings. Given the zoning of the subject site this objective is not applicable to the application.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As discussed above, the proposal does not provide for sufficient opportunities to maintain privacy between the subject site and neighbouring dwellings. The proposal is inconsistent with this objective.

C4 Stormwater

Clause C4 requires:

Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.

The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

Comment:

Council's Development Engineer has confirmed that insufficient information has been submitted to meet the Council's Water Management Policy as such the proposal is inconsistent with the objectives and requirements of Clause C4 (Stormwater).

D6 Access to Sunlight

Clause D6 requires:

- 1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

Comment:

The proposal is assessed against the objectives of the control as detailed below:

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

Shadow diagrams have been submitted which confirm that the proposal will cast additional shadow to the southern and eastern neighbour. The diagrams do not show the entire site to the southern neighbour to make a detailed assessment. Despite this the breach in the height and the insufficient side setbacks contribute unreasonably to impacts on solar access and a more innovative design solution will reduce solar access impacts. The proposal is therefore inconsistent with objective 1.

- *To encourage innovative design solutions to improve the urban environment and public open space.*

Comment:

The proposal will not result in unreasonable impacts on the solar access to public open space as the additional shadow is primarily cast on the neighbouring residential properties to the south and east.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal fails to include any options for solar energy. The proposal is therefore inconsistent with objective 3.

D8 Privacy

Clause D8 requires:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to*

limit overlooking.

3. *The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*

4. *The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*

5. *Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Comment:

The proposal is assessed against the objectives of the control as detailed below:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The development has a nil setback to the east on all levels with windows to habitable rooms located in the eastern elevation. In addition, the eastern edge of the elevated breezeway has a nil setback to the east. The design of the privacy screens to the windows add to the appearance of the excessive height and are not supported and the proposal has the potential to result in unreasonable amenity impacts on No. 49 Arthur Street to the immediate east.

In addition, the landscape roof fails to provide sufficient soil depth to support screen planting to the rear to ensure privacy is protected to the southern neighbour.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

A more innovated design that responds better to the context would improve the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal provides for the personal and property security for future occupants and visitors.

D9 Building Bulk

Clause D9 requires

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

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

3. *On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:*

The amount of fill is not to exceed one metre in depth.

Fill is not to spread beyond the footprint of the building.

Excavation of the landform is to be minimised.

4. *Building height and scale needs to relate to topography and site conditions.*

5. *Orientate development to address the street.*
6. *Use colour, materials and surface treatment to reduce building bulk.*
7. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
8. *Articulate walls to reduce building mass.*

Comment:

The proposal is assessed against the objectives of the control as detailed below.

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The design is generally regarded as a good design, however, the height, scale and bulk is contextually inappropriate in context to the surrounding low density residential area.

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

Comment:

The side setbacks are not progressively increased as wall height increases, the proposal is therefore inconsistent with sub-clause 1 of the control. The proposal as viewed from the east will result in unreasonable visual impact to No. 49 Arthur Street and the streetscape in general. For the reasons discussed throughout the report the proposal is inconsistent with the requirements and objectives of Clause D9 (Building Bulk).

D10 Building Colours and Materials

With the exception of the vertical screens attached to the eastern elevation the materials and colours are assessed as acceptable. Refer to comments from Council's Urban Designer within this report.

D18 Accessibility and Adaptability

Clause D18 requires:

1. *The design is to achieve a barrier free environment with consideration given to the design of door handles and switches, entrances and corridors. Steep, rough and slippery surfaces, steps and stairs and narrow paths should be avoided.*
2. *There are to be continuous, independent and barrier-free access ways incorporated into the design of buildings.*
3. *Pathways are to be reasonably level with minimal cross fall and sufficient width, comfortable seating and slip-resistant floor surfaces.*
4. *Where there is a change of level from the footpath to commercial or industrial floor levels, ramps rather than steps should be incorporated.*
5. *There is to be effective signage and sufficient illumination for people with a disability.*
6. *Tactile ground surface indicators for the orientation of people with visual impairments are to be provided in accordance with the relevant Australian Standard.*

Comment:

The proposal has been assessed against the objectives of the control as detailed below:

- *To ensure vehicular access points for parking, servicing or deliveries, and pedestrian access are designed to provide vehicular and pedestrian safety.*

Comment:

Insufficient information has been submitted to confirm that the proposal provides accessible pedestrian access to the shops and the accessible toilet. In addition, all split level units have internal stair access and the proposal does not provide for the needs for 20% of the units being adaptable. The proposal is therefore inconsistent with this objective.

- *To ensure convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability.*

Comment:

As discussed above, insufficient information has been submitted to confirm that the proposal provides a convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability, refer to Council's Urban Design comments within this report. Due to the insufficient information regarding access it is not possible to confirm compliance with this objective.

- *To provide a reasonable proportion of residential units that should be designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.*

Comment:

As discussed above, the proposal fails to provide any adaptable units given that all units have an internal stair at the entrance. The proposal is inconsistent with this objective.

F1 Local and Neighbourhood Centres

Clause F1 requires:

1. *Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as being interesting, safe and comfortable.*
2. *The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*
3. *The design and arrangement of buildings are to recognise and preserve existing significant public views.*
4. *Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*
5. ***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.***
6. ***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. (emphasis added).***
7. *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*
8. *Footpath awnings should be designed to allow for street tree planting.*
9. *Awnings should be consistent in design, materials, scale and overhang with adjacent retail developments.*
10. *Awnings should have an adequate clearance from the kerb.*
- 15 (a) *At Forestway Shops, expansion or alteration to the existing approved buildings is to address the relationship of the development with the adjoining residential area and pedestrian and vehicular access and circulation.*
- (b) *Parking and access arrangements are to minimize conflicts between pedestrians and vehicles. Additional vehicular access from streets other than Forest Way is preferred.*

Comment:

The proposal does not achieve the required floor to ceiling height for the ground floor commercial units and is therefore contrary to part 3. The proposal has unreasonable impacts on neighbouring amenity in terms of loss of privacy and additional over-shadowing and is therefore contrary to part 4. The eastern elevation has a zero setback on all levels and the excessive height, bulk and scale of the building fails to transition to the adjacent single storey residential development contrary to part 5, 6 and 15a of the control. The architectural treatment of the eastern elevation with the vertical screens adds to the visual bulk of the development.

The proposal is assessed against the objective of the control as detailed below:

- *To encourage good design and innovative architecture.*

Comment:

While the architectural design articulation and details are general acceptable, with the exception of the eastern elevation, the critical issues is the failure of the development to transition to the adjoining low density dwellings. The height, bulk and scale of the development is excessive and an alternative innovative design that responds appropriately to the context is required.

- *To provide a safe and comfortable environment for pedestrians.*

Comment:

Insufficient information has been submitted to confirm that the comfortable access to all areas of the development can be achieved for pedestrians.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

Comment:

The proposal provides opportunities for small scale shops and business that would add to the amenity of the Neighbourhood Centre. However, further consideration needs to be given to addressing the density of the residential component of the development to ensure that the scale, height and bulk of the development is contextually appropriate.

- *To enhance the established scale and pattern of development and the continuity of existing streetscapes.*

Comment:

The site is located within the B1 Neighbourhood Centre Zone, there is no established pattern of development in the zone. The existing building has 100% site coverage.

- *To enhance the public domain.*

Comment:

The proposal has the potential to enhance the public domain.

- *To increase adaptability, environmental performance and amenity of buildings.*

Comment:

The proposal is supported with a BASIX certificate, however, the Design Panel have suggested additional sustainability measures, refer to discussion under SEPP 65.

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 2021**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$35,504 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,550,429.

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has not 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 not be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Conclusion

Height, bulk and scale

The proposal results in a significant breach of the maximum 8.5m height development standard by 22.4%. The clause 4.6 statement submitted with the application is not considered to adequately address the matters required, nor does it adequately justify that compliance is unreasonable or unnecessary in the circumstances.

The excessive height, combined with the nil set back of the upper floors from the side boundaries, will result in a development that is out of context with the surrounding low density residential area. The excessive height, scale and bulk fails to transition to the adjoining low density residential area and will result in unreasonable visual impacts when viewed from the property to the east and the streetscape.

Residential amenity (privacy and overshadowing)

As a result of the excessive height, bulk, scale and massing and insufficient side setbacks the proposal will result in unreasonable impacts on neighbouring residential amenity in terms of over-shadowing. Windows to habitable rooms and the edge of the elevated breezeway have a zero setback from the eastern boundary. The design of the privacy screens to the windows and breezeway is not supported and the proposal will result in visual privacy issues to neighbouring properties. In addition, insufficient soil depth is proposed on the landscaped roof to support screen planting which is required to help protect the privacy of the southern neighbour.

Landscaping (deep soil and common open space)

The proposal includes a 14sqm (2% of the site area) deep soil zone in the south-east rear corner which breaches the ADG requirement by 5%. The area will not support sufficient landscaping to help reduce the visual impact of the development to the rear. The proposal does not provide any common open

space which is also inconsistent with the SEPP 65 and the ADG.

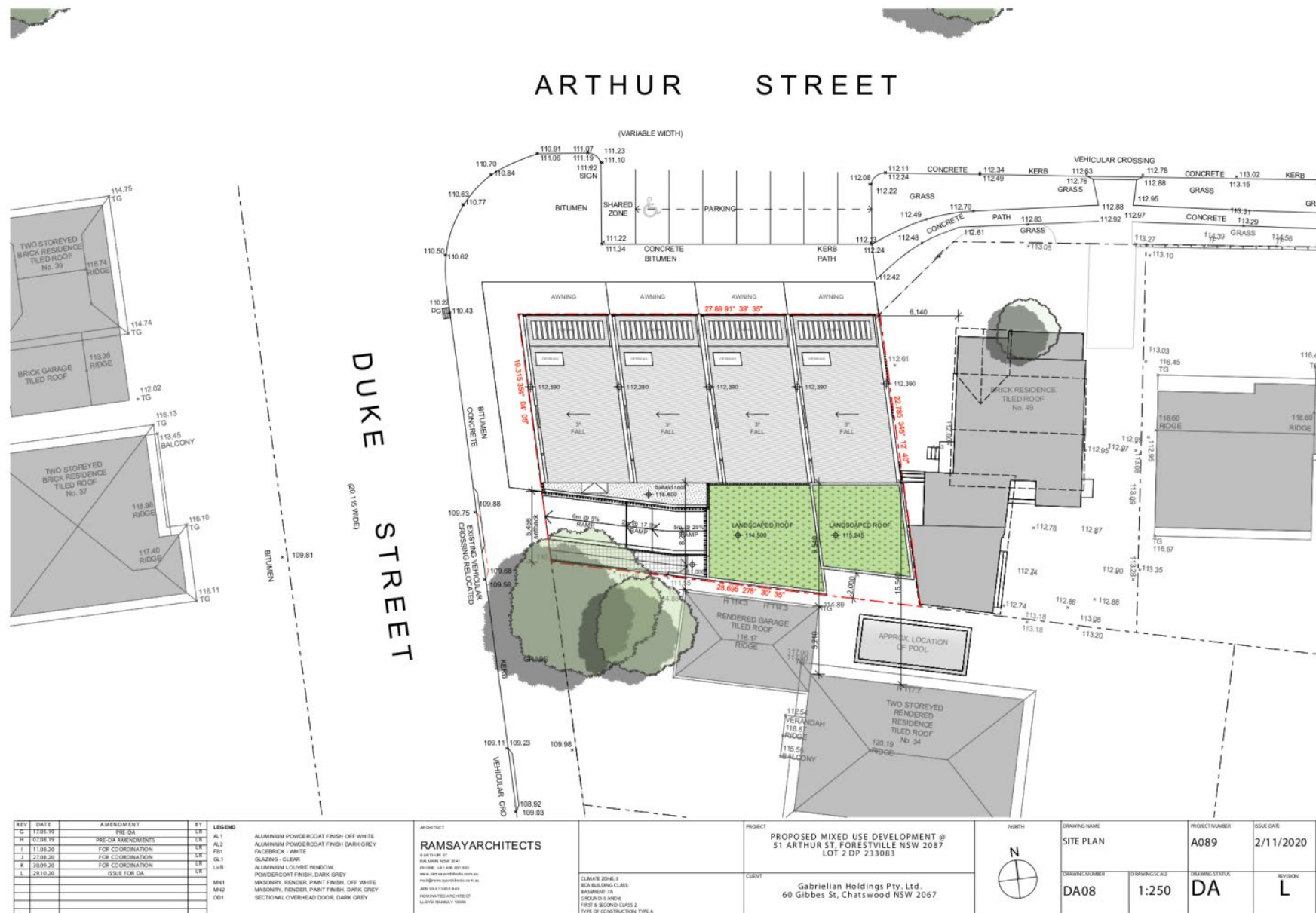
Access

The proposal does not provide for the accessible requirements of SEPP 65 or the WDCP.
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1759 for the Demolition works and construction of a shop top housing development on land at Lot 2 DP 233083,51 Arthur Street, FORESTVILLE, for the reasons outlined as follows:

1. The proposal is inconsistent with Section 4.15 (b) and (c) of the Environmental Planning and Assessment Act 1979 as the height, scale and bulk of the fails to transition to the adjoining low density residential area. As a result, the proposal will result in unreasonable visual impacts to surrounding properties and the streetscape and unreasonable impacts on residential amenity. All of these issues result in a proposed development that is an overdevelopment of the site.
2. The proposal is inconsistent with the Design Quality Principles of the State Environmental Planning Policy 65 - Design Quality of Residential Flat Development. The proposal is also inconsistent with the requirements of the Apartment Design Guide in terms of landscape design (communal open space and deep soil zones), visual privacy, accessibility and minimum ceiling heights to the retail units.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
5. The proposal is inconsistent with the requirements and objectives of the following Warringah DCP controls:
 - (a) Clause B6 - Merit Assessment of Side Boundary Setbacks;
 - (b) Clause B10 Merit assessment of Rear Boundary Setbacks;
 - (c) Clause C4 Stormwater;
 - (d) Clause D6 Access to Sunlight;
 - (e) Clause D8 Privacy;
 - (f) Clause D10 Building Colours and Materials;
 - (g) Clause D18 Accessibility and Adaptability, and
 - (h) Clause F1 Local and Neighbourhood Centres.
6. The proposal is contrary to the relevant requirement(s) of SEPP 65, the WLEP and WDCP, including the height development standard. The proposal will result in a bulk and scale that fails to transition to the surrounding low density residential area and will result in unreasonable impacts on neighbouring amenity. The proposal will create an undesirable precedent and be contrary to the expectations of the community. As such, the proposal is not in the public interest.



[illegible]



REV	DATE	AMENDMENT	BY	LEGEND
1	17/05/19	PRE-DA	LF	AL1
2	07/08/19	PRE-DA AMENDMENTS	LF	AL2
3	11/08/20	FOR COORDINATION	LF	FB1
4	27/08/20	FOR COORDINATION	LF	GL1
5	30/09/20	FOR COORDINATION	LF	LVR
6	29/10/20	ISSUE FOR DA	LF	
				MN1
				MN2
				OD1

ALUMINUM POWDERCOAT FINISH OFF WHITE
ALUMINUM POWDERCOAT FINISH DARK GREY
FACEROCK - WHITE
GLAZING - CLEAR
ALUMINUM LOUVER WINDOW
POWDERCOAT FINISH, DARK GREY
MASONRY - RENDER, PAINT FINISH, OFF WHITE
MASONRY - RENDER, PAINT FINISH, DARK GREY
SECTIONAL OVERHEAD DOOR, DARK GREY

ARCHITECT
RAMSAYARCHITECTS
51 ARTHUR ST.
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WWW.RAMSAYARCHITECTS.COM.AU
ABN 69 113 022 940
REGISTERED ARCHITECT
LICENCE NUMBER: 15086

CLIMATE ZONE: 5
BCA BUILDING CLASS:
RESIDENTIAL - FA
GROUND 1 AND 2
FIRST & SECOND CLASS 2
TYPE OF CONSTRUCTION TYPE A

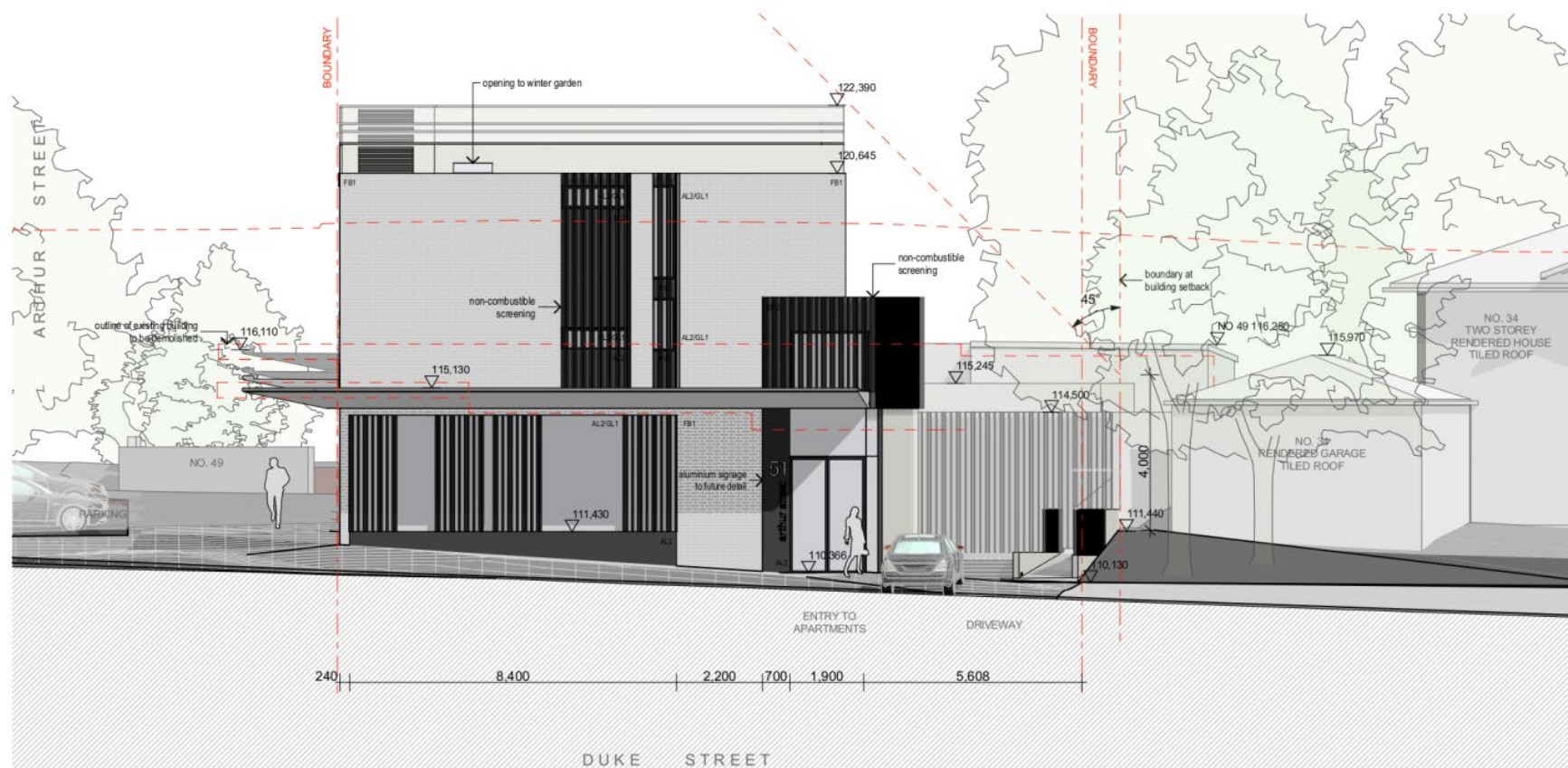
PROJECT
PROPOSED MIXED USE DEVELOPMENT @
51 ARTHUR ST, FORESTVILLE NSW 2087
LOT 2 DP 233083

CLIENT
Gabrielian Holdings Pty. Ltd.
60 Gibbs St, Chatswood NSW 2067

DRAWING NAME		PROJECT NUMBER	ISSUE DATE
SOUTH ELEVATION		A089	2/11/2020
DRAWING NUMBER	DRAWING SCALE	DRAWING STATUS	REVISION
DA302	1:200	DA	L

ISSUE FOR DA





REV	DATE	AMENDMENT	BY	LEGEND	ARCHITECT	PROJECT	DRAWING NAME	PROJECT NUMBER	ISSUE DATE
10	17/05/19	PBE DA	LF	AL1 ALUMINUM POWDERCOAT FINISH OFF WHITE	DA	PROPOSED MIXED USE DEVELOPMENT @ 51 ARTHUR ST, FORESTVILLE NSW 2087 LOT 2 DP 233083	WEST ELEVATION	A089	2/11/2020
11	07/06/19	PBE DA AMENDMENTS	LF	AL2 ALUMINUM POWDERCOAT FINISH DARK GREY	R				
1	11/08/20	FOR COORDINATION	LF	FBI FACEBOOK - WHITE	0				
2	27/08/20	FOR COORDINATION	LF	GL1 GLAZING - CLEAR	0				
3	30/08/20	FOR COORDINATION	LF	LV1R ALUMINUM LOUVER WINDOW	0				
1	28/10/20	FOR COORDINATION	LF	POWDERCOAT FINISH DARK GREY	0				
		FOR COORDINATION	LF	MASONRY, RENDER, PAINT FINISH, OFF WHITE	0				
		FOR COORDINATION	LF	MASONRY, RENDER, PAINT FINISH, DARK GREY	0				
		FOR COORDINATION	LF	SECTIONAL OVERHEAD DOOR, DARK GREY	0				

51 Arthur Street, Forestville: Shop Top Housing

ANNEXURE 1

Clause 4.6 variation request – Height of buildings

51 Arthur Street, Forestville: Shop Top Housing

Clause 4.6 variation request – Height of buildings**51 Arthur Street, Forestville**

The proposed development provides for a 3 storey shop top housing building. Pursuant to the height of buildings map, the site has a maximum building height limit of 8.5 metres.

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 (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

The proposed development has a variable upper parapet height reaching a maximum building height of 9.749 metres at its eastern edge and 10.405 metres at its western edge representing a non-compliance of between 1.249 metres (14.69%) and 1.905 metres (22.4%) as depicted in Figure 1 over page.

51 Arthur Street, Forestville: Shop Top Housing

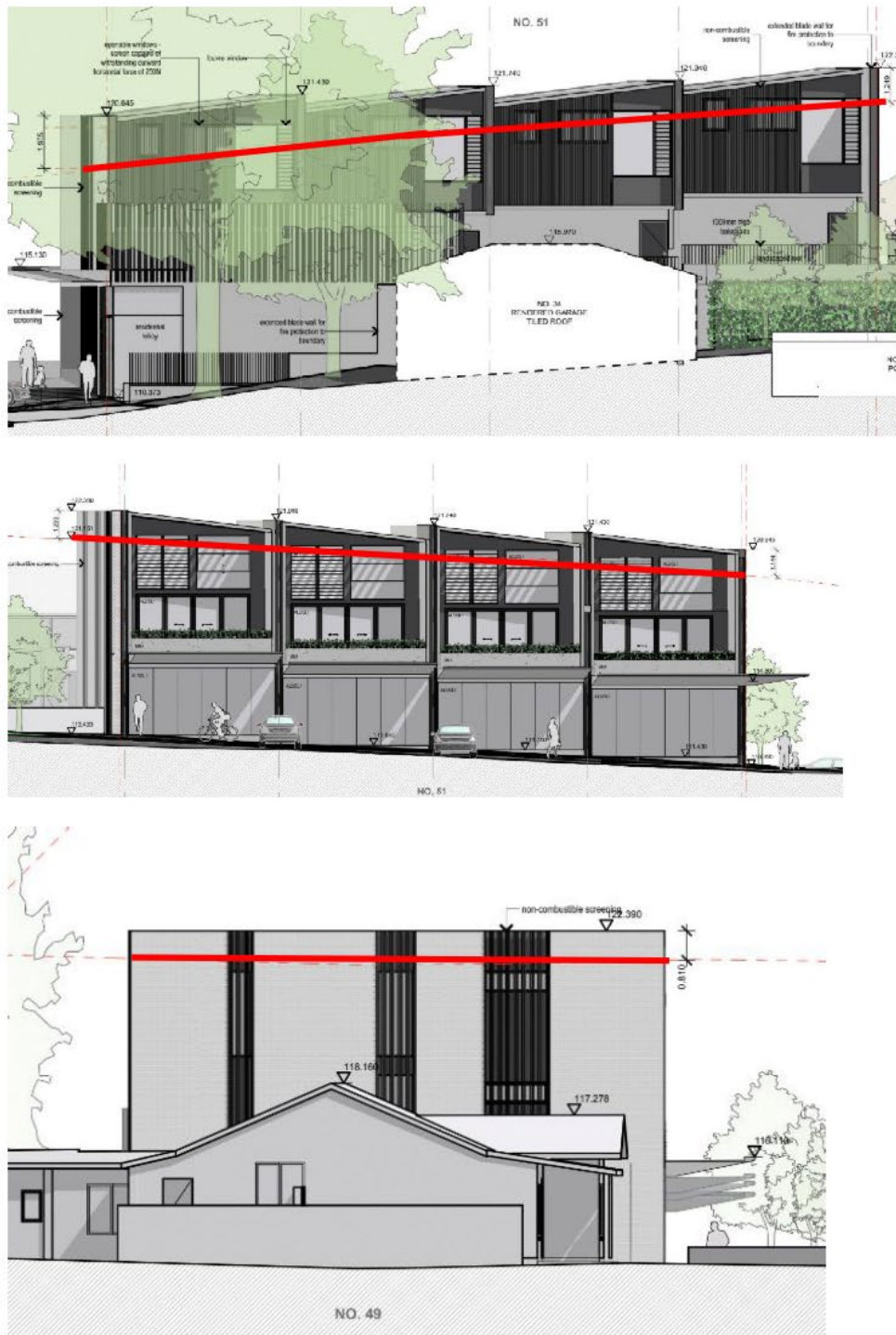


Figure 1 – Elevations showing extent of building height breach

51 Arthur Street, Forestville: Shop Top Housing

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. 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.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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.*

Clause 4.6(5) states that 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.*

Clause 4.6 Claim for Variation

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.

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: An assessment of the proposal compatibility with the height and scale of surrounding development must be assessed in the context that unlike surrounding the nearby development which is characterised by detached style housing on R2 Low Density Residential zoned sites the subject site is zoned B1 Neighbourhood Centre in which shop top housing is a permissible form of development. That is, the land use and associated building form outcomes anticipated on the subject site are disparate to those anticipate on surrounding land.

That said, compatibility in an urban context is dealt with by the planning principle established in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191. In this matter the Senior Commissioner formed the following opinion:

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

In this regard, the proposal displays a height and form which, whilst exceeding the 8.5 metre height standard to a varying extent, displays an overall height which is consistent with that of 2 storey development within the surrounding area.

At paragraph 24 the planning principle states:

Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

In this regard, I have formed the opinion that the building height breaching elements will not give rise to any unacceptable physical impacts on surrounding development in terms of view loss, privacy or overshadowing as detailed within this variation request.

Further, the resultant building form will contribute positively to the streetscape quality of the area given the design initiatives adopted including its highly articulated and modulated building facades and introduction of balcony edge landscape treatments as depicted in Figure 2 below.



Figure 2: 3D Montage

51 Arthur Street, Forestville: Shop Top Housing

The 2 storey mezzanine style apartments above ground level retail spaces have been designed to present as 2 storey elements to both street frontages with the split level floor plates enabling the development to step down the Arthur Street frontage in response to topography. This design approach also keeps the building low in the streetscape and minimises the building height breach. The facades are otherwise appropriately articulated in both the horizontal and vertical planes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that the building height non-compliant elements will not give rise to any unacceptable physical impacts on neighbouring properties and that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development, is able to coexist in harmony, and accordingly the proposal is consistent with this objective notwithstanding the building height non-compliance.

(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 we 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 relation to privacy, the development has been designed through detailed site analysis to ensure that appropriate privacy is maintained between adjoining development through building design and orientation, the appropriate use and placement of fenestration and the inclusion of fixed privacy screen treatments where necessary. In this regard, appropriate privacy and security will be maintained between adjoining development.

Particular attention has been given to the eastern elevation due to its proximity to the neighbouring residential dwelling. The windows to the eastern elevation will include vertical louvres to minimise any risk to privacy. A solid wall to the first floor balcony maintains the privacy to the adjoining dwelling.

A southern setback provides appropriate spatial separation to the adjoining residential property with a combination of setback, fixed privacy screen and intervening landscape elements maintaining appropriate privacy between properties.

In relation to solar access, I refer to the shadow diagrams prepared by Ramsey Architects a copy of which are at Attachment 1. The shadow diagrams confirm that at least 3 hours of solar access will be maintained to the east, north and west facing living room windows and rear private open space area of No. 34 Duke Street between 9am and 3pm on 21 June with a negligible increase in additional overshadowing impact to the swimming pool located within the side setback of this property.

51 Arthur Street, Forestville: Shop Top Housing

Further, the shadow diagrams demonstrate that the living room windows and private open space areas of No. 49 Arthur Street will continue to receive compliant levels of solar access between 9am and 12 noon notwithstanding the building height breaching elements.

In relation to views, having inspected the site and its surrounds to identify available view corridors across the site, we have formed the considered opinion that the building height breaching elements will not give rise to adverse public or private view affectation with a view sharing scenario maintained in accordance with the principles established by the Land and Environment Court in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.

In relation to visual bulk, the development has been designed through detailed site context analysis to provide through a contextually responsive building form maintaining appropriate amenity to adjoining properties and a high level of amenity to future occupants.

The 2 storey mezzanine style apartments above ground level retail spaces have been designed to present as 2 storey elements to both street frontages with the split level floor plates enabling the development to step down the Arthur Street frontage in response to topography. This design approach also keeps the building low in the streetscape and minimises the building height breach. The facades are otherwise appropriately articulated in both the horizontal and vertical planes.

Particular attention has been given to achieving a contextually appropriate human scale consistent with that established by 2 storey dwelling houses in the locality with the skillion roof forms adopted also reflecting a complimentary and compatible residential form and scale.

Having regard to the above analysis I am satisfied that the proposal, notwithstanding the building height breaching elements, has been designed to minimise visual impact, minimise disruption of views, minimise loss of privacy and minimise loss of solar access. Accordingly, 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 have any discernible impact on the bush environment in the local area. The existing site has no landscaping elements and the proposal seeks to enhance the landscaping on the site. The proposal achieves this objective.

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

Comment: 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 Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B1 Neighbourhood Centre zone. Shop top housing is permissible in the zone with consent. The developments consistency with the stated objectives of the B2 zone are as follows:

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

Response: The proposed mixed use development provides small scale ground floor retail/business tenancies that are able to accommodate a range of uses that serve the needs of people who live or work in the surrounding neighbourhood. The proposal achieves this objective.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Response: The proposed design achieves a building form that creates a village-like atmosphere with ground floor retail uses able to activate both frontages of the site. The ability to introduce outdoor to further enhance the village-like atmosphere is also a positive element of the proposal. All publicly accessible spaces together with the surrounding public domain provide a safe and comfortable environment for pedestrians. This objective is achieved.

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

It has been determined that the proposal will not give rise to adverse residential amenity or land use conflicts with the future development of the subject site for either commercial or shop top housing land uses anticipated, through the provision of a highly articulated and modulated façade presentation to this property which responds to the residential character of the area in a contemporary fashion. The proposal has taken into consideration the adjoining residential zone and does not create any conflict between land uses on adjoining properties or the amenity of residential uses within adjoining zones as previously detailed within this clause 4.6 variation request.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined. Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development

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

51 Arthur Street, Forestville: Shop Top Housing

Sufficient environmental planning grounds

There are sufficient environmental planning grounds relative to this particular site to justify the variation sought.

In this regard, whilst the development has been cleverly designed to step down the site in response to topography the topographical characteristics to make strict compliance difficult to achieve whilst providing a building of high design quality, amenity and streetscape appearance. In this regard, the extent of building height breach could be significantly reduced through a reduction in the retail ceiling heights and introduction of flat roof forms in lieu of the skillion roof form proposed. Strict compliance could also be achieved through deletion of the however this would leave the development unviable. Such outcome would be neither orderly or economic.

In my opinion, a better environmental planning/ built form/ urban design outcome is achieved through approval of the variation proposed with enforcement of strict compliance resulting in a development which does not display the same design quality and in which the residential amenity of the development as a whole is significantly compromised. Approval of the variation sought would achieve the objects in Section 1.3 of the EPA Act, specifically:

- The variation promotes the orderly and economic use and development of land (1.3(c),
- The reasons previously outlined, the development represents good design, contributes positively to the streetscape and provides superior levels of residential amenity to future occupants (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 8.5 metre height precinct in which the site is located.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

51 Arthur Street, Forestville: Shop Top Housing

- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we 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.

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

Yours sincerely

Boston Blyth Fleming



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

Attachment 1 – Shadow diagrams



Design + Sustainability Advisory Panel Meeting Report – 29 April 2021

DA2020/1759 - 51 Arthur Street, FORESTVILLE

PANEL COMMENT AND RECOMMENDATIONS

General

The site comprises a single storey commercial building comprising 6 retail units which has almost 100% site coverage with the exception of a small service area to the rear. A driveway from Duke Street provides access to the rear service area. The land fall across the site from east to west and north to south. There are no significant trees on the site. An area with public car parking for 8 vehicles is located along the Arthur Street frontage.

The proposal has previously been presented to a PLM on 18 April 2019. The Panel has been provided with a briefing by Council officers that identifies a wide range of non compliances.

The Panel recognises that the proposal is for a re-development of an existing building that is itself “non-compliant” in relation to current controls and policies.

Strategic context

The proposal is for demolition of existing shops. The shops are an essential service in the area, and shop-top housing is an appropriate approach to increasing and diversifying housing supply while also preserving and up-grading retail offerings and services. The Panel also recognises the social function of local shops as gathering places and the importance of informal encounters that they provide.

In short, the Panel is very supportive of shop-top housing and understands the financial challenges but also the need to fit in and complement the surrounding area and adjoining properties that may not

Urban context: surrounding area character

Surrounding development consists primarily of one and two storey detached dwellings set back from the street in landscape settings. A single storey brick residence is located to the immediate east at No 49 Arthur Street and a two storey detached dwelling with a garage and pool is located to the immediate south at No 34 Duke Street.

The Panel has seen the scheme presented to the PLM and considered the revised design much improved and having the **potential** to be more sympathetic to the context.

Scale, built form and articulation

A height limit of 8.5 metres applies to most areas in the Northern Beaches. The intention of this height limit is to allow for development which is compatible in height to surrounding residential development, and given cross fall of a site slope and floor to ceiling dimensions for commercial requirements and residential amenity may result in only a 2 storey buildings capable of being designed within the height limit.

The Panel is aware that a 2-storey shop top housing development with basement parking will present financial feasibility issues for the development.

The Panel notes the cross-fall across the site.

The proposal has a repetitious form and the row of apartments with strong vertical expression serves to emphasise the height of the building rather than moderate it.

No consideration has been given to the relationship between the eastern elevation (DA303) and the adjoining property 49 Arthur Street.



The Panel commends and supports the stepping down of the retail floors to match the adjoining public domain, however as noted, it is not clear what has driven the roof form or the direction of pitch, that serves to emphasis height, requires valley gutters and unnecessarily exceeds the height limit at the street and rear alignments.

The internal ceiling heights on the upper level appear to range from 2.6 to 3.3m, while the retail is too low.

The Panel is concerned that the 2.9m floor to floor dimension will prove inadequate, 3.1m floor to floor is the generally accepted minimum to accommodate services.

Given the overall concern with the bulk, apparent height and relationship to adjoining properties, the Panel does not understand why the prominent two storey expression has been adopted, why two bedroom apartments need a second bath room, or a 'wintergarden' all of which contribute to the bulk of the building.

The Panel notes and supports the F1 Local and Neighbourhood Centres guidelines:

(6) 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.

The Panel agrees with many of the comments provided in the Urban Design referral, however if the overall presentation of the building were modified to present a predominantly 2 storey form as described above, with an expressed parapet/ balustrade at approximately RL8.0 and with the upper level eave and roof set back by 3m the proposal may be supported.

The panel supports the non trafficable landscaped green roofs and the set back to 34 Duke Street.

Recommendations.

1. Reduce the overall bulk of the building. Any breaches of the height controls should be in the centre of the building while keeping the extremities as low as possible.
2. Reduce the height of the building at the eastern end by introducing a set back above the ground level.
3. Floor to ceiling heights should comply with the ADG and floor to floor should be sufficient to achieve this with adequate tolerance for construction; 3.1m floor to floor is general practice.
4. Reconsider the need for a second bathroom and the need for 'wintergardens' in the apartments.
5. More clearly define a 2-storey form with the third level set back. The panel notes that the PLM scheme had this form but also presented a monolithic appearance. It is not at all clear how the curved forms in the PLM scheme, or the double storey form of the apartments relate to the local area.
6. The Panel does not support the roof forms and recommends that alternative approaches be explored to reduce the apparent height, in passing noting the re-orientation of the roofs would also provide a better solar orientation and avoid box gutters.

Access

The rationale for the levels and access to the apartments is not clear. Is it intended that the pedestrian access is via the ramp along the southern boundary and then up the stairs?

While access to the 'accessible' toilet is not clear, the Panel recognises the challenges of resolving levels on the site.

It is not clear how the lift will serve the lobby and the retail, or is it intended that the lift not open to the retail passage?

The proposal includes an accessible path of travel to the front door of each apartment but then there are stairs immediately inside. Presumably the stairs intrude into the retail space below. It is not clear why the ramp could not be higher, the stairs shifted to the space currently occupied by the second bathroom.

Raising the ramp would also allow the ground floor to be raised.



Planning for the basement will be made easier by a reduction in the retail car spaces.

Recommendations

7. Replan the access to all for direct level access to shops and apartments wherever possible.
8. Rearrange the internal circulation in apartments

Landscape,

The existing building already covers the site entirely. There is no existing vegetation on the site, so any improvement is welcomed.

Recommendation.

9. Provide further detail on the landscaping of the 'green roof'
10. Consider enhancing the public domain design and landscape character to further complement the landscape context.

Vehicular movement and car parking

The Panel notes that the development does not provide sufficient on-site car parking for the retail component according to the WDCP

Given that there is no increase in the amount of retail, the Panel suggests Council should consider some concession or 'credit' is given to the development and that underground spaces are not required and in fact unlikely to be used. There are also issues of shared use of the lift between customers and residents.

Recommendations

11. Consider a reduction in the amount of car parking on site.

Façade treatment

The range of façade compositions, materials and colours are supported.

Amenity

The amenity of the dwellings is good.

Sustainability

Steel roofing products are becoming available in the market that have high solar reflectance and are able to improve the thermal performance of the building. These are in a range of light colours. It is recommended that a metal roof with these qualities is used.

Heat pump hot water systems are recommended as a good sustainability outcome. Unfortunately, including heat pumps may reduce the energy score, but this can be compensated for with additional PV. Increasing the PV would be a positive and practical outcome.

Recommendations

12. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.
13. The Panel recommends increasing the capacity of PV.
14. Add external windows to bathrooms and utility rooms wherever possible including ground level retail toilets.



PANEL CONCLUSION

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

Significant changes to building massing, roof form, access arrangements, setbacks on the upper level and improved relationship to the adjoining residence on no 49 Arthur Street are required.

ITEM 3.3	DA2021/0541 - 45 DARLEY ROAD, MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	Rebecca Englund
TRIM FILE REF	2021/625264
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0541 for alterations and additions to a dwelling house at Lot 1 DP 19320, 45 Darley Road, Manly subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0541
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 19320, 45 Darley Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Michael Ignatius Doyle Liza Doyle
Applicant:	Michael Ignatius Doyle

Application Lodged:	13/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/06/2021 to 13/07/2021
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,317,000.00
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Executive Summary

The proposal is referred to the Local Planning Panel as there have been more than 10 submissions received for the dwelling house alterations and additions.

The critical assessment issues for the proposal relate to solar access, views, streetscape, building bulk, spatial separation and site related issues. The applicant has sought to respond to the issues raised with specific amendments the plans to reduce building bulk, reduce overshadowing impacts and address view sharing. In doing so the plan amendments submitted during the assessment increased the setbacks for selected wall and roof elements including minor changes to open space areas and to assist in addressing streetscape concerns, including proximity to heritage items.

The non-compliances with storey height is consistent with permitting basement elements), including

front setbacks for corner sites. The proposal maintains compliance with building height and floor space ratio requirements. All internal referrals support the proposal subject to conditions. No issues are raised pursuant to heritage considerations (the subject building is not a heritage item) or landscaping (including bandicoot habitat area). Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

PROPOSED DEVELOPMENT IN DETAIL

The development application (DA) proposes alterations and additions to a dwelling house including:

Basement/Garage Level (RL 16.680):

- Demolition of the existing garage walls and construction of new 2 car garage.
- Excavation and new basement storage area, bathroom, stair access.

Ground Floor (RL 19.380):

- Demolition of previous additions on eastern side of house.
- Rear extension of the existing dwelling to create an open plan kitchen/living/dining area with access to a new terrace above the garage.
- Existing veranda to the existing dwelling to be renovated and reinstated.
- Renovation work within original house section, including window replacement, wall / roof material repairs and new fireplace structure.

First floor (FFL 22.680):

- Main bedroom with ensuite and walk-in-robe. Balcony with integrated landscaping works.
- Connecting roof element alterations (new roof ridge RL26.180).

Ancillary site drainage works, site preparation, excavation, landscaping, fencing and ancillary 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 - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.5.5 Landscaping
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot 1 DP 19320 , 45 Darley Road MANLY NSW 2095
Detailed Site Description:	The site is rectangular in shape having primary frontage and address to Darley Road of 14.82 metres (m), secondary frontage to Cliff Street of 32.84 metres and an area of 487.6 square metres (sqm). The subject property is a corner lot and the slope falls approximately 2 metres across its surface in a westerly direction and 4m to the north. The property does not contain any significant trees or landscape features. The existing development on the site consists of a single level cottage with vehicle access to lower level parking from Cliff Street. The existing excavated garage forms a basement element but due to its age of construction does not meet contemporary standards for height and width for 2 cars. Development in the immediate vicinity generally consists of single dwellings, semi-detached dwellings and residential flat buildings. The site is within reasonably short walking distance Manly CBD, Manly Wharf and Manly Beach. The site is not a heritage item however adjacent building to the west and opposite are included as Heritage items in the Manly LEP.

Map:



SITE HISTORY

Pre-lodgement Meeting No.PLM2021/0029 was held on 2.3.2021 with Council for alterations and additions to the dwelling house. The PLM notes provided the following concluding remarks "The proposal is generally supported. The key recommendations relate to the front setback to Cliff Street and the side setbacks. The proposal will upgrade the site and streetscape with a well-designed contemporary addition that follows good design principles for non-listed federation homes."

Development Application No.322/04 for replacement of balustrade on garage balcony was approved by Council on 13.8.2004

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	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Some additional information was requested in this case to address submission / DCP assessment issues and minor changes were made to the plans (Issue G - dated 15.6.2021). The changes made go toward addressing submission issues and were re-notified in accordance with the <i>Community Participation Plan</i>. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent as all existing building structures on site are to be demolished. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety, access, building work / materials the development). This matter is subject to BCA compliance for Construction Certificate stage for the new build and may involve partial 'upgrade' of existing elements. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. This includes but is not limited to fire safety, access, building work / materials the development). This matter has been addressed via a condition of consent and fire separation / fire safety arrangements (partition wall within the building) are subject to BCA compliance appropriate for <i>Construction Certificate</i> stage.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact

Section 4.15 Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development subject to conditions.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	A number of submissions were received following notification.
Section 4.15 (1) (e) – the public interest	Subject to conditions, no matters have arisen in this assessment that would justify the refusal of the application in the public interest. All submission issues have been considered and relevant considerations under the Manly LEP and Manly DCP including, but not limited to, views, privacy, solar access, heritage, surrounding amenity, landscaping, traffic, parking, construction / demolition and the built form of the proposal including ancillary works.

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 29/06/2021 to 13/07/2021 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 16 submission/s from:

Name:	Address:
Mia Rae Thompson	C/- Clarke & Humel Property PO Box 1009 MANLY NSW 1655
Mr Peter Guy Ward	51 Darley Road MANLY NSW 2095
Dino Alexandratos	8 Kalianna Crescent BEACON HILL NSW 2100
Ms Jenny Alexandratos	47 Darley Road MANLY NSW 2095
Mr Andrew Furniss	4 Cliff Street MANLY NSW 2095
Manly Warringah Pittwater Historical Society	The Secretary PO Box 695 MANLY NSW 1655
Mr Christopher Peter Carroll	2 Cliff Street MANLY NSW 2095
Mrs Sheila Margaret Newton	49 Darley Road MANLY NSW 2095
Mrs Elaine Margaret Mulcahy	6 Cliff Street MANLY NSW 2095
Mr Peter Harrison	3 / 1 Cliff Street MANLY NSW 2095

Name:	Address:
Mrs Susanne Harrison	
Ms Shirley Leaver	43 Darley Road MANLY NSW 2095
Mr Johnathon Michael Gliksten	2 A Cliff Street MANLY NSW 2095
Ms Tracey Gail Middleton	2 / 3 Cliff Street MANLY NSW 2095
Ms Candie Eve Tancred	76 Darley Road MANLY NSW 2095
Ms Lisette Maris Rudge	41 Darley Road MANLY NSW 2095
Mr George Alexandratos	47 Darley Road MANLY NSW 2095

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

1. Roof space FSR
2. Building height
3. Overshadowing
4. Front setback non-compliance
5. Heritage streetscape
6. Privacy
7. Materials & finishes
8. Fencing

The matters raised within the submissions are addressed as follows:

- *1. Concern that the roof space within the original part of the dwelling area will be accessible for use as an attic and therefore adds to the applicable gross floor area.*

Comment:

The ceiling space located above the retained portion of the original dwelling (also being renovated as part of the work) is not accessible by stairs and to that extent is empty roof space rather than a usable attic room. The hipped roof line connection and enclosed space is also too low and unsuitable to be a habitable space. A convenient basement storage area is provided adjacent the garage, so there is no need for a habitable attic room. Under such circumstances this existing roof space is not GFA as defined and to that extent does not contribute to the FSR calculation. This issue does not warrant refusal of the application.

- *2. Concern that the building is over height and includes 3 storeys that has view loss impacts.*

Comment:

This issue is addressed in detail under the heading *Part 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)* and *Part 3.4.3 Maintenance of Views* within this report. In summary, the proposal satisfies the height controls of the LEP and objectives of the DCP with the amended plans provided and has adequately addressed view sharing considerations. The proposal is consistent with the objectives of the storey height allowances under the DCP applicable for the circumstances of the existing development on the site and normal LEP height line measurements as detailed by the NSW LEC approach used, pursuant to *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. This issue has been addressed

and does not warrant refusal of the application.

- *3. Concern the the building height and scale will increase overshadowing and loss of sunlight enjoyment to neighbouring properties, including 2A Cliff Street and No.47 Darley Road.*

Comment:

This issue is addressed in detail under the heading *Part 4.1.4 Setbacks (front side and rear) and Building Separation* within this report. In summary, shadow details provided within the submissions and the solar access diagrams submitted for the amended plans have been considered in detail. This includes plan view and 3D diagrams provided on drawings *DA19 to DA27 Issue G* dated 15.6.2021 drawn by *Watershed Design* that demonstrate the change in overshadowing has been minimised and maintains the objectives of the Manly DCP. This issue has been addressed by the amended plans and does not warrant refusal of the application.

- *4. Concern that setback to Cliff Street must be in accordance with the planning regulations and this has not occurred.*

Comment:

This issue is addressed in detail under the heading *Part 4.1.4 Setbacks (front side and rear) and Building Separation* within this report. In summary, the planning controls are not rigid and following pre-lodgement advice and consideration during the assessment period (including submissions) the applicant made amendments to the plans to address spatial separation, solar access, views, building bulk and setback minor elements of the design including reduction of selected forward elements to the setback along Cliff Street. Overall the proposed setback is consistent with the existing building footprint and existing excavated garage location. The setbacks have been considered on merit as a corner lot location and do not create an unreasonable precedent against the Manly DCP. This issue has been addressed by the amended plans and does not warrant refusal of the application.

- *5. Concern that the residential streetscape has heritage values and the size, bulk and design of the proposed alterations and additions is not consistent with the surrounding historical houses.*

Comment:

This issue is considered in detail by Council's Heritage Officer under the heading *Internal Referrals* and *Part 3.1.1 Streetscape (Residential areas)* within this report. In summary, the plans were amended to ensure the bulk and design of development improves spatial separation, views and does not have an unreasonable impact on the streetscape of Darley Road or Cliff Street. Generally the additions and alterations maintain the original built form of the original house section of the subject property with the new additions being of a contemporary style with clear distinction between new section and old section along the line where the gas fireplace wall is located. The interconnection between the architectural elements is consistent with similar approach's on heritage property in the vicinity to preserve the integrity older original elements and maintain the setting in context with the residential environment. This issue has been addressed and does not warrant refusal of the application.

- *6. Concern that there will be privacy impacts from the balcony or windows to surrounding land.*

Comment:

This issue has been addressed in detail under *Part 3.4.2 Privacy and Security* within this report. In summary the balcony areas, window size and placement for the new additions do not create unreasonable overlooking or privacy and security impacts to surrounding land. The side windows are generally screened / translucent glass and associated with stairwell, hall wardrobe or bathrooms space. The front balcony is off a bedroom and include side screening with street outlook. Therefore, this issue has been addressed within the design detail provided on the amended plans and does not warrant refusal of the application.

- *7. Concern that the selection of materials and finishes are not consistent with adjacent buildings and will detract from the appearance and street amenity of the adjacent Federation era buildings.*

Comment:

This issue has been addressed in detail under *Part 4.1.7 First Floor and Roof Additions, Part 3.1.1 Streetscape (Residential areas)* as well as *Part 3.4 Amenity* within this report. In summary, The design of the additions are of a contemporary architecture at the side (rear of the original dwelling orientation to Darley Road) which is consistent with the Australian "*Burra Charter*" approach for older buildings where the original building fabric / design is of a historical architectural period and new additions are proposed. This approach is consistent with the pre-lodgement advice provided to the applicant and does not unreasonably detract from the scenic amenity of the area while at the same time much of the original house section is to be repaired and renovated to ensure its long term Federation style is preserved when viewed from Darley Road. This issue has been addressed by the amended plans to reduce building bulk within the new additions and does not warrant refusal of the application.

- *8. Concern that proposal will add a new fence height section to the top of the dividing fence with No.47 Darley Road that will further increase overshadowing.*

Comment:

The normal dividing fence height between adjoining private properties (behind the building line) is limited to 1.8m above ground level. The replacement or change of materials for dividing fences is administered under the *Dividing Fences Act 1991* and though the Local Court system, not Council. The amended plans show (DA09 G Section, dated 15.6.2021) that the side boundary fence height be limited to a maximum of 1.8m measured from existing ground level (upper side) behind the building line or the existing side fence height is retained (that is up to 2.1m at some points). The overshadowing from the fence line is within the shadow area of the main house and does not create additional overshadowing impacts. This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. The development application is for alterations & additions to an existing dwelling. Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following

Internal Referral Body	Comments
	landscape controls of Manly DCP 2013 (but not limited to): • <i>section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, 3.3.2 Preservation of Trees and Bushland Vegetation, and 3.3.3 Footpath Tree Planting</i> • <i>section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.</i> A Landscape Plan and a Arboricultural Impact Assessment is provided with the application. The Landscape Plan enhances the landscape setting of the development site and includes native shrub and groundcover species. The landscape works shall include at least one (1) native tree in accordance with <i>Schedule 4 - Part B - Native Tree Selection</i>, to satisfy DCP <i>clause 4.1.5.2.c Minimum Tree Planting</i>, and conditions of consent shall be imposed, including the requirement that any new landscaping shall be in accordance with Clause 3.3.1 of the Manly DCP, including use of species listed in Section 3.3.1.iv) of the Manly DCP (landscaping in bandicoot habitat zones). The site contains no significant trees nor vegetation, and all trees within the site, as identified in the Arboricultural Impact Assessment are Exempt Species under the DCP and include Alexander Palms, Mango, Frangipani and a Dragon Tree, permitted for removal without Council approval. All existing street trees fronting the development site along both Darley Road and Cliff Street shall be protected. Landscape Referral raise no objections, subject to completion of landscape works as imposed by conditions of consent.
NECC (Bushland and Biodiversity)	Supported with conditions. Council's Biodiversity referrals team have assessed the Development Application for compliance against the following biodiversity related controls: • <i>Biodiversity Conservation Act 2016 (BC Act)</i> • <i>Manly LEP cl. 6.5 Terrestrial Biodiversity</i> • <i>Manly DCP cl. 3.3.1 a) iv) Landscaping in Bandicoot Habitat</i> • <i>Manly DCP cl. 5.4.2 Threatened Species and Critical Habitat Lands</i> The Development Application seeks consent for alterations and additions to the existing dwelling. The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, assessment of potential impacts is required to be undertaken in accordance with <i>Section 7.3 of the NSW Biodiversity Conservation Act</i> (i.e. the threatened species "test of significance"). This

Internal Referral Body	Comments
	assessment has been undertaken and has concluded that the proposal is unlikely to result in significant impact to the endangered bandicoot population. A Landscape Plan (Sticks and Stones, April 2021) has been submitted with the Development Application. A number of native plant species have been selected to provide new and/or improved low dense clumping habitat to provide for potential foraging and nesting in accordance with MDCP cl. 3.3.1 a) iv). Conditions of consent will be applied to ensure compliance with relevant DCP controls.
NECC (Development Engineering)	Supported with conditions. Development Engineering has no objection to the application subject to conditions of consent.
Strategic and Place Planning (Heritage Officer)	Supported without conditions. The proposal has been referred to Heritage as the property adjoins the heritage listed stone kerbs Item "I2 – All stone kerbs" - Along Cliff Street and within the vicinity of a heritage item, being Item "I95 - Group of 6 semi-detached houses" - 2–12 Cliff Street, listed under Schedule 5 of Manly LEP 2013. <u>Item I2 - All stone kerbs</u> Statement of significance: <i>Stone kerbs are heritage listed.</i> Physical description: <i>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.</i> <u>Item - I95 - Group of 6 semi-detached houses</u> Statement of significance: <i>Six Federation Queen Anne style semi-detached houses which form a unified group.</i> Physical description: <i>Single storey brick semi-detached houses in the Federation Queen Anne style with hipped unglazed terracotta tile roofs with a central gablet over front entries, roughcast stucco to gablet ends, sandstone foundations, timber balustrading and fretwork and elaborately turned timber verandah posts to front verandahs.</i> The proposal seeks consent for alterations and additions to the existing dwelling, including the demolition of the existing garage and the rear extension and the construction of a new double garage with a two storey extension above the garage. The amended drawings submitted in July 2021 have provided the required setback from the adjacent property which is not a listed heritage item but is an intact dwelling from the Federation era. As a result of the retained front section and the amended set-back is a better outcome from a heritage perspective. It is noted that the existing property has two driveway cross overs which are concrete

Internal Referral Body	Comments
	and thus sandstone kerbing wont be impacted by the proposal and the proposed changes to the existing driveway cross overs will not affect the heritage listed stone kerbing. If possible, Heritage would suggest to reinstate sandstone to the kerb where a crossover is removed. It is considered that, the proposed infill development will have a manageable impact upon the significance of the heritage items within the vicinity. Therefore, no objections are raised to the proposal on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> 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 Other relevant Heritage Listings (SREP, National Trust, NSW, etc)? Nil applicable COMPLETED BY: Oya Guner, Heritage Advisor DATE: 18 August 2021

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A referral response was received on 25.5.2021 and no objections are raised subject to standard safety clearance advice for electricity Assets recommended from Ausgrid.

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, and has been subject to previous renovations / alterations. 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. A413974 dated 22.4.2021) for the dwelling.

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

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

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. A referral response was received on 25.5.2021 and no objections are raised subject to standard safety clearance advice for electricity Assets recommended from *Ausgrid*.

Other Service Infrastructure Authorities

Sydney Water (SW) requirements are managed by their own administrative operations. The proposal was not required to be referred to *Transport NSW* (formerly RMS) and no other service infrastructure referral issues are raised pursuant to the SEPP.

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*: Existing ground level (Area "I")	8.5m	7.5 m	N/A	Yes
Floor Space Ratio (FSR) (Area "F")	0.6:1	Floor area 263sqm 0.54:1	N/A	Yes

*Height of Buildings is measured from an extrapolated existing ground line which is consistent with the practical approach used in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* whereby basements or the like, below ground level are not representative to the intended height plane line.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.8 Conversion of fire alarms	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
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density D3: 1 dwelling per 250sqm	R1 General Residential Area 1 dwelling on 487.6sqm	N/A	Yes
4.1.2.1 Wall Height	North Elevation:	4.8m	N/A	Yes

	6.5m (based on site gradient <1:20)			
	South Elevation: 6.5m (based on site gradient <1:20)	6.2m	N/A	Yes
	East Elevation: 6.8m (based on site gradient 1:20)	6.8m	N/A	Yes
	West Elevation: 6.8m (based site gradient 1:20)	4.5m (No change)	N/A	Yes
4.1.2.2 Number of Storeys	2	part 3 storey* (*Garage excavated structure)	N/A	No*
4.1.2.3 Roof Height	Height: 2.5m	1.0m (new addition)	N/A	Yes
	Parapet Height: 0.6m	0.0m	N/A	Yes
	Pitch: maximum 35 degrees	30 degrees existing roof <10 degrees New roof	N/A	Yes
4.1.4.1 Street Front Setbacks (Darley Road)	Prevailing building line / 6m (Darley Road)	Consistent with prevailing setback No change to dwelling setback 7.3m to 9.6m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (Cliff Street)	Windows: 3.0m	2.9m (South)	N/A	No*
		4.2m to 3.5m (East)	N/A	Yes
	Secondary street frontage: (Cliff Street)	(Adjacent dwelling 7.8m) (Existing garage & house 0.0m to 2.4m)	N/A	No*
		4.4m to 4.5m New dwelling wall	N/A	Yes
	Minimum frontage <50% for garage structures	0.9m to 2.5m New terrace / balcony	N/A	Yes
		Garage 23% frontage 0.0m (Consistent with existing	N/A	No*

		garage position)		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space 55% of site area (267sqm)	169.3sqm 35%	36%	No*
	Open space above ground <40% of total open space	55sqm 32%	N/A	Yes
4.1.5.2 Landscaped Area (500sqm to 800sqm site area) (Total site area 487.6sqm)	Landscaped area 35% of total open space 93sqm	150sqm 88%	N/A	Yes
	3 native trees	1 tree	N/A	No*
4.1.5.3 Private Open Space	18 sqm per dwelling	26 sqm	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	Basement garage (replace existing garage)	N/A	Yes
Schedule 3 Parking and Access	2 spaces per dwelling	2	N/A	Yes

* Refer to detailed merit assessment under the heading 'Built Form Controls' within this report.

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
3.3.3 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	No	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 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
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.5 Road Widening and Realignment	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Merit assessment is considered with regard to the objectives and requirements of *Clause 3.1.1 Streetscapes (Residential areas)* as follows:

- The additions and alterations do not dominate the building form of the building and maintain the distinct building character of the original house section. In this regard building materials and finishes and architectural style are consistent with other contemporary additions to older dwellings. In the assessment of the proposal the plans were amended to ensure the bulk and design of development improves spatial separation, views and does not have an unreasonable impact on the streetscape of Darley Road or Cliff Street.

- The maintain building heights and roof expanses are compatible scale with adjacent development particularly at the street frontage and building. The context for the corner lot position and alignment, whilst also having regard to the LEP height standard and the controls are acceptable for wall height also and roof style. While the excavated garage gives the appearance of 3 storeys, the upper levels are setback. The existing garage to be replaced is in effect a basement element with regard to the adjacent garden ground levels and the building maintains a two storey appearance at the sides and main street frontage to Darley Road.
- The proposal has used landscaping to screen forward terrace elements and sandstone facing to integrate the garage to the existing stonework above Cliff Street footpath area. Generally the additions and alterations maintain the original built form and style of the older original house and are consistent with similar approach's on heritage property in the vicinity to preserve the integrity and setting including heritage considerations.
- The proposal utilises innovative design solutions and incorporates building materials and finishes complementing those dominant in the locality (including re-instating / renovating parts of the original dwelling, fencing and garden areas to suit the Federation style of the house when viewed from Darley Road frontage.

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

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

General Amenity considerations pursuant to the objectives and requirements of *Clause 3.4 Designing for Amenity* are as follows:

Merit Assessment Comments:

- Design considerations have been made to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties with regard to the demolition work, new additions and renovations. The surrounding area has a mix of higher densities and single dwellings, including dual occupancy, terraces and apartment buildings. This mix of housing styles may potentially impact on neighbour's amenity, including privacy and solar access. Considerations of these elements have been accommodated in the design with further amendments received during the assessment period. Details on the plans show the appropriate use of screens, room orientation, window styles (sill height), wall setbacks and landscaping.
- The design of the additions are of a contemporary architecture at the side (rear of the original dwelling orientation) and is consistent with the "*Burra Charter*" approach for older buildings where the original building fabric / design is of a historical architectural period. This approach does not unreasonably detract from the scenic amenity of the area, including the use of pressed metal, low pitched roof and landscaped balcony for the added (replaced) section of the building. The principle original roof form at the front of the house is retained with a suitable colour scheme between the two elements to minimise reflectivity. In particular, the visual pattern of bulk and design of a development is consistent with adjacent and nearby dwellings and has been considered from surrounding public space and private (outdoor) viewpoints.

- Adequate space on site is retained for open space to provide a landscape setting and meet the recreational needs of the occupier for the dwelling design but the changed internal layout and connection to balcony areas. The proposal has been designed to ensure no unreasonable amenity of existing and future residents and includes privacy, outlook, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts, subject to conditions.
- The materials and finishes selected are suitable for the surrounding urban environment in terms of reflectivity including the roof material and style and window glazing extent for walls. The use of screens, wall articulation, roofing, wall materials, glazing and stonework materials and colours are appropriate for the residential nature of the building and consistent with the Manly DCP to ensure no unreasonable impact to the existing streetscape and surrounding amenity.

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

3.4.1 Sunlight Access and Overshadowing

Specific solar access requirements and objectives, pursuant to *Clause 3.4.1 Sunlight Access and Overshadowing*, are considered as follows:

Merit Assessment Comments:

- The proposal will maintain equitable access to light and sunshine for adjacent properties that are situated on the southern and eastern sides of the site respectively. The submitted shadow analysis diagrams to accompany the amended plans (DA19 – DA27 Issue G, dated 15.6.2021) demonstrate solar access between 9am and 3pm on 21 June and that the proposed additions do not eliminate more than a third of the total sunlight accessing the rear private open space of No. 47 Darley Road. Acceptable solar access is retained to No.2A Cliff Street which is a two storey terraces building has a much larger (deeper) land area.
- The submitted shadow diagrams provided by the applicant demonstrate that the existing solar access will not be unreasonably reduced during 9am to 3pm for private open spaces of the adjacent dwellings. In addition, the windows to the living spaces/ habitable rooms, in particular the ground floor will maintain reasonable solar access in consideration of the north / south alignment of the property.
- The amended proposal does not unreasonably reduce the mid-winter sunlight to the windows, living rooms and to principal outdoor areas and changes made during the assessment to the roof and building form assist in providing modulation and reduced building bulk to facilitate sunlight penetration to adjacent properties.
- The site has a corner site orientation (north and west) with the level of solar access impact to adjacent windows of living rooms between 9am to 3pm on the winter solstice (21 June)

maintaining reasonable amenity in accordance with the objectives of the DCP and Planning Principle considerations for Access to Sunlight outlined in *Parsonage v Ku-Ring-Gai Council [2004] NSW LEC 77*.

In summary the proposal is consistent with the objectives and requirements of this clause.

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows:

Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement, including use of sill heights, fencing, narrow or translucent or obscured glass windows to maximise privacy and where necessary the use of screening devices and landscaping.
- Where walls are closer to the adjacent boundaries and some windows are less than 3.0m from side boundary windows are off-set where practicable or designed to ensure no unreasonable impact on the adjacent dwellings with regard to viewing by using smaller windows or appropriate sill heights where they face the side setback / or near adjacent windows. The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment.
- The proposed additions have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the use of fixed glazing / screening between spaced buildings so that direct viewing is reduced. Generally the orientation is toward the street. Overall the proposal does not create direct unreasonable viewing toward properties adjacent as smaller style windows and screens are used to minimise privacy impacts along the side walls.
- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.
- The design of the proposed additions provide a street outlook and reasonable privacy to the side setbacks with regard to habitable rooms and private open space with appropriate security. In this regard ground level fencing in the side access maintains screening / separation for visual and acoustic privacy in between adjacent private open space.

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

3.4.3 Maintenance of Views

The requirements and objectives of *Clause 3.4.4 Maintenance of Views* are considered as follows:

An assessment of view loss in respect of adjacent development has been undertaken with reference to the Views Principle established by the *NSW Land and Environment Court* as follows:

- *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comment:

The proposed dwelling would impact elements of harbour views toward Manly Wharf and distant area of 'Forty Baskets' beach area / Seaforth. The existing view is made partial and vulnerable due existing development (such as apartment buildings) to the west, larger trees and view line across a side boundary (albeit a corner front setback also). The building of No.2A Cliff Street have views northwards toward the main CBD area of Manly from the first floor level that are much broader than ground level for the front rooms. (See view image details on 'Dwg. DA28 Issue G' prepared by *Watershed Design*). See view image below:

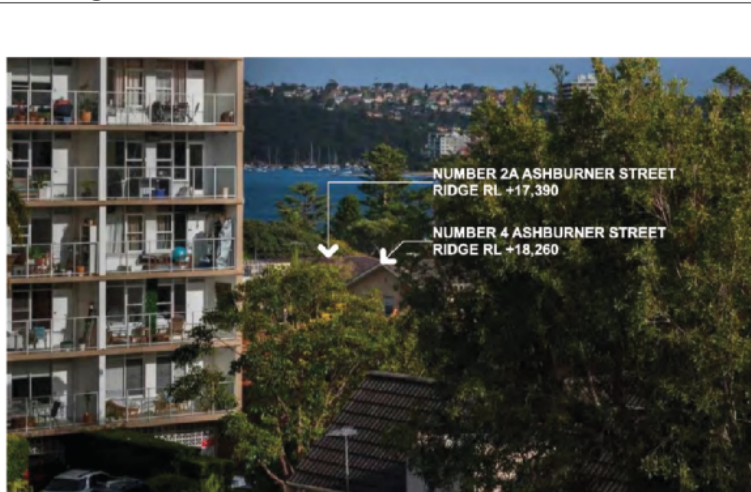


Image: View over site to Manly Harbour

- *The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment:

The views impacted are obtained from the front room and verandah and can be currently obtained from standing and sitting level. The view is across the side boundary and front corner of the site and is

therefore vulnerable. This includes view line from the front windows balcony and from a side window for No.2A Cliff Street. Views from the ground level are significantly limited due to foreground urban development, tree canopy and other surrounding ground level structures such as fences, walls and the like. There is also a limited urban outlook from properties to the south of the site (toward Addison Road for No.47 to No.57 Darley Road) along the rear setback areas looking toward Manly CBD in the space over the eastern part of the site where the new additions are proposed and this is across the side boundary of the site, being the narrow corridor on the eastern side of the existing original Federation roofline. See image below of side standing view retained.

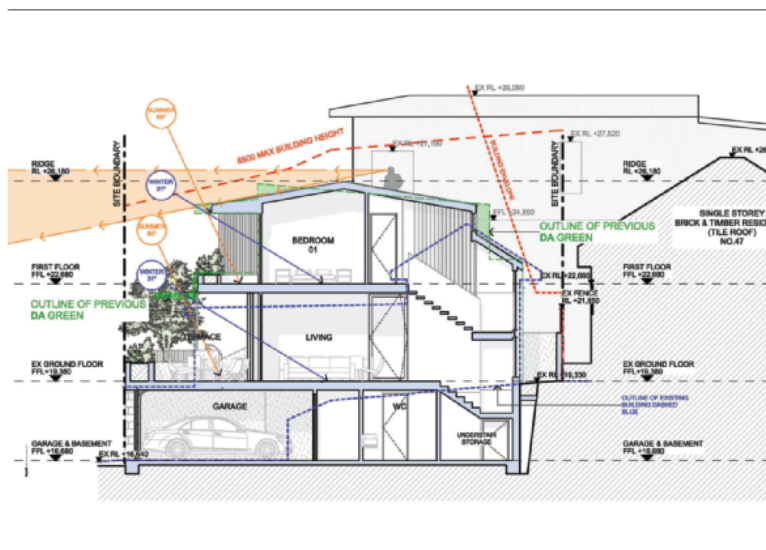


Image: Standing view line with changes made to minimise view to harbour.

- *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comment:

As a result of the loss of water view from front balcony, front room and side windows the impact on views for the whole of the property is minor. The accompanying plans incorporate a view analysis which is outlined on 'DA28 Image' and 'DA09 Section' dated 15.6.2021 prepared by *Watershed Design*) indicating the view potential retained. This has been modelled from survey information available existing development and survey / architectural information. The view analysis demonstrates that the proposed works, as amended, will not unreasonably impact the harbour and land/water interface view currently available from the upper-level balcony and side window within No.2A Cliff Street with a view sharing outcome maintained. The principal outlook from No.2A Cliff Street is northwards toward the central manly area in accordance with the building orientation. Views eastwards to the ocean are limited by multi-storey development along Cliff Street to the east.

As a result of the loss of water view and loss of partial impact on views for the whole of the property is minor where living areas are at the mid or upper floor. The extent of impact partially affects water,

headland and beach views however the impact is minor due to the broad view available and in context with the adjacent development pattern. .

- *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment

The proposal is compliant with the development standard for building height under the Manly LEP and side setbacks under the Manly DCP. These two controls have such an impact on the views in this circumstance that compliance with the other controls (to have a fully compliant building envelope) would result in a substantially similar impact on views but dramatically reduce development potential. A "more skilful design" to fully eliminate impact on views would not feasibly provide the same development potential as the view sharing impact, and likely have a worse amenity impact in other areas and is not reasonable to the circumstances of the proposal such as eliminating the entire top floor. In consideration of this fourth step the proposal has however been amended with a change to the roof design, from skillion to gable, with upper wall setbacks and eaves modified also to reduce build bulk and improve view sharing.

With regard to the consideration of impact on views, the development is considered against the underlying Objectives of the Control as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposed alterations and additions are in a position has a high vulnerability to view loss due to the existing single storey element and corner site location in a mid-slope position along Darley Road. As such, the subject site and surrounding dwellings have limited views that include a mix of broad urban outlooks, limited harbour views and in some situation ocean views also depending on the topography and dwelling position. The proposed dwelling reasonably provides opportunity for views at this location (for the occupants) whilst also adequately minimising loss of views for surrounding dwellings by providing appropriate setbacks, a compliant building height and a wall height that is consistent with surrounding dwellings, having regard to the DCP and NSW LEC planning principle for views, applied above. This provides a situation in which the proposal provides a built form that is considerate to allow for view sharing for both existing and proposed development that overlook the site from surrounding or nearby dwellings.

- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

Views from Public places

The compliant setbacks, compliant height and ridge line consistent with the prevailing pattern in the street, provide a situation in which reasonable spacing is provided to maintain adequate access to views from public places.

- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

The elements of the proposal creating the impact comply with the relevant planning controls. In this regard it is noted that the floor space ratio exceeds the relevant control, but this has negligible impact on the views from the assessed viewing positions. More importantly, the proposal is substantially below the building height control and complies with the setback controls, the wall height control and is consistent with allowances detailed within the DCP storey height control. Overall the proposal has been designed in a manner consistent with the provisions of the MLEP and MDCP, including consideration of the existing pattern of development within the site and on adjacent land.

Conclusion

The proposed building height is measured from the "ground level (existing)" on site and this relates to the normal landscape level of the land / garden area around the house. Although this is the case for the existing level on the subject site, it is also reasonable to consider the topography of the surrounding land as well as the pattern of maximum ridge heights for dwellings in the street. As a result of the vulnerability to view impact at this location is likely due to the corner site, setbacks and permitted height of the proposal. The view impact from the front balcony and side windows situation and the question of a more skilful design was considered. Some minor changes were made to the plans during the assessment phase to address related issues that have assisted in minimising the impact on views to and the view sharing is reasonable in accordance with the above considerations.

Given the consistency with the court established planning principle for views, amendments to address the development controls, building height compliance and design response that is consistent with the character of the area, the proposal reasonably minimises loss of views. In addressing views, a site inspection was conducted in the vicinity of the site along Darley Road and Cliff Street, however to overcome limitations from CV19 situation for private property entry, survey data, existing Council file records used and additional details from the applicant (including roof and setback changes to improve view sharing) were sought to assist with overall view considerations.

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

3.5.5 Landscaping

Specific landscaping requirements and objectives, pursuant to *Clause 3.5.5 Landscaping*, are considered as follows:

Merit Assessment Comments:

- Landscaping has been selected that includes suitable trees and vegetation that is adaptable to the site conditions, including the site of ground level open space, soil / sunlight conditions,

slope, proximity to existing vegetation, building services and to provide amenity to the occupants. This includes the use of landscape pathways and side setback landscaping to complement the building and streetscape.

- Detailed landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping is consistent with the objectives and requirement of this clause subject to conditions. This includes consideration for some where alternative tree planting is appropriate, including protecting trees in the road reserve and particular canopy trees on site to maintain landscape amenity. While there is a minor non-compliance with deep soil landscaping the hard surface areas are consistent with the existing site conditions.
- Landscape planting will assist to provide screening and complement the height and scale of the building by using a mix of small, medium planting. The site is not appropriate for very large trees which would unreasonably impact surrounding outlook, light or potentially building elements over the long term. This is consistent with the pattern of surrounding development (including renewal and renovation of older dwellings) in the central Manly area.
- The use of native trees suitable for the local environment are slow growing and adapted for low water requirements and assist to provide habitat and food sources for insects, birds and arboreal animals such as Bandicoot habitat throughout Manly. The site is not within a bushfire zone that would limit certain tree species from selection.
- Landscape elements have been designed to complement the architecture of the building and provide amenity when viewed from public and private land. The proposal has been designed to retain the main landscape open space principally on the northern and western side of the site and is convenient to the principal living areas.

Subject to conditions, as per Council's Landscape Referral, the proposal is consistent with the objectives of this clause.

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

The requirements and objectives of Clause 4.1.2 *Height of Buildings (Incorporating number of storeys, wall height and roof height)* are considered as follows:

Buildings must not exceed 2 storeys for area "I" which has a residential 8.5m height of buildings control. In this case the building appears as 3 storeys above the garage due to the existing excavated garage and new two storey additions above. Merit consideration of this is addressed with regard the DCP provision below:

- *Variation to the maximum number of storeys may be considered where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards and to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

Comment:

The site has a steeper cross fall toward the north and the dwelling sits well above road level which has resulted in the original garage being excavated to gain level access. In this regard the proposal maintains the existing arrangement with the new garage / storeroom that is below the floor level of the

house. From Cliff Street the new additions and basement together give the appearance of 3 storeys. However, the DCP allows for basement elements to be accommodated and under the circumstances the proposal is consistent with this control in that the overall wall height and wall height controls are satisfactory, and do not create any unreasonable amenity impacts on surrounding land.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are considered as follows:

Merit Assessment Comments:

- The proposal has maintained the existing streetscape, including the desired spatial residential proportions of the street, the street sandstone edging and the landscape character of the street for Darley Road, to which the property is addressed. Reinstatement work will also occur along Cliff Street including fencing, landscaping, vehicle and pedestrian access. The site is oriented to present toward Darley Road Parade however the principal outlook for the living area and new master bedroom / balcony is the northerly aspect toward Cliff Street. The existing garage is a variation to the established (approx 6.5m) setback control for this secondary frontage and the proposal seeks to maintain the status quo in this respect with some additional landscape elements to screen the living area terrace. In consideration of this the properties to the east of the site along this side of Cliff Street are much deeper (up to 45m) which has influenced this wider setback and therefore a 6.5m setback to the site is unreasonable for the secondary frontage.
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and achieving access to natural light, direct sunlight and air circulation for adjacent buildings. While there is additional overshadowing and privacy impacts the proposal has addressed these by design changes to ensure no unreasonable impact. The context / integrity of the original front (western) portion of the house is retained with the renovation work. The non-compliance with the front setback along Cliff Street (including the basement garage) does not create any unreasonable impact on surrounding amenity including views.
- The proposal is consistent with the DCP objective to allow for the flexibility in the renovation of older buildings while allowing for their modernization and renewal including consideration for suitable private open space. While the new additions are directly attached to the original house section the junction is clearly defined and does not create unreasonable amenity impacts or the appearance of excessive bulk. While the additions are clearly present to Cliff Street the scale, materials and configuration is consistent with similar redevelopment / renovation work in the locality. The proposal will maintain safe and adequate traffic conditions, including car parking and pedestrian access.
- Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting subject to conditions. The proposed setbacks allow for compliance with the *Building Code of Australia* for maintenance, access, drainage work

and fire safety requirements. The nature of development does not unduly detract from the context of the site and particularly in relation to street frontages and front and side setbacks, minor non-compliance with side facing windows and in consideration of the context of neighbouring properties and the prevailing building lines / setbacks in the immediate vicinity, particularly for corner sites.

- Consistency is maintained to the principal building line of Darley Road and the additions are not readily visible from this street. For Cliff Street the two storey character of the additions with the basement parking area do not create unreasonable setbacks differences and landscaping elements are used to assist in privacy, softening the built form and enhancing the setback / spatial separation between neighbouring dwellings.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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.

4.1.7 First Floor and Roof Additions

Consideration against the DCP requirements and objectives, pursuant to *Clause 4.1.7 First Floor and Roof Additions*, are addressed as follows:

- *First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.*

Comment:

The proposal is a two storey addition over the existing building footprint, but the new garage basement, kitchen / living room and master bedroom not over the original Federation house section of the building. The setback lines along the side boundaries (corner lot) are consistent the existing ground floor wall setbacks / building footprint of the current house, noting that the new additions seek to replace former additions to the original house. The new upper storey for the new section is setback from the lower floor area and the changes made to the design during the assessment address previous concerns regarding overshadowing privacy and views. (See detailed discussion under Part 3.4 within this report)

- *The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.*

Comment:

Cliff Street and Darley Road within visual proximity of the site has a mix of single storey and two storey buildings, but with some much larger apartment buildings, such as No.66 Darley Road. The sloping terrain also influences the height of building in respect to adjacent buildings however the proposal maintains a consistent ground level for the new additions to the existing house and garage setback (replacing the existing garage). While excavation area in being enlarged setbacks to the side boundaries are maintained and the new additions are in a contemporary style but with muted / darker

tones to distinguish the additions from the original house. Elements of the original house will also be renovated, such as fencing, window, masonry, landscaping and the like. The additions are confined to the eastern side of the original house to replace the former additions. The overall scale and character, including clear definition between the original and new roof lines is consistent with this objective, noting that the building is also not heritage listed but near other heritage items have been subject contemporary additions. The additions are considered to address solar access, streetscape, views and amenity issues in context of the corner site location.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$23,170 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,317,000.

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

In summary, a detailed assessment has been required for the following specific issues:

The alterations and additions replace an existing garage and previous additions to the original Federation style dwelling and the proposed work seeks to renovate elements of the original house section and provide a new garage, basement area, living area and master bedroom in part two / part three storey addition.

Building setbacks, height and amenity issues raised in submissions have been addressed by the applicant and minor changes to the plans to increase the side wall setbacks, roof profile changes and changes to selected elements to assist with privacy (visual and acoustic), solar access, view sharing and reduce the building bulk and scale. Other construction related issues (erosion, dilapidation, site access and the like) are addressed by conditions.

In conclusion, the principal issues in the assessment have been addressed by the amendments to the plans received in order to reduce the impact of building alterations and additions principal issues of solar access, views and street setbacks.

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 DA2021/0541 for Alterations and additions to a dwelling house on land at Lot 1 DP 19320, 45 Darley Road, 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
DA03 Issue G - Demolition Plan	15.6.2021	Watershed Design
DA05 Issue G - Basement	15.6.2021	Watershed Design
DA06 Issue G - Ground Floor	15.6.2021	Watershed Design
DA07 Issue G - First Floor	15.6.2021	Watershed Design
DA08 Issue G - Section AA	15.6.2021	Watershed Design
DA09 Issue G - Section BB	15.6.2021	Watershed Design
DA11 Issue G - Elevation A - Darley Road and Elevation C	15.6.2021	Watershed Design
DA12 Issue G - Elevation B - Cliff Street and Elevation D	15.6.2021	Watershed Design
DA29 & DA30 - Exterior Finishes Schedule	15.6.2021	Watershed Design

Engineering Plans		
Drawing No.	Dated	Prepared By
DA10 Issue G - Driveway Crossover	15.6.2021	Watershed Design
DA 28 Issue G - Excavation and Fill Diagram	15.6.2021	Watershed Design
D01 / A - Stormwater management Plan	30.4.2021	IStruct Consulting Engineers
D02 / A - Sediment and Erosion Control Plan	30.4.2021	IStruct Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate A413974	22.4.2021	Efficient Living P/L
Geotechnical Investigation J3306	28.4.2021	White Geotechnical

		Group
Arboricultural Impact Assessment Report - Part 5 Recommendations	12.4.2021	Blues Bros Arboriculture

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
F102 Landscape Master Plan	20.4.2021	Sticks and Stones

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	26.4.2021	Watershed Design

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	25.5.2021

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

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

3. Prescribed Conditions

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

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

(i) in the case of work for which a principal contractor is required to be appointed:

- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the

development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (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 2021

A monetary contribution of \$23,170.00 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 2021. The monetary contribution is based on a development cost of \$2,317,000.00.

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 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided, at the terrace over the garage, and planter outside the Dining room.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue

of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

i) 600mm for shrubs.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

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 kerb on Cliff Street.

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. Access Spaces – Bandicoot Habitat

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

10. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

11. Access to Undercroft Areas – Bandicoot Habitat

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

12. Height of Walls/Steps – Bandicoot Habitat

The height of any new retaining walls or steps of new external stairways must not exceed 200mm (or lower in accordance with BCA standards). Where this cannot be achieved, a slope is to be provided in association with the retaining walls and/or stairs to permit Long-nosed Bandicoot access.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

13. No Bright Lighting – Bandicoot Habitat

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

14. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

16. **Construction and Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) shall be prepared by an RMS accredited person and submitted to and approved by the Principal Certifying Authority prior to the commencement of bulk / civil excavation works required.

The CTMP must address following as appropriate:

- The proposed phases of construction works on the site, and the expected duration of each construction phase, including methods of excavation, vibration minimisation and protocols to be implemented to advise surrounding residents of high noise (such as impact excavation, rock drilling, concrete pumping and the like during site works).
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken including dust suppression, site safety and noise minimization.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed as applicable.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking within driveway / garage slab / kerb side parking.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety traffic as appropriate.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation / prevent erosion / soil slumping, adjacent to adjoining properties and having regard to any Geotechnical Report recommendations provided with the development application. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties from machinery / work damage.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”. A copy of the site CTMP is to be submitted to Council prior to issue of the Construction Certificate for record keeping purposes to assist with any related enquiries for the site.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

17. **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.

18. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range as per the approved "Exterior Finishes Schedule" in order to minimise solar reflections (e.g. Building Code of Australia classification 'M' and 'D') to neighbouring properties. Any roof with a metallic / galvanised steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

20. **Site Induction Required – Bandicoot Habitat**

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

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

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

21. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items. Including but not limited to, subject to the direction of the Certifying Authority:

No.47 Darley Road, Manly
No.2A Cliff Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

22. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising

from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site along Darley Road and Cliff Street shall be protected in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Tree trunk protection for street tree(s) fronting Cliff Street, identified as T1 and T2 within the Arboricultural Impact Assessment, as directed by an Arborist with minimum AQF Level 5 in arboriculture, and additionally branch protection shall be installed, if advised by the Arborist.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

24. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity

Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

25. **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.

26. **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.

27. **Installation and Maintenance of Sediment Control**

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

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

28. Vehicle Crossings

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

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

Reason: To facilitate suitable vehicular access to private property.

29. 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.

30. Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

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

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****31. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) at least one (1) native tree shall be planted within the site in accordance with Schedule 4 - Part B - Native Tree Selection, to satisfy DCP clause 4.1.5.2.c Minimum Tree Planting, at 75 litre container size, located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees,
- ii) nominated *Rhaphiolepis* species shall be deleted and replaced with a non self-seed spreading shrub of similar size and form,
- iii) any new landscaping shall be in accordance with Clause 3.3.1 of the Manly DCP, including use of species listed in Section 3.3.1.iv) of the Manly DCP (landscaping in bandicoot habitat zones).

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

32. **Stormwater Disposal**

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

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

33. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Sticks and Stones, April 2021) 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.

34. **No Weeds Imported On To The Site**

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

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

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

35. **House / Building Number**

House/building number is to be affixed to the building letterbox / fence to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**36. Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

FLOOR SPACE RATIO

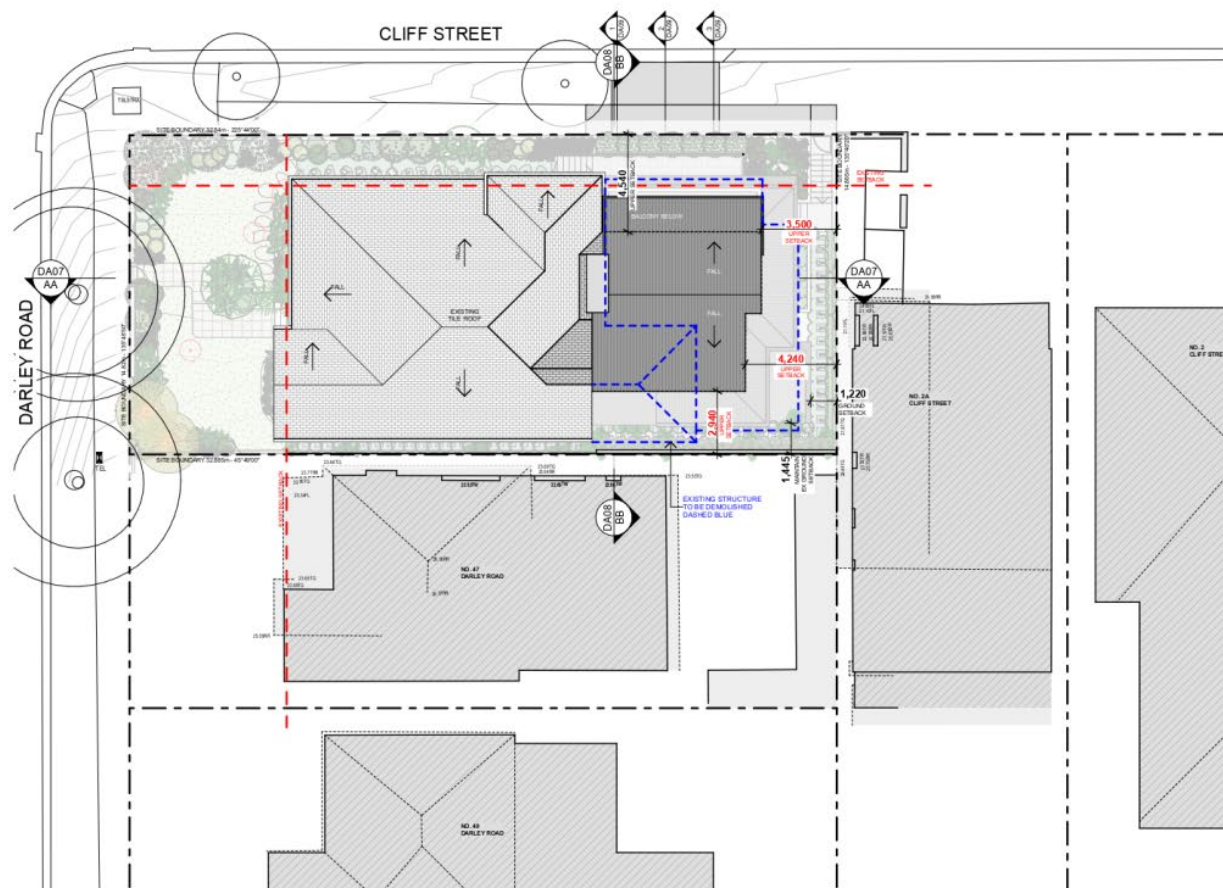
01 EXISTING SITE AREA	487.60
04 EXISTING INTERNAL AREA	266.81
04 INTERNAL FLOOR AREA	263.08

OPEN SPACE

01 EXISTING SITE AREA	487.60
03 EXISTING OPEN SPACE	139.95
03 OPEN SPACE	200.28

LANDSCAPE AREA

01 EXISTING SITE AREA	487.60
02 EXISTING LANDSCAPE	149.38
02 PROPOSED LANDSCAPE	169.31



NOTES:

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Issue ID	Issue Name	Issue Date
A	PRE-DA ISSUE	4/2/21
B	Issue to Consultants	27/4/21
C	Issue for Client Review	27/4/21
D	Issue for DA	5/5/21
E	Issue for Information	8/5/21
F	Issue for Client Review	11/5/21
G	Amended Development Application	15/6/21

WATERSHED DESIGN
architecture
interiors
landscapes

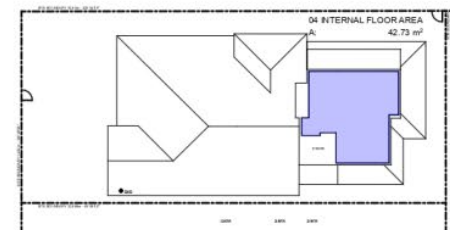
REGISTERED ARCHITECT: MARK KOROL
PHONE: 9077 1576 FAX: 02 9970 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU
ADDRESS: LEVEL 1, 187 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA



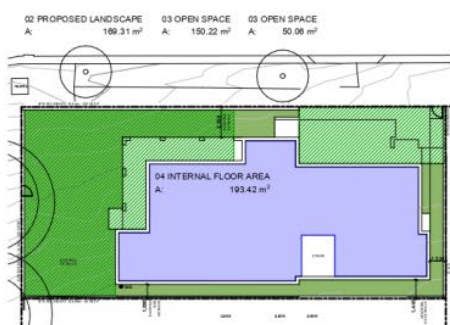
CLIENT: MICHAEL & LIZA DOYLE
PROJECT: DOYLE HOUSE - ALTS & ADDS

ADDRESS: 45 DARLEY ROAD MANLY NSW
DRAWING: **SITE & ROOF PLAN**

JOB NO: 20014
DRAWN: MC
CHECKED: MK
SCALE: 1:1, 1:200, 1:333.33
DRAWING NO: **DA04**
ISSUE: **G**



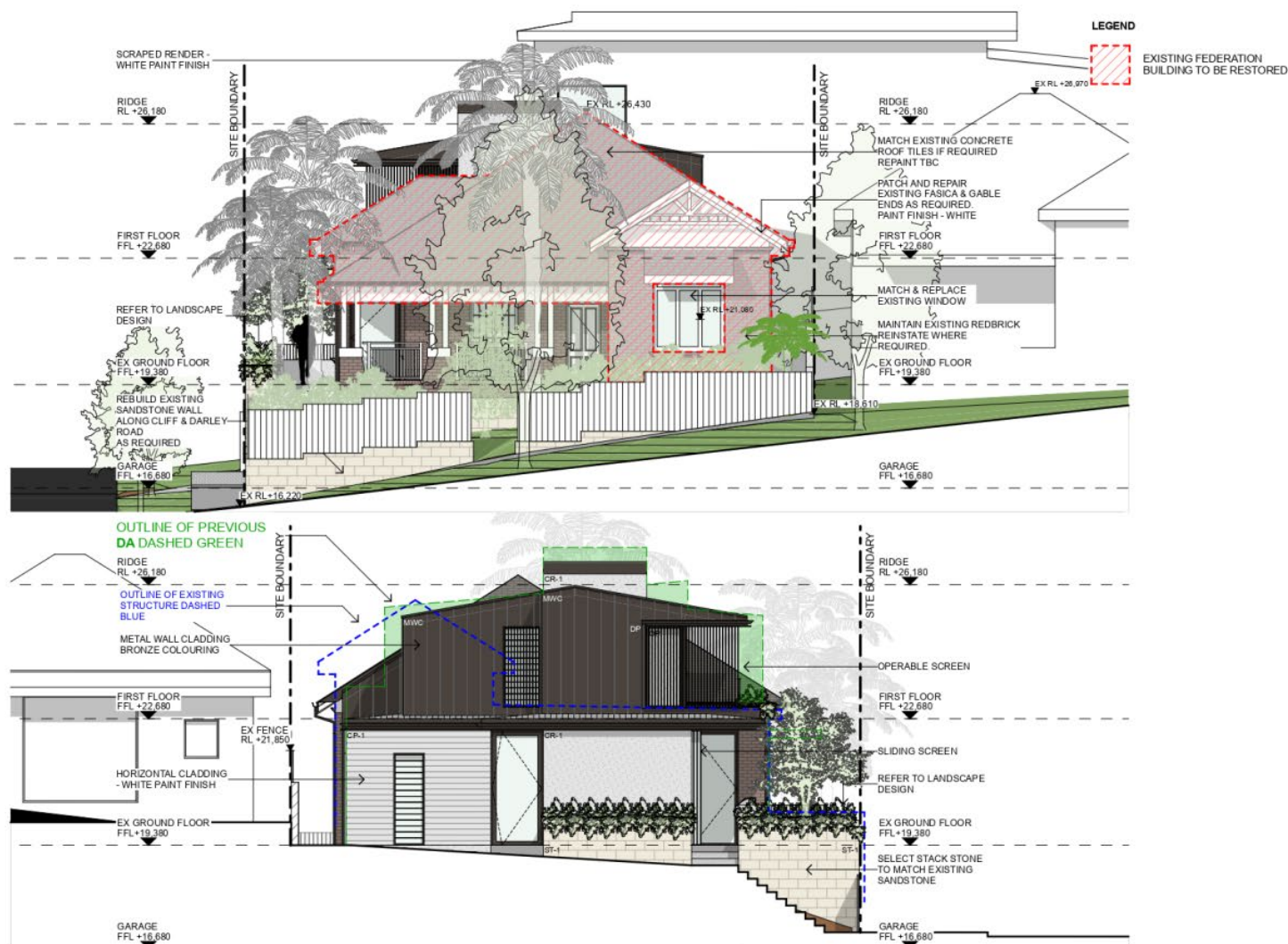
AREA - FIRST FLOOR
1:333.33



AREA - GROUND FLOOR
1:333.33



AREA - BASEMENT
1:333.33



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G	Amended Development Application	15/6/21

WATERSHED DESIGN architecture interiors landscapes

REGISTERED ARCHITECT: MARK KOROL REGISTRATION NUMBER: 6221
PHONE: 9077 1576 FAX: 02 9979 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU
ADDRESS: LEVEL 1, 187 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA



CLIENT:	MICHAEL & LIZA DOYLE	ADDRESS:	45 DARLEY ROAD MANLY NSW	JOB NO:	20014	DRAWING NO:	DA11
PROJECT:	DOYLE HOUSE - ALTS & ADDS	DRAWING:	ELEVATION A - DARLEY ROAD & ELEVATION C	DRAWN:	MC	ISSUE:	G
				CHECKED:	MK		
				SCALE:	1:100		



NOTES:

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**WATERSHED
DESIGN** architecture
interiors
landscapes

REGISTERED ARCHITECT: MARK KOROL REGISTRATION NUMBER: 6221
PHONE: 9077 1576 FAX: 02 9979 0825 EMAIL: INFO@WATERSHEDDESIGN.COM.AU
ADDRESS: LEVEL 1, 187 PITTWATER ROAD MANLY NSW 2095 AUSTRALIA



CLIENT:	MICHAEL & LIZA DOYLE	ADDRESS:	45 DARLEY ROAD MANLY NSW	JOB NO:	20014	DRAWING NO:	DA12
PROJECT:	DOYLE HOUSE - ALTS & ADDS	DRAWING:	ELEVATION B - CLIFF STREET & ELEVATION D	DRAWN:	MC	ISSUE:	G
				CHECKED:	MK		
				SCALE:	1:100		

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/0527 - 31 OXFORD FALLS ROAD, OXFORD FALLS - SUBDIVISION OF ONE (1) LOT INTO TWO (2) LOTS, INCLUDING THE DEMOLITION OF ALL EXISTING STRUCTURES AND THE CONSTRUCTION OF A NEW DRIVEWAY
AUTHORISING MANAGER	Rebecca Englund
TRIM FILE REF	2021/625281
ATTACHMENTS	1 Assessment Report 2 Subdivision Plan 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 pursuant to clause 4.6 of WLEP 2011 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. DA2021/0527 for Subdivision of one (1) lot into two (2) lots, including the demolition of all existing structures and the construction of a new driveway at Lot 1 DP 661034, 31 Oxford Falls Road, Oxford Falls subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0527
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 1 DP 661034, 31 Oxford Falls Road BEACON HILL NSW 2100
Proposed Development:	Subdivision of one (1) lot into two (2) lots, including the demolition of all existing structures and the construction of a new driveway
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Henrik Valentin Tommasina Lisa Valentin
Applicant:	Henrik Valentin Tommasina Lisa Valentin
Application Lodged:	17/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	25/05/2021 to 08/06/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 20.0%
Recommendation:	Approval
Estimated Cost of Works:	\$ 32,750.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2021/0527 for subdivision of one lot into two, including the demolition of all existing structures and the construction of a new driveway. The application is referred to the Northern Beaches Local Planning Panel for determination due to the proposed non-compliance with the minimum subdivision lot size exceeding 10%.

The proposed subdivision of the existing allotment will result in the following lot sizes:

- Proposed Lot 1 (rear lot): 520.7m² (13.2% variation)
- Proposed Lot 2 (front lot): 479.7m², excluding right of carriageway (20% variation)

The applicant has submitted a request to vary the minimum subdivision lot size development standard under Clause 4.6 of WLEP 2011. The Clause 4.6 variation seeks to justify that there are sufficient environmental planning grounds to vary the development standard and that strict compliance with the minimum subdivision lot size is unreasonable and unnecessary in this instance. Council supports the applicant's justification to vary the development standard. The subdivision pattern of immediate adjacent lots is consistent with the size, layout and orientation of the proposed lot sizes.

Development Application DA2020/1385 was submitted on 30 October 2020. The application was determined by the Northern Beaches Planning Panel and refused on 17 March 2021 due to concerns which revolved around safe vehicular access to the site and access within the site due to the retention of the existing dwelling which resulted in the undersized lots not being acceptable, inconsistency with the surrounding subdivision pattern and failure to adequately demonstrate compliance with development standard *Clause 4.1 - Minimum subdivision lot size*. The subject development application now proposes to demolish the existing dwelling and has satisfied safety concerns with access to the site with an appropriate passing bay which resolved the main issues from the previously refused development application (DA2020/1386).

The application was exhibited in accordance with the Northern Beaches Community Participation and received four (4) submissions which are discussed in more detail in the body of the report. In summary, Council is satisfied that the proposal meets the aims and objectives and outcomes of the relevant policies and controls as detailed in the body of this report.

When assessed on its merits, the proposed subdivision arrangement is found to be acceptable and consistent with the existing subdivision pattern along Oxford Falls Road. Therefore, it is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition of existing on-site structures and torrens title subdivision of one allotment into two allotments, including civil works.

The proposed lot sizes are as follows:

Lot 1: 520.7sqm.

Lot 2: 479.7sqm (620.50sqm including the right of carriageway and passing bay).

The application does not involve the construction of dwelling houses on the proposed lots. The application has provided indicative dwelling designs for both Lot 1 and Lot 2. The existing dwelling on proposed Lot 2 is to be demolished.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act

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

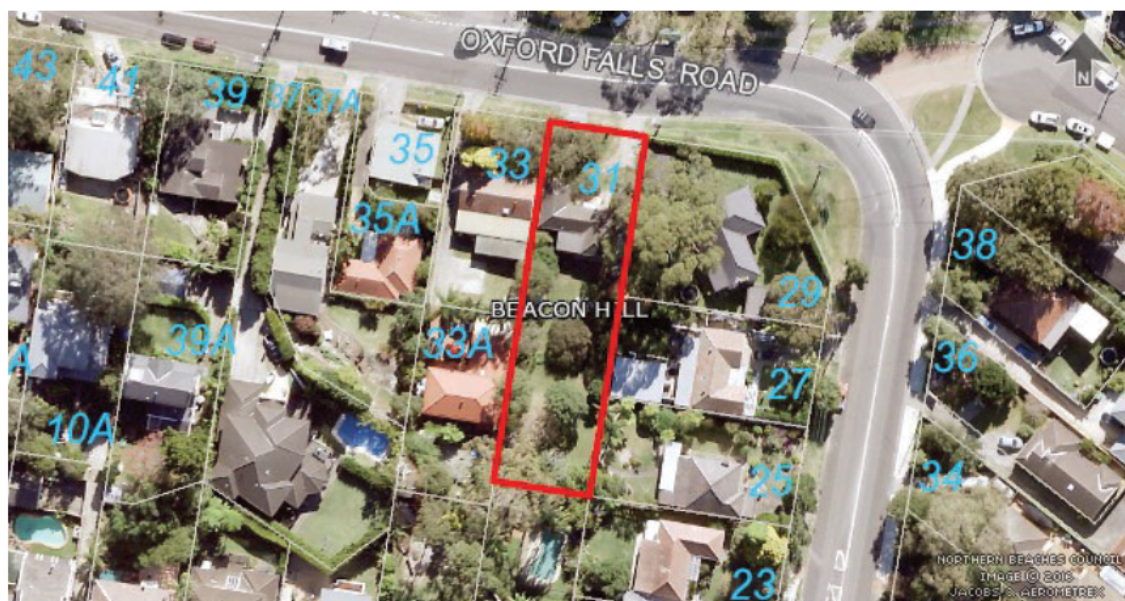
SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - C9 Waste Management

SITE DESCRIPTION

Property Description:	Lot 1 DP 661034 , 31 Oxford Falls Road BEACON HILL NSW 2100
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Oxford Falls Road. The site is regular/irregular in shape with a frontage of 17.35 m along Oxford Falls Road and a depth of 65.8m. The site has a surveyed area of 1141m². The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a single storey residential dwelling. The site falls approximately 4.4m from the southwest towards the northeast. The site contains large grassed areas at the front and rear of the dwelling. Several large canopy trees are located on and adjacent to the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

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:

- Pre-lodgement meeting **PLM2020/0174** was held on 18/08/2020 for Subdivision of Land (1 into 2 lots).
- **DA2020/1386** - Subdivision of one lot into two, alterations to the existing dwelling, new driveway and parking. Refused at Northern Beaches Local Planning Panel (NBLPP) on 17 March 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic

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	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 25/05/2021 to 08/06/2021 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 4 submission/s from:

Name:	Address:
Mr Russell Matheson Cragg Tracey Allison Cragg	33 A Oxford Falls Road BEACON HILL NSW 2100
Antony Robert Tyler	2 Dareen Street BEACON HILL NSW 2100
Michael John McClure	50 Hallam Avenue LANE COVE WEST NSW 2066
Mr David Groves	235 Warringah Road BEACON HILL NSW 2100

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

- Non-compliance with minimum subdivision lot size.
- Privacy / amenity impacts
- Stormwater runoff
- Traffic/Pedestrian safety

The matters raised within the submissions are addressed as follows:

- Concern is raised that the proposed subdivision does not comply with the minimum lot size requirement of the site and is inconsistent with the prevailing subdivision pattern.
Comment:

The proposed subdivision and non-compliant lot sizes are consistent with the prevalent subdivision pattern of the locality. A detailed assessment is provided in this report under Clause 4.6 of WLEP 2011 and Part C1 of WDCP.

- Concern is raised that the proposed subdivision will lead to unreasonable privacy and amenity impacts of future development on adjacent properties.
Comment:
The applicant has submitted concept plans for future dwelling development on the subdivided lots. The plans indicate that it may be possible for a dwellings to be constructed that achieves appropriate levels of privacy and amenity between dwellings.

Any future development application for a new dwelling will be independently assessed against the relevant development controls and policies relating to amenity, privacy and solar access.

- Concern is raised with stormwater runoff
Comment:
Stormwater infrastructure will be contained within the easement on the southern side of the lots. Council's Development Engineers have reviewed this design and raised no objections.
- Concern is raised with the proposed driveway regarding the safety of pedestrians and passing traffic.
Comment:
The development proposes to widen the existing driveway and incorporates a passing bay along the western side of the driveway within the front setback of the site. A second driveway is not proposed. The location of the driveway and the compliant passing bay has been reviewed by Council's Development Engineer who raises no concern subject to conditions.
- Concern is raised with potential noise generated from the use of the proposed driveway along the eastern boundary regarding vehicular access to Lot 1.
Comment:
The use of the driveway is not expected to create an unreasonable level of noise out of keeping with the Low Density Residential use of the site.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objection – with conditions The proposal is indicated to be for the demolition of the existing structures and the Torrens Title subdivision of one lot into two lots, including the construction of a new driveway and crossing, with drainage infrastructure to support the proposed development. Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan and the following Warringah DCP 2011 controls: D1 Landscaped Open Space and Bushland Setting

Internal Referral Body	Comments
	E1 Preservation of Trees or Bushland Vegetation The proposal is accompanied by an Arborist's report and plans indicating how two dwellings could be accommodated on the site. It is understood that the dwellings do not form part of the current application. The Arborist's Report assess the proposal with the inclusion of the two dwellings and a retaining wall. As a result, the report indicates that 5 trees would need to be removed. However, it is noted that based on the sub-division, driveway and drainage works the subject to this application, no trees are actually required to be removed. As the application is for sub-division and associated works only, it is recommended that the existing trees remain on site and that assessment of trees to be removed be undertaken when development applications are submitted for the 2 Lots (if approved). It is noted that one plan has been included with hand drawn retaining wall locations at the rear of the site. Construction of the retaining walls would require tree removal. It is noted that the dwelling design plans submitted for Lot 1 by Metricon do not indicate retaining walls in the location indicated on the hand drawn plan. It is recommended that approval for the retaining walls not be granted at this stage, with any such works being assessed at the time of a development application for a dwelling on the Lot. An addendum to the Arborist's report is noted confirming that trees on the adjoining site (T3 and T4) can be retained based on the proposed driveway being on the same level as the existing driveway. The Driveway Longitudinal Sections provided indicate that this is the case for the proposal. Subject to deletion of the retaining walls from the proposed works, no objections are raised subject to conditions.
NECC (Development Engineering)	<u>No objection – with conditions</u> The application proposed to remove the existing structures and subdivide the land into two lots. No dwelling is proposed to be built in this application. Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Water Management)	<u>No objection – with conditions</u> The drainage infrastructure for the subdivision must incorporate a sediment filter pit for EACH of the proposed lots to remove organic matter and coarse sediments prior to discharge of stormwater from the lots. Conditioned.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Lot 1: 600sqm	520.7sqm	13.2%	No
	Lot 2: 600sqm	479.7sqm (excluding right of carriageway)	20%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600sqm
Proposed:	Lot 1: 520.7sqm Lot 2: 479.7sqm (620.5sqm including access corridor)
Percentage variation to requirement:	Lot 1: 3.2% Lot 2: 20.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development

standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has 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 subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *The above environmental planning grounds are not general propositions. They are unique*

circumstances to the proposed development, particularly the provision of new allotments that provide sufficient building area to accommodate new dwellings of a size and potential floor area for future occupants, with appropriate residential amenity. The location of the future building platforms will allow for the development of the site's in a manner which is compatible with Council's current planning controls and will result in subdivision which is a typical to the character of the area, given the size and configuration the proposed allotments is compatible with the surrounding subdivision pattern. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum subdivision lot size.

- *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.

It is acknowledged there are some lots in the vicinity of the site that are undersized and have an irregular pattern. Whilst many of these lots were created under planning instruments that are no longer in force, DA2020/1043 for the subdivision of land, including alterations and additions to a dwelling house, new driveway and parking is a recent application that was approved at 45 Oxford Falls Road, Beacon Hill on 25 January 2021. The development approved two (2) undersized lots (Lot 1: 585sqm and Lot 2: 541sqm). When taking into account the wider locality along Oxford Falls Road and Dareen Street, almost all lots are below the minimum subdivision lot size and have a consistent subdivision pattern. Council therefore does accept the justification that the proposed subdivision is consistent with the prevalent subdivision pattern of the locality. It is agreed that there is a varying range of lot sizes in the vicinity of the subject site and that the proposed lots would be in keeping with the size and shape of the majority of lots in the locality.

The concept dwelling plans indicate that it is possible to construct a new dwelling on each lot that comply with all relevant built form controls.

As outlined above, there are sufficient environmental planning grounds to justify contravening the development standard.

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 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 Minimum subdivision lot size Development Standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

As noted above, the size and configuration of the proposed allotments are consistent with properties 14/14A, 18/18A and 22/22A on the western side of Government Road. Moreover, the proposed subdivision arrangement is of a size and shape that is similar to existing allotments on the eastern and western side of the Beacon Hill Road, which are generally approximately 470sqm in area and rectangular in shape. Based on the above, it is reasonable to conclude that the proposed allotments are consistent with the pattern, size and configuration of existing allotments in the locality.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The subject site is located within the R2 Low Density Residential zone pursuant to the WLEP 2011. Commercial and industrial development is prohibited on this site and surrounding sites. Therefore, this objective is not of relevance.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The site is not zoned for rural purposes and therefore, this objective is not relevant.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The site and surrounding area is not located within an environmentally sensitive area. Therefore, this objective is not relevant.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The site is not located within a bushfire prone area.

(f) to protect and enhance existing remnant bushland.

Comment:

The site does not contain any existing remnant bushland.

(g) to retain and protect existing significant natural landscape features.

Comment:

There are no significant natural landscape features on the site. Any new dwellings proposed under future applications will have to comply with Clause E6 'Retaining unique environmental features' of the WDCP 2011.

(h) to manage biodiversity.

Comment:

The site is located within the R2 Low Density Residential zone and does not have significant value in terms of biodiversity.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

Council's Development Engineer has reviewed the proposal with respect to stormwater and sewer infrastructure and raised no objections. Suitable conditions have been included with this consent to ensure the appropriate provision of utility infrastructure.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal will provide an additional allotment to cater for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal will not prevent other sites from providing facilities or services to meet the day to day needs of the residents within the locality.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The indicative building footprints on Lots 1 and 2 indicate that reasonably sized dwellings could be accommodated on the proposed allotments in accordance with Council's current planning guidelines.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

6.2 Earthworks

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

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

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

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

locality

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

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

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

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

Comment: The application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. 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 application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. 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 site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, 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.

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

6.4 Development on sloping land

Under this clause, 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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m ²	<u>Proposed Lot 1</u> Width: 17.35m Depth: 30.03 Building area: <150sqm building area able to be achieved.	Yes
		<u>Proposed Lot 2</u> Width: 17.35m (10.3m excluding right of carriageway) Depth: 35.77m Building area: <150sqm building area able to be achieved	Yes (No when excluding right of carriageway)
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction. Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided. Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.	Motor vehicle access from Oxford Falls Road is provided to Lots 1 and 2. Access for Council service vehicles, emergency vehicles and garbage collection vehicles is not inhibited. The internal driveway meets the vehicular access grades. A passing bay has been provided which complies with the minimum width and distance requirements. A concept Right of Carriageway has been provided and Council's Development Engineer is satisfied that it meets Council's requirements. Suitable conditions have been included to ensure a Right of Carriageway and	Yes

Driveways in excess of 200 metres will not be allowed for residential development. Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m. Passing bays should have regard to sight conditions and minimise vehicular conflict. Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay. Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities. Width of accessways are to be as follows: <table border="1"> <thead> <tr> <th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr> </thead> <tbody> <tr> <td>1 - 5</td><td>3.5</td></tr> <tr> <td>6 - 10</td><td>5.0</td></tr> <tr> <td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr> </tbody> </table> Provision of services in rights of carriageway are as follows:	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Easement for Drainage is created pursuant to the provisions of Section 88B of the Conveyancing Act.
Number of lots to be serviced	Width of clear constructed accessway (m)								
1 - 5	3.5								
6 - 10	5.0								
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)								

	<table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)								
Up to 3 lots	0.5								
4 or more lots	1.0								
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	The proposal has been reviewed by Council's Development Engineer who raises no objections to the approval, subject to conditions. The proposed passing bay is compliant with the relevant width and length requirements. Other aspects of the proposal including stormwater and OSD have been reviewed as acceptable, subject to conditions if approved.	Yes						
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	Each allotment will have the ability to drain to Oxford Falls Road. Proposed 1 will do so through an easement over proposed Lot 2.	Yes						

Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Appropriate conditions can be included in the consent if approved.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The site is identified as Area A & B on Council's Land Slip Risk Map. The proposed allotments are capable of accommodating dwelling that minimise the hazard risk. The site is noted as Land Slip Risk Area A & B. Accordingly, a Geotechnical Investigation has been prepared by White Geotechnical Group, Reference No. J2984A, dated 7 May 2021, and accompanies this submission. The report provides recommendations in relation to geotechnical inspections to be observed during the construction works. The proposal therefore satisfies the provisions of this clause.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bushfire prone	Yes

Description of non-compliance

The width of proposed Lot 2, excluding the right of carriageway is 10.3m (17.35m if the width of the right of carriageway is included).

The control requires a minimum of 13m.

Merit consideration

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

- *To regulate the density of development.*

Comment:

The indicative 150sqm building footprints shown on the subdivision plan indicates that the resulting allotments could comfortably accommodate reasonably sized dwellings that would comply with Council's relevant planning controls. Therefore, Council can be satisfied that the minor lot width non-compliance will not prevent a suitable dwelling from being constructed on Lots 1 and 2. Overall, the proposal meets this objective.

- *To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

The site does not contain any significant natural features. Any new dwellings proposed under future applications will have to comply with Clause E6 'Retaining unique environmental features' of the WDCP 2011.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

The indicative 150sqm building footprints submitted with this application indicate that Lots 1 and 2 could easily accommodate a dwelling that complies with Council's relevant planning controls. The subdivision plan has included a 2m x 2m landscaped area in the front south eastern corner of Lot 1, which will avoid a 'gun barrel' impervious driveway and provides a perceived landscaped strip along the entire southern side boundary when viewed from the street frontage.

- *To maximise and protect solar access for each dwelling.*

Comment:

Any new development on either proposed lot will need to comply with the solar access provisions of the DCP.

- *To maximise the use of existing infrastructure.*

Comment:

No additional major infrastructure is required for this development, apart from the construction of a new driveway. The two lots will utilise the existing infrastructure.

- *To protect the amenity of adjoining properties.*

Comment:

The works do not involve the construction of dwellings on Lots 1 or 2. Nevertheless, it is considered that a well designed, fully compliant dwelling on the resulting allotments will be able to protect the amenity of adjoining properties.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The site is not subject to significant environmental constraints. The site is located within 'Area A' on the WLEP 2011 Landslip Risk Map, which is the lowest risk category being slopes less than 5 degrees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and the proposed variation is supported in this particular circumstance.

C9 Waste Management

The application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. The plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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 2021

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

CONCLUSION

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

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

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

In consideration of the proposal and the merit consideration of the development, the proposal is

considered to be:

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

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

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

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

The proposal involves variations to the Minimum Lot Size Development Standard, which prescribes a 600sqm minimum lot size. Lot 1 is 520.7sqm and Lot 2 479.7 (620.5sqm when including the Right of Carriageway and passing bays). This represents respective variations from the Development Standard of 13.2% and 20% for Lots 1 and 2.

Despite the variations to the Development Standard, the proposed subdivision arrangement is consistent with properties 33/33A, 35/35A, 39/39A Oxford Falls Road to the west of the subject site and 14/14A Dareen Street and 36/36A and 38/38A on the eastern side of Oxford Falls Road and is consistent with the size and configuration of the majority of allotments on the eastern side of the street (opposite the site).

The applicant has submitted a written request pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) and has demonstrated that compliance with the Minimum Lot Size Development Standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variations.

Therefore, it is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

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 4.1 Minimum Subdivision Lot Size development standard pursuant to clause 4.6 of the WLEP 2011 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 DA2021/0527 for Subdivision of one (1) lot into two (2) lots, including the demolition of all existing structures and the construction of a new driveway on land at Lot 1 DP 661034, 31 Oxford Falls Road, BEACON HILL, 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
20082 Sheet C1	21 April 2021	Michael Korecki
20082 Sheet C2	21 April 2021	Michael Korecki
Location Plan	25 August 2020	Intrax

Engineering Plans		
Drawing No.	Dated	Prepared By
20082 Sheet EAS - 1	21 April 2021	Michael Korecki

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	7 May 2021	White Geotechnical Group
Arboricultural Impact Assessment	5 October 2020	Hugh The Arborist

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

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

5. Subdivision Works Certificate

A Subdivision Works Certificate is to be approved by Certifying Authority for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifying Authority for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. internal driveway and driveway crossing
2. internal stormwater drainage

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

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 Subdivision Works Certificate.

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

7. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

8. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Subdivision Works Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

9. **Stormwater Treatment Measures – Minor**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

10. **Amendments to the approved plans**

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

- o Deletion of the proposed retaining walls located in the south western corner of the site.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

11. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Project Arborist**

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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.

14. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Section 10 (Work Method Statement) and Section 11 of the Arboricultural Impact Assessment dated 5 October 2020 and Addendum AIA dated 13 May 2021 prepared by Hugh the Arborist 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, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections

- 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must:
 - i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and
 - iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

15. **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.

16. **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.

17. **Installation and Maintenance of Sediment Control**

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

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

18. **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.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

19. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

20. **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 ex
- 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 vegeta

Reason: Tree protection.

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

21. **Restriction as to User (Vehicular Access)**

The Applicant shall submit a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) to be incorporated on the title of proposed Lot 2. The restriction shall preclude that lot from utilising its frontage for vehicular traffic except for the section created as a Right of Carriageway. The wording of the restriction of use is to be prepared by a surveyor, with terms acceptable to Council. Details demonstrating compliance are to be submitted to the

Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with Council policy for vehicular access.

22. **Release of Subdivision Certificate**

Prior to the release of the Subdivision Certificate all structures on site will be demolished and all waste material removed from site.

Reason: Ensure orderly development of land.

23. **Provision of Services for Subdivision**

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

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

24. **Right of Carriageway**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

25. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

26. **Subdivision Certificate Application**

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

Reason: Statutory requirement of the Conveyancing Act 1919.

27. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and

restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

28. **Condition of Retained Vegetation - Project Arborist**

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:

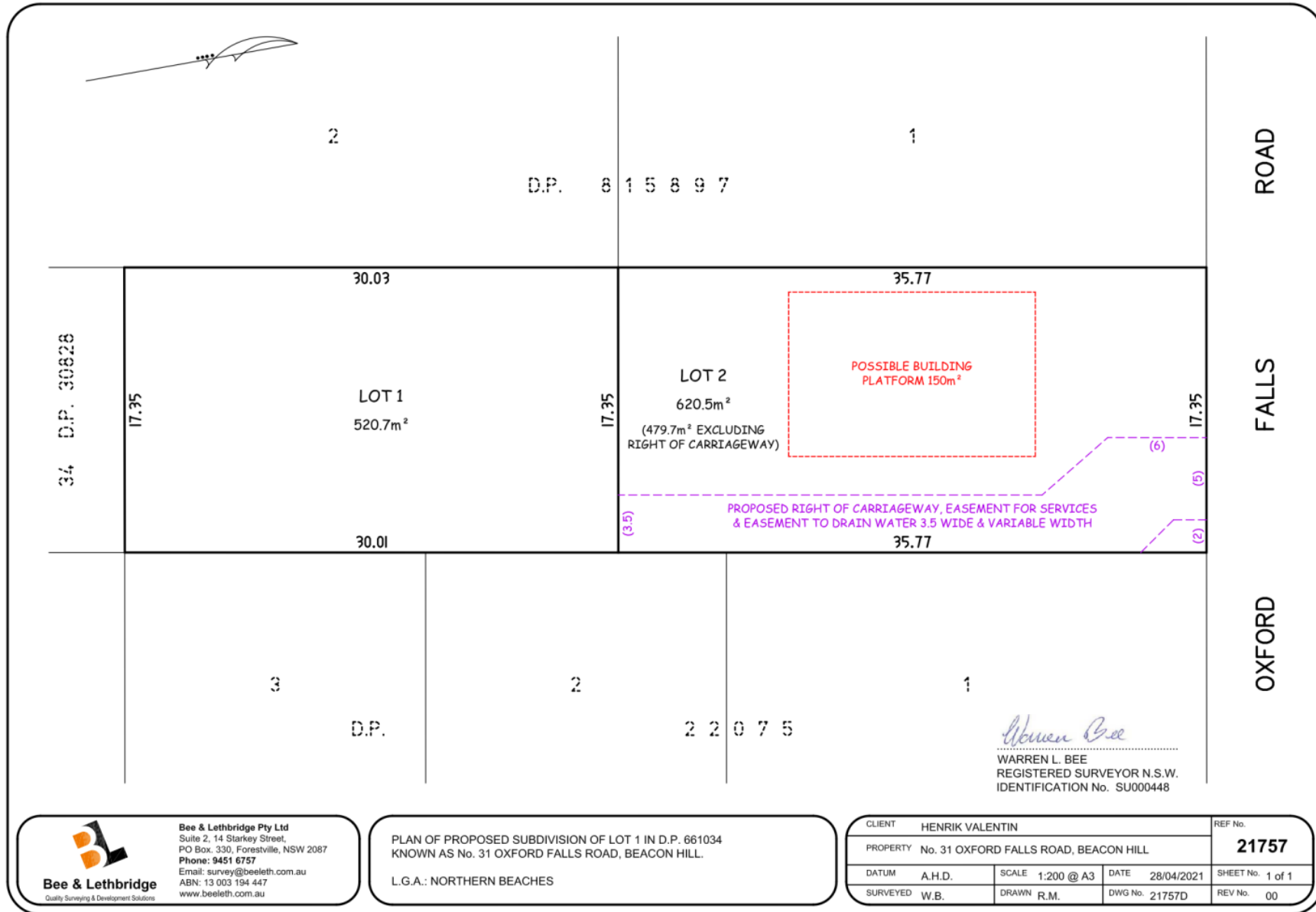
- a) compliance to any Arborist recommendations for tree protection generally and during ex
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegeta

Reason: Tree protection.

29. **Restriction as to User**

The Applicant shall submit a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) to be incorporated on the title of proposed Lot 2. The restriction shall restrict the construction of an future dwelling within the area designated as Possible Building Platform as it appears on the Plan of Proposed Subdivision dated 28/04/2021 prepared by Bee Lethbridge. The restriction may only be removed, varied or amended by Northern Beach Council. The wording of the restriction of use is to be prepared by a surveyor, with terms acceptable to Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure orderly development of land.



Vaughan Milligan Development Consulting Pty Ltd

**APPENDIX:
CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE**

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

31 OXFORD FALLS ROAD, BEACON HILL

**FOR THE DEMOLITION OF THE EXISTING STRUCTURES AND PROPOSED TORRENS TITLE SUBDIVISION
OF ONE LOT INTO TWO LOTS AND CONSTRUCTION OF A DRIVEWAY AND CROSSING
& SERVICES INFRASTRUCTURE**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM SUBDIVISION LOT SIZE AS
DETAILED IN CLAUSE 4.1 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

For: Demolition of the existing structures and the proposed Torrens Title subdivision of one lot into two lots, together with a new driveway and crossing and associated infrastructure
At: 31 Oxford Falls Road, Beacon Hill
Owner: Henrik & Tommasina Valentin
Applicant: Henrik & Tommasina Valentin c/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.1 restricts the minimum subdivision lot size in this locality to 600m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The resultant allotments which have been defined as Proposed Lots 1 and 2, will have the following indices:

Site Area (Lot 1):	520.7m ²
Site Area (Lot 2):	479.7m ² (620.5m ² incl. access corridor)

Lot 1 will present a variation of 79.3m² or 13.2% from the standard.

Lot 2 will present a variation of 120.3m² or 20.05% from the standard.

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2.1 Is Clause 4.1 of the LEP a development standard?

(The definition of “development standard” in clause 1.4 of the Environmental Planning and Assessment Act 1979 (“EP&A Act”) means standards fixed in relation to an aspect of a development and includes:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*

It follows that clause 4.1 of WLEP 2011 is a development standard.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (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

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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 the LEP 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.*

Clause 4.1 (the Minimum subdivision lot size) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP 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 minimum subdivision lot size development standard pursuant to Clause 4.1 of WLEP which specifies a minimum lot size of 600m² in this area of Beacon Hill.

Proposed Lot 1 will present a lot size of 520.7m², which is a variation to the standard of 79.3m² or 13.2%.

Proposed Lot 2 will present a lot size of 620.5m² or 479.7m² excluding the access corridor, which is a variation to the standard of 120.3m² or 20.05%.

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:*

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

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 Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

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

Council 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), and should 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]).

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The proposed subdivision is not subject to Clause 4.6(6) which restricts the size of allotments to be subdivided in certain zones. The site is zoned R2 Low Density Residential and is not subject to the provisions of Clause 4.6(6).

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 4.1 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (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 development will achieve a better outcome in this instance as the site will provide for the demolition of the existing structures and create the opportunity to construct a new dwelling within the proposed new lots. A new driveway will be provided to allow for vehicular access to each lot from Oxford Falls Road.

The subdivision of one lot into two lots, it is considered to be consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

As sought by the zone objectives, the proposal will provide for demolition of the existing structures and the proposed Torrens Title subdivision of one lot into two lots, construction of a new driveway and crossing with associated services, with the proposal being sensitive to the location and the topography of the locality.

As indicated in the concept dwelling design information provided with the application for each lot, together with the engineering design for the proposed driveway and services, the proposed subdivision will provide lots that are capable of accommodating dwellings that will provide suitable amenity for occupants and neighbours, and therefore compliance with the minimum allotment size standard is unnecessary and unreasonable in the circumstances of the case.

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5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the minimum subdivision lot size standard contained in Clause 4.1 of WLEP.
- 5.2 Clause 4.1 of WLEP specifies a minimum subdivision lot size of 600m² in this area of Beacon Hill.
- 5.3 Proposed Lot 1 will present a lot size of 520.7m², which is a variation to the standard of 79.3m² or 13.2%.
- 5.4 Proposed Lot 2 will present a lot size of 620.5m² or 479.7m² excluding the access corridor, which is a variation to the standard of 120.3m² or 20.05%.

6.0 Relevant Caselaw

- 6.1 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*

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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.*

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

1. Is Clause 4.1 of WLEP 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 4.1 and the objectives for development for in the R2 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 4.1 of WLEP?

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7.0. Request for Variation

7.1 Is compliance with Clause 4.1 unreasonable or unnecessary?

- (a) This request relies upon the 1st & 2nd ways identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the minimum subdivision lot size standard, as outlined under Clause 4.1, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The proposed subdivision is consistent with the existing subdivision pattern in the locality as noted in Table 1 below. The proposal is therefore considered to be in keeping with the residential character of the locality.

Table 1: Size of existing lots in the immediate locality

Address	Lot	DP	Land Area (m ²)
301/0 Brooker Avenue BEACON HILL NSW 2100	301	599065	49.00
44A Oxford Falls Road BEACON HILL NSW 2100	3	862488	317.20
44B Oxford Falls Road BEACON HILL NSW 2100	2	862488	298.20
44C Oxford Falls Road BEACON HILL NSW 2100	1	862488	339.80
44D Oxford Falls Road BEACON HILL NSW 2100	4	862488	262.50
45 Oxford Falls Road, BEACON HILL NSW	Prop Lot 1		585.00
	Prop Lot 2		541.00
35 Oxford Falls Road BEACON HILL NSW 2100	1	850352	251.90
35 A Oxford Falls Road BEACON HILL NSW 2100	2	850352	382.60
8A Oxford Falls Road BEACON HILL NSW 2100	150	873000	393.40
210A Warringah Road BEACON HILL NSW 2100	202	871952	420.10
39 Tristram Road BEACON HILL NSW 2100	1	859147	444.40
39A Tristram Road BEACON HILL NSW 2100	2	859147	408.00
13 Tristram Road BEACON HILL NSW 2100	1	840371	830.90
13A Tristram Road BEACON HILL NSW 2100	2	840371	416.90
1B Tristram Road BEACON HILL NSW 2100	51	846606	323.70
1A Daines Parade BEACON HILL NSW 2100	2	871808	400.20
80A Iris Street BEACON HILL NSW 2100	31	1067494	279.20
80B Iris Street BEACON HILL NSW 2100	32	1067494	279.30
51A Iris Street FRENCHS FOREST NSW 2086	2	1018589	422.50

31 Oxford Falls Rd, Beacon Hill

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51 Iris Street FRENCHS FOREST NSW 2086	1	1018589	670.90
49 Iris Street FRENCHS FOREST NSW 2086	1	862415	380.60
49 A Iris Street FRENCHS FOREST NSW 2086	2	862415	709.50
11 Patanga Road FRENCHS FOREST NSW 2086	1	853565	327.90
92 Dareen Street FRENCHS FOREST NSW 2086	2	853565	271.50
90A Dareen Street FRENCHS FOREST NSW 2086	1	855917	380.10
90B Dareen Street FRENCHS FOREST NSW 2086	2	855917	380.80
89 Dareen Street FRENCHS FOREST NSW 2086	1	1070945	290.90
91 Dareen Street FRENCHS FOREST NSW 2086	2	1070945	291.10
14A Patanga Road FRENCHS FOREST NSW 2086	2	865016	256.20
14 Patanga Road FRENCHS FOREST NSW 2086	1	865016	380.60
16 Patanga Road FRENCHS FOREST NSW 2086	1	1206353	318.70
16A Patanga Road FRENCHS FOREST NSW 2086	2	1206353	319.20
20 Patanga Road FRENCHS FOREST NSW 2086	101	857954	337.70
31 Iris Street FRENCHS FOREST NSW 2086	100	857954	488.40
27 Iris Street FRENCHS FOREST NSW 2086	1	848217	383.00
27A Iris Street FRENCHS FOREST NSW 2086	2	848217	434.00
25 Iris Street FRENCHS FOREST NSW 2086	1	836660	433.00
19 Inverness Avenue FRENCHS FOREST NSW 2086	2	836660	475.10
1A Harmston Avenue FRENCHS FOREST NSW 2086	592	843492	349.70
36 Frenchs Forest Road East FRENCHS FOREST NSW 2086	591	843492	495.00
32A Frenchs Forest Road East FRENCHS FOREST NSW 2086	1	1065395	377.40
32 Frenchs Forest Road East FRENCHS FOREST NSW 2086	2	1065395	377.40
305A Warringah Road BEACON HILL NSW 2100	61	1031836	276.70
305B Warringah Road BEACON HILL NSW 2100	62	1031836	278.70
303A Warringah Road BEACON HILL NSW 2100	51	1031837	276.70
303B Warringah Road BEACON HILL NSW 2100	52	1031837	278.70

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east and west along Oxford Falls Road and the immediate area surrounding the site.

As detailed in the concept dwelling design is provided to support the submission, Proposed Lot 1 can readily accommodate a future dwelling that provides for a footprint that will maintain Council's required side and rear setbacks together with a landscaped area that exceeds 40% (measured with a minimum width of 2m).

The existing dwelling within Proposed Lot 2 will be demolished, with an indicative dwelling design provided to confirm that were the lot to be redeveloped in the future, the lot can accommodate a modern two storey dwelling with car parking and which complies with Council's setback and landscaped area controls.

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(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

This control is not relevant in this instance as the land is zoned for residential development and is not suitable for commercial or industrial development.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

This control is not relevant in this instance as the land is not within a rural locality and is not sensitive to fragmentation.

(d) to achieve low intensity of land use in localities of environmental significance,

The subject site has not been noted as being of environmental significance.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The land has not been classified as being bushfire prone land.

(f) to protect and enhance existing remnant bushland,

The subject site does not contain remnant bushland and therefore this control is not relevant in this instance

(g) to retain and protect existing significant natural landscape features,

The site is not noted as containing existing significant natural landscape features. The proposed works do not require any significant land disturbance and other than for some potential minor benching of the rear site to provide for a level building platform with a future Development Application, the general topography of the site will be maintained.

(h) to manage biodiversity,

The development will not require the removal of any significant protected vegetation. Some trees will be removed within the building platform however these works would be carried out at the time of the construction of a future dwelling.

An Arboricultural Impact Assessment has been prepared by Hugh The Arborist, dated 5 October 2020 (addendum dated 13 May 2021) has been provided which notes that the majority of the trees on the site and in the neighbouring properties will be maintained.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Each lot will have access to a stormwater disposal system in accordance with Council's controls. Stormwater from each lot will be directed by a gravity to the street gutter in Oxford Falls Road.

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Both lots will have access to Water Board sewer infrastructure.

7.3 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]*

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed subdivision, which as discussed introduces an appropriate and compatible lot size within the locality, which promotes the orderly & economic use of the land (cl 1.3(c)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of new allotments that provide sufficient building area to accommodate new dwellings of a size and potential floor area for future occupants, with appropriate residential amenity.

The location of the future building platforms will allow for the development of the site's in a manner which is compatible with Council's current planning controls and will result

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not result in subdivision which is a typical to the character of the area, given the size and configuration the proposed allotments is compatible with the surrounding subdivision pattern. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the minimum subdivision lot size.

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.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3A and the objectives of the R2 Low Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st & 2nd tests in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

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It is considered that notwithstanding the variation to the minimum subdivision lot size, the proposed subdivision will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

It is considered that notwithstanding the noncompliance of each lot with the minimum subdivision lot size, the proposed subdivision of one lot into two will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons (over):

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

As previously noted in Table 1 which outlined the variety lot sizes in the area, the proposed resulting lot sizes will allow for residential development in accordance with the expectations of the community for a dwelling size with appropriate amenity that is compatible with the R2 Low Density Residential zone.

As discussed above, the proposed subdivision results in allotments which are in keeping with the size of existing lots in the locality. The proposed lots are consistent with the existing pattern of subdivision to the east along Oxford Falls Road.

Each of the proposed allotments can readily accommodate a future dwelling which complies with Council's controls, as noted by the indicative building envelope in the submitted Subdivision Plan (Sheet No. 1) in the concept dwelling designs provided with the application.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject proposal.

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- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

The proposal provides for the demolition of the existing structures and the Torrens Title subdivision of one lot into two lots, construction of a new driveway and crossing, together with appropriate services for the lots, in a manner which will retain the single dwelling character of the immediate area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of generous areas of soft landscaping, will maintain the balance between landscaping and built form.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed minimum subdivision lot size control, whilst maintaining consistency with the zone objectives.

7.5 Has Council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed subdivision of the land for the particular site and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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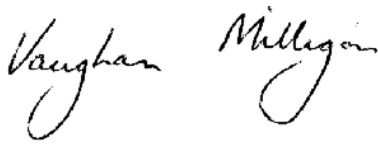
7.0 Conclusion

This written request to vary the minimum lot size specified in Clause 4.1 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The request demonstrates that the lots can be readily developed in a manner which is consistent with the surrounding pattern and can achieve the Objectives of the R2 Low Density Zone.

The density of the proposed subdivision is appropriate for the site and locality.

In my opinion, strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 4.2**DA2020/1733 - 332-338 SYDNEY ROAD, BALGOWLAH -
DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP
HOUSING DEVELOPMENT****AUTHORISING MANAGER** Rebecca Englund**TRIM FILE REF** 2021/626444**ATTACHMENTS**
1 Assessment Report
2 Site Plan & Elevations
3 Clause 4.6
4 Design & Sustainability Advisory Panel Report**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1733 for demolition works and construction of a Shop Top Housing Development at Lot A DP 336220 & Lot 1 DP 318879 & Part Lot 1 & Part Lot 2 DP 796788, 332-338 Sydney Road, Balgowlah for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1733
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 796788, 336 Sydney Road BALGOWLAH NSW 2093 Lot 2 DP 796788, 334 Sydney Road BALGOWLAH NSW 2093 Lot 1 DP 318879, 338 Sydney Road BALGOWLAH NSW 2093 Lot A DP 336220, 332 Sydney Road BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of a Shop Top Housing Development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Balgowlah Developments Pty Ltd
Applicant:	Ted Byrne
Application Lodged:	02/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	12/02/2021 to 26/02/2021
Advertised:	12/02/2021
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 32.8%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 8,250,000.00

Executive Summary

This shop top housing proposal seeks a height variation up to 32.8% which involves an additional residential storey above the 12.5m building height limit applying to the site. As the development application proposes a variation to the height standard of more than 10% it is referred to the *Northern Beaches Local Planning Panel*. The assessment of the proposal within this report does not support the



variation to height control under the circumstances due to streetscape considerations. It is also noted that the Manly DCP does not nominate this as an "important" corner site for redevelopment, unlike other corner sites in the vicinity. Notwithstanding this the height variation is not supported pursuant to related objectives for the zone and DCP requirements. The proposal meets the site FSR of 2:1, however does not comply with the 25% commercial proportion required and this is addressed under 'clause 4.6'.

No objections by way of public submissions were received for the proposal, however a number of Internal Referrals do not support the development application. This includes Waste Services, Traffic Engineering, Development Engineering and Heritage. In addition, Councils Design and Sustainability Panel (DSAP) do not support the proposal due to inconsistencies with SEPP 65 and the Apartment Design Guide. DSAP review comments were provided in May 2021 and they recommended a range of changes to the proposal. Amended documents were prepared in August and submitted in September and a preliminary review of the amended plans reveals that they do not satisfy all referral concerns.

Issues that remain would require substantial redesign to elements of the building and therefore cannot be conditioned for approval. In summary, the height variation is not supported and reasons for refusal relate to excessive building height, stormwater, traffic safety, streetscape character, waste management, residential amenity and insufficient information to address Design Excellence requirements.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a five (5) storey shop top housing development comprising two (2) levels of basement car parking, ground floor retail premises and 14 residential apartments on Levels 1 to 4 above.

Specifically the works involve:

Basement Levels 1 and 2 (B1 RL39.7 to B2 RL 37.25)

- Car parking for vehicles (retail spaces, residential spaces and visitor spaces (including AS1428 accessible parking spaces);
- Domestic and Retail storage rooms;
- Lift and stairwell access/egress;
- Toilets and driveway ramp.
- Bin storage;
- Services rooms;
- Drainage services.

Ground Floor (RL42.73 to RL43.3)

- Retail premises (4) (sqm 339 retail GLFA);
- Loading dock and carwash bay;
- Entry lobby;
- Building plant rooms and bin holding collection rooms;
- Service ducts;
- Lift and stairwell access/egress;
- Driveway ramp and truck turntable.

First Floor (RL46.79)

- 2 x 1 bedroom apartments;
- 2 x 2 bedroom apartments;
- 1 x 3 bedroom apartment;
- Landscaped courtyard / light well;
- Lift and stairwell access/egress.

Second Floor (RL49.90)

- 2 x 1 bedroom apartments;
- 2 x 2 bedroom apartments;
- 1 x 3 bedroom apartment;
- Landscaped courtyard / light well;
- Lift and stairwell access/egress.

Third Floor (RL53.00)

- 3 x 3 bedroom apartments;
- Lift and stairwell access/egress.
- Balcony terrace areas

Fourth Floor (RL56.10)

- 1 x 3 bedroom apartment;
- Lift and stairwell access/egress;
- Roof top common area;
- Machinery A/C plant / lift equipment;
- Balcony / terrace areas.

Upper roof level (RL59.20)

- Roof area and lift overrun structure (RL60.10)

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant



- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 101 Development with frontage to classified road)

Manly Local Environmental Plan 2013 - Zone B2 Local Centre

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.13 Design excellence

Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.6 Accessibility

Manly Development Control Plan - 3.8 Waste Management

Manly Development Control Plan - 4.1 Residential Development Controls

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)

Manly Development Control Plan - 4.2.1 FSR (Consideration of Exceptions including Arcades)

Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.6 Balgowlah Local Centre

Manly Development Control Plan - 4.2.6.1 Wall Height on the Street Frontage

Manly Development Control Plan - 4.2.6.2 Exceptions to LEP Building Height

Manly Development Control Plan - 4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking

SITE DESCRIPTION

Property Description:	Lot 1 DP 796788 , 336 Sydney Road BALGOWLAH NSW 2093 Lot 2 DP 796788 , 334 Sydney Road BALGOWLAH NSW 2093 Lot 1 DP 318879 , 338 Sydney Road BALGOWLAH NSW 2093
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	Lot A DP 336220 , 332 Sydney Road BALGOWLAH NSW 2093
Detailed Site Description:	The corner site comprises Lot 2 DP 796778 (used as right of carriageway), being No. 334 Sydney Road but fronting Condamine Street, and Lots 1 DP318879 (corner Lot), Lot 1 DP796788 and Lot A DP336220, being No. 332-338 Sydney Road, Balgowlah The consolidated development site is generally rectangular in shape having primary frontage and address to Sydney Road of 12.8 metres, secondary frontage to Condamine Street of 30.48 metres and a total area of 739 square metres. The allotment falls approximately a metre in height across the land in a northerly direction. Existing development on the site comprises 2 storey commercial buildings built to both street frontages with access to the rear of No. 334 and 336 Sydney Road via a right of carriageway (private laneway land being Lot 2 DP 796788 to the north of the subject site accessed from Condamine Street). The properties to the east of the subject site are also occupied by 2 storey commercial and 3 storey mixed use buildings with a single storey commercial building and Balgowlah Uniting Church located to the north. The properties located on the western side of Condamine Street are occupied by 1, 2 and 3 storey commercial and mixed use buildings and the higher multi-storey buildings of "Totem / Stockland Balgowlah Shopping Centre" to the north west of the site and mixed use building at No.343-354 Sydney Road. The subject site is located within immediate proximity of a range of services and facilities and a regular bus services to Sydney City, Manly and Dee Why.

Map:



SITE HISTORY

Prelodgement Meeting (PLM2020/0141)

A pre lodgment meeting was held on 9.7.2020 to discuss a proposal for demolition works and construction of a shop top housing development on the site. The prelodgement meeting plans proposed a building of 2 basement levels, commercial ground floor with 4 residential levels above).

The PLM meeting notes provide the following written advice summary:

"The proposal includes a 4.7m breach to the height of buildings development standard, equating to a variation of 37.6%. The proposed development also relies upon a significant breach to the wall height control of the MDCP 2013, and includes visible height above the established street façade level (see further comment below), presenting unreasonable bulk and scale that is inconsistent with the streetscape. Further, demonstration that the breach is unreasonable or unnecessary has not been established, and sufficient environmental planning grounds are not provided. The uppermost level (Level 4) is to be deleted from the proposed development, and Level 3 is to be reduced....."

Council notes that the subject site is not classified as an Important Corner under Schedule 2 Map B Balgowlah Town Centre of the MDCP 2013, so is not subject to concessions or special considerations in this regard. Any remaining variation to the development standard must be supported by a written request to vary the standard, in accordance with the requirements of Clause 4.6 Exceptions to Development Standard under the MLEP 2013"

The subject application has not adopted all the recommendations contained within the meeting notes but minor changes were made to building and particularly the upper level (5th storey) to make it more recessive and not readily visible from street level. Within the PLM notes the referral advice raised concerns regarding waste servicing arrangements, traffic / truck access considerations, apartment design guide considerations, development engineering and heritage concerns. The plans were not changed sufficiently to address Council's Internal Referral issues as outlined within this report under the heading 'Internal Referrals'. Options for wider site consolidation with No.328-330 Sydney Road have not be pursued as per the PLM notes.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested and advised with the Internal Referrals (Engineering, Waste Services, Traffic Engineering and Heritage) and DSAP review advice. Amended plans and documents were received / uploaded 3.9.2021 however these amended / reviewed documents have not been assessed as part of this assessment as this report was in the final stages of assessment. The amended plans and documents have been subject to a preliminary review however they do not resolve all referral and assessment issues and cannot be reasonably assessed in detail with this assessment as they were received in the final stages / finalisation phase of this report. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is able to be addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is able to be addressed via a

Section 4.15 Matters for Consideration'	Comments
	condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is able to be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is able to be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter is able to be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development for reasons outlined in the detailed assessment issued raised under the internal referrals and LEP / DCP assessment. Particular issues of concern relate to the ground floor arrangements (truck loading access, building layout and height, including streetscape impacts).
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No public submissions were received.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of SEPP 65, the Manly DCP controls and desired character for <i>Balgowlah Local Centre</i> 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 12/02/2021 to 26/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported with conditions. The application has been reviewed by Council's Building Assessment Team who have provided the following comments: <i>'The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.'</i> <i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.'</i>
Landscape Officer	Supported with conditions. The application is for the construction of a shop top housing development on land zoned B2 Local Centre. The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development (SEPP65), and associated Apartment Design Guide (ADG), Manly Local Environmental Plan and Manly Development Control Plan, including but not limited to: section 3: General Principles of Development, clauses 3.1.3 Townscapes (Local and Neighbourhood Centres), and 3.3.1 Landscape Design; Schedule 1 Design quality principles of the SEPP65 applies where Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. ... well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity ..." A Landscape Plan is provided with the application including landscape treatments on structure to level 1 and level 4. The public domain fronting both Sydney Road and Condamine Street contains paving, street furniture and lighting and street trees. Existing street trees and

Internal Referral Body	Comments
	guards exist fronting the Sydney Road frontage and these shall be protected. Public domain works fronting other commercial sites have been upgraded and in line with such works pavement upgrade shall be a condition of consent under the provisions of sections 138 and 139 of the Roads Act. The landscape outcome satisfies the design principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development including clause 29 (2), clause 30 (2), and Schedule 1 - Design quality principle 5: Landscape. The objectives and guidelines of the Apartment Design Guide, including part 3E Deep Soil Zones, 4O Landscape Design, and 4P Planting on Structures can be satisfied by the landscape proposal, subject to conditions of consent regarding approved landscape plans and the provision of adequate on-slab planter depth. Landscape Referral raise no objections to the proposal subject to conditions of consent.
NECC (Development Engineering)	Not supported. The submitted stormwater design including OSD is not acceptable. The following issues are raised with respect to the system. 1. A portion of the OSD tank is located under habitable floor which is not acceptable. The tank must be relocated to suit. 2. The design does not include any orifice plate size. In this regard the design must ensure that the flow from the site is limited to 25 litres per second for all storm events up to and including the 1% AEP. Detailed calculations are to be submitted for assessment. 3. The outlet pipe from the site is located within the proposed driveway crossing which is not acceptable. The outlet must be clear of the crossing. 4. The proposed pump-out system to collect seepage flows cannot be connected to the kerb. Either the site is designed to be tanked to ensure there are no seepage flows or a piped drainage system to Council's nearest drainage pit in Condamine St is to be provided with a design submitted for assessment. In terms of the proposed driveway crossing, this can be conditioned once the above information is provided using Council's Normal profile. The proposed turntable and loading bay are to be assessed by Council's Traffic Engineers. Development Engineers cannot support the application due to insufficient information to address <i>Clause 3.7</i> of Manly DCP. <u>Planning Comment</u>

Internal Referral Body	Comments																								
	The referral advice was made available for response but no amended plans have been provided and conditions are not able to be applied to address the above issues. Therefore the proposal is recommended for refusal pursuant to <i>Clause 3.7 Stormwater Management</i> of the Manly DCP.																								
Property Management and Commercial	Supported with conditions. The proposal is for the demolition of existing structures and the construction of a shop top housing development. Property has no objections to the proposal as submitted, noting that any application for outdoor dining must submit a separate Outdoor Dining Area Approval Application form to Council for approval.																								
Road Reserve	Supported with conditions. No apparent impact on existing road assets. It is recommended paving on street frontage be upgraded to comply with current streetscape guidelines by Development Engineering Team																								
Strategic and Place Planning (Heritage Officer)	Not supported. <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3"> This application has been referred to Heritage, as the subject site is within the vicinity of a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013. Item I8 - Street trees - Condamine Street (from Griffiths Street to Sydney Road) </td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3"> Details of the listed item as contained within the Northern Beaches heritage inventory is as follows: Item I8 - Street trees <u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape. <u>Physical description:</u> Brush Box (<i>Lophostemon Confertus</i>) on both sides of the street between Griffiths Street junction and Sydney Road. </td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage</td><td>No</td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			This application has been referred to Heritage, as the subject site is within the vicinity of a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013. Item I8 - Street trees - Condamine Street (from Griffiths Street to Sydney Road)			Details of heritage items affected			Details of the listed item as contained within the Northern Beaches heritage inventory is as follows: Item I8 - Street trees <u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape. <u>Physical description:</u> Brush Box (<i>Lophostemon Confertus</i>) on both sides of the street between Griffiths Street junction and Sydney Road.			Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage	No	
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Internal Referral Body	Comments		
	Register		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal is for demolition of the existing buildings across 332, 334, 336 and 338 Sydney Road which are considered to be good examples of Inter-War commercial buildings that contribute to the streetscape and character of Balgowlah village. The application also proposes the consolidation of the existing lots and construction of a shop top housing development, comprising basement car parking accessed from Condamine Street, 4 ground floor retail shops with a total of 14 residential apartments above over 4 levels, which exceeds the permissible height limit for the site and clause 4.2.6 Balgowlah Local Centre - 4.2.6.2 - e) "in relation to 292-338 Sydney Road, Balgowlah, the height above established street facades in this location is not visible from the street." should be taken into consideration. The subject site is located in the Schedule 2 - Map 2B - Balgowlah Local Centre of Manly Development Control Plan 2013, therefore the following principles of the clause 3.1.3 Townscape (Local and Neighbourhood Centres) applies to the site: <i>Townscape Principles Map</i> <i>b) All development involving the erection of a new building or external alterations to an existing building must be consistent with the townscape and streetscape and the principles and opportunities further illustrated in the Townscape Principles Maps at Schedule 2 of this plan. Having regard to the features located in the Townscape Principles Maps the following guidelines apply:</i> <i>i) Important corner sites shall be maintained, including strongly defined corner buildings. Ensure corner development has strong height and facade elements with building along the street frontage being set by these corner heights. Construct to boundary. Maintain and re-use existing development if it achieves objectives for these corner sites.</i> <i>ii) Important pedestrian links shall be maintained including existing public arcade links and encourage new through-block arcades which in turn should limit the size of parcels and the bulk of large buildings.</i> <i>iii) Important end of vista sites shall be acknowledged.</i>		

Internal Referral Body	Comments
	<i>Appearance of the street elevation requires special attention at the end of these vistas.</i> <i>Design Details</i> <i>c) Design details of proposed developments must complement adjacent building in the locality with particular reference to:</i> <i>(i) the scale, proportion and line of visible facades;</i> <i>(ii) the pattern of openings and the visual pattern of solids to voids on facades;</i> <i>(iii) both the overall wall and parapet height and the height of individual floors in relation to adjoining development and important corner buildings and the height of awnings. See also paragraph 4.4.4; and</i> <i>(iv) materials, textures and colours;</i> In the Pre-Lodgement notes, Heritage recommended the retention of the facades of the existing buildings across 332, 334, 336 and 338 Sydney Road (which are considered to be good examples of Inter-War commercial buildings that contribute to the streetscape and character of Balgowlah village) and required a heritage report, investigating the facades and their value, to be submitted with the development application. However, the applicant has not addressed any of these Heritage concerns with the current Development Application. The subject site is located in a high prominent location of Balgowlah village and it is considered, that the existing buildings contribute to the existing low scale presentation of the streetscape, especially at this junction of the village, which is defined by the low scale Inter-War buildings, built in the early 1900s. Therefore, the overall bulk and scale of the proposal is considered overwhelming and it dominates the presentation of the existing low scale streetscape at this prominent corner when viewed from a number of view points. Designing in context requires any proposal to respect the context, scale and character of the existing and support the significance of the place, while enabling the place to respond to the contemporary needs of the users and the community. It is considered that the retention of the existing facades at this prominent location should be taken into consideration to minimise the visual impact on the streetscape and to respond better to its context and the low scale character of the Balgowlah village. Therefore, Heritage considers that the proposal should be revised to retain the existing facades and minimise the bulk and scale of the proposal and also requires a more detailed heritage response. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? A report investigating the

Internal Referral Body	Comments
	facades and their value is required Has a Heritage Impact Statement been provided? No Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 04 August 2021 <u>Planning Comment</u> The referral advice was made available for response but no amended plans have been provided (to retain the existing facade) and conditions are not able to be applied to address the above issues. Therefore, the proposal is recommended for refusal pursuant to <i>Clause 4.2.6 Balgowlah Local Centre</i> of the Manly DCP.
Strategic and Place Planning (Urban Design)	Not supported. Urban Design Referral considerations are assessed as part of the <i>Design and Sustainability Advisory Panel (DSAP)</i> review. DSAP COMMENTS AND RECOMMENDATIONS: <u>General</u> Proposal: The application proposes the demolition of the existing buildings and erection of a five (5) storey mixed use development configured as: • 4 x Retail tenancies • Shop top housing • 14 x apartments (2 x 1-bed, 4 x 2-bed, 6 x 3 bed) • 33 vehicles over 2 basement levels. <u>Strategic context</u> <i>Manly Local Environment Plan and Manly Development Control Plan.</i> • Height variation - Sought variation is not inconsistent with development already approved that vary MLEP and Balgowlah Local Centre as applies for this corner. • Current Town Centre strategic plan excludes the subject site from the provisions of being a prominent corner identified for the other 3 corner sites of the Sydney Rd/Condamine St. • This site is not a zone interface to a lower density land use. • CI 6.13 of MLEP requires the development demonstrate design excellence, in addition to complying with other controls. • CI 3.1.3.1 for Townscape of Manly DCP must be demonstrated. Recommendations: <i>1. CI 6.13 will not be satisfied without the Panel's identified issues being satisfactorily resolved. Variation to height therefore could only</i>

Internal Referral Body	Comments
	<i>be supported where design excellence is demonstrated and an improved outcome for public domain or public spatial or natural systems outcomes, residential amenity within the development and importantly reducing impacts to neighbouring properties and the public domain.</i> Urban context: surrounding area character - Balgowlah is a Local Centre in transition with a mix of existing generally lower density (one to two-storey) retail/commercial development and shop top housing. There are precedents of 5 storey development approved or under construction on corner sites to the west of the subject site. - The Panel notes that adaptive re-use has been explored but considered impractical, would not achieve B2 zone objectives or meet current strategic and compliance requirements. The Panel takes this on trust but notes that the fact that the building is not an identified heritage item also opens up the potential for 'savage' modification of the existing façade to meet current amenity requirements. There are many examples of this type of adaptive re-use. - Overall the proposed shop top type is consistent with the intended future urban context. The proposed height variation is discussed below. Scale, built form and articulation - The proposed built form does not comply with the height control. The Panel notes that the allowable FSR of 2.0:1 is difficult to achieve within the 12.5 m height limit that is understood to allow for a 4-storey form. The panel notes that generally FSR of 0.33:1 is achievable per residential level and perhaps 0.5:1 on the ground level. - Consequently it is not unexpected that the proposal is for 5 levels and not 4. The question becomes where and if the exceedance of the height limit could occur and what impacts it would have on the amenity of the units within the site itself, the public domain and on neighbouring properties. - Given that the allowable FSR is a maximum permissible, it is important to recognise that the height limits are not arbitrary. On the contrary, the height limits in this location have been determined to ensure a compatible scale, and importantly, to ensure there is not overshadowing of the southern side of Sydney Road. - These solar access planes should be the primary determinant of the building mass. - Pulling the development off the northern boundary is supported and noted it would need to occur for satisfying

Internal Referral Body	Comments
	SEPP 65 and the ADG where dwellings have their primary aspect towards the neighbouring properties. The proposed setback will need to demonstrate equitable sharing with future permitted development on the neighbouring site. • The arrangement of massing is questioned given there are amenity issues arising with the lightwell and where the top floor massing has been concentrated. • The light well provides natural daylight and ventilation to the lift lobbies which is supported, but only service rooms should have a window or outlook into the smaller space (approximately 5m x 5m) not habitable rooms as proposed. The bottom of the light well will not receive sufficient daylight for amenity or to adequately support vegetation growth. Recommendations: <i>2. Ensure there is no overshadowing of the full extent of the footpath on the southern side of Sydney Road between the hours of 10am and 2pm mid winter.</i> <i>3. The building including balcony should be set back to grid line B</i> <i>4. The top floor should be set back further so it is truly recessive. This has not occurred on sites to the west resulting in a poor public domain interface and architectural expression. Treatment of the building edge will be a critical design element.</i> <u>Landscape context, Façade treatment</u> • The façade design suits the character and other new development in the area. • The treatment of the residential entry does not provide good amenity, with a narrow entrance and long narrow corridor to a lift and stairs. • POS courtyards on level 1 are overlooked and get no sun. It is unlikely anything will grow well in those locations and is not quality spaces for residents. • It cannot be assumed that in the future the redevelopment on the adjoining site will be setback to align grid D • No specific issues with landscape planting provided. Recommendation: <i>5. The lightwell, if retained, should be enlarged to improve daylight access to the lower apartments and to the floor of the lightwell.</i> <i>6. Increase the setback to the north to provide solar access to the POS as well as living spaces</i> <i>Public domain: relationship to public domain, safety/security.</i> <u>Accessibility</u> • Access to the shops should be from the street rather than through recesses in the façade as this is not positive for

Internal Referral Body	Comments
	accessibility. Although noted on the drawings as accessible to as 1428 it is not clear that this is possible. - Public domain impacts or positive outcomes arising with the proposed additional storey are not adequately communicated. Overshadowing impacts to the public domain will need to be considered particularly where reconsidering the location of the top floor massing. Recommendations: <i>7. Alcove retail entries along Condamine Street should be enlarged to improve accessibility and visibility.</i> <i>8. Residential entry along Sydney Rd is clearly separated from the retail. The internal layout however is quite a long walled corridor. Opportunities to improve the entry character should be considered.</i> <i>9. Rear Lane will be dominated by the angled roller shutter when viewed from the public domain. The undercroft space becomes somewhat ambiguous with the first floor balcony overhanging the 'lane'. The Unit 104 balcony should be aligned with Unit 105 and the planter extended. Safe access to the planters needs further design consideration particularly for the edge treatment.</i> <u>Common areas</u> - Rooftop communal open space is supported in principle. However, it should be located to receive the highest amenity. The Communal open space is on the noisy corner, not well designed for amenity, having a south west aspect and therefore minimal daylight. The shade is positive in summer but will be a cold and unappealing space in winter. There is minimal landscaping to soften it. - Lift lobbies receiving natural light and ventilation is supported. - Residential entry is down a long straight corridor. While sightlines are direct, the space is likely to be uninviting and alternative arrangements should be considered. Recommendations: <i>10. Locate rooftop communal open space to achieve the highest amenity. Coordinate with any rearrangement/location of top floor massing d.</i> <i>11. Move COS to north for improved aspect and noise protection. Consider design to create more variety of spaces and improved landscape treatments.</i> <u>Amenity and Servicing</u> - Bedrooms 1 and 3 in unit 401 significantly overshadow the light well and units on the lower levels. - Natural ventilation, acoustic amenity, visual privacy amenity – Units 105 typical bedroom proximity to Unit 101 typical

Internal Referral Body	Comments
	living/balcony within lightwell not acceptable – ADG 4A-2. • Solar access modelling must include consideration of future development permitted on adjacent sites to enable a full assessment. • Retail spaces do not have a WC on the ground floor level. • Access to the garbage enclosures are circuitous and remote from the retail areas Recommendations: <i>12. The planning on the top level should be re-arranged to maximise the amount light and solar penetration into the light well. This could be achieved by relocating the communal open space to the east or north east, moving the AC units etc. There are number of possible approaches.</i> <i>13. A WC for retail tenancies should be providing that is easily and directly accessible from the tenancies and located on the ground floor.</i> <i>14. Commercial bin store should be relocated to ground level.</i> <i>15. Residential bin room should be closer to lift or relocated.</i> <u>Sustainability and resilience</u> • Achieving natural ventilation and cross ventilation while achieving acoustic comfort is required so residents are not relying on A/C for the life cycle of the development. • Solar access and daylight amenity to all habitable rooms minimizes the reliance/need to artificial lighting for day-to-day tasks. Solar access to the apartments needs to be considered in the event of the neighbouring site to the north redeveloping. • Cl 6.13 of MLEP requires the development demonstrate design excellence. A building demonstrating design excellence should have a demonstrate inclusion of sustainability attributes such as reduced water use rainwater recycling, PV connected to the common area uses at a minimum, apartments if possible, all electric approach to servicing, etc. • Generally, the approach to passive design is commendable, with prioritization of northern aspect and maximizing cross ventilation. If the comments can be addressed, then it can be supported. Recommendations: <i>16. Solar access to be recalculated with modelling of permitted future development on neighbouring sites demonstrated.</i> <i>17. Include sustainability attributes such as rainwater recycling and PV on the roof.</i> <u>PANEL CONCLUSION</u> • The Panel does not support the proposal in its current form. • The overall design is consistent with the desired future character of the area.

Internal Referral Body	Comments
	The scheme is supportable if the recommendations were incorporated in a revised design. <u>Planning Comment:</u> The DSAP review was on 22.4.2021 comprehensive DSAP comments made available on 7.5.2021 to the applicant for response. While amended plans / documents were prepared in August and submitted recently they have not been able to be thoroughly reviewed at this stage and preliminary review identifies that not all issues are fully addressed. Since this report was in finalisation stage the plans are not accepted for the purposes of this application (but may be used / progressed for a subsequent Review application). Therefore, the proposal is recommended for refusal pursuant to <i>Clause 3.1.3 Townscape (Local and Neighbourhood Centres)</i> of the Manly DCP, Clause 1.2 of the Manly LEP, and inconsistency with the Design Principles of SEPP 65 and the <i>Apartment Design Guide</i>.
Traffic Engineer	Not supported. The development proposal is for demolition of the existing buildings at 332-338 Sydney Road and construction of a shop top housing development comprising 4 ground floor shops and 14 residential apartments over 4 levels. The development site is situated on the north eastern corner of the intersection of Sydney Road and Condamine Street, Balgowlah. This intersection is controlled by traffic signals and carries high volumes of traffic with highly congested conditions occurring at peak periods. <u>Traffic</u> The traffic and parking assessment report estimates that the development will result in an increase in traffic from the site of 7 vehicles per hour in peak periods, with the increase associated primarily with residential traffic movements. i.e primarily outbound in the AM peak period and primarily inbound in the PM peak period. At these levels the change would result in no appreciable change to traffic conditions on the surrounding road network however some increase in delays particularly in the PM peak associated with turning into the site is anticipated. Concern was raised at the pre-lodgement stage with regard to the safety of right turn movements into the site and it was suggested that a median island to prevent right turns would be required. This has not been addressed either on the plans or in the traffic and parking assessment report. Given a) the proximity of the proposed driveway to the signalised intersection of Condamine Street/Sydney Road and b) the increased number of vehicles turning into the driveway in the busy pm peak and c) limited sight distance to vehicles waiting to turn into the site, a median island is considered advisable. If the applicant does

Internal Referral Body	Comments
	not consider this appropriate it should be addressed in detail by the applicant's traffic consultant. <u>Parking</u> carparking required: Retail : 1365.8sqm @ 1 space per 40sqm = 9.145 (round up to 10) Residential: 4 x 1 bed @ 1 per apartment = 4 4 x 2 bed @ 1 per apartment plus 0.2x4 = 4.8 spaces 6 x 3 bed @ 1 per apartment plus 0.5x6 = 9 spaces i.e total residential spaces = 4+4.8+9 = 17.8 (round up to 18) Visitor parking @ 0.25 per apartment = 0.25x 14 = 3.5 (round up to 4) Total requirement = 10 + 18 + 4 = 32 The Traffic and Parking Assessment report advises that the applicant proposes to provide 33 parking spaces including 8 accessible spaces. A review of the plans suggests that this is incorrect with only 30 parking spaces proposed comprising 15 spaces in the lower basement including 3 disabled spaces and 15 spaces on the basement level including 3 disabled spaces. The level of parking provision is therefore non-compliant. The aisle width in the basement level between the lift and spaces denoted "Res Visitor02" & "Retail 07" is only 4.7m in width which is non compliant with the aisle width of 5.8m required in AS2890.1 adjacent to 90 degree parking spaces. The same issue is present on the lower basement level adjacent to spaces denoted "Res 11" & "Res 12". <u>Bicycle parking</u> Bicycle parking, by way of 7 bicycle lockers on both the basement and lower basement levels is proposed. It is noted that storage areas are also proposed which could be used for additional bicycle parking if required. This is generally compliant with DCP requirements and considered acceptable. <u>Disabled parking</u> The Statement of Environmental Effects advises that 3 of the 14 apartments are adaptable and 6 of the proposed parking spaces are marked on the plans at dimensions which would allow their use for disabled parking i.e each adaptable unit would have access to a disabled parking space consistent with DCP requirements and an additional 3 disabled parking spaces are proposed. This exceeds DCP requirements. It is noted that not all disabled spaces have a bollard sited in the shared area adjacent to the parking space (as required by AS2890.6). The plans should be amended to include the

Internal Referral Body	Comments
	bollard which would ensure they are utilised as intended. <u>Loading/Servicing</u> It is noted that Council's Waste Services team have raised a number of concerns with regard to the proposed waste servicing arrangements. These comments are supported. In addition, there is concern about the practicality and safety of delivery trucks/waste services trucks and vehicles being washed all relying upon use of a loading/unloading bay which is only capable of holding a small truck and which overhangs the turntable and the driveway serving the basement carpark. To support a development of this size where the regular visits by removalist trucks and delivery vehicles of a size larger than the small rigid vehicle able to be accommodated in the loading bay could be anticipated, a loading bay capable of housing at least a medium rigid vehicle (i.e bay length 8.8m, bay width 3.5m and clearance 4.5m) is considered desirable. Any car wash bay should also be sited separately to minimise usage conflicts. <u>Access.</u> The width of the proposed driveway appears adequate. Swept path plots show that access to and from the site and to and from the loading bay is able to be achieved by a small rigid vehicle (6.4m in length) approaching from the north and departing to the south. It is however noted that there is little margin for error when using the turntable. Access to the site from the south and departing to the north for a small rigid vehicle has not been verified and this is required. It is also noted that access to and from the basement carpark is completely blocked while the turntable is in use. This is considered unsatisfactory as this is a critical manoeuvring area and blocking access may lead to vehicles queuing back into Condamine Street or across the footpath. It appears from the plans that the western edge of the development will be raised quite significantly above footpath level at the point where the proposed driveway meets the footpath. This is therefore likely to mean that visibility for exiting vehicles to pedestrians on the footpath will be obstructed. Sight lines triangles consistent with AS2890.1 Fig 3.3 shall be provided and noted on the plans. Given the level of impact of the construction process on the footpaths fronting the site it is expected that the developer would reconstruct paving along the street frontages consistent with current streetscape guidelines to Council's satisfaction. This could be conditioned <u>Summary</u> Given the number of concerns raised with regard to the current proposal some of which will require significant design changes and

Internal Referral Body	Comments
	additional supporting information the development application cannot be supported in its current form. <u>Planning Comment</u> The referral advice was made available for response but no amended plans have been provided and conditions are not able to be applied to address the above issues. Therefore, the proposal is recommended for refusal pursuant to <i>Clause 4.2.4 Carparking, Vehicular access and Loading controls</i> of the Manly DCP.
Waste Officer	Not supported. Non-compliances with Council's <i>Waste Management Design Guidelines</i> are dealt with below referencing each level within the proposed building. <u>Lower Basement</u> Bulky Goods Room • The door opens inwards - <i>Unacceptable, the door must open outwards away from the direction of travel when entering and leaving the room.</i> • The door is too narrow - <i>Unacceptable, the door must be 1200mm wide.</i> Waste Bin Storage Room • The door opens inwards - <i>Unacceptable, the door must open outwards away from the direction of travel when entering and leaving the room.</i> • The door is too narrow - <i>Unacceptable, the door must be 1200mm wide.</i> • Access to the "accessible toilet" is through the binroom. - <i>Unacceptable, binroom and toilet to maintain separate access.</i> <u>Basement</u> Commercial Bin Storage Room: • The door opens in the direction of travel - <i>Unacceptable, the door must open away from the direction of travel when entering and leaving the room.</i> • The door is too narrow - <i>Unacceptable, the door must be 1200mm wide.</i> Residential Bin Storage Room: • The door opens in the direction of travel - <i>Unacceptable, the door must open away from the direction of travel when entering and leaving the room.</i> • The door is too narrow - <i>Unacceptable, the door must be 1200mm wide.</i>

Internal Referral Body	Comments
	<u>Ground Floor</u> Waste Collection Vehicle Access: • Turntable The applicant proposes the use of a turntable to allow for vehicle to enter and leave in a forward direction. - <i>Unacceptable</i> The applicant has provided conflicting information regarding capacity of the turntable. The waste management report (WMP) states that the turntable will accommodate a MRV waste collection truck whilst the traffic management report (TMR) states that the turntable is only suitable for a SRV up to 6.4 metres long. Council does not have any SRV waste collection trucks. The smallest MRV waste collection truck is 7.7 metres long. The turntable is placed in the middle of the driveway. When in use this prevent any other vehicles entering or leaving the property and may result in queueing of vehicles on Condamine Street waiting to enter the building. • Loading Bay The loading bay is also proposed as a vehicle wash bay for the building occupants. - <i>Unacceptable</i>. Loading bay must be available for bin servicing. The loading bay is not long (deep) enough to accommodate a waste collection vehicle - <i>Unacceptable</i>. Vehicle access to the building will be blocked whilst the waste truck is servicing bins. This may result in queueing of vehicles on Condamine Street waiting to enter the building. Please note that 1.5 metres of clearance is required at the rear of the truck to lift bins. <u>Bin Holding Bay</u> • Commercial and residential bins presented in a common room - <i>Unacceptable</i>. Commercial and residential bins must remain separated at all times. • The door opens inwards - <i>Unacceptable</i>, the door must open outwards away from the direction of travel when entering and leaving the room. • The door is too narrow - <i>Unacceptable</i>, the door must be 1200mm wide. <u>Additional Notes</u> The SoEE includes Urban Design Analysis, Ch 7.0 Waste Management & Traffic & Clause 7.02 Reference is made to No.404 Sydney Road as justification for use of the turntable for waste collection. Please note that this turntable at No.404 Sydney Road is <u>not in use</u> as it is too small to accommodate the waste collection

Internal Referral Body	Comments
	trucks. Waste collection is undertaken from the kerbside with the use of a HRV waste collection truck and the provision of a "wheel out/wheel in" service for the bins. This is provided by Council as part of the waste collection service. It is Council's preference to collect the bins from 336 Sydney Road in the same manner. That being from the kerbside, using the wheel out/wheel in service, from a binroom designed in accordance with Council's requirements. <u>Planning Comment</u> The referral advice was made available for response but no amended plans have been provided and conditions are not able to be applied to address the above issues. Therefore, the proposal is recommended for refusal pursuant to <i>Clause 3.8 Waste Management</i> of the Manly DCP.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response by letter dated 11.2.2021 raising no objections to the proposal subject to compliance for working in proximity to <i>Ausgrid</i> assets including underground cables, to be included with any approval.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential / commercial purposes for a significant period of time with no prior land uses. 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 / commercial land use. Conditions are included to ensure the safe handling of any asbestos / lead based materials during demolition as appropriate where such materials may exist within past building works to be removed.

SEPP 65 - Design Quality of Residential Apartment Development



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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a 5 storey residential flat 'housing' development plus basement car parking for the provisions of 17 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council an appointed Design Review Panel and DSAP advice / review is provided under the "Internal Referrals section".

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

Responding to context involves identifying the desirable elements of an area's existing or future



character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The subject site is located within an established local centre in Balgowlah. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height.

To the north west of the subject site is the larger 'Totem / Stockland Development' and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafes, with residential apartments located on the floors above. There are a number of sites that are currently occupied by older style two (2) storey commercial/shop top housing developments which it can be reasonably expected will be redevelopment.

The proposed building, a five storey shop top housing building, but is identified as a site limited to 4 storeys even though other adjacent and near corner sites have a concessional identification to be 5 storeys. The design of the building is reflective of a modern shop top housing development to be high quality design, however the desirable neighbourhood elements of the existing inter-war period building on the site is not being retained despite the local planning controls encouraging such elements of the existing urban fabric to be kept and integrated into the re-development of buildings. This demonstrates a loss of streetscape character in favor of replacement with completely new and higher (above height limit) shop top housing.

With the existing building of the site being one of the larger and better examples of inter-war development, in the vicinity, the proposal to completely replace the building does not satisfy this Principle, particularly in also seeking additional storey level over the local height control.

Principle 2: Built Form and Scale

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

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

Comment:

The proposed building achieves a scale, bulk and height that is appropriate to the existing and desired future character of the street and surrounding buildings. The design appropriately acknowledges the sites role as having a dual frontage to on a central corner site within the Balgowlah Local Centre. The development provides an articulated built form, width and setbacks that is reflective of its important corner location but has sought to include an additional storey level that is not designated as part of the DFC. Notwithstanding this the upper storeys are setback and the top floor has been concealed by a wider awning feature from the storey below and wider setbacks.

The building is suitably articulated and provides effective shaping of balconies and recessed building wall sections to provide visual interest and relief when viewed from the public domain and surrounding properties.

The development satisfies this Principle in terms of width and breadth and setbacks, however the building is higher than that envisaged by the DFC.

**Principle 3: Density**

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

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

Comment:

The design of the building affords future residents a high level of amenity. The resultant density influences the proportionate height of the building with the additional (Level 4) top floor unit added, however this site has good access to existing infrastructure, services, public transport, location within the Balgowlah Local Centre and ease of access to community facilities and the surrounding environment.

The development satisfies this Principle.

Principle 4: Sustainability

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

Comment:

The design of the building allows for adequate natural cross ventilation and sunlight for the amenity and liveability of future residents and provides passive thermal design for ventilation, heating and cooling, including PV cells shown for roof area and landscaping elements for the building.

The application is supported by a *Waste Management Plan* which includes suitable details for the disposal and recycling of demolition and excavation materials should the application be approved.

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

The development satisfies this Principle.

Principle 5: Landscape

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

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

Comment:



There is no minimum landscaped open space provision required for such development within this zone. This is due to the dense urban environment and envisaged character of development in the Balgowlah Local Centre.

Therefore, due to the urban context within which this site is located, minimal landscaping has been provided at ground level. Landscaping features have been provided at the various residential levels and incorporated into selected balcony planter boxes including light / air well for the development. The landscape regime is considered to be adequate to enhance the internal amenity of the development.

The development satisfies this Principle.

Principle 6: Amenity

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

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

Comment:

The design of the residential units are generally oriented to achieve a street outlook or northerly outlook for the amenity for future residents and residents in neighbouring properties. A sufficient level of sunlight, natural ventilation, views, privacy and private open space is afforded to future dwelling occupants and maintained for occupants of surrounding residential properties. Some amenity concerns have been identified with the DSAP review that would improve internal amenity with regard to the *Apartment Design Guidelines* that relate to window to window separation and areas around the light / air well.

The layout of service areas for the ground floor is a concern as all waste from the shop and storage is in the basement required continuous movement between the shops and the basement to access waste bins, staff toilets, storage and the like, which is inefficient and much less practical. In addition Waste Services have advised the location of the ground level bin holding area and turntable truck bay is unacceptable and will not be serviced within the site by Council trucks. Details of disabled access to each of the shops is also uncertain due to the sloping road frontage, particularly along Condamine Street for the ground floor layout shown.

The development is not considered to satisfy the Principle for the reasons outlined within the DSAP review (see Internal Referrals) and the dislocation between the operational areas / 'back of house' elements for the ground floor.

Principle 7: Safety

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

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

Comment:

Generally, the development provides secure access to vehicular and pedestrian access points to both



the retail and residential components of the development. The majority of apartments provide balconies and windows for passive surveillance / outlook to either Sydney Road or Condamine Street. Concern is raised however that the turntable / loading bay area involves unnecessary arrangements for Council's waste truck to enter the site (which Waste Services advise against) creating safety issues and need for commercial / shop staff to routinely move between the carpark and ground floor to access storage / waste sorting areas which adds to safety concerns in the carpark area and pedestrian movement.

The development does not satisfy this Principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The provision of a mix of one, two and three bedroom apartments (e.g for singles, couples, families and in terms of accessibility needs) in this location is considered reasonable due to the site's close proximity to public transport, commercial facilities and opportunities within the Balgowlah Local Centre.

The development satisfies this Principle.

Principle 9: Aesthetics

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

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

Comment:

The proposed development exhibits a high standard of architecture and overall contemporary aesthetics, which will contribute a new modern appearance to the streetscape of Sydney Road and Condamine Street and the Balgowlah Local Centre. This however is a transformation away from the local DFC that seeks to, where possible retain existing important elements of the urban fabric rather than losing them forever. In this case the site has a large inter-war period building on the site and no elements of the corner site building are being retained in order to respond to local context, desirable elements and existing repetitions of the streetscape. While the existing corner building is not heritage listed details of its importance to the urban fabric were identified in the PLM advice provided to the applicant and have been outlined in the "Internal Referrals - Heritage" advice within this report.

The development does not satisfy this Principle.

APARTMENT DESIGN GUIDE

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

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Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The development responds to its corner position but certain aspects of the proposal at ground floor level layout, loading dock access, service room access, and the assumptions made to adding an extra storey above the height limit have contributed to a number of inconsistencies with the Manly DCP and LEP. In addition to this the DCP encourages elements of the existing streetscape to be retained for site such as this where existing building contribute to the streetscape character rather than totally removing older buildings for redevelopment, which replaces the streetscape character.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The development responds to the Sydney Road and Condamine Street position that includes making practical use of Lot 2, which will provide vehicle access to the site (but cannot be built over). The general orientation of the building and apartments is satisfactory given the constraints of the surrounding built environment, topography, adjacent land uses and available road frontages.
Public Domain Interface	Does the development transition well between the private and public domain without compromising	Inconsistent The development

	safety and security? Is the amenity of the public domain retained and enhanced?	provides an appropriate transition between the public and private domain along shop front sections for an active street front, however safety concerns are raised with regard to the ground floor arrangement and reliance to go to the basement by pedestrian movement for commercial / shop waste, storage and toilet facilities. The development provides awning covers along the street frontage for weather protection which is appropriate. Reliance on access to the loading dock area for waste services and turntable arrangements is not supported by Council Waste Services which involves safety concerns around the basement access and dock. Therefore, the proposal does not fully satisfy this requirements.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Consistent (on merit) The development provides a roof top communal space however this is in association with adjacent building elements that are above the local planning control height limit. The roof top area however is generally open and does not readily impact on solar access, views or other amenity considerations as it is setback from the building edge and includes landscape design elements. The ADG provides the

		following design guidance where development is unable to achieve the design criteria: <i>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</i> • <i>provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</i> • <i>provide larger balconies or increased private open space for apartments</i> • <i>demonstrate good proximity to public open space and facilities and/or provide contributions to public open space</i> Each residential apartment has been designed to provide spacious balconies and areas of open space above the minimum requirements of the ADG.								
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="2">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Consistent (on merit) The required amount of deep soil zone is 51.7sqm (7% of site area). The development provides no deep soil zone at ground level. The design guidance
Site area	Minimum dimensions	Deep soil zone (% of site area)								
Less than 650m ²	-	7%								
650m ² – 1,500m ²	3m									

	Greater than 1,500m ²	6m	provided with this part of the ADG states: <i>Achieving the design criteria may not be possible on some sites including where:</i> - the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres) - there is 100% site coverage or non-residential uses at ground floor level <i>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.</i> The subject site is located within a local centre and business zone and therefore opportunities to achieve the required deep soil zone are limited with the dual road frontage, driveway along the northern boundary and adjacent commercial site to the east. Notwithstanding the technical non-compliance with the design criteria, the development provides acceptable stormwater management and provides areas of on structure planting throughout,
	Greater than 1,500m ² with significant existing tree cover	6m	

		including the light / air well, landscape planter boxes for selected balconies and at roof level for the communal open space.												
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Inconsistent The intent of this design guide is to allow future and existing residents on adjacent properties to use their private open space without being unreasonably overlooked. Visual privacy balances site and context specific design solutions with views, outlook, ventilation and solar access. The design criteria also specifies that no separation is required between blank walls (this has been applied along the eastern boundary with No.332 Sydney Road, but includes a light / air well element that would conceivably be equally replicated on that side with redevelopment. The development is located within the B2 Local Centre zone which allows development to be built to the road boundaries of the site, however the northern boundary cannot due to the ROW / driveway along Lot 2. Concerns are outlined with the DSAP review for Level 1 to 3 whereby the courtyard / light well has kitchens and living rooms and bedrooms adjacent each other from different apartments with balconies as well as communal
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		passageways. While screen devices are incorporated the layout is not ideal for visual and acoustic amenity and therefore the proposal is inconsistent with this design element. In this regard, the development provides adequate separation between buildings.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Inconsistent The pedestrian entryway is located from Sydney Road for the apartment foyer. However the accessibility (marked on the plans) is unclear as to whether that is practically achieved for the shop entries. The reliance on pedestrian movement to and from the basement area for the shops to access to waste bins, toilets and storage is not consistent with convenient and practical long term safe pedestrian movement.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Inconsistent Council's Traffic Engineer has reviewed the proposed traffic and vehicle access and does not support the proposal for the reasons outlined within the Internal Referrals - Traffic Engineering
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional	Inconsistent The proposal provides adequate provisions for bicycles. Car parking arrangement / design is not satisfactory for the reasons outlined

	centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	with the "Internal Referrals - Traffic Engineering". In addition the truck access and turntable area is not suitable for Council's Waste Services as detailed with the "Internal Referrals - Waste Services"
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: - Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. - A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	Consistent 85% (12 of 14 apartments) of the proposed apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter. (Note: Solar Analysis report by Scott Walsh dated 11.13.2020 does not include potential impact / modeling of a re-development on No.328-330 Condamine Street to solar amenity compliance being sustained which influences justification required for the proposed height / additional storey and associated overshadowing created by going above the building height control within the site. This issue is addressed under Clause 4.6 within this report.)
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally	Consistent 85% (12 of the 14 apartments) of the proposed apartments are natural cross-ventilated.

	cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.													
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><thead><tr><th colspan="2">Minimum ceiling height</th></tr></thead><tbody><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></tbody></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Consistent (on merit) The development provides a satisfactory minimum finished floor to finished ceilings to apartments. The retail areas have 3.8m to 2.7m proposed for the mixture of shop tenancies. The lower ceiling is in the area of the building where the internal courtyard forms the roof structure over Shop 4.
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><thead><tr><th>Apartment type</th><th>Minimum internal area</th></tr></thead><tbody><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></tbody></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent The architectural plans submitted with the application indicate that proposed apartments satisfy the minimum dimensions and areas specified for internal areas of the apartments.		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	increase the minimum internal area by 12m² each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts																
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent The architectural plans submitted with the application indicate that each apartment within the development has a satisfactory minimum balcony area and private open space areas.
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Consistent The maximum number of apartments accessible off of a single circulation core is 5.															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	Consistent The architectural plans submitted with the application indicate that the development provides											
Dwelling Type	Storage size volume																
Studio apartments	4m ²																

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1 bedroom apartments	6m ²							
2 bedroom apartments	8m ²							
3+ bedroom apartments	10m ²							
	At least 50% of the required storage is to be located within the apartment.							
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Inconsistent The central lift / stair core is adequately separated from apartment bedrooms and could be constructed of materials that will ensure acoustic privacy is maintained.						
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The design of the proposed development satisfactorily addresses and mitigates the potential impact of external noise and pollution. (Note: Construction specification for walls, glazing for road noise considerations from a classified road as per SEPP Infrastructure are able to be incorporated at construction certificate stage).						
Configuration								
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development will provide an appropriate mix of apartments to contribute to the market demand within the Balgowlah Town Centre and surrounds.						
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Inconsistent The use of a mix of contemporary materials and finishes and effective building articulation will ensure visual interest is provided along Condamine Street (west) and Sydney Road (south frontage) to completely						

		replace all buildings on the site and construction of a 2 level basement. This therefore requires a complete demolition of the existing building and loss that historical characterisation within the established streetscape. The retention of parts or all of the existing inter-war facade on the site is encouraged by the Manly planning controls in order to respect the character of the local area. It is noted that new excavation behind the existing inter-war facade and the existing building fenestration would require a substantial redesign, notwithstanding that the additional upper storey / building height is not consistent with the DCP controls.										
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	Consistent The proposed roof design is consistent with recent and modern buildings located within the street and locality. The roof elements are constructed of lightweight materials to ensure the development does not become visually dominant by way of its bulk or scale.										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The proposal includes areas of landscaping which responds well to the existing site conditions and context.										
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area						Consistent Areas of planting that are located on structures provides adequate size planting, soil depth and area to support the growth of planting.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area								

	<table><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
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Shrubs			500-600mm																													
Ground Cover			300-450mm																													
Turf			200mm																													
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	Consistent At least 20% of the apartments contained within the development are capable of providing adaptable living arrangements.																														
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.																														
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent The subject site is located within a local centre and on a classified road that is well serviced by public transport. The development provides ground floor street activation by way of a retail premises located on the ground floor that can be access off .																														
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent The development provides a continuous / shaped awning along both street frontages. This is of a contemporary style and to match the building																														

		style. No signage is proposed at this stage for the awnings / shops.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Yes.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Yes, adequate provisions for water management and conservation are proposed.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Inconsistent The waste bin servicing facilities for Council's truck and the design of the bin rooms are addressed under the heading "Internal Referrals - Waste Services within this report. In summary, waste service advise the that the waste servicing areas are of an unsatisfactory design. The proposal includes a waste management plan.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The construction and facade materials selected for the development are of an adequate durability to ensure the longevity of the building provided reasonable building maintenance occurs for the duration of the buildings life.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment



Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 4.15 (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Adequate regard has not been given to the matters raised under subclause (2) and the application is recommended for refusal.

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* and no objections is raised to the proposed development with the referral response dated 11.2.2021. *Ausgrid* advise that applicant/developer will be required to take precautionary measures (locate and record) underground services to ensure that driveways and any



other construction activities within the footpath area do not interfere with the existing cables in the footpath.

Other Service Infrastructure Authorities

The proposal was referred to *Transport NSW* (TfNSW) as the proposal has frontage to 'Classified' roads "159" and "2112" including proximity to traffic intersection signals and considerations with regard to noise amenity impact of traffic on the dwellings within the development. No referral response was received within the 21 day statutory period. No advertising structures are proposed with the development. *Sydney Water* manage their assets under their own administration processes. No other Service Authority referral issues are raised pursuant to the SEPP.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	12.5m	15.6m to 16.6m	24.8% (Roof) to 32.8% (Lift overrun)	No (see cl 4.6 discussion)
Floor Space Ratio (Site area 739sqm)	FSR: 2:1 (1,479 sqm)	FSR: 1.98:1 (1,467sqm)	N/A	Yes
Gross floor area in Zone B2	At least 25% commercial GFA, with a max of 1000sqm retail.	Commercial GFA: 22.8% (335sqm) 25 % area = 366.7sqm	9.2%	No (see cl 4.6 discussion)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.8 Landslide risk	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	No



Clause	Compliance with Requirements
6.16 Gross floor area in Zone B2	No

Detailed Assessment

Zone B2 Local Centre

The B2 Local Centre zone has the following objectives, which are considered and assessed in context of the proposal:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
Comment:
The proposal is consistent with this objective being within the Balgowlah Local Centre.
- To encourage employment opportunities in accessible locations.*
Comment:
The proposal is consistent with this objective being a mixed use building that include retail uses for employment.
- To maximise public transport patronage and encourage walking and cycling.*
Comment:
The proposal is consistent with this objective being in location with access to bus services along Sydney Road and Condamine Street with links to Manly and the metropolitan area. The building contains bicycle storage to encourage cycling options.
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*
Comment:
The proposal is not consistent with this objective in that the ground floor layout is unacceptable to Council's Waste Services requirements, Traffic Engineering considerations and Development Engineering. Concerns are outlined in the referral responses regarding the delivery dock arrangement, access to waste areas, "back of house" safety, including accessibility concerns.

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	12.5m - Height of Buildings 2:1 - FSR (with proportional 25% commercial)
Proposed:	16.6m (Lift overrun) 15.6m (Roof area) 1.98:1 for overall FSR,

	however proportional commercial area is varied with only 335 sqm.
Is the planning control/s in question a development standard?	YES
If numerical enter a % variation to requirement	24.8% to 32.8% - Height of Buildings 9.2% to the required commercial FSR area (or 34.2sqm)

Assessment of request to vary a development standard:

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

An assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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



- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

cl 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) seeks to demonstrate 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 seeks variation to the development standard being unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). In summary, for reasons that the adjacent corner site are provided with exceptions to future height above 12.5m whereas this corner site, being similar under the circumstances is not identified to have the same consideration applied within the *Balgowlah Local Centre* DCP map. Notwithstanding this the applicant seeks merit consideration that the standard is unreasonable or unnecessary in that the additional height does not compromise the objective of the zone for the provision of housing and potential impacts of views, solar access, bulk and streetscape are addressed by setting the top storey well back from the outer edges of the building. This includes consideration that proposal complies with the overall FSR of 2:1 also and examples of other similar scale developments at No.374 and No.404 provide similar circumstances (under the same LEP) to also support a variation in this case.

It is not concurred that all the objectives of the zone are achieved (as outlined under the heading "Zone B2 Local Centre") and it is not concurred that the building design, given the variation to height permitted at adjacent or nearby sites in the Balgowlah Local Centre are sufficient to validate the variation proposed under the circumstances of the case. This includes consideration that the additional height is justified on its own merit as potential impact on surrounding land, streetscape and density impacts on the overall design.

With regard to FSR there proposal is subject to impact from the adjacent right of way within the site that influences the area able to be allocated at ground level for commercial area. This however is unbalanced by the additional residential storey that adds different proportion to FSR to what the DCP seeks, and is subject to further consideration within this merit assessment.

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written



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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The Applicant's written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The applicants written request submits that the development maintains compliance with the floor space ratio development standard contained within the Manly LEP 2013, however the additional floor space created by the extra residential floor triggers an imbalance to the proportional DCP requirement for 25% commercial floor area. The ground floor and commercial FSR of the building has raised number of concerns with the design and layout since "back of house" facilities are in the basement which assists to balance the commercial are yet seek an additional residential floor level / height. The building is inconsistent with the requirements of objects of the Act 1.3 (f), (g), and (h) that should be satisfactorily achieved.

In doing so, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land and that the building is of acceptable design and will protect the amenity of the surrounding built environment. The proposal does not satisfy cl 1.3(f) to (h) of the EPA Act.

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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



Comment:

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

Objectives of development standard - Height of Buildings

The underlying objectives of cl 4.3 Height of Buildings development standard are:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed development is located within a local centre where buildings are of varying heights and roof forms.

Development located within the town centre is predominantly characterised by a mix commercial and shop top housing developments varying between 3 to 5 storeys in height. To the north west of the subject site is the 'Totem / Stockland Development' which is up to 8 storeys in height. Other building height at No. 374-378 Sydney Road (5 storey /17.2m), No. 387-391 Sydney Road (15.33m) and No. 385 Sydney Road (15.1m) are considered in context as prevailing / other building height precedents. The proposed building height, 16.6m to 15.6, is not consistent with the existing buildings that share a common boundary.

While the upper most floor of the development is setback from the public road frontages the use of wide awnings assists to conceal the view of the non-compliant top floor from street level but sets a precedent for the site whereby it has not been granted additional consideration for the extra storey by the local streetscape controls applying to the *Balgowlah Local Centre*

In this regard, in view of the location of the subject site, the MDCP 2013 does not identify this as an 'important corner' identification. with the prevailing building height and desired future streetscape character of the locality the proposed building height and roof form is considered reasonable in this instance.

The development does not satisfy this objective in maintaining elements of the desired future character (such as facade character elements) while achieving a building height that notwithstanding non-compliance, assists to sustain the characteristic streetscape features of the locality.

(b) to control the bulk and scale of buildings,

Comment:

The building bulk has been acceptably managed for the mid levels of the building building setbacks, building separation, building articulation and shaping of building elements. However, the site is not identified for additional height as an "important corner" within the planning controls for the Balgowah Local Centre. The top floor element is a significant additional elements of a 3 bedroom unit, including open space. These are not 'incidental' variations such as a lift shaft of roof profile and therefore are inconsistent with the objective to control the bulk and scale of the building. The proposal is compliant with the floor space ratio control of 2:1 but has a disproportional balance to the desired 25% commercial area. The top level is generally concealed from street view by wide upper awning and setbacks to the top floor elements.

The development does not satisfy this objective in controlling building bulk.



(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed building height allows for reasonable views to be maintained to nearby residential development from public spaces, from nearby residential development to public spaces and views between public spaces.

The development satisfies this objective.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposed building height does not result in or contribute to any unreasonable loss of solar access to public or private open spaces as per the shadow diagrams submitted. However, the shadow diagrams have not modeled the potential ability for adjacent land to achieve compliant solar access without unreasonably impacting this building in future (particularly around the lightwell) due to the additional height within the proposed building above the building height control.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not located within a recreation or environmental protection zone.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

Objectives of development standard - Floor space ratio

The underlying objectives of Clause 4.4 – 'Floor space ratio' are:

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

Comment:

The non-compliance with the commercial area allocation does not singularly affect the overall bulk of the building as the proposal complies with the net FSR permitted on the site. The proportionate balance however is varied in that additional residential floor area is allocated above the height control that would otherwise not be present and the local control do not seek this for this particular site under the Balgowlah Local Centre as an 'important' corner site.

- *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 variation to commercial area ratio does not create obstruction to any landscape or other townscape features. The proposal is consistent with this objective.

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

Comment:

The variation to the commercial area of the FSR is affected by the additional storey height that is not envisaged by the local character planning objectives applicable to the site in accordance with the Balgowlah Local Centre, including streetscape and corner sites. The proposal is not consistent with this objective.

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

Comment:

The proposed variation to the FSR commercial area is consistent with this objective.

- *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 variation to the FSR has sought to be minimised for the commercial area containing 4 shops however for the long term occupancy of the building including daily operations the provision of 'back of house' services for staff, commercial waste and access is dislocated by allocation into the basement area and therefore affects safety, convenience for commercial occupants.

Zone objectives

The underlying objectives of the B2 Local Centre zone

- *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 development provides a ground floor retail premises that will provides the opportunity to



serve the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

The development is located on a classified road (Sydney Road and Condamine Street) that is well serviced by public transport.

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

Comment:

The development is located on a classified road (Sydney Road) that is well serviced by public transport. Adequate facilities for bicycle parking have been provided on site. The location of the site within the local centre allows the site to be easily accessed by pedestrians walking to and from the local centre.

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

Comment:

The proposal is not consistent with this objective in that the ground floor layout is unacceptable to Council's Waste Services requirements, Traffic Engineering considerations and Development Engineering. Concerns are outlined in the referral responses regarding the delivery dock arrangement, access to waste areas, "back of house" safety, including accessibility concerns which are inconsistent with the objectives of floor space ratio and objectives for the height of buildings.

Conclusion:

For the reasons detailed above, the proposal is not considered to be consistent with the objectives of the B2 Local Centre.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary is not assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings and Floor Space Ratio Development Standards is not supported and not assumed.

6.4 Stormwater management



The proposal is inconsistent with the objective of this clause to *'minimise the impacts of urban stormwater'*.
Comment

- The proposal has been assessed with regard to clause 6.4 Stormwater and does not achieve Council's Development Engineering requirements as outlined under the heading "Internal Referral - Development Engineering" within this report. In summary, this related to OSD location, discharge requirements / limitations, outlet locations to the road and use of pump out systems.

6.13 Design excellence

The proposal is inconsistent with the objectives of this clause to *"protect and enhance the streetscape"* and *"sympathetic to its setting, including neighbouring site and existing or proposed buildings"*.

Comment

- The proposal has been assessed with regard to clause 6.13 Design excellence and is not supported by the Design Review provided by Council's DSAP. Design Excellence considerations of protecting and enhancing the streetscape are detailed under the "Internal Referral - DSAP" and "Heritage Referral" within this report.
- In summary, concerns have been identified with the additional height (being an exception to the DCP and LEP controls applicable) as well as the loss of the existing building facade that has historical characteristics for the *Balgowah Local Centre* streetscape. In summary, this clause seeks to achieve *"the highest standard of architectural and urban design of buildings"* and given the DSAP advice and other internal referral recommendations regarding waste managements, traffic access, and heritage (streetscape) considerations the proposal does not satisfy this clause.

6.16 Gross floor area in Zone B2

The proposal complies with the 2:1 floor space development standard for the site. The proposal complies with this development standard with an overall FSR of 1.98:1. The FSR has a subordinate requirement that seeks a proportionate allocation of FSR to be used a commercial / shop, being 25% minimum for the DCP within the Balgowlah Local Centre. The proposal has allocated 22.8% for shop use. In summary, the variation to the FSR proportional requirements is supported given area taken up for access and priority needed for "back of house" areas for the long term operational requirements of the building.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.2.3 Setback controls in LEP Zones B1 and B2	All buildings are to be constructed to the public road and side boundaries of the allotment at ground	BASEMENT LEVELS Basement to boundary not including right of way (Lot 2)	N/A	Yes
		GROUND LEVEL	N/A	Yes

	floor.	The building is built to match the boundaries of the basement level at ground level with recesses for access points. (Awning over public footpath area)		
	Upper levels setback		N/A	Yes**
		LEVEL 1 to LEVEL 3 West (Condamine St) (Residential) Shaped balconies 0.0 to 1.0m Apartment walls setback 1.3m to 3.4m. (General alignment 2.2m to 3.0m)	(See Notes below regarding additional separation created by ROW / driveway area between No. 120 Condamine Street)	Yes**
		North* (to ROW driveway) 0.0 to 1.9m for shaped balconies 3.0m to 9.0m for apartment walls		Yes**
		South (Sydney Rd) 0.0m for shape balconies 1.5m to 4.5m for apartment walls (General alignment 1.5m to 3.0m)	See SEPP 65 assessment.	No***
		East (to 332 Sydney Rd) Balcony 0.0m Wall 0.0 and 6.5m for light / air well.		No***
		LEVEL 4 North* (to ROW driveway) 5.4m to balcony 8.1m Wall line		No***
		South (Sydney Road) 4.5m to balcony (communal area) 8.8m to wall		
		West (Condamine		

		Street) 4.5m to balcony 7.1m apartment wall East (to 332 Sydney Road) 0.5m to 6.5m for apartment wall and light air well 6.5m to communal roof area		
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor (Schedule 3 parking and access)	In other LEP Business Zoned land (i.e. other than Manly Town Centre) 1 resident parking space for each dwelling (irrespective of number of bedrooms), and 0.16 visitor parking space for each dwelling. 14 dwellings = 14 spaces 14 dwellings = 2.24 (3 visitor spaces) Total = 17 spaces	18 spaces 4 Visitor spaces (Total 22 incl. 4 accessible) + 14 bicycle lockers	N/A	Yes
	1 parking space for every 40sqm of gross floor area 1,365sqm = 9.14 (10 spaces)	8 spaces (incl. 1 accessible) + Loading dock	N/A	Yes

* The subject site has two (2) public road frontages as a corner site and a ROW driveway that therefore creates and additional 2.44m to 3.2m separation with No.120 Condamine Street.

** Generally Level 3 is setback further than Level 1 and 2 for apartments facing the public domain and the northern boundary. Ground level is the commercial (shops) area.

***Level 4 is not envisaged by the DCP controls and is therefore non-compliant for setback and assessment based on merit submission as submitted by the Applicant and the design responding to the *Apartment Design Guide*.

Note: The site includes Lot 2 DP796788, but it cannot be built over or excavated due to right of way / easement restrictions, however this assists to provide additional physical setback width as noted above, from northern wall alignment of the proposed building.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.3 Townscape (Local and Neighbourhood Centres)	No	No
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	No
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	No	No
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	No
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.1.1 Residential Density and Dwelling Size	N/A	N/A
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	No	No
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	No
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.3 Setbacks Controls 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	No	No
4.2.6 Balgowlah Local Centre	No	No
4.2.6.1 Wall Height on the Street Frontage	No	Yes
4.2.6.2 Exceptions to LEP Building Height	No	No
4.2.6.3 Setbacks	Yes	Yes
4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking	No	No
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The requirements and objectives of Clause 3.1 for Streetscape and Townscapes includes that development when viewed from the street *complements the identified streetscape and assists in maintaining the character of the locality.*

Comment:

- The existing site contains a prominent inter-war period building that forms part of the identified streetscape to both Sydney Road and Condamine Street for the corner site and therefore the retention of this facade would strongly contribute to maintaining the character of the locality within Balgowlah Local Centre. Emphasis of this objective is outlined within the referral response provided by Council's heritage officer noting that while the building is not heritage listed it contribute to the desired character of the locality.
- The complete replacement of the building is therefore not supported and dismisses the objective particular related objectives under sub-clause 3.1.3 Townscape.

3.1.3 Townscape (Local and Neighbourhood Centres)

Clause 3.1.3 for local and neighbourhood centres contains a number of objectives and Design Principles including that *the use of reflective glass and curtain walling as a facade treatment is not favoured in terms of being consistent with townscape objectives, maintain and re-use existing development if it achieves objectives for these corner sites and ensure development exhibits design excellence in accordance with considerations of MLEP clause 6.13(4) .*

Comment:

- The proposal is inconsistent with these objectives and review details provided by Council's DSAP identify elements of the design that do not achieve the design principles design



excellence and the MDCP in this regard. In addition the proposal is a corner site but does not identified to have an increased height, bulk and scale for redevelopment.

- In this regard the proposed complete removal of the existing building substantially alters the character of the streetscape at this central position within the Balgowlah Town Centre.

3.4.1 Sunlight Access and Overshadowing

Clause 3.4.1 seeks to *allow adequate sunlight to penetrate private open spaces within the development site and private open spaces and windows to the living spaces / habitable rooms within the proposed development and the adjoining properties.*

Comment:

- Detailed assessment of solar access and overshadowing are addressed under the heading "SEPP 65" and the Apartment Design Guide within this report, including concerns raised within DSAP review of the proposal. In summary, while the proposal generally meets solar access to units within the building the additional height and ability for solar access to be maintained at the lower level apartments (with an adjacent redevelopment if site consolidation is not achievable) has not been modelled by the applicant. Therefore insufficient information is provided to address this issue.

3.4.2 Privacy and Security

Clause 3.4.2 and its subclasses seeks to address *privacy and security, window design and orientation, balconies and terraces and acoustical privacy.*

Comment:

- Details of the proposal are addressed (by the overriding planning provisions) under the heading SEPP 65 and the Apartment Design Guide within this report, including review comments provided by DSAP. In summary, the external (outward facing) balconies and apartments along Condamine Street and Sydney Road are satisfactory. However, the internal light /air well has internal balconies, with living and bedrooms spaces facing into this area and these are not separated by the minimum 9.0m requirement for the height of the building.
- The design of the proposal is unsatisfactory and would require redesign / changes that are not suitable to condition. Therefore, the proposal is not consistent with this clause (and its subclauses) under the MDCP.

3.6 Accessibility

Clause 3.6 include objectives to continue *improving understanding and awareness of access issues for people with disabilities through a commitment to implementation of best practice.*

Comment:

- The inclusion of an accessible standard toilet at ground floor for convenience of the shops, staff and commercial area is considered appropriate for location and operational areas of the



building. Generally the proposal includes appropriate compliance with accessibility requirements however access to the ground floor shops is insufficiently detailed and the location of the unisex disable toilet room in the lower basement level, accessed through the bin room is not consistent with the objectives of clause 3.6.

3.8 Waste Management

The proposal is inconsistent with the objective of this clause to : *To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services; and "to minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene."*

Comment:

- The proposal has been assessed with regard to clause 3.8 *Waste Management* and does not achieve Council's Waste Services requirements as outlined under the heading "Internal Referral - Waste Services" within this report. In summary, this relates to bin room location and access, door openings, truck loading, safety and convenience for commercial uses in daily management of waste storage.

4.1 Residential Development Controls

Clause 4.1 *Residential Development Controls* included objectives of *maintaining the exiting character of residential areas of the former Manly Council area*, and providing for new housing while the *maintaining environmental quality of the environment or the aesthetic quality of the former Manly Council area*, including enabling *population growth without having adverse effects on the character*.

Comment:

- The subject clause has seven (7) generalized objectives however under this clause the objectives are provided in reference to the Manly LEP *Clause 1.2(2)(b)*. The character elements of the Balgowlah Town Centre are relevant with particular regard to the existing inter-war period building on the site to be demolished and the subsequent change in character that produces. This is not supported buy Council Heritage Officer as oulined under the heading internal referrals within this report. In addition to the above the building height is not supported by way of the additional bulk / scale at the upper level including the particulars that the site is not identified as an 'important' corner, whereby provision is made for that extra height for the Balgowlah Town Centre. Details of the overall design response, character and context are also provided within the review by DSAP which do not support the proposal for reasons provided under the heading "Internal Referrals within this report.

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

While LEP clause 4.3A Special Height Provision prescribe the maximum building height for certain lots identified on the LEP Height of Building Map, the DCP guidelines at paragraphs 4.1.2 of this plan provide more detailed height control (walls, roof & storeys) on any part of the lot where the application of the DCP height controls do not conflict with the LEP i.e. where in the circumstances of the case, the



DCP provides for a greater building height overall.

Comment:

- For the subject site the MDCP does not provide a greater overall building height. The wall height along the street front setbacks has been discussed within this report under the DCP heading for setbacks. However, the site does not include additional storey provisions under Clause 4.1.2.2 and storey height is also influenced by the *Apartment Design Guide* and therefore the height control provided overall discussion and assessment conclusion with regard to building height. In summary, the proposal is not supported for the height proposed within the Balgowlah Local Centre.

4.1.3 Floor Space Ratio (FSR)

The proposal complies with the 2:1 floor space development standard for the site. The proposal complies with this development standard with an overall FSR of 1.98:1. The FSR has a subordinate requirement that seeks a proportionate allocation of FSR to be used a commercial / shop, being 25% minimum for the DCP within the Balgowlah Local Centre. The proposal has allocated 22.8% for shop use. In summary, the variation to the FSR proportional requirements is supported given area taken up for access and priority needed for "back of house" areas for the long term operational requirements of the building.

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

Clause 4.1.4 seeks to ensure building setbacks and separation are consistent with desirable outcomes for streetscape character, siting, safe traffic conditions, privacy, local amenity and landscape elements, including natural features.

Comment:

- Front side and rear setback are addressed under the heading *Apartment Design Guide* within this report in that separation distances for apartments are guided by SEPP 65. In this regard, the relevant element of the building design have been reviewed by Council's DSAP with detailed comments provided under the heading Internal Referrals - Urban Design within this report.
- The corner position of the site is not identified for any additional splay widening.
- The subject site has no rear setback requirements due to the corner position.
- Architecturally the building addresses both streets however this is proposed with the addition of extra building height and wall height with the upper massing having potential impact on equitable access to sunlight and internal privacy with regard to adjacent future development where continuity in maximum / established building height may be sought to be replicated on adjoining land.

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

Clause 4.2.6 for Parking, Vehicular Access includes seven (7) objectives under the MDCP. In this case the proposal is not satisfactory with regard to *providing To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient.*

Comment:



- Detailed assessment of parking, vehicular access loading is provided under the heading internal referrals within this report by Councils *Waste Services* comments *Traffic Engineering* comments. In summary the loading dock area, bin room, turntable and ramp access is unsatisfactory for efficient, safe and convenient access. The changes required to meet this objective are not able to be conditioned and therefore the proposal is inconsistent with this element of the MDCP.

4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)

Clause 4.2 seeks to achieve outcomes whereby *all DAs in local and neighbourhood centres are to consider townscape, design, diversity, interest and heritage values. Any departure from this plan and its controls will not be allowed where Council regards these considerations and the objectives of the LEP as being compromised by the development.*

Comment:

- In achieving the above outcome this clause contains the following objective for *the assessment of building heights, setback and other controls relating to building form and height in order to achieve a consistent and coherent townscape appropriate to the locality.* Having regard to the overall height proposed, existing and desired character, townscape considerations (including comments by Council's Heritage Officer, and DSAP) the proposal does not adequately achieve consistency with this clause of the MDCP. Change required are not able to be addressed by conditions and therefore the proposal is not supported.

4.2.1 FSR (Consideration of Exceptions including Arcades)

Clause 4.2.1 contains additional considerations and objectives with regard to FSR controls applicable.

Comment:

- The subject site is not an "Arcade" development and the Exceptions do not apply. In this regard the proposal is inconsistent with this clause given the objective to provide *"firm guidelines as to the potential development of a centre and an individual site."*
- This assessment has considered the overall maximum scale of development considered and limitations in the ability to achieve scale and proportional FSR given characteristics of the site itself, and the other related requirements of the DCP.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

- Merit assessment to the *Height of Building* planning control is considered in detail under the heading 'Manly Local Environmental Plan Clause 4.6' within this report.
- Comment:
 - The Manly DCP details certain considerations to townscape principles in determining whether to grant an exception to the LEP standard concerning whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and whether



'there is sufficient environment planning grounds to justify contravening the development standard' (LEP clause 4.6(3)).

- In summary, where a proposal does not demonstrate consistency with *Clause 3.1.3.1 Design Principles* then consideration to a building height variation are not supportable. Given the details provided within the DSAP review of the proposal and Heritage Referral regarding streetscape and SEPP 65 the proposal is not consistent with this clause of the DCP.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Clause 4.2.4 provided more specific objectives applicable to business centres which includes *the adequate provisions for car parking access and loading in future development and redevelopment and to minimise conflicts between pedestrian and vehicular movement systems.*

Comment:

- Detailed assessment is provided under the heading 'Internal Referrals' within this report by Council's *Traffic Engineer* and *Waste Services*. In summary the proposal is inconsistent with this clause due to the design of the loading area, bin loading area and dependence on turntable which is not supported by for waste service operations and truck having to enter the site. This includes potential conflict with access to the basement area across the loading dock area with the turntable. Therefore the proposal does not meet the objectives of this clause pursuant to the MDCP.

4.2.6 Balgowlah Local Centre

Clause 4.2.6 of the Balgowlah Local Centre supports the achieve that new development maintains *pedestrian protection, retention of interesting shopfront development and flexible floor plan and access layouts* as being important.

Comment:

- The principal elements of this clause have been outlined within this report by Council's Traffic Engineer, Heritage Officer and DSAP. In summary concerns are raised surrounding the loading dock layout area which include pedestrian safety during waste servicing and truck access. Additionally the existing historic (inter-war) shop front is not being retained which currently forms an interesting and prominent streetscape feature to the Balgowlah Local Centre.
- Assessment details are provided with regard to the ground floor area and concerns about 'back of house' elements being located within the basement although it is noted that the proposal meets the overall FSR and has a right of way along the northern boundary in addition to the two public road frontages, which influences the overall design. Notwithstanding the the objectives of Clause 4.2.6 have not been achieved to the satisfaction of Councils Council's Traffic Engineer, Heritage Officer or DSAP and this cannot be resolved by conditions. Therefore, the proposal is not supported pursuant to this clause.



4.2.6.1 Wall Height on the Street Frontage

Within the LEP building height development standard, this DCP limits the wall height at the street frontage to 10.5m which is determined to be the established maximum height of street facades for the Local Centre particularly along Sydney Road and is significant in preserving local characteristics of the townscape.

Comment:

- The proposal is aligned with the front setback for the commercial area that is up to 4.0m (along the gradient) with the balcony areas for Level 1 to Level 4 above setback for the wall line. The shaped balconies extend up to the building line and for Sydney Road meet the 10.5m height for the balustrade structure / planter box elements. For Condamine Street the height of the balcony balustrade rises to 11.1m (as per section DA13 Issue A).
- The minor variation to the height along Condamine Street for the forward edge of Level 3 is supported due to the slope of the street and minor open style balcony element with the main apartment walls appropriately stepped back.

4.2.6.2 Exceptions to LEP Building Height

Clause 4.2.6.2 seeks to ensure with any exceptions to the LEP building height *the height of buildings including the height at the street frontage fulfils Council's townscape objectives.*

Comment:

- This clause includes additional considerations with respect to building height exceptions, including wall height, achieving better townscape relationships between building forms, sunlight, views and privacy, sloping sites, lift plant and roof elements. With regard to these considerations a detailed assessment has been provided under the heading 'clause 4.6' within this report.
- In assessing the building height consideration is also given to the detailed comments provided by Council's DSAP, the applicant's submissions, plans and supporting documents. In summary the site is not identified as a property for additional future height above the normal height control and is not nominated as corner site for additional storey height in the MDCP. In order to achieve consistency with this clause the changes to the proposal cannot be conditioned and therefore the proposal is not supported pursuant to Clause 4.2.6.2.

4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking

Clause 2.2.6.4 seeks to ensure that in achieving Design Excellence that *vehicular access does not interfere with the continuity of retail frontage or interrupts the frontage of the property in other ways that would conflict with any other provisions of this DCP, in particular the townscape objectives and established street facades.*

Comment:

- Concerns regarding the movement of vehicles, particularly waste truck to and from the site and potential safety, loading and conflict with pedestrian movements, including reliance on a



turntable within the site are not accepted by Council's Waste Services as detailed within this report under the heading "Internal Referrals" This issue is not able to be resolved by conditions and therefore the proposal is not supported.

- The position of the building in relation to access and entry and impact on traffic at the signalised intersection of Sydney Road and Condamine Street also requires supplementary analysis by the TfNSW. While amended traffic information has recently been provided the information has not been accepted for the purposes of this assessment and would require further review by Council's Traffic Engineer and TfNSW.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$82,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$8,250,000.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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



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

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

The application has raised a number of concerns with regard to internal referral advice sought from referral bodies of Council's Design & Sustainability Advisory Panel, Waste Services, Development Engineering, Heritage and Traffic Engineering have not be resolved to the satisfaction of Council to support the proposal.

The development has been found to not comply with the numerical Height of Buildings Development Standard contained in the Manly LEP 2013 and Notwithstanding, the merit consideration with the non-compliance with the LEP development standard, the development does not satisfy the requirements of cl 4.6 Exceptions to development standards for the height variation and FSR to be supported. In this regard, the proposal is inconsistent with the underlying objectives of cl 4.3 Height of Buildings and additionally cl 4.4 Floor Space Ratio (for the 25% commercial to residential component) development standard and the *B2 Local Centre* zone under the *Manly LEP 2013*.

The development is inconsistent with the objectives contained within the MDCP 2013 relating to Design Excellence, building height, Balgowlah Local Centre, waste management, stormwater management and traffic access, SEPP 65 (including the *Apartment Design Guide*), and streetscape. These issues would require some substantial re-design to address in reviewing the plans and therefore cannot be addressed by conditions.

Accordingly, the development application is recommended for refusal.
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1733 for the Demolition works and construction of a Shop Top Housing Development on land at Lot 1 DP 796788,336 Sydney Road, BALGOWLAH, Lot 2 DP 796788,334 Sydney Road, BALGOWLAH, Lot 1 DP 318879,338 Sydney Road, BALGOWLAH, Lot A DP 336220,332 Sydney Road, BALGOWLAH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development*. In particular for reasons of retaining streetscape character, public domain interface, safety, visual privacy, pedestrian access, vehicle access and loading areas, acoustic privacy, facade retention, and waste management.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979



the proposed development is inconsistent with the provisions of Clause Zone B2 Local Centre of the Manly Local Environmental Plan 2013. In particular, servicing of the premises to meet Council requirements and routine daily operational requirements for occupants.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.
6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.Design Excellence of the Manly Local Environmental Plan 2013.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.6 Accessibility of the Manly Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.8 Waste Management of the Manly Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones Manly Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.6.2 Exceptions to LEP Building Height of the Manly Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking of the Manly Development Control Plan.

In signing this report, I declare that I do not have a Conflict of Interest.

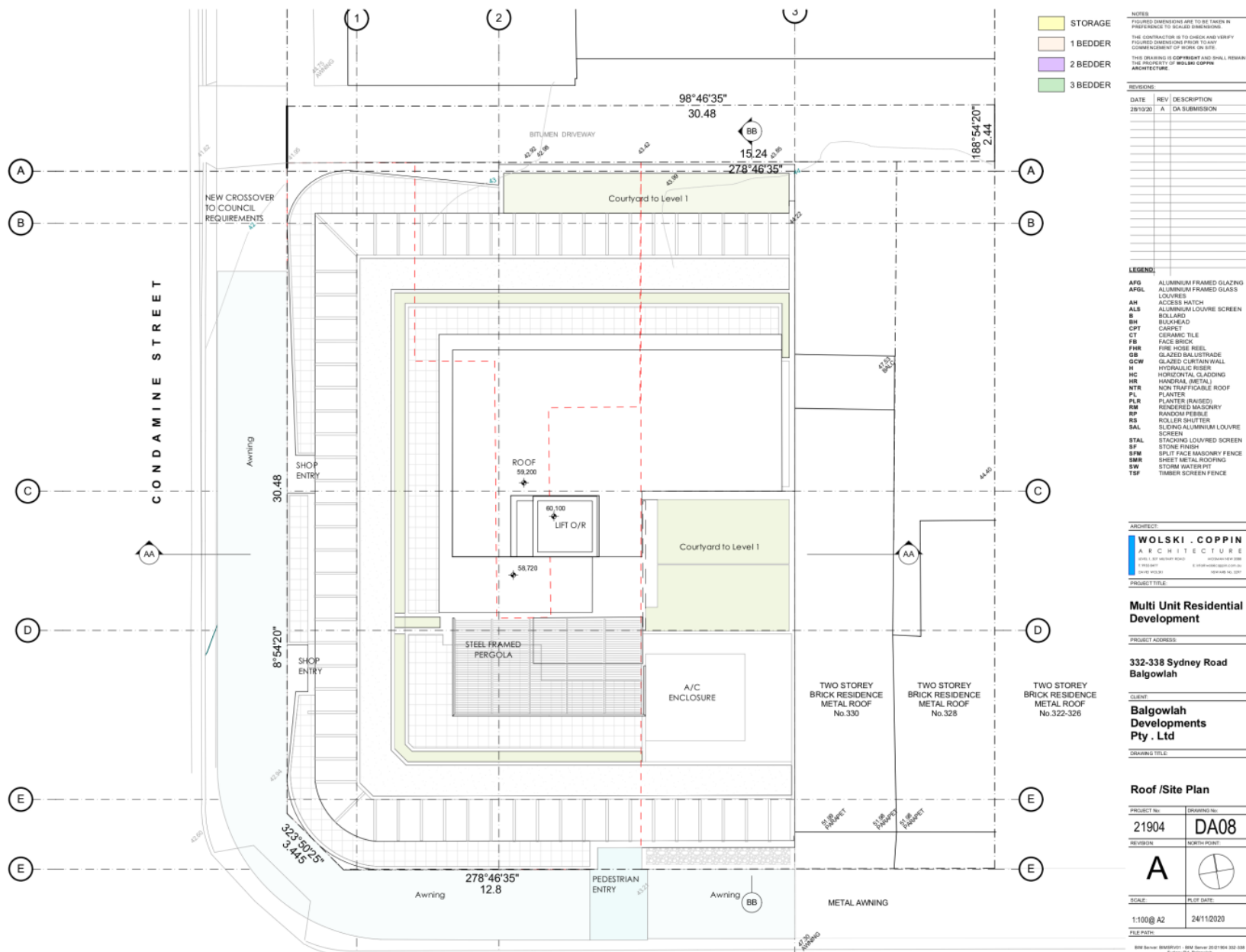
Signed

The application is determined on //, under the delegated authority of:

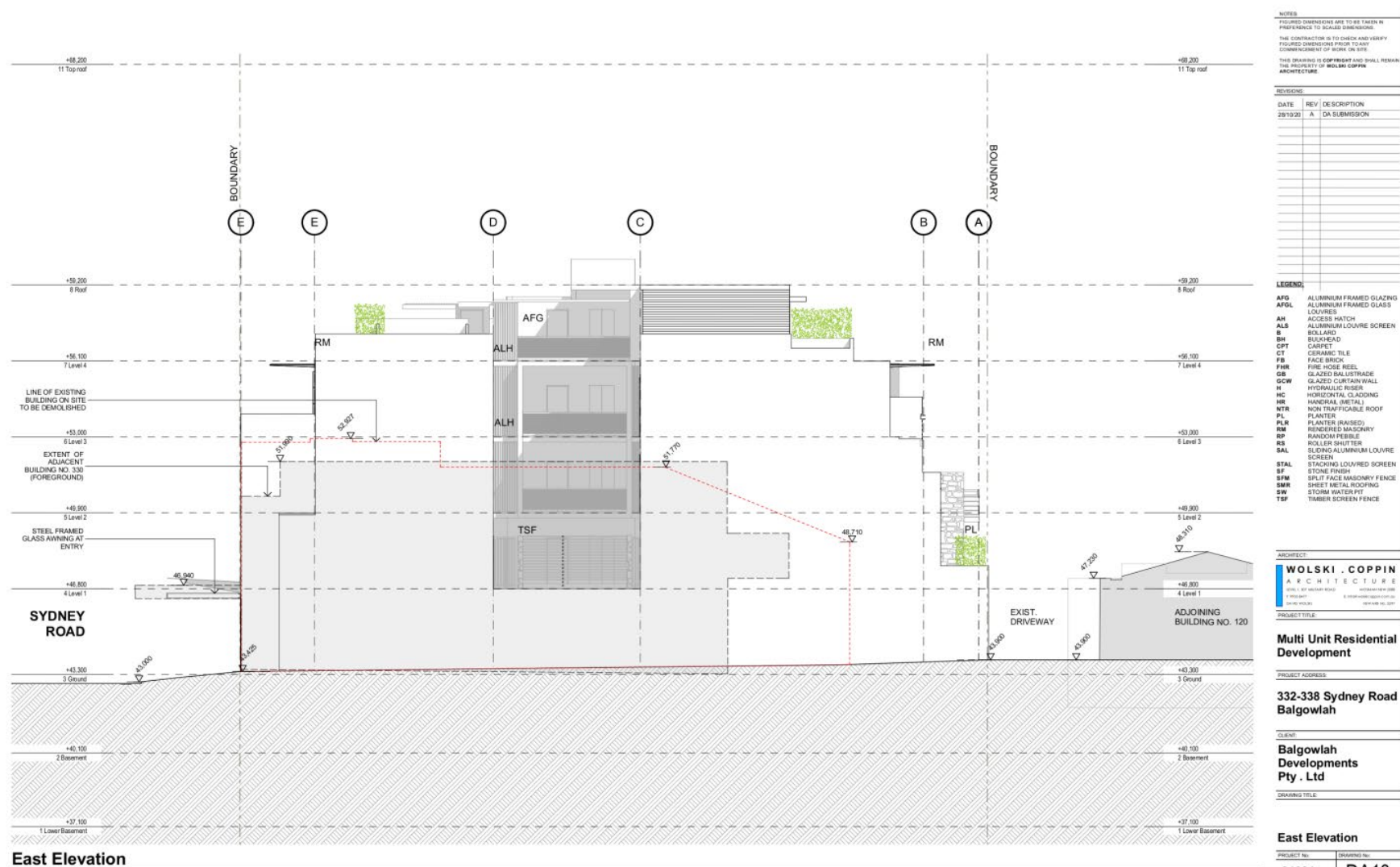


Rebecca Englund, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment









North Elevation

NOTES

FIGURED DIMENSIONS ARE TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS.

THE CONTRACTOR IS TO CHECK AND VERIFY FIGURED DIMENSIONS PRIOR TO ANY COMMENCEMENT OF WORK ON SITE.

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REVISIONS:		
DATE	REV	DESCRIPTION
29/10/20	A	DA SUBMISSION

LEGEND:

AFG	ALUMINUM FRAMED GLAZING
AFGL	ALUMINUM FRAMED GLASS
	LOUVRES
AH	ACCESS HATCH
ALS	ALUMINUM FRAME SCREEN
BL	BULLARD
BH	BUKHAUD
CPT	CARPET
CB	CERAMIC TILE
FB	FACE BRICK
FNR	FIRE HOSE REEL
	GLASS LUSTRADE
GCW	GLAZED CURTAIN WALL
H	HYDRAULIC RISER
HC	HORIZONTAL CLADDING
HM	HANDRAIL METAL
NTR	NON TRANSPARENT ROOF
PL	PLATE
PLR	PLANTER (RAISED)
RP	RENDERED MASONRY
RM	RANDOM PEBBLE
SL	SLIDING PARTITION
SAL	SLIDING ALUMINUM LOUVRE
	SCREEN
STAL	STACKING LOUVRE SCREEN
	STONE FINISH
SFM	SPLIT FACE MASONRY FENCE
SMR	SHEET METAL ROOFING
STH	STEEL HANGER
TSF	TIMBER SCREEN PANEL

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PROJECT TITLE

Multi Unit Residential Development

PROJECT ADDRESS:

332-338 Sydney Road
Balgowlah

CLIENT

**Balgowlah
Developments
Pty . Ltd**

DRAWING TITLE

North Elevation

PROJECT No:	DRAWING No:
21904	DA11

REVISION	NORTH POINT
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SCALE:	PLOT DATE:
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FILE PATH:

IBM Service IBMSEV01 - IBM Service 25.01904 332-3
Sydney Rd, Balikpapan



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REVISIONS:		
DATE	REV	DESCRIPTION
28/10/20	A	DA SUBMISSION

LEGEND:

AFG	ALUMINUM FRAMED GLAZING
AFGL	ALUMINUM FRAMED GLASS
AN	ACCESS HATCH
ALS	ALUMINUM LOUVRE SCREEN
BN	BURKHEAD
BN	CABINET
CT	CERAMIC TILE
FB	FACE BRICK
GR	GYPSUM BOARD
QB	GLAZED BALUSTRADE
GCW	GLAZED CURTAIN WALL
H	HORIZONTAL CLADDING
CB	CORNER BRICK
HR	HORIZONTAL CLADDING
NTR	NON-TRAFICABLE ROOF
PLR	PLANTER (RAISED)
PLR	ROOFED TERRACE RAILRY
PR	PERIMETER PEBBLE
RS	ROLLER SHUTTER
SAL	SLOPED ALUMINUM LOUVRE SCREEN
STAL	STALING LOUVRE SCREEN
STAL	STONE FINISH
SFM	SPACK FACE MASONRY FENCE
SMR	SHED METAL ROOFING
STP	STEEL WATERPIT
TSF	THICKEN SCREEN FENCE

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PROJECT TITLE:

Multi Unit Residential Development

PROJECT ADDRESS:

332-338 Sydney Road
Balgowlah

CLIENT _____

**Balgowlah
Developments
Pty . Ltd**

DRAWING TITLE:

**South Elevation
(Sydney Road
Elevation)**

PROJECT No.	DEVELOPER No.
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21904	DA12
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FILE PATH:

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Sydney Rd, Bayswater

ANNEXURE 1

Clause 4.6 variation request – Height of buildings

**Clause 4.6 variation request – Height of buildings
Proposed Shop top housing development
332 – 338 Sydney Road, Balgowlah**

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 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 12.5 metres in height. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

The development has a maximum building height of 15.6 metres measure to the upper level roof with the lift overrun extending to a maximum height of 16.6 metres. This represents a variation of between 3.1 metres (24%) and 4.1 metres (32.8%). The extent of non-compliance is diagrammatically depicted in Figure 1 over page.





Figure 1 – Height compliance diagrams

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 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 MLEP 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 Height of Buildings Development Standard.

Clause 4.6(3) of MLEP 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 MLEP 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 MLEP provides:

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

- (a) *the consent authority is satisfied that:*

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

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

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

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

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

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

Clause 4.6(5) of MLEP 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 MLEP 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 MLEP?

4.0 Request for variation

4.1 Is clause 4.3 of MLEP 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 MLEP prescribes a fixed building height that seeks to control the bulk and scale of certain development. Accordingly, clause 4.4 MLEP 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 provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Response: I have formed the considered opinion that the development provides for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the immediate locality. In forming such opinion, reference is made to the townscape principles map contained at schedule 2 of the DCP as detailed below.

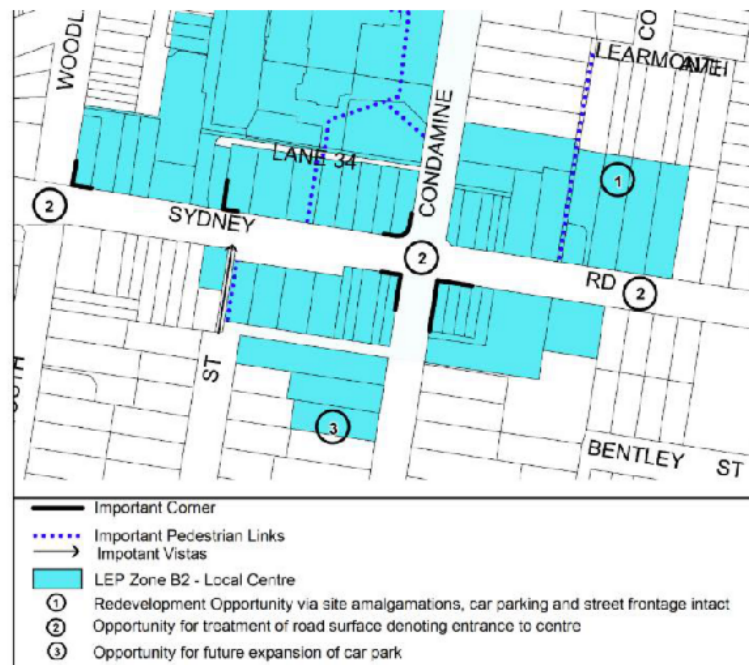


Figure 2 - Townscape Principles Map

This map identifies that the subject property is located within an intersection containing 3 identify important corner elements whereby the subject site is for some unknown reason not identified. The DCP identifies the opportunity for additional height on the balance of the corners within this same intersection which we do not consider makes any urban design sense.

In this regard, we rely on the urban design analysis prepared by David Wolski – Urban Design a copy of which is Annexed. This report clearly and comprehensively discusses the important urban design function created by the overall composition of this intersection as it relates to building height and form and demonstrates why, in his opinion, a far superior urban design outcome is achieved through adopting the same important corner provisions contained within the DCP as they relate to the balance of this intersection.

I consider the distribution of compliant floor space on this development site to be contextually appropriate having regard to the heights anticipated on the balance of the corner sites within the intersection, with the additional height proposed facilitating the appropriate distribution of compliant floor space on the site to achieve superior streetscape and amenity outcomes through the provision of substantially greater setbacks to the northern boundary than those anticipated through strict compliance with the DCP nil boundary setback controls.

The height, bulk and scale of the building are entirely consistent with the built form characteristics of adjoining development and more recently constructed development along this section of Sydney Road with the non-compliant upper level floor plate setback well behind the façade of the level below ensuring that it is not a prominent or readily discernible element in a streetscape context as depicted in Figure 3 below.



Figure 3 – Photomontage showing recessive upper levels as viewed from Sydney Road.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

I note in this regard, that pursuant to this planning principle consistency does not mean that development needs to be the same in terms of height formatting with consistency achieved when development is able to coexist in harmony as is the circumstance proposed.

Notwithstanding the building height breaching elements, the proposal provides for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. This objective is achieved notwithstanding the building height breaching elements.

(b) to control the bulk and scale of buildings,

Response: I note that the proposed development is fully compliant with the 2:1 floor space ratio development standard with the additional building height reflecting the contextually responsive and appropriate distribution of floor space across this particular site. In this regard, FSR is used as a means to control the bulk and scale with compliance with the FSR standard reflecting consistency with the desired bulk and scale of buildings generally.

For the reasons outlined in relation to objective (a) above, I have formed the considered opinion that the height, bulk and scale of the building, particularly the non-compliant building height elements, are contextually appropriate and will not be perceived as inappropriate or jarring in the context of surrounding development and development generally within the site's visual catchment.

The proposal achieves this objective.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*

Response: Having undertaken a wide ranging view from surrounding public vantage points, I have formed the considered opinion that the areas of non-compliance have been designed, located and constrained to minimise disruption of views to nearby residential development from surrounding public spaces. In fact, I was unable to identify any public space from which views to nearby residential development will be adversely impacted.

The proposal achieves this objective.

- (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*

Response: Consideration has been given to the impact of the proposal on existing view lines over and across the site. Having reviewed the detail of the application I have formed the considered opinion that the proposal is of good design which minimises view impacts through the appropriate distribution of floor space with a view sharing scenario maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

The proposal achieves this objective.

- (iii) *views between public spaces (including the harbour and foreshores),*

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces. In this regard, I was unable to identify any particular view impact associated with the height breaching element as it relates to views between public spaces.

The proposal achieves this objective.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Response: The accompanying shadow diagrams prepared by the project Architect demonstrate that due to the orientation of the site that at least 2 hours of solar access is maintained to all west facing windows in the mixed use residential development at No. 322 – 326 Sydney Road and accordingly ADG compliant levels of solar access are maintained notwithstanding the building height breach. A copy of the shadow diagram is a Figure 4 below.

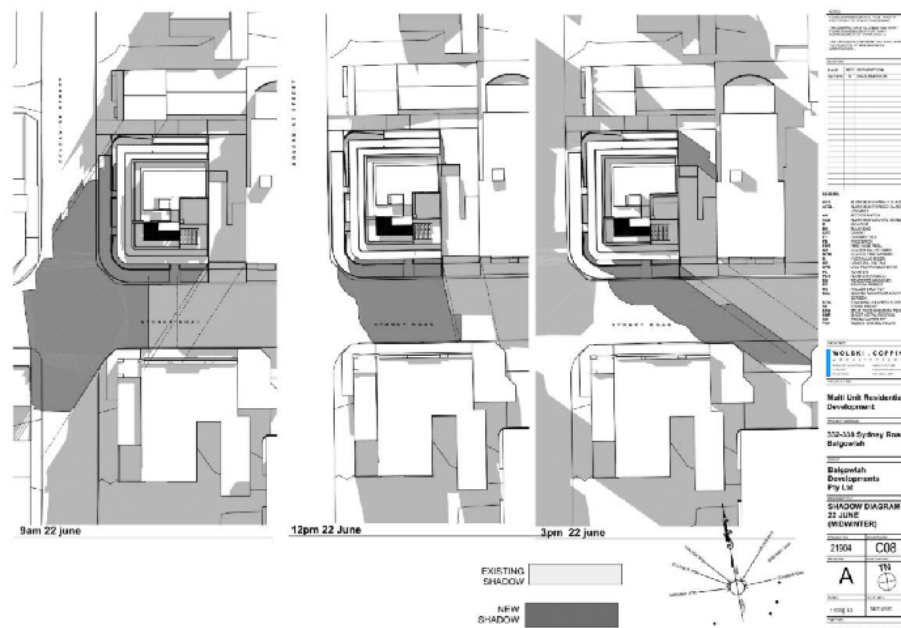


Figure 4 - Shadow diagrams

The proposal achieves this objective, notwithstanding the building height breach, as it does not unreasonably impact solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings/ surrounding residential properties.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Response: This objective is not applicable.

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 MLEP 2013. The developments consistency with the stated objectives of the B2 zone are as follows:

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

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

- *To encourage employment opportunities in accessible locations.*

Response: The proposed mixed use development provides ground floor retail/ business tenancies which will provide employment opportunities in an accessible location. The proposal will also encourage employment in terms of strata management and property maintenance. The proposal achieves this objective.

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

Response: The proposal does not provide any excessive carparking and as such achieves this objective.

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

Response: The development is not within proximity of any zone boundaries. No objection is raised to standard conditions pertaining to the acoustic performance of air conditioning condensers. The proposal achieves this objective.

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

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of building standard objectives.

Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

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

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

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

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

Sufficient environmental planning grounds

There are sufficient environmental planning grounds relative to this particular site to justify the variation sought.

The site's unique location within an important intersection in which there are 3 identified important corners facilitates an outcome whereby a compliant quantum of floor space is able to be more appropriately distributed into a 5th storey element without giving rise to any adverse streetscape or residential amenity impacts. Such distribution of floor space provides for a substantially greater setback to the northern boundary than what would be achieved were the DCP nil side boundary setback control adopted with such setback enabling the development to take advantage of northerly aspect whilst reducing amenity impacts on the northern adjoining property.

In my opinion, a better environmental planning/ built form/ urban design outcome is achieved through approval of the variation proposed with enforcement of strict compliance resulting in either a development which extends to within immediate proximity of the northern boundary whereby the development is unable to take advantage of the site's northern orientation in terms of balcony orientation, and which results in increased amenity impacts on the northern adjoining property, or alternatively the deletion of the entire upper level floor plate resulting in a development unable to achieve the anticipated FSR of 2:1 on the site located within an established centre, and ideally suited to increased residential densities. Such outcome would be neither orderly or economic have regard to the zoning of the land and the sites location within the established Balgowlah mixed use precinct.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land through achieving the FSR anticipated for this form of development on this particular site consistent with that able to be achieved by other recently constructed shop top housing development within the street block (1.3(c)).
- The reasons previously outlined, the development represents good design and provides superior levels of residential amenity to future occupants (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

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

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

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

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

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

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

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

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

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

4.5 Secretary’s concurrence

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

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

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

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

5.0 Conclusion

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

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

As such, I have formed the 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

ANNEXURE 2

Clause 4.6 variation request – Gross floor area in Zone B2

**Clause 4.6 variation request – Gross floor area in Zone B2
Proposed Shop top housing development
332 - 338 Sydney Road, Balgowlah**

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 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 – Gross Floor Area in Zone B2

Pursuant to clause 6.16 MLEP, development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises.

The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres

The proposal has a total commercial floor space of 335m² representing 22.8% of the total gross floor area of 1467.2 m² proposed. This represents a non-compliance of 34.25 square metres or 9.2%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

- (c) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (d) *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 MLEP provides:

- (5) *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 6.16 gross floor area in Zone B2 Development Standard.

Clause 4.6(3) of MLEP provides:

- (6) *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.*

In this regard, strict compliance is considered to be unreasonable 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 MLEP provides:

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

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

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of MLEP 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.*

The Land & Environment 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 6.16 of MLEP 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:

23. *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].*
24. *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].*
25. *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].*

26. *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].*
27. *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.*
28. *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 6.16 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 6.16 of MLEP 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 6.16 of MLEP?

4.0 Request for variation

4.1 Is clause 6.16 of MLEP 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 6.16 MLEP prescribes an FSR control that seeks to control the density of certain development. We are of the opinion that this provision is a development standard to which clause 4.6 applies.

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

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

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

The proposal has a total commercial floor space of 335m² representing 22.8% of the total gross floor area of 1467.2 m² proposed. This represents a non-compliance of 34.25 square metres or 9.2%.

Consistency with objectives of the standard

The objective of this standard is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres. Having regard to this objective we note:

- The ground floor commercial offers 4 retail tenancies which provide activation of both street frontages,
- The retail uses occupy all available ground floor space not required to accommodate residential pedestrian and vehicular access to the site and required vertical circulation,
- The area of the ground floor plate occupied by the required basement access ramp and loading bay area makes strict compliance difficult to achieve it being noted that the additional driveway width provided in the north western corner of the site, at the expense of commercial floor space, will significantly enhance both pedestrian and vehicular safety along the existing ROW given improved sight lines and geometry, and
- The variation will not impact the viability of the B2 Local Centre zone nor compromise the expansion and diversity of business activities that will contribute to economic growth, retention of local services and employment opportunities in the centre.

Having regard to the above analysis, 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 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 MLEP 2013. The developments consistency with the stated objectives of the B2 zone are as follows:

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

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

- *To encourage employment opportunities in accessible locations.*

Response: The proposed mixed use development provides ground floor retail/ business tenancies which will provide employment opportunities in an accessible location. The proposal will also encourage employment in terms of strata management and property maintenance. The proposal achieves this objective.

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

Response: The proposal does not provide any excessive carparking and as such achieves this objective.

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

Response: The development is not within proximity of any zone boundaries. No objection is raised to standard conditions pertaining to the acoustic performance of air conditioning condensers. The proposal achieves this objective.

The proposed development, notwithstanding the height breaching elements, achieve the objectives of the zone. The non-compliant component of the development demonstrates consistency with objectives of the zone and the objectives of the standard.

Adopting the first option in *Wehbe* strict compliance with the standard has been demonstrated to be unreasonable and unnecessary.

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

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

25. *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.*

26. *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

The unique constraints imposed by the location of the existing ROW and required vehicular access and servicing requirements for the site, which take up a large portion of the ground floor area of the development site along its southern edge, provide sufficient environmental planning grounds to justify the variation sought on this particular site.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the proposed development and associated commercial floor space are consistent with objectives 1.3(c), (g) and (h) of the Act in they that promote good design and amenity (facilitate improved vehicular access and servicing to the site and other users of the ROW), facilitating the orderly and economic use and development of the land and promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, through improved vehicular access and servicing to the site and other users of the ROW

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 6.16 and the objectives of the B2 Local Centre zone

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

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

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

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

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

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

4.5 Secretary’s concurrence

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

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

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

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

5.0 Conclusion

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

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a commercial floor space in the B2 zone variation in this instance.

Boston Blyth Fleming Pty Limited



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Director



Design + Sustainability Advisory Panel Meeting - 22 April 2021

1 DA 2020/1733 332-338 Sydney Road, BALGOWLAH

PANEL COMMENT AND RECOMMENDATIONS

General

Proposal: The application proposes the demolition of the existing buildings and erection of a five (5) storey mixed use development configured as:

- 4 x Retail tenancies
- Shop top housing
- 14 x apartments (2 x 1-bed, 4 x 2-bed, 6 x 3 bed)
- 33 vehicles over 2 basement levels.

Strategic context

Manly Local Environment Plan and Manly Development Control Plan.

Height variation - Sought variation is not inconsistent with development already approved that vary MLEP and Balgowlah Local Centre as applies for this corner.

Current Town Centre strategic plan excludes the subject site from the provisions of being a prominent corner identified for the other 3 corner sites of the Sydney Rd/Condamine St. This site is not a zone interface to a lower density land use.

CI 6.13 of MLEP requires the development demonstrate design excellence, ***in addition to complying with other controls.***

CI 3.1.3.1 for Townscape of Manly DCP must be demonstrated.

Recommendations

1. CI 6.13 will not be satisfied without the Panel's identified issues being satisfactorily resolved. Variation to height therefore could only be supported where design excellence is demonstrated and an improved outcome for public domain or public spatial or natural systems outcomes, residential amenity within the development and importantly reducing impacts to neighbouring properties and the public domain.

Urban context: surrounding area character.

Balgowlah is a Local Centre in transition with a mix of existing generally lower density (one to two-storey) retail/commercial development and shop top housing. There are precedents of 5 storey development approved or under construction on corner sites to the west of the subject site.

The Panel notes that adaptive re-use has been explored but considered impractical, would not achieve B2 zone objectives or meet current strategic and compliance requirements. The Panel takes this on trust but notes that the fact that the building is not an identified heritage item also opens up the potential for 'savage' modification of the existing façade to meet current amenity requirements. There are many examples of this type of adaptive re-use.



Overall the proposed shop top type is consistent with the intended future urban context. The proposed height variation is discussed elsewhere.

Scale, built form and articulation,

The proposed built form does not comply with the height control. The Panel notes that the allowable FSR of 2.0:1 is difficult to achieve within the 12.5 m height limit that is understood to allow for a 4-storey form. The panel notes that generally FSR of 0.33:1 is achievable per residential level and perhaps 0.5:1 on the ground level.

Consequently it is not unexpected that the proposal is for 5 levels and not 4. The question becomes where and if the exceedance of the height limit could occur and what impacts it would have on the amenity of the units within the site itself, the public domain and on neighbouring properties.

Given that the allowable FSR is a **maximum** permissible, it is import to recognise that the height limits are not arbitrary. On the contrary, the height limits in this location have been determined to ensure a compatible scale, and importantly, to ensure the there is not overshadowing of the southern side of Sydney Road.

These solar access planes should be the primary determinant of the building mass.

Pulling the development off the northern boundary is supported and noted it would need to occur for satisfying SEPP 65 and the ADG where dwellings have their primary aspect towards the neighbouring properties. The proposed setback will need to demonstrate equitable sharing with future permitted development on the neighbouring site.

The arrangement of massing is questioned given there are amenity issues arising with the lightwell and where the top floor massing has been concentrated.

The light well provides natural daylight and ventilation to the lift lobbies which is supported, but only service rooms should have a window or outlook into the smaller space (approximately 5m x 5m) not habitable rooms as proposed. The bottom of the light well will not receive sufficient daylight for amenity or to adequately support vegetation growth.

Recommendations

2. Ensure there is no overshadowing of the full extent of the footpath on the southern side of Sydney Road between the hours of 10am and 2pm mid winter.
3. The building including balcony should be set back to grid line B
4. The top floor should be set back further so it is truly recessive. This has not occurred on sites to the west resulting in a poor public domain interface and architectural expression. Treatment of the building edge will be a critical design element.

Landscape context, Façade treatment

The façade design suits the character and other new development in the area.

The treatment of the residential entry does not provide good amenity, with a narrow entrance and long narrow corridor to a lift and stairs.

POS courtyards on level 1 are overlooked and get no sun. It is unlikely anything will grow well in those locations and is not quality spaces for residents.

It cannot be assumed that in the future the redevelopment on the adjoining site will be setback to align grid D

No specific issues with landscape planting provided.



Recommendation

5. The lightwell, if retained, should be enlarged to improve daylight access to the lower apartments and to the floor of the lightwell.
6. Increase the setback to the north to provide solar access to the POS as well as living spaces

Public domain: relationship to public domain, safety/security.

Access to the shops should be from the street rather than through recesses in the façade as this is not positive for accessibility. Although noted on the drawings as accessible to as 1428 it is not clear that this is possible.

Public domain impacts or positive outcomes arising with the proposed additional storey are not adequately communicated. Overshadowing impacts to the public domain will need to be considered particularly where reconsidering the location of the top floor massing.

Recommendations

7. Alcove retail entries along Condamine Street should be enlarged to improve accessibility and visibility.
8. Residential entry along Sydney Rd is clearly separated from the retail. The internal layout however is quite a long walled corridor. Opportunities to improve the entry character should be considered.
9. Rear Lane will be dominated by the angled roller shutter when viewed from the public domain. The undercroft space becomes somewhat ambiguous with the first floor balcony overhanging the 'lane'. The Unit 104 balcony should be aligned with Unit 105 and the planter extended. Safe access to the planters needs further design consideration particularly for the edge treatment.

Common areas

Rooftop communal open space is supported in principle. However, it should be located to receive the highest amenity. The Communal open space is on the noisy corner, not well designed for amenity, having a south west aspect and therefore minimal daylight. The shade is positive in summer but will be a cold and unappealing space in winter. There is minimal landscaping to soften it.

Lift lobbies receiving natural light and ventilation is supported.

Residential entry is down a long straight corridor. While sightlines are direct, the space is likely to be uninviting and alternative arrangements should be considered.

Recommendations

10. Locate rooftop communal open space to achieve the highest amenity. Coordinate with any rearrangement/location of top floor massing d.
11. Move COS to north for improved aspect and noise protection. Consider design to create more variety of spaces and improved landscape treatments.

Amenity and Servicing

Bedrooms 1 and 3 in unit 401 significantly overshadow the light well and units on the lower levels.

Natural ventilation, acoustic amenity, visual privacy amenity – Units 105 typical bedroom proximity to Unit 101 typical living/balcony within lightwell not acceptable – ADG 4A-2.



Solar access modelling must include consideration of future development permitted on adjacent sites to enable a full assessment.

Retail spaces do not have a WC on the ground floor level.

Access to the garbage enclosures are circuitous and remote from the retail areas

Recommendations

12. The planning on the top level should be re-arranged to maximise the amount light and solar penetration into the light well. This could be achieved by relocating the communal open space to the east or north east, moving the AC units etc. There are number of possible approaches.
13. A WC for retail tenancies should be providing that is easily and directly accessible from the tenancies and located on the ground floor.
14. Commercial bin store should be relocated to ground level
15. Residential bin room should be closer to lift or relocated

Sustainability and resilience

Achieving natural ventilation and cross ventilation while achieving acoustic comfort is required so residents are not relying on A/C for the life cycle of the development.

Solar access and daylight amenity to all habitable rooms minimizes the reliance/need to artificial lighting for day-to-day tasks. Solar access to the apartments needs to be considered in the event of the neighbouring site to the north redeveloping.

CI 6.13 of MLEP requires the development demonstrate design excellence. A building demonstrating design excellence should have a demonstrate inclusion of sustainability attributes such as reduced water use rainwater recycling, PV connected to the common area uses at a minimum, apartments if possible, all electric approach to servicing, etc.

Generally, the approach to passive design is commendable, with prioritization of northern aspect and maximizing cross ventilation. If the comments can be addressed, then it can be supported.

Recommendations

16. Solar access to be recalculated with modelling of permitted future development on neighbouring sites demonstrated.
17. Include sustainability attributes such as rainwater recycling and PV on the roof.

PANEL CONCLUSION

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

The overall design is consistent with the desired future character of the area.

The scheme is supportable if the recommendations were incorporated in a revised design.