AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 6 OCTOBER 2021

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

Peter Robinson
Executive Manager Development Assessment

northern beaches council

Panel Members

David Crofts	Chair
Brian Kirk	Town Planner
Robert Hussey	Town Planner
Nick Lawther	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.

northern beaches council

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 6 October 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 15 SEPTEMBER 2021

The Panel notes that the Minutes of the Northern Beaches Local Planning Panel held 15 September 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	**PLANNING PROPOSAL - 159-167 DARLEY STREET WEST MONA VALE (PEX2021/0001)**
AUTHORISING MANAGER	**EXECUTIVE ASSISTANT TO EXECUTIVE MANAGER**
TRIM FILE REF	**2021/617319**
ATTACHMENTS	**NIL**

PURPOSE

To seek endorsement of the Northern Beaches Local Planning Panel to recommend to Council the rejection of a Planning Proposal to rezone properties 159-167 Darley Street West, Mona Vale from R2 Low Density Residential under Pittwater Local Environmental Plan 2014 (PLEP 2014) to R3 Medium Density Residential and to amend clause 4.5A of PLEP 2014 so that maximum dwelling density requirements do not apply to the site.

BACKGROUND

A Planning Proposal (PEX 2021/0001) for properties at 159-167 Darley Street West, Mona Vale was lodged on 14 July 2021 by Intrec Management (the Proponent).

The proposal is to:

- Rezone properties 159-167 Darley Street West, Mona Vale from R2 Low Density Residential under PLEP 2014 to R3 Medium Density Residential.
- Amend Clause 4.5A(3) of PLEP 2014 to include reference to 159-167 Darley Street West, Mona Vale (thereby confirming that clause 4.5A does not apply to the subject site).

A Concept Plan has been prepared for the site which includes 2 residential flat buildings containing 38 apartments and 3 townhouses.

It is noted that the Concept Plan carries no statutory weight, and should the Planning Proposal be approved, a development application would be required for the site, which could be of substantially different form and density to the submitted Concept Plan.

Three of the properties subject to the proposal are owned by Magnolia Views Property Pty Ltd, with the remaining two properties in separate private ownership.

Pre-lodgment meeting

A pre-lodgement meeting for the Planning Proposal was held on 9 September 2020, with the following comments provided to the Proponent.

Strategic & Place Planning

- Mona Vale is identified as a Strategic Centre within both the Greater Sydney Region Plan 2036 and the North District Plan. Council is undertaking technical studies to determine how to best achieve the housing and employment targets in the context of the Strategic Centre and the entire LGA.
- The North District Plan and Local Strategic Planning Statement do not specifically require the need for additional housing in the location of the subject site.
- Based on Council's preliminary research, the LGA's five-year housing target (2016-2021)

under the North District Plan is 3,400 new dwellings and is likely to be met under existing planning controls without the need for unplanned uplift.

- Councils LSPS has actions for the Mona Vale strategic centre focused on place planning and revitalisation of the commercial centre as well as improvements to circulation and transportation both within the centre and in terms of access to other areas of the LGA.
- The LSPS also indicates that other studies will inform how Council is able to achieve housing, employment, and other infrastructure targets into the future.
- There is no clear link between the Northern Beaches LSPS and the provision of additional housing beyond the existing Mona Vale strategic centre. As noted above, recent research indicates that existing planning controls will be able to deliver short term targets with an emphasis on new dwellings being provided in already identified precincts such as Frenchs Forest.
- Any areas subject to uplift would be subject to the provision of affordable housing in accordance with Council's adopted Affordable Housing policy. In particular, the proposal must provide for the delivery of the 10% rental housing target (all strategic plans and planning proposals for urban renewal or greenfield development).
- Discussion was had in relation to the possibility of introducing Additional Permitted Uses to the site to ensure that development occurs as intended by the objectives of the Planning Proposal. Council is unable to provide formal comment on the use of APUs for this site given that this matter does not form part of the pre-lodgement documents. Further discussion may be held separately for this matter.
- The proposal to remove clause 4.5A in relation to density controls for residential accommodation is not supported.
- Further, the proposal does not adequately justify the rezoning of the subject property over and before other land adjoining the Mona Vale town centre zone R2 land (or other land across LGA with similar characteristics and attributes). Consideration of rezoning of the subject site has the risk of setting a precedent for adjoining landowners to consider rezoning under the same premises.

Stormwater, Floodplain Engineering

- The Proposal must show compliance with the Flood Prone Land (4.3) Direction of the Local Planning Directions under Section 9.1(2) of the Environmental Planning and Assessment Act 1979.
- The proposal would permit a significant increase in the development of floodprone land, the applicant must demonstrate that the cumulative impact of the development will not affect surrounding areas.
- The planning proposal has the potential to set a precedent for adjoining properties to upzone without the benefit of a wider housing review or the impacts to flood prone land to the northwest of the subject site.
- A comprehensive Flood Risk Assessment is required which includes:
    - 2D flood modelling of the existing flood regime for a range of design flood events up to and including the Probable Maximum Flood event
    - Flood modelling of the post construction scenario for the same design flood events up to and including the Probable Maximum Flood event

- Afflux mapping to demonstrate the impact of the development on the flood regime, including the impact on flood depths and velocities
- Consideration of the potential for blockage and how this will be mitigated
- Determination of the required Flood Planning Level and resultant minimum floor level requirements for future development.
- An assessment of the flood risk to life associated with the development including appropriate flood emergency response planning
- Detail of any required civil works to mitigate flood risk
- Commentary on the consistency of the proposal with Section 9.1 Direction 4.3 Flood Prone Land
- Council is supportive of opportunities to minimise flood risk to private property and divert this flow to Darley Street if it does not impact the trafficability of the roadway in flood events.

- The Proposal would need to outline how any future Development Application on the site could comply with Council's Local Environmental Plan and Development Control Plan provisions for flood prone land.

Site Description

The subject site (see *Figure 1*) comprises five lots in total, legally described as Lot 1-5, DP 11108 with an approximate area of 6,120m^2. The site contains five single or double storey dwellings, and adjoins:

- a residential flat building to the East containing 11 units (155 Darley Street West),
- Darley Street West and Bayview Golf Course to the North,
- detached dwellings and a residential flat building containing four units (10 Kunari Place) to the West; and
- a mix of one and two storey detached dwellings located in Park Street to the South.

Figure 1 : Aerial photo of site and adjoining properties

Figure 2 : 159 Darley Street West

Figure 3 : 161 Darley Street West

Figure 4 : 163 Darley Street West (double block)

Figure 5 : 167 Darley Street West

Site Ownership

Three of the lots subject to the proposal are owned by Magnolia Views Property Pty Ltd (161-163 Darley Street West), with the remaining two properties in separate private ownership (159 Darley Street West & 167 Darley Street West).

Proposed Amendments to PLEP 2014

The following amendments to PLEP 2014 are proposed:

A. Rezone the site from R2 Low Density Residential to R3 Medium Density Residential

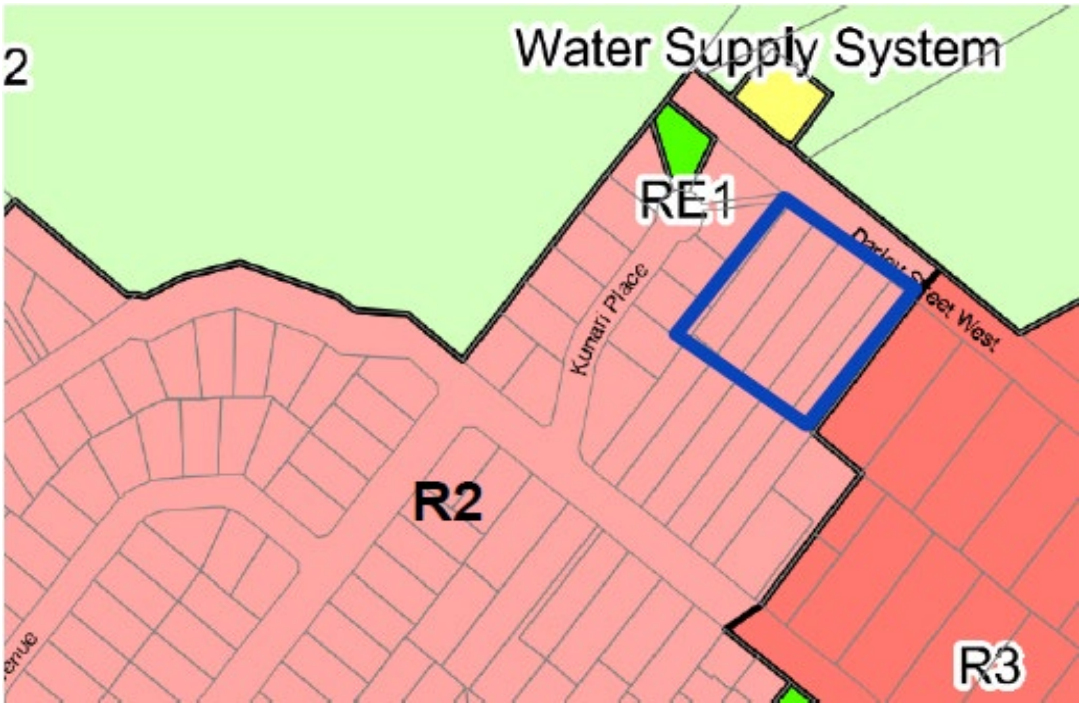


Figure 6 : Site - existing zoning

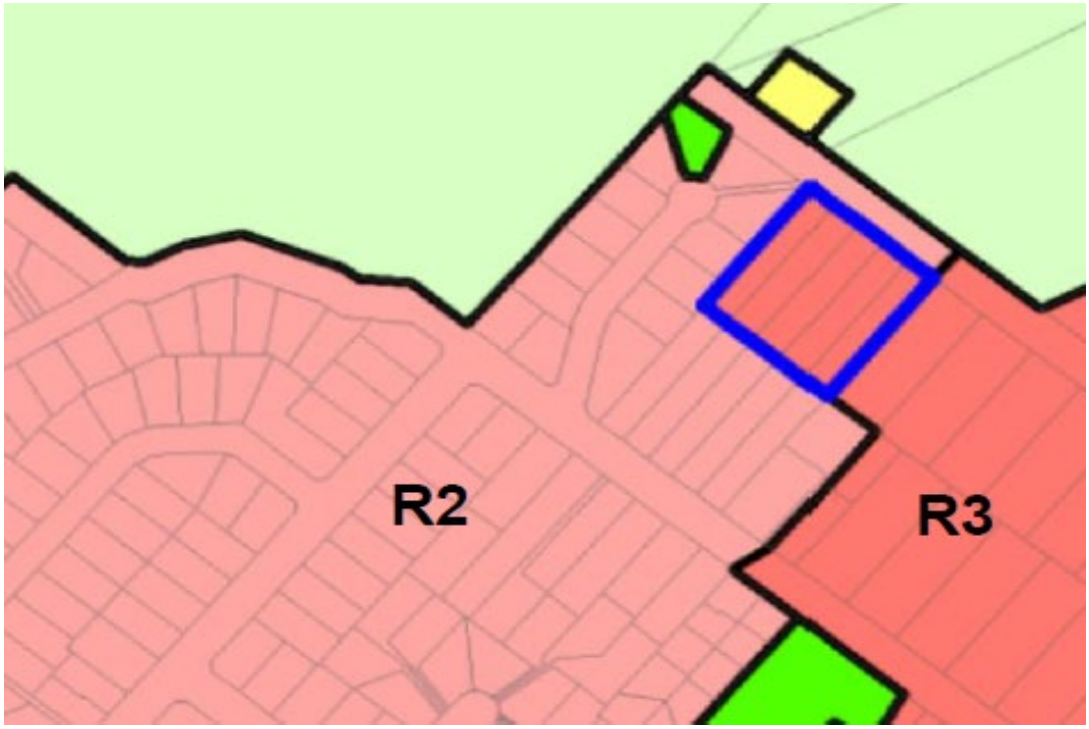


Figure 7 : Site - Proposed Zoning

B. Amend Clause 4.5A(3) to include reference to 159-167 Darley Street West, Mona Vale (thereby confirming that clause 4.5A does not apply to the subject site):

Clause 4.5A Density controls for certain residential accommodation

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

(a) to achieve planned residential density in certain zones,

(b) to ensure building density is consistent with the desired character of the locality.

(2) Development consent must not be granted to development for a purpose specified in Column 1 of the table to this clause on land in the zone shown opposite that development in Column 2 of that table unless the development complies with the density requirements specified in Column 3 of that table.

(3) This clause does not apply to land in the Warriewood Valley Release Area and 159-167 Darley Street West, Mona Vale

ASSESSMENT OF PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Department of Planning,Industry and Environment's '*Planning Proposals: A Guide to Preparing Planning Proposals'*.

Part 1 – Objectives or Intended Outcomes

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 to enable the site to be developed for medium density housing.

A Concept Plan has been prepared for the site to indicate up to 41 dwellings (three townhouse and 38 apartments) (See Figure 8).

Figure 8 : Concept Plan (BLDA=20 units ; BLDB = 18 units ; BLD B,C & D = 3 townhouses)

Part 2 – Explanation of Provisions

The site is currently zoned R2-low density residential under PLEP 2014, and the construction of multi-dwelling housing and residential flat buildings are not consistent with the objectives of this zone and are prohibited uses.

The proposal seeks to permit the development of multi-dwelling housing and residential flat buildings

on the site by rezoning the site from R2 Low Density Residential to R3 Medium Density Residential. Both multi-dwelling housing and residential flat buildings are permissible with consent under the R3 Medium Density Zone within PLEP 2014.

Density controls also exist for the development of certain residential accommodation within the R3 zone under Clause 4.5 of PLEP 2014 that restrict the density of development to a maximum of one dwelling per 200 square metres of site area.

The proposal also seeks to amend Clause 4.5A(3) of PLEP 2014 to include reference to 159-167 Darley Street West, Mona Vale (thereby confirming that clause 4.5A does not apply to the subject site).

Specifically, the proposed outcome of the planning proposal will be achieved by:

- Amending PLEP 2014 Land Zoning Map Sheet 12 for 159-167 Darley Street West, Mona Vale in accordance with *Figure 7*.
- Amending clause 4.5(3) of PLEP 2014 to include reference to 159-167 Darley Street West, Mona Vale and thereby confirming that clause 4.5A does not apply to the site.

A Concept Plan has been prepared for the site showing two apartment buildings comprising 38 apartments plus three townhouses, equating to 41 dwellings with a density of approximately one dwelling per 149 square metres.

However, it is noted that the Concept Plan carries no statutory weight and should the Planning Proposal be approved in its current form, a development application would be required for the site, which could be of a substantially different form and density to the submitted Concept Plan.

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?

The Planning Proposal is not the result of any endorsed Local Strategic Planning Statement (LSPS),strategic study or report. Whilst Councils LSPS identifies an area of 1.5km around the Mona Vale centre to investigate medium density housing, a key principle is also to locate a greater diversity of housing and affordable housing options within reasonable walking distance (800m) of high-frequency public transport. The mechanism to further explore the location, demand and type of dwelling is Councils Local Housing Strategy (LHS) and preparation of the Mona Vale Place Plan.

Action 15.1 of the LSPS is for Council to prepare and implement a LHS. Council adopted the LHS on 27 April 2021. The endorsed LHS does not consider the site for medium density housing.

Action 27.1 of the LSPS is for Council to prepare a place plan for Mona Vale and develop LEP and DCP controls to respond to LEP studies and support the revitalisation of the centre.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The objective of the Planning Proposal is to provide additional medium density housing within the vicinity of the Mona Vale town centre via a spot rezoning. Spot rezonings are not the best means of achieving the intended outcomes of providing a mix and diversity of housing to meet the needs of the local community whilst considering the unique character and impacts on infrastructure to support any proposed growth.

The best and most orderly way to explore and outline Council's approach to managing the location, type, and amount of new housing to meet the needs of the Northern Beaches community to 2036 is through Councils LHS and Place Planning of the Mona Vale area.

Section B - Relationship to Strategic Planning Framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategy?)

a) Does the proposal have strategic merit?

Mona Vale is identified as a Strategic Centre within both the *Greater Sydney Region Plan 2036* and the *North District Plan*. In these documents, strategic centres are the focus of housing, employment, and transportation. As per the District Plan, Mona Vale strategic centre is a mixed-use area including retail, commercial, community, light industrial and residential uses.

In both the Regional and the District plans, the focus for this centre is in its commercial and retail function including a job target of between 700-1700 jobs by 2036. A 0–5-year housing target of 3,400 dwellings is also provided in the North District Plan, with each Council to also develop 6-10 housing targets through its LHS and demonstrate capacity for steady housing supply.

The Northern Beaches Council's LSPS (Towards 2040), was made by the Chief Executive Officer under delegated authority based on Council's resolution 25 February 2020 and a letter of support from the Greater Sydney Commission (GSC) for consistency with the Greater Sydney Region Plan and North District Plan. This new planning document sets out a 20-year vision for land use in the area.

Councils LSPS and LHS (adopted at the Council meeting of 27 April 2021) is the mechanism to provide a locally relevant response to the Greater Sydney Region Plan and District Plan housing targets. The LSPS identifies the need to prepare a LHS and a Place Plan for Mona Vale.

The LHS applies the principles of Towards 2040 and aims to build in long term capacity for growth around centres with good transport, whilst respecting each centre's scale and character and increasing housing diversity and affordability.

It considers trends in terms of population growth and change; household size and mix; issues such as affordability, sustainability and building resilience; and housing diversity, including housing types such as boarding houses, seniors housing and social and affordable housing.

The LHS identifies that we will need to accommodate around 12,000 new homes by 2036 to provide for population growth. Analysis shows we generally have the capacity under existing planning rules to provide for these new homes, without having to make major changes to our existing planning controls for most of the Council area. The shortfall between what is needed and what is possible (i.e., the gap that we must plan for to 2036) within current controls is around 275 dwellings.

However, Council still needs to provide for a diversity of dwelling types to meet local needs and to enable Council to seek exemption from housing-related State Environment Planning Policies, which have in the past resulted in ad-hoc development with poor environmental planning outcomes.

The LHS outlines options to achieve this goal, including the identification of Centre Investigation Areas within an 800-metre radius of nominated centres, Mona Vale being one of them (the others being Brookvale, Dee Why, Manly Vale & Narrabeen). This work will be subject to separate precinct-based master-planning and community consultation. Council has State Government funding to begin the Mona Vale Place Plan (which will incorporate the investigation area), which will commence shortly and will consider the development potential of that area, including the appropriate level of new development that can be accommodated, and demands for local infrastructure.

The Proposal is both outside of the Mona Vale investigation area and is inconsistent with the intent

of master-planning, which is to consider the area, reflecting upon the unique character of the area and potential infrastructure required to support any growth.

Further, Council's LHS identifies a significant undersupply of affordable housing on the Northern Beaches to support key and essential workers, and through Councils adopted Affordable Housing Policy aims for the provision of 10% affordable rental housing in areas subject to urban renewal (areas of zoning uplift). This is reinforced through Council's LSPS, which contains several principles and actions in relation to social and affordable housing, including seeking a minimum of 10 per cent affordable rental housing to be included in new planning proposals, consistent with Council's existing Affordable Housing Policy.

The Proposal does not provide for the provision of any affordable rental housing and is inconsistent with Councils affordable housing policy and LHS.

The North District Plan, LSPS and LHS do not specifically require the need for additional housing in the location of the subject site. Further the Proponent has not demonstrated why this planning proposal should be progressed ahead of the Mona Vale Place Plan and without the demonstrable strategic need for additional housing of this form in this location.

It is therefore considered that the Proposal does not have strategic merit.

Greater Sydney Region Plan – A Metropolis of Three Cities

The proposal's consistency with the relevant objectives of the *Greater Sydney Region Plan* is detailed within Table 1.

Relevant Planning Priorities	**Consistency**
Housing the City *Objective 10 – Greater housing supply*	The proposal will support residential uses on the site; however, the objective is to support new housing in the right location and must be co-ordinated with local infrastructure. The site is not the right location for additional medium density housing such as residential flat buildings, which needs to be planned for with consideration of the broader character of the area and impacts on infrastructure to support any proposed growth. As identified above, Council's LHS identifies an area within 800 metres of the Mona Vale centre as an area for future investigation. This will be subject to separate precinct-based master-planning and community consultation work, to be done via the Mona Vale Place Plan. The site is not located within the 800 metre investigation area. Work on the Mona Vale Place Plan (which will incorporate the investigation area) will be starting soon and will take into consideration the area, including the appropriate level of new development that can be accommodated and impacts on local infrastructure. Any increase in density in the R3 zone under the LEP should also be considered holistically in the context of the proposed precinct-based review being undertaken by Council in the Mona Vale Centre Investigation Area.

Objective 11 – Housing is more diverse and affordable	The objective is to provide diverse housing choices, particularly in the form of additional affordable rental housing. Councils affordable housing policy requires areas of urban renewal (areas of zoning uplift) to provide 10% affordable rental housing. This is reinforced through Council's LSPS, which contains several principles and actions in relation to social and affordable housing, including seeking a minimum of 10 per cent affordable rental housing to be included in new planning proposals The Proposal does not include for the provision of any affordable rental housing (increasing the density to provide a variety of dwelling sizes does not increase the provision of affordable rental supply) and is inconsistent with Council's affordable housing policy, LSPS and Objective 11.
A well-connected city *Objective 14 - Integrated land use and transport creates walkable and 30-minute cities*	To achieve a 30-minute city the integration of land use and transport planning is required to create walkable cities. Council's adopted position within its LHS for exploring additional housing diversity within Mona Vale, is the identification of a Centre Investigation Area within an 800-metre radius of the Mona Vale B-line bus stop. This area has been identified as the most appropriate location within a walkable distance to services, jobs, and public transport. This work is to be a separate precinct-based place-planning process and will take into consideration the impacts on local infrastructure, including transport. The Planning Proposal to change the zoning and alter the density to significantly increase the number of dwellings on this site, which is located outside of the 800-metre investigation area, is inconsistent with Council's adopted Local Housing Strategy and considered inconsistent with Objective 14.

Table 1 : Consistency with relevant priorities in the Greater Sydney Region Plan

North District Plan

The proposals consistency with the relevant objectives of the *North District Plan* is detailed within Table 2.

Relevant Planning Priorities	Consistency
Housing the city *Planning Priority N5 – Providing housing supply, choice, and affordability, with access to jobs, services, and public transport*	The objective is to support new diverse housing (such as terrace and villa homes that provide increased housing options) in the right location and must be coordinated with local infrastructure. Priority N5 identifies that councils are in the best position to investigate and confirm which parts of their local government area are suited to additional medium density opportunities

	(particularly for infill development) through the preparation of local housing strategies. Priority N5 also sets five-year housing targets for the Northern Beaches area and stipulates that each council is to develop 6-10 housing targets through its LHS and demonstrate capacity for steady housing supply. As detailed above, Council's adopted LHS identifies that Council generally has capacity under existing planning rules to provide for these new homes. However, Council needs to provide for a diversity of dwelling types to meet demand, and to enable Council to seek exemption from housing-related State Environment Planning Policies, One of these options is the identification of an area within 800 metres of the Mona Vale centre as an area for investigation. This will be subject to separate precinct-based place-planning and community consultation work, to be done via the Mona Vale Place Plan. Work on the Mona Vale Place Plan (which will incorporate the investigation area) will be starting soon and will take into consideration the appropriate level of new development that can be accommodated and impacts on local infrastructure. Priority N5 also identifies the requirement for councils to prepare affordable Rental Housing Target Schemes following development of implementation arrangements. In addition to Council's LSPS & LHS a key element of Council's Affordable Housing Policy is the inclusion of the Northern Beaches LGA in State Environmental Planning Policy No.70 (SEPP70). SEPP 70 enables Councils to include affordable rental housing requirements in Local Environmental Plans (LEPs) in areas subject to zoning "uplift" through an affordable housing contribution scheme. Council has developed a draft affordable housing contribution scheme, which will allow the collection of developer contributions to provide affordable housing either as complete dwellings or as an equivalent monetary contribution. The scheme will initially apply to the Frenchs Forest Planned Precinct and a site subject to a rezoning proposal in Narrabeen. It will be extended to other land that is subject to increases in residential density in the future. The proposal does not provide for the provision of any affordable rental housing and is inconsistent with Councils affordable housing policy, LSPS and Priority N5
A well-connected city *Planning Priority N12 – Delivering integrated land use and transport planning and a 30-minute city*	To achieve a 30-minute city the integration of land use and transport planning is required to created walkable cities. Councils adopted position within its LHS for exploring additional housing diversity within Mona Vale, is the identification of a Centre Investigation Area within an 800-metre radius of the Mona Vale B-line bus stop. This area

	has been identified as the most appropriate location within a walkable distance to services, jobs, and public transport. This work is to be a separate precinct-based place-planning process and will take into consideration the impacts on local infrastructure, including transport. The Planning Proposal to change the zoning and alter the density to significantly increase the number of dwellings on the site, which is outside the 800-metre investigation area, is inconsistent with Council's adopted Local Housing Strategy and considered inconsistent with Planning Priority N12.
A resilient city *Planning Priority N22 - Adapting to the impacts of urban and natural hazards and climate change*	Effective planning can reduce exposure to natural and urban hazards, with growth and change to be considered at the local level, taking into consideration cumulative impacts. The site is identified as flood affected, with the Planning Proposal showing general compliance with planning on flood affected land. A full assessment however cannot be undertaken until a more detailed application is lodged.

Table 2 : Consistency with relevant priorities in the North District Plan

4. Does the proposal have site-specific merit, having regard to the following?

The natural environment (including known significant environmental values, resources, or hazards).	<u>*Flooding*</u> The subject site is affected by Low Risk and Medium Risk flood hazards in accordance with Council's Flood Hazard Map adopted in 2019. Council notes the Planning Proposal generally meets the flood controls in the LEP and DCP, however has not addressed the most recent Ministerial direction 4.3 (flood prone land - released on 14 July 2021). Council however considers it generally consistent with Direction 4.3, however a full assessment cannot be undertaken until a more detailed development application is lodged and would be subject to approval by the development engineers. <u>*Biodiversity*</u> The Ecological Assessment has concluded that the subject site contains a total of 0.23 ha of native vegetation, of which, 0.13 ha is indicated to be impacted. It is recommended that any future development design maximises efforts to avoid/ minimises impacts to the biodiversity values of the site and locality, including Pittwater Spotted Gum Forest. From the information supplied it is hard to determine the number of native trees proposed for removal, and whether it would be compliant with the DCP controls in relation to removal of tree canopy. An Arboricultural Impact Assessment Report, prepared by a qualified AQF5 (or higher) arborist, must be submitted when works are proposed within 5.0m of a tree irrespective of

	property boundaries.
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	The site is zoned R2 low density residential. Councils LHS identifies an area within 800 metres of the Mona Vale centre as an area for investigation for additional housing diversity and density. Whilst Council will be beginning work on the Mona Vale Place Plan soon (which will incorporate the investigation area), it will apply the LHS adopted Centre Renewal Framework for this work. This identifies the outer zone of the investigation area as an area suitable for housing that matches the character of existing detached housing, such as dual occupancy, terraces, semi-detached dwellings, or manor homes. The subject site is not within the identified centre investigation area, and the proposal is for a Concept Plan with two apartment buildings in additional to three town houses. The proposal is inconsistent with the likely future uses of land in the vicinity of the proposal.
The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.	Work on the Mona Vale Place Plan (which will incorporate the investigation area identified within the LHS) will be starting soon and will take into consideration the centre investigation area as identified within the LHS. Planning for infrastructure to support proposed growth will be a key element of this work, and will consider potential impacts on local infrastructure, including transport, traffic, environmental sustainability, and climate change. The need for new infrastructure will also be informed by other Council strategies, such as the social infrastructure study, open space and recreation strategy, and a land use and infrastructure implementation plan.

Table 3 : Commentary on site specific merit

5. Will the planning proposal give effect to a council's local strategy or other local strategic plan?

Councils LSPS contains four priorities related to housing as shown in *Table 4*.

Relevant Planning Priorities	Comment
Open Space *Priority 6 - High quality open space for recreation*	A key principle is to locate all new residential development within 400m of open space and all high-density areas within 200m of open space. The site is opposite the Bayview Golf Course, and within 200m of additional areas zoned RE1.

Housing *Priority 15 – Housing supply, choice, andaffordability in the right locations*	A key principle is to locate a greater diversity of housing and affordable housing options within reasonable walking distance (800m) of high-frequency public transport. A key action to deliver on the priority is to prepare and implement a local housing strategy. The Proposal is not within 800 metres of the B-line stop, or the area for investigation as identified within the LHS.
Priority 16 – Access to quality social housing and affordable housing	To ensure an available supply of affordable rental housing and provide for a minimum of 10% affordable rental housing for all planning proposals for upzoning. The Proposal does not provide for any affordable rental housing in accordance with this priority or Councils affordable housing policy.
Jobs and skills *Priority 27 – Prepare a place plan for Mona Vale and develop LEP and DCP controls to respond to LEP studies and support the revitalisation of the centre.*	Priority 27 of the document recognises Mona Vale as the contemporary, urban heart of the north. Actions for this strategic centre focus on place planning and revitalisation of the commercial centre as well as improvements to circulation and transportation both within the centre and in terms of access to other areas of the LGA. The LSPS indicates that other studies will inform how Council is able to achieve housing, employment, and other infrastructure targets into the future. There is no clear link between the Northern Beaches LSPS and the provision of additional housing beyond the existing Mona Vale strategic centre. As noted above, this will be investigated through work on the Mona Vale Place Plan (which will incorporate the investigation area identified within the LHS), which will be starting soon and will take into consideration the area.

Table 4 : Consistency with Towards 2040

Further, the LSPS identifies an area of 1.5km around the Mona Vale centre to investigate medium density housing, which will be further explored through the preparation of a LHS, with the key principle being to locate a greater diversity of housing and affordable housing options within reasonable walking distance (800m) of high-frequency public transport.

Councils adopted LHS, applies the principles of Towards 2040 and aims to build in long term capacity for growth around centres with good transport, whilst respecting each centres scale and character and increasing housing diversity and affordability.

As detailed above, the LHS looks at the housing mix in the Northern Beaches today, and the kind of housing that will be needed in the future. It considers trends in terms of population growth and change; household size and mix; issues such as affordability, sustainability and building resilience; and housing diversity, including housing types such as boarding houses, seniors housing and social and affordable housing.

The adopted position for exploring additional housing diversity within Mona Vale, is the identification of a Centre Investigation Area within an 800-metre radius of the Mona Vale B-line bus stop. This work is to be a separate precinct-based place-planning process involving community

consultation. Council has State Government funding to begin the Mona Vale Place Plan (which will incorporate the investigation area), which will be starting soon and will take into consideration the area, including the appropriate level of new development that can be accommodated, including the impacts on local infrastructure.

The Proposal is both outside of the Mona Vale investigation area and is inconsistent with the intent of master-planning, which is to consider the area, reflect on the unique character of the area and circumstances and impacts on infrastructure to support any proposed growth.

In consideration of the above, the documents submitted by the proponent have not demonstrated why this planning proposal should be progressed ahead of the completion of the Mona Vale Place Plan.

Further, the proposal does not adequately justify the rezoning of the subject property over and before other land adjoining the Mona Vale town centre zone R2 land (or other land across LGA with similar characteristics and attributes). Consideration of rezoning of the subject site has the risk of setting a precedent for adjoining landowners to consider rezoning under the same premise.

It is therefore considered the Proposal does not have site specific or strategic merit.

6. Is this Planning proposal consistent with applicable State Environmental Planning Policies?

SEPP 55 – Remediation of Land

The Proposal includes a Concept Plan for the potential development of two residential flat buildings containing 38 apartments and three townhouses. SEPP 55 would apply should a development application be submitted. Matters for consideration are included within Ministerial Direction 2.6 detailed within section 6.

SEPP 65 – Design Quality of Residential Apartment Development

The Proposal includes a Concept Plan for the potential development of two residential flat buildings containing 38 apartments and three townhouses.

It is noted that the Concept Plan carries no statutory weight, and should the Planning Proposal be approved in its current form, a development application would be required for the site, which could be of a substantially different form and density to the submitted Concept Plan.

SEPP 65 would apply should a development application be submitted.

SEPP 70 - Affordable Housing (Revised Schemes)

The Proposal does not provide any affordable rental housing.

SEPP 70 identifies the need for affordable housing across the whole of the State and enables councils to include affordable rental housing requirements in Local Environmental Plans in areas subject to zoning “uplift” through an affordable housing contribution scheme.

Council has developed a draft affordable housing contribution scheme, which allows the collection of developer contributions to provide affordable housing either as complete dwellings or as an equivalent monetary contribution, consistent with Council’s affordable housing policy for areas of urban renewal (areas of zoning uplift) to provide 10% affordable rental housing

The Scheme is to apply initially to the Frenchs Forest Planned Precinct and a site in Narrabeen, however, may be extended to other areas that are rezoned or are subject to increases in residential density in the future. Each area will be subject to separate feasibility analysis to determine the required contribution rate.

The proposal does not provide any affordable rental housing and is inconsistent with Council’s

affordable housing policy and intention of SEPP 70 to enable the provision of additional affordable rental housing within the Northern Beaches LGA.

SEPP (Building Sustainability Index: BASIX) 2004

The Proposal includes a Concept Plan for the potential development of two residential flat buildings containing 38 apartments and three townhouses.

It is noted that the Concept Plan carries no statutory weight and should the Planning Proposal be approved in its current form, a development application would be required for the site, which could be of a substantially different form and density to the submitted Concept Plan.

SEPP BASIX would apply should a development application be submitted.

SEPPs		Applicable	Consistent
1	Development Standards		
19	Bushland in Urban Areas	No	N/A
21	Caravan Parks	No	N/A
33	Hazardous and Offensive Development	No	N/A
36	Manufactured Home Estates	No	N/A
44	Koala Habitat Protection	No	N/A
47	Moore Park Showground	No	N/A
50	Canal Estate Development	No	N/A
55	Remediation of Land	Yes	Would apply should a development application be submitted.
64	Advertising and Signage	No	N/A
65	Design Quality of Residential Apartment Development	Yes	Would apply should a development application be submitted.
70	Affordable Housing (Revised Schemes)	Yes	No – The proposal does not provide any affordable rental housing.
	(Aboriginal Land) 2019	No	N/A
	(Affordable Rental Housing) 2009	No	N/A
	(Building Sustainability Index: BASIX) 2004	Yes	Would apply should a development application be submitted.
	(Coastal Management) 2018	Yes	Would apply should a development application be submitted.
	(Concurrences) 2018	No	N/A
	(Education Establishments and Child Care Facilities) 2017	No	N/A
	(Exempt and Complying Development Codes) 2008	Yes	Would apply should the Planning Proposal be approved.
	(Gosford City Centre) 2018	No	N/A
	(Housing for Seniors or People with a Disability) 2004	No	N/A
	(Infrastructure) 2007	No	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries)2007	No	N/A
	(Miscellaneous Consent Provisions) 2007	No	N/A

	(Penrith Lakes Scheme) 1989	No	N/A
	(Primary Production and Rural Development) 2019	No	N/A
	(State and Regional Development) 2011	No	N/A
	(State Significant Precincts) 2005	No	N/A
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Vegetation in Non-Rural Areas) 2017	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	No	N/A
9	Extractive Industry (No 2 -1995)	No	N/A
16	Walsh Bay	No	N/A
20	Hawkesbury – Nepean River (No 2 – 1997)	No	N/A
24	Homebush Bay Area	No	N/A
26	City West	No	N/A
30	St Marys	No	N/A
33	Cooks Cove	No	N/A
	(Sydney Harbour Catchment) 2005	No	N/A

Table 5 : Compliance with State Environmental Planning Policies (SEPPs)

7. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1directions)?

Direction 2.6: Remediation of Contaminated Land

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

A Preliminary Site Investigation (PSI) and Preliminary Acid Sulfate Soil Assessment (PASSA) was undertaken and prepared by the proponent which identifies that the land is not located within an investigation area, activities listed in Table 1 of the draft Contaminated Land Planning Guidelines have not been known to have been carried out on the site; the site has been used and occupied by residential development for over 50 years and the land is suitable, or can be made suitable, for the proposed medium density use subject to the implementation of recommendations of the report at the Development Application Stage.

Direction 3.1: Residential Zones

The objectives of this direction are:

a) to encourage a variety and choice of housing types to provide for existing and future housing needs,

b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and

c) to minimise the impact of residential development on the environment and resource lands.

The proposed amendments are to provide for medium density development.

As outlined above, a Concept Plan has been prepared for the site which includes the potential construction of two residential flat buildings containing 38 apartments and three townhouses.

Council notes that the Concept Plan carries no statutory weight, and should the Planning Proposal be approved, a development application would be required for the site, which could be of a substantially different form and density to the submitted Concept Plan.

Councils adopted position within its LHS for exploring additional housing diversity within Mona Vale, is the identification of a Centre Investigation Area within an 800-metre radius of the Mona Vale B-line bus stop. This work is to be a separate precinct-based place-planning process involving community consultation. Council has State Government funding to begin the Mona Vale Place Plan (which will incorporate the investigation area), which will be starting soon and will take into consideration the area, including the appropriate level of new development that can be accommodated, including the impacts on local infrastructure.

The Proposal is both outside of the Mona Vale investigation area and inconsistent with the intent of master-planning, which is to consider the area, reflect on the unique character of the area and circumstances and impacts on infrastructure to support any proposed growth.

Any increase in density in the R3 zone under the LEP should also be considered holistically in the context of the proposed precinct-based review being undertaken by Council in the Mona Vale Centre Investigation Area.

Councils LHS is the most appropriate mechanism to broaden (where required) the choice of building types and locations available in the housing market in the Northern Beaches today, and the kind of housing that will be needed in the future.

The proposal is therefore considered to be inconsistent with the objectives of Direction 3.1.

Direction 3.4: Integrating Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

(a) improving access to housing, jobs and services by walking, cycling and public transport, and

(b) increasing the choice of available transport and reducing dependence on cars, and

(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and

(d) supporting the efficient and viable operation of public transport services, and

(e) providing for the efficient movement of freight.

Councils adopted position within its LHS for exploring additional housing diversity within Mona Vale, is the identification of a Centre Investigation Area within an 800-metre radius of the Mona Vale B-line bus stop. This area has been identified as the most appropriate location within a walkable distance to services, jobs, and public transport.

This work is to be a separate precinct-based master-planning process and will take into consideration the impacts on local infrastructure, including transport.

The Planning Proposal seeks to change the zoning and alter the density to significantly increase the number of dwellings on the site, is outside of the investigation area and is inconsistent with Councils adopted Local Housing Strategy and considered inconsistent with Direction 3.4.

Direction 4.3 Flood Prone Land

The Proposal must show compliance with the Flood Prone Land (4.3) Direction of the Local Planning Directions under Section 9.1(2) of the Environmental Planning and Assessment Act

1979.

Under this direction, the following applies:

A planning proposal must include provisions that give effect to and are consistent with:

(a) the NSW Flood Prone Land Policy,

(b) the principles of the Floodplain Development Manual 2005,

(c) the Considering flooding in land use planning guideline 2021, and

(d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.

Council notes the Planning Proposal has not addressed the most recent direction (released on 14 July 2021). Council however considers it generally consistent with Direction 4.3, however a full assessment cannot be undertaken until a more detailed development application is lodged.

Direction 5.10 - Implementation of Regional Plans

The North District Plan does not specifically require the need for additional housing in the location of the subject site, with the mechanism to provide a locally relevant response to the District Plan housing being Councils LSPS and draft LHS/Mona Vale Place Plan.

The Proponent has not demonstrated why this planning proposal should be progressed ahead of the Mona Vale Place Plan and without the demonstrable strategic need for additional housing of this form in this location.

Further, the proposal does not adequately justify the rezoning of the subject property over and before other land adjoining the Mona Vale town centre zone R2 land (or other land across LGA with similar characteristics and attributes). Consideration of rezoning of the subject site has the risk of setting a precedent for adjoining landowners to consider rezoning under the same premises.

It is therefore considered the Proposal is inconsistent with the Regional Plan.

Directions (as of July 2021)		**Applicable**	**Consistency**
1	**Employment and Resources**		
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	No	N/A
1.3	Mining, Petroleum Production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	No	N/A
2	**Environment and Heritage**		
2.1	Environment Protection Zones	No	N/A
2.2	Coastal Management	No	N/A
2.3	Heritage Conservation	No	N/A
2.4	Recreation Vehicle Areas	No	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
2.6	Remediation of Contaminated Land	Yes	Would apply should a development application be submitted.
3	**Housing, Infrastructure and Urban Development**		

3.1	Residential Zones	Yes	No
3.2	Caravan Parks and Manufactured Home Estates	No	N/A
3.3	Home Occupations	No	N/A
3.4	Integrating Land Use and Transport	Yes	No
3.5	Development Near Licensed Aerodromes	No	N/A
3.6	Shooting Ranges	No	N/A
3.7	Reduction in non-hosted short term rental accommodation period	No	N/A
4	**Hazard and Risk**		
4.1	Acid Sulfate Soils	Yes	Would apply should a development application be submitted.
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	Yes	Would apply should a development application be submitted.
4.4	Planning for Bushfire Protection	No	N/A
5	**Regional Planning**		
5.2	Sydney Drinking Water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.9	North West Rail Link Corridor Strategy	No	N/A
5.10	Implementation of Regional Plans	Yes	No
5.11	Development of Aboriginal Land Council land	No	N/A
6	**Local Plan Making**		
6.1	Approval and Referral Requirements	No	N/A
6.2	Reserving Land for Public Purposes	No	N/A
6.3	Site Specific Provisions	No	N/A
7	**Metropolitan Planning**		
7.2	Implementation of Greater Macarthur Land Release Investigation	No	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A

7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	No	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	No	N/A

Table 6 : Compliance with Ministerial Directions

Community Engagement

Council placed the Applicant's Planning Proposal on a non-statutory public exhibition in accordance with the Northern Beaches Community Participation Plan from 9 August 2021 – 22 August 2021 (2 weeks). Notification included:

- Letters to landowners and occupiers within the vicinity of the subject site including:
  - 155 Darley Street West, Mona Vale
  - 12 Kunari Place, Mona Vale
  - 10 Kunari Place, Mona Vale
  - 8 Kunari Place, Mona Vale
  - 6 Kunari Place, Mona Vale
  - 4 Kunari Place, Mona Vale
  - 96 Park Street, Mona Vale
  - 94 Park Street, Mona Vale
  - 92 Park Street, Mona Vale
  - 90 Park Street, Mona Vale
  - 88 Park Street, Mona Vale
  - 86 Park Street, Mona Vale
  - 82 Park Street, Mona Vale
  - 82A Park Street, Mona Vale
  - Bayview Golf Club
- Electronic copies of the exhibition material on Council's yoursay page.

Emails to registered community members who have listed their interest on Council's Community Engagement Register were sent on 9 August 2021 (to 22,483 people) and 14 August 2021 (to 173,038 people).

Submissions

72 public submissions were received in response to the public exhibition period.

66 submissions objected to the proposal. One submission generally supported the proposal, with a further submission being neutral and four submissions raising no objection to the rezoning but objecting to the proposed removal of the density restrictions.

A summary of the objections to the proposal is provided below.

<u>Strategic Merit</u>

- Overpopulation of the Northern Beaches with no requirement for the unplanned uplift due to the North District Plan zero-five-year housing target likely to be met under existing planning controls.
- There is no strategic merit in rezoning the site to R3, with any rezoning to form part of the strategic planning process and not through a spot rezoning with land closer to the Mona Vale centre more appropriate for medium density housing.
- The proposal is inconsistent with the desired future character of the area.
- The proposal is not providing affordable housing, nor enabling the provision of smaller housing as claimed, but instead is a way for the developer to increase profits.
- The Proposal is not in the interest of the local population.

Other Issus

- The development of this density will result in increased traffic and parking impacts on Darley Street West which is a dead-end cul-de-sac and cannot sustain any more traffic, with increased safety issues at the lights at the Pittwater Road intersection.
- Overdevelopment of the site which is unsuitable for such a high density of development and should therefore remain low density.
- The development will depreciate the value of existing properties in the vicinity of the site.
- Inaccurate mapping within the Planning Proposal Report, with 102 Darley Street West (a private development) identified as part of Bayview Golf Club
- Existing sewage problems in the area, and the increase in density on the site will exacerbate issues.
- Additional demand for garbage collection and the increased noise that will be associated with this is unacceptable.
- Broader Impacts/strain on infrastructure and the environment, particularly flora and fauna, soil contamination and impacts on climate change.
- The proposal is within a flood prone area, with existing issues with the water table and under-ground parking and subterranean moisture.
- Overshadowing and impacts on privacy, particularly on adjoining neighbours.
- Will this property become predominately investors and therefore the potential to create an increase in airBnB style short term renters and significantly increase noise and other associated activities commonly found in this style of development.
- Issues raised by Council in the pre-lodgment meeting have not been satisfactorily addressed.
- Community consultation on the proposal is inadequate, and all of Darley Street West should have been notified.

Response

Strategic Merit

As detailed above, Council agrees that the Planning Proposal is inconsistent with Council's strategic direction and the planning proposal has not demonstrated why this planning proposal should be progressed ahead of the Mona Vale Place Plan and without the demonstrable

strategic need for additional housing of this form in this location.

Further, the proposal does not adequately justify the rezoning of the subject property over and before other land adjoining the Mona Vale town centre zone R2 land (or other land across LGA with similar characteristics and attributes). Consideration of rezoning of the subject site has the risk of setting a precedent for adjoining landowners to consider rezoning under the same premises.

It is therefore considered the Proposal has no strategic merit.

Other Issus

Council notes many of the issues raised in submissions are matters for consideration should the Planning Proposal be approved, and a development application is lodged for the site.

In this respect a Concept Plan has been prepared for the site which includes the construction of two residential flat buildings containing 38 apartments and three townhouses.

Council notes the Concept Plan is not an application for development, and as such a merit assessment of the Concept Plan has not been undertaken at this point, inclusive of all site related issues associated with building such a development.

It is noted however that removing the density provision for the site will also result in a potential increase in dwellings and therefore additional site related impacts such as additional cars entering and exiting the site. Any increase in density in the R3 zone under the LEP should also be considered holistically in the context of the proposed precinct-based review being undertaken by Council in the Mona Vale Centre Investigation Area.

Council does not support the Planning Proposal, and notes that the Concept Plan carries no statutory weight. However, should the Planning Proposal be approved, a development application would be required for the site, at which point the site-specific impacts would be subject to the development assessment process.

It is also noted however that should the Planning Proposal be approved; any development application could be of a substantially different form and density to the submitted Concept Plan.

With regards to community consultation, Council notified all the adjacent neighbours that would be directly impacted by the Planning Proposal. Electronic copies of the exhibition material were also published on Council's Yoursay page, with other community members who listed their interest on Council's Community Engagement Register also receiving an email about the Proposal.

Agency Referrals

The Planning Proposal was referred to Sydney Water for comment (due to the location of the Sydney Water site at 112 Darley Street West).

Sydney Water advise that potable water is available to the site via a 100mm CICL watermain (laid in 1949) on Darley Street West. Wastewater should also be available via a 150mm PVC wastewater main (laid in 1975) within the property boundary. Amplifications, adjustments, and/or minor extensions may be required.

Detailed requirements, including any potential extensions or amplifications, will be provided once the development is further referred to Sydney Water for a Section 73 application.

Internal Referrals

Referrals were sent to the following Northern Beaches Council business units requesting specialist feedback on the planning proposal:

- Transport
- Stormwater and Flooding
- Coast and Catchments
- Environment & Biodiversity
- Place and Economic Development
- Urban Design

Council notes the Concept Plan is not an application for development, and as such a detailed assessment of all issues associated with building such a development has not be undertaken at this point.

Council also notes that the Concept Plan carries no statutory weight, and should the Planning Proposal be approved, a development application would be required for the site, which could be substantially different to the submitted Concept Plan.

Transport

- Concerns raised on the impact on the adjoining intersection of Darley Road west and Pittwater Road.
- Secondary concerns relate to access to transport services from the proposed intensification of dwellings on the subject sites.
- The application includes a Traffic Impact Assessment report that addresses the usual issues of concern. Intersection capacity and safety will need to be considered in any future applications.
- Additional lane capacity at Darley Street West needs to be considered to address increased generation and demand attributed to any proposed development.
- Any future application for the development consent should consider compliance with AS2890, AS1742, and provide suitable connections from the development to Active Transport Network and public transport connections.
- No objection to the proposal is raised at this stage.

Flooding

- The planning proposal generally meets the flood controls in the LEP and DCP and Direction 4.3 of the Local Planning Directions. A full assessment, however, cannot be undertaken until the DA stage and would be subject to approval by the development engineers.
- The subject site is affected by Low Risk and Medium Risk flood hazards in accordance with Council's Flood Hazard Map adopted in 2019.
- An existing overland flowpath traverses through the subject properties and continues towards Kunari Place (number 6, 8 and 10). The proposed proposal involves diverting approximately 70% of the peak 1% AEP flows arriving from the south east through a new shared access driveway to Darley Street West.
- The diverted flows arrive at Darley Street West and subsequently discharge overland towards Mona Vale golf course. The additional flows within Darley Street West will generally achieve flood depths and velocities that maintain the current flood risk hazard (h1 – h2).

- The 1% AEP afflux mapping indicates an increase in depths by up to 40mm on Darley Street West and to the reserve to the north adjacent to the golf course where additional overland flows have been directed.
- The post development flood modelling results indicate a reduction of flood depths for the 1% AEP event and PMF for 6, 8 and 10 Kunari Place ranging from 0.05 to 0.15m.
- The proposed buildings (C, D and E) have ground floor levels set at 1% AEP plus 500mm freeboard (4.91m AHD) associated with the diverted flows.
- The ground floor levels of both building A and B are elevated above existing overland flow paths and not impacted by local flood depths.
- Flood waters up to the PMF would not enter the undercover parking area (under building B and the new townhouses) as it is set at the PMF level of 4.64m AHD.
- A detailed flood evacuation plan or shelter in place details would need to be provided at the DA stage.
- All buildings would be required to be designed and constructed as flood compatible buildings and have structural integrity up to the PMF.

<u>Catchments and Water Management</u>

- Not aware of any statutory considerations or actions regarding Water Management that that Council should be initiating with assessment of the proposal.
- The site is not in a riparian area or riparian buffer and no issues or concerns in relation to water management.
- Future developments on the site will be required to comply with chapter 4 of Council's Water Management for Development Policy, including demonstration that impervious areas are minimised and Water Sensitive Urban Design is incorporated in the landscaping and build design to meet the Policy's General Stormwater Quality Requirements (Table 4).
- This is achievable based on the provided concept plans.

<u>Biodiversity</u>

- A preliminary Ecological Assessment has been undertaken to support the proposal. Findings from the assessment identify that the subject site contains 0.19 ha of PCT 1214 Pittwater Spotted Gum Forest (PSGF), consistent with the Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion, listed as endangered under the Biodiversity Conservation Act 2016 (BC Act). The remainder of the subject site is comprised of Planted Native Vegetation (0.04 ha), exotic vegetation (0.22 ha) and existing developed land (0.17 ha).
- The Ecological Assessment has estimated that the proposal will require the removal of approximately 0.09 ha of PSGF, 0.04 ha of planted native vegetation and 0.15 ha of exotic vegetation. These areas have been calculated based on area of the development overlapping the vegetation mapping prepared by the Ecologist.
- The Ecological Assessment has concluded that as the subject site contains a total of 0.23 ha of native vegetation, of which, 0.13 ha is indicated to be impacted, the NSW Biodiversity Offset Scheme is unlikely to be triggered by this mechanism. A preliminary assessment of significance has also been conducted which indicated that a significant impact to threatened biodiversity is unlikely.

- Indirect and prescribed impacts are required to be considered in assessment of whether the proposal triggers the BOS in accordance with the Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017, thus entry into the BOS and preparation of a Biodiversity Development Assessment Report (BDAR) cannot be ruled out at this stage.
- It is recommended that any future development design maximises efforts to avoid and minimises impacts to the biodiversity values of the site and locality, including Pittwater Wagstaff Spotted Gum Forest. As documented, further Biodiversity Assessment will be required as part of any development application to Council and should be based on final plans and incorporate the results of the Arboricultural Impact Assessment.
- The assessment should conduct site surveys with reference to relevant published flora and fauna survey guidelines. In addition, the Ecological Assessment must address the proposals compliance with the local planning controls Pittwater 21 DCP cl. B4.3 Flora and Fauna Habitat Enhancement Category 2 Land & cl. B4.22 Preservation of Trees and Bushland Vegetation.
- From the information supplied it is hard to determine the number of native trees that are proposed for removal, and whether it would be compliant with the DCP controls in relation to removal of tree canopy. An Arboricultural Impact Assessment Report, prepared by a qualified AQF5 (or higher) arborist, must be submitted when works are proposed within 5.0m of a tree irrespective of property boundaries. This may identify that further native vegetation requires removal due to location of tree, health of tree and/or application of relevant exemptions in accordance with the Pittwater 21 DCP.

<u>Economic development & tourism</u>

- The site is well removed from the industrial area and so there is not an economic development concern with the impact of the rezoning on the Mona Vale industrial uses at eastern end of Darley Street.
- The attached Economic Assessment sets out the case for increasing housing supply and diversity in Mona Vale area in general and identifies increasing demand for housing in the Northern Beaches arising from the trend for increased working from home.
- However, there may be an issue with proceeding with the rezoning ahead of detailed Place Planning process, led by the Strategic Place and Planning team.

Section C – Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Ecological Assessment has concluded that the subject site contains a total of 0.23 ha of native vegetation, of which, 0.13 ha is indicated to be impacted. It is recommended that any future development design maximises efforts to avoid/ minimises impacts to the biodiversity values of the site and locality, including Pittwater Wagstaff Spotted Gum Forest. From the information supplied it is hard to determine the number of native trees proposed for removal, and whether it would be compliant with the DCP controls in relation to removal of tree canopy. An Arboricultural Impact Assessment Report, prepared by a qualified AQF5 (or higher) arborist, must be submitted when works are proposed within 5.0m of a tree irrespective of property boundaries.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proposed amendments seek to increase the dwelling density of the site, with potential increased environmental considerations that will be required to be assessed should a development application be submitted.

Q9. Has the planning proposal adequately addressed any social and economic effects?

A key principle of Council's local strategic planning statement is to locate a greater diversity of housing and affordable housing options within reasonable walking distance (800m) of high-frequency public transport, with a key action being to deliver on the priority is to prepare and implement a local housing strategy. Council's local housing strategy looks at the housing mix in the Northern Beaches today, and the kind of housing that will be needed in the future. It considers trends in terms of population growth and change; household size and mix; issues such as affordability, sustainability and building resilience; and housing diversity, including housing types such as boarding houses, seniors housing and social and affordable housing.

Council's LHS and its targets have been prepared based on projections and other information currently available by DPIE. The LHS notes that the DPIE population projections were released before the COVID-19 pandemic, and may need to be reviewed to reflect revised projections. The LHS further notes that "*COVID-19 pandemic has had and will continue to have many impacts. Restrictions on travel and migration within Australia and internationally are likely to affect levels of population growth, particularly in the short term. Given the uncertainty, it is not possible to accurately predict the impact that COVID-19 associated restrictions will have on rates of population growth, demand for particular housing types, or the need for affordable housing. This reiterates the need for effective, flexible planning for the future of housing on the Northern Beaches and Sydney".*

However, with regards to the impacts of COVID, it is noted that the population insight update provided by DPIE in December 2020 states that "*ongoing border restrictions, the economic downturn and fewer births are likely to lead to both a lower rate of population growth and changing in living arrangements. These in turn will lead to less underlying demand for housing."*

The proposed amendments are considered inconsistent with Council's strategic documents and do not provide for any affordable rental housing (increasing the density to provide a variety of dwelling sizes does not increase the provision of affordable rental supply).

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Removing the density provision for the site will result in a potential increase in dwellings and therefore additional site related impacts such as additional cars entering and exiting the site. Any increase in density in the R3 zone under the LEP should be considered holistically in the context of the proposed precinct-based review being undertaken by Council in the Mona Vale Centre Investigation Area and potential impacts on infrastructure.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

N/A

TIMING

Should the recommendation be to proceed with the Planning Proposal, the anticipated timeframe for the completion of the Planning Proposal would be approximately 10-12 months

from the date of Council's approval to proceed. Following the issue of a Gateway Determination, Council will be required to formally exhibit the Planning Proposal for 28 days.

The matter would then be reported back to Council for final consideration following exhibition.

LINK TO COUNCIL STRATEGY

- Places for People - Goal 7: Our urban planning reflects the unique character of our villages and natural environment and is responsive to the evolving needs of our community
- Good Governance - Goal 19: Our Council is transparent and trusted to make decisions that reflect the values of the community.
- Participation and Partnership - Goal 21: Our community is actively engaged in decision making processes.

FINANCIAL CONSIDERATIONS

The assessment of the Planning Proposal is funded by the prescribed Planning Proposal fee as set out in Councils Fees and Charges 2021/22 and does not have an adverse impact on Council's budget.

SOCIAL CONSIDERATIONS

The proposed amendments are inconsistent with Council's strategic documents and do not provide for any affordable rental housing.

ENVIRONMENTAL CONSIDERATIONS

The proposed amendments seek to increase the dwelling density of the site, with potential increased environmental considerations that will be required to be assessed should a development application be submitted.

CONCLUSION

The Planning Proposal seeks to amend PLEP 2014 by rezoning the properties at 159-167 Darley Street West, Mona Vale from R2 Low Density Residential to R3 Medium Density Residential and amend clause 4.5A of the PLEP to include reference to the subject site.

The proposed amendments are not consistent with Councils strategic documents, with the Proponent not demonstrating why this planning proposal should be progressed ahead of the Mona Vale Place Plan and without the demonstrable strategic need for additional housing of this form in this location.

Further, the Proposal does not provide for a minimum of 10% affordable rental housing in accordance with the requirements of the LSPS or Council's affordable housing policy.

It therefore considered the Proposal does not have strategic or site specific merit and should be refused.

RECOMMENDATION OF PRINCIPAL PLANNER

That the Northern Beaches Local Planning Panel recommends that Council reject the Planning Proposal for 159-167 Darley Street Mona Vale, and not forward it to the NSW Department of Planning, Industry and Environment for a Gateway determination for the following reasons:

A. The proposal is inconsistent with the following Directions and Objectives of the Greater Sydney Region Plan:

I. Direction for Housing the City

- Objective 10 – Greater housing supply;
- Objective 11 – Housing is more diverse and affordable

II. Direction for a well-connected city

- Objective 14 - Integrated land use and transport creates walkable and 30-minute cities

B. The proposal is inconsistent with the following Directions and Priorities of the North District Plan:

I. Direction for Housing the City

- Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport

II. Direction for a well-connected city

- Planning Priority N12 – Delivering integrated land use and transport planning and a 30-minute city

C. The proposal is inconsistent with the following Planning Priorities of the Towards 2040 Local Strategic Planning Statement:

I. Housing

- Priority 15 – Housing supply, choice and affordability in the right locations
- Priority 16 – Access to quality social housing and affordable housing

II. Jobs and skills

- Priority 27 – Prepare a place plan for Mona Vale and develop LEP and DCP controls to respond to LEP studies and support the revitalisation of the centre.

D. The proposal has not demonstrated sufficient strategic merit or site-specific merit.

E. The proposal is inconsistent with the following applicable Ministerial Planning Direction(s):

I. Direction 3.1: Residential Zones

II. Direction 3.4: Integrating Land Use and Transport

III. Direction 5.10 - Implementation of Regional Plans

F. The proposal is not an appropriate strategic outcome as it is not consistent with Council's draft Local Housing Strategy

G. That the Local Planning Panel recommend the Planning Proposal lodged for 159-167 Darley Street West, Mona Vale be refused.

ITEM 3.2	**REV2021/0014 - 321-331 CONDAMINE STREET, MANLY VALE - REVIEW OF DETERMINATION OF APPLICATION DA2020/0824 FOR DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT AND STRATA SUBDIVISION**
AUTHORISING MANAGER	**Lashta Haidari**
TRIM FILE REF	**2021/680338**
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 a review 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, **refuses** Application No. REV2021/0014 for Review of Determination of Application DA2020/0824 for demolition works and construction of a shop top housing development and strata subdivision at Lot 20, 21, 22 & 25 DP 11320 & Lot 123 DP 737259, 321-331 Condamine Street, Manly Vale for the reasons for refusal set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0014

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 21 DP 11320, 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 22 DP 11320, 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 123 DP 737259, 327 - 329 Condamine Street MANLY VALE NSW 2093 Lot 25 DP 11320, 331 Condamine Street MANLY VALE NSW 2093 Lot 20 DP 11320, 321 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Review of Determination of Application DA2020/0824 for demolition works and construction of a shop top housing development and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Manly Vale Developments No.2 Pty Ltd
Applicant:	Manly Vale Developments No.2 Pty Ltd

Application Lodged:	15/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	09/08/2021 to 23/08/2021
Advertised:	09/08/2021
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 26.8%
Recommendation:	Refusal

Estimated Cost of Works:	$ 11,279,007.00

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2020/0824, which was refused by the NBLPP

on 16 December 2020. The four storey shop top housing development was refused due to the extent of the height exceedance, the inadequacy of the clause 4.6 submission, the visual impact of the non-compliant top floor, conflicting vehicular and pedestrian arrangements, and inconsistency with SEPP 65 and the ADG, specifically with regard to solar access, natural ventilation, ceiling heights and building separation to the west.

In response to the refusal of DA2020/0824, the review application has been accompanied by amended plans to reduce the number of units proposed (from 31 to 27), with an increase to the size of the internal light well, and changes to the internal layout of the upper floors and the facades of the development. The application now also proposes the dedication of land along Somerville Place (under a proposed Voluntary Planning Agreement offer) to facilitate the widening of the laneway.

Despite these amendments, the majority of the matters identified in the reasons for refusal remain unsatisfactory and as a consequence of the changes to the design, new issues and areas of non-compliance have now arisen. The proposal remains non-compliant with the maximum building height development standard, with the entirety of the upper floor protruding above the 11m height plane and one storey above the three storey height limit. The massing of the development, with nil setbacks to each boundary on Levels 2 and 3, is at odds with that of surrounding and nearby development, and results in unreasonable impacts upon the amenity of adjoining dwellings and the character of the streetscape.

Submissions were received from five (5) nearby residents and business owners in objection to the development, primarily concerned with regard to the bulk and scale of the development, the transition to the low density land to the west, and impacts upon the laneway. With the exception of concerns regarding the laneway, these concerns remain unaddressed in the amended proposal, despite forming part of the reason for the refusal of the original application.

The application significantly departs from numerous applicable controls prescribed by WLEP 2011, WDCP 2011 and the ADG, and overall, the proposal presents as an over development of the site. The application is referred to the NBLPP with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act seeking a review of the refusal of development application DA2020/0824, which sought consent for:

- the demolition of all existing site improvements,
- the construction of a four storey shop top housing development comprising 31 residential units and 4 retail tenancies, over two levels of basement car parking,
- associated earthworks, landscaping and infrastructure, and
- the strata subdivision of the resultant development.

In response to the refusal of DA2020/0824 and in response to Council's preliminary review of the subject application, the development has been amended and consent is now sought for the following:

- the demolition of all existing site improvements,
- the construction of a four storey shop top housing development comprising 27 residential units and 4 retail tenancies over two levels of basement car parking,
- associated earthworks, landscaping and infrastructure,
- reconstruction of Somerville Place and the dedication of a 1.5m wide strip of land adjacent to Somerville Place to Council (subject to a draft VPA offer), and
- the strata subdivision of the resultant development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 -
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D18 Accessibility and Adaptability
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 21 DP 11320 , 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 22 DP 11320 , 323 - 325 Condamine Street MANLY VALE NSW 2093 Lot 123 DP 737259 , 327 - 329 Condamine Street MANLY VALE NSW 2093 Lot 25 DP 11320 , 331 Condamine Street MANLY VALE NSW 2093

	Lot 20 DP 11320 , 321 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	When consolidated, the site is irregular in shape with a 35.645m wide frontage to Condamine Street (east), a 31.090m wide frontage to Sunshine Street (south), a 38.075m wide frontage to Somerville Place (west) and a total area of 1274.4m². The site experiences a cross fall from the upper north-western corner down towards the south-eastern corner of approximately 1.87m and a maximum gradient of 5.5%. The site currently contains one and two storey mixed use buildings with vehicular access and parking gained via Somerville Place. Condamine Street is a six-lane classified road, with bus lanes and intermittent parking restrictions on both sides of the street. The Condamine Street road reserve immediately adjacent to the site comprises a covered footpath, with no street trees or overhead infrastructure. Sunshine Street is a two-lane local road, with time restricted parking on both sides of the street. The Sunshine Street road reserve immediately adjacent to the site comprises a covered footpath, with no street trees or overhead infrastructure. Somerville Place is a single lane, one-way laneway that connects between Sunshine Street and King Street to the north. The western side of Condamine Street contains commercial and shop top housing developments of varying age, character and scale, including older single storey retail premises and more recent three-five storey shop top housing development. The eastern side of Condamine Street is more varied again, inclusive of retail premises, the Manly Vale Community Centre, residential development and shop top housing development. Low density residential development is located immediately to the west of the site, on the opposite side of Somerville Place.

Map:

SITE HISTORY

On 13 October 2019, a pre-lodgement meeting was held in relation to the redevelopment of the subject site for the purpose of a four storey shop top housing development.

On 24 July 2020, DA2020/0824 was lodged with Council.

On 16 December 2020, DA2020/0824 was refused by the NBLPP for the following reasons:

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. The development fails to comply with the provision of SEPP 65, in particular relating to the principals of context and the requirements of the Apartment Design Guide in relation to solar access, cross ventilation and building separation to the residential zoned land to the west. The development does not provide adequate floor to ceiling heights for the retail tenancies 3 and 4 and the residential lobby accessed from Sunshine Street as required by SEPP 65.*
2. ***Building Height***
   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. In this regard, the Panel is not satisfied that the applicant's written request demonstrates there are sufficient environmental planning grounds to justify contravening the development standard. The Panel is not satisfied that the development will be in the public interest as the development is not consistent with the objectives of the height of buildings development standard regarding compatibility with the height, bulk and scale of nearby developments and that the development will minimise visual impact of the top floor (Level 3) from the public domain and surrounding lands.
3. ***Building Setbacks (Top floor)***
   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 B5 Side Boundary Setbacks of the Warringah Development Control Plan. The upper floor is not sufficiently setback

to minimise the visual impact of level three as viewed from the surrounding lands and public domain.

4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan. The development does not result in a satisfactory outcome with regards to pedestrian and vehicle safety along Somerville Place due to the width of the existing laneway and the intensity of the development proposed.*

The minutes from the NBLPP meeting on 16 December 2020 provide the following reasons for this determination:

> *The Panel generally agrees with the assessment report, with the exception of the assessment of the clause 4.6 written request. The Panel does not consider there to be sufficient environmental planning grounds to justify contravening the development standard. The Panel considers the bulk and scale of the building to be inconsistent with the surrounding developments, in particular the upper level (level 3) of the development, which is not sufficiently setback from each street frontage to minimise the visibility of the top floor as viewed from the surrounding lands.*

On 15 April 2021, the review application was lodged with Council. At the time of lodgement, the application sought consent for the following:

- the demolition of all existing site improvements,
- the construction of a four storey shop top housing development comprising 30 residential units and 4 retail tenancies over two levels of basement car parking,
- associated earthworks, landscaping and infrastructure,
- the dedication of a 1.5m wide strip of land adjacent to Somerville Place to Council (subject to a VPA), and
- the strata subdivision of the resultant development.

On 28 June 2021, Council requested amendments and/or additional information in relation to the following:

- internal amenity of the proposed residential units, specifically in relation to solar access, natural ventilation, areas of private open space, internal layouts, and accessibility/adaptability,
- visual privacy, specifically in relation to overlooking of the adjoining dwelling to the west,
- building height non-compliance,
- adaptability, noting the absence of an updated accessibility report,
- vehicular access,
- treatment of the 1.4m strip of land to be dedicated to Council,
- stormwater management,
- ceiling heights of retail tenancies, and
- treatment of the public road reserve.

On 30 July 2021, amended architectural, civil and landscape plans were received by Council. The amended plans demonstrated further amendment to the design and layout of the upper levels, including a reduction from 30 units to 27 units. The civil and landscape plans also detailed the treatment of the land to be dedicated to Council, removing the proposed landscaping to be replaced by a widened roadway.

On 2 September 2021, an amended Clause 4.6 submission, amended stormwater plans, swept path

diagrams, and an amended BASIX Certificate were provided to Council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 (1) Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposal was supported by a Preliminary Site Investigation Report that confirms that there is a low risk of potential contamination. See further discussion with respect to SEPP 55.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested and subsequently provided during the assessment process. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the

Section 4.15 (1) Matters for Consideration	Comments
	issue of a Construction Certificate. This matter can 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 Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of the WLEP 2011, WDCP 2011 and SEPP 65 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Section 8.3 Application for and conduct of review

In accordance with Section 8.3 of the EP&A Act, an applicant may request a review of a determination of a development application. As the development application was determined within the 'prescribed period', the review must be lodged and determined within 12 months of the date of determination of the development application. The prescribed period is the period commencing on 25 March 2020 and ending on 25 March 2022, which was included in the *COVID-19 Legislation Amendment (Emergency Measures - Miscellaneous) Bill 2020* to provide additional measures to mitigate the impacts of the current pandemic. To meet this requirement, noting that the development application was determined on 16 December 2020, the subject review application must be determined before 16 December 2021.

Section 8.3(3) provides that whilst the applicant may amend the proposal, the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application. The applicant has made changes to the development, including the reduction of 31 units to 27 units. However, despite the change to the density of the development, the proposal is considered to remain essentially and materially the same as that previously proposed, and thus Council can be satisfied in this regard.

Section 8.3(5) prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the review application is consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined before 16 December 2021.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/08/2021 to 23/08/2021 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 5 submission/s from:

Name:	Address:
Tiles By Kate - Classic Tileworld	337 Condamine Street MANLY VALE NSW 2093
Mr Elia Francis Chahwan	2 Sunshine Street MANLY VALE NSW 2093
Ms Stephanie Mary Dryden	4 / 254 Condamine Street MANLY VALE NSW 2093
Ms Roslyn Leigh Rose	77 Wearden Road FRENCHS FOREST NSW 2086
Mr Dominic Leonard Ms Lauren Kelly	8 Sunshine Street MANLY VALE NSW 2093

In some instances, Council received multiple submissions from the same property owner. In accordance with Council's Community Participation Plan, multiple submissions from one property are counted as one submission.

Each of the five (5) submissions received were in objection to the proposed development. The concerns raised in the submissions received are addressed as follows:

- **Proximity of development to dwellings on Sunshine Street**
  Submissions were received in objection to the limited setback between the proposed development and adjacent dwelling houses. In particular, the submissions highlight non-compliance with the provisions of the ADG that identify the need for greater setbacks on sites that transition to low density. The submissions state that the proximity of the development is exacerbated by the sheer number of units oriented towards the dwellings to the west, the lack of appropriate screening to areas of private open space, and the removal of the landscaping previously proposed along Somerville Lane.

  As discussed with regard to the ADG and clause B6 (Merit Assessment of Side Setback) of WDCP 2011, the proposed development does not provide an appropriate transition to the low density development to the west, and the impacts upon the amenity of the adjoining dwelling are unacceptable. The application is recommended for refusal in this regard.

- **Visual impact of fourth floor**

Objection has been raised in regards to the proposed incorporation of a fourth floor, inconsistent with the three storey height limit prescribed by WDCP 2011. The additional floor is said to add excessive bulk to the development, particularly as seen from the low density zone to the west. The overall bulk and scale of the development is excessive and the proposal is recommended for refusal in this regard.

- **Parking**
  Submissions have been received in objection to the development on the grounds of insufficient parking. The submissions suggest that the provision of 1 space for 2 bedroom units is inadequate, and question where the additional cars are to be parked. The proposed development exceeds the minimum parking requirements prescribes by WDCP 2011. The site is located in a highly accessible location with excellent public transport services. It is anticipated that this will reduce demand for private vehicles at the site and in the general area.

- **Bulk, scale and character**
  Submissions received state that the development is out of character with the locality, with excessive bulk and scale presenting to the public domain. The proposal exceeds the maximum building height development standard, the number of storeys control and all minimum front and side setback controls. The proposed building sits one storey higher than the tallest neighbouring development and is uncharacteristic of the massing and scale of nearby built form. The proposal is recommended for refusal in this regard.

- **Construction traffic management**
  Submissions have been received raising concerns with regard to construction traffic management, with nearby business owners concerned regarding the obstruction of the rear one-way laneway. The submissions suggest that the two-way travel should be permitted during construction.

  Should the application be approved, conditions of consent can be imposed to ensure appropriate traffic management during construction. However, the laneway is too narrow to accommodate two-way travel, even in the short term.

- **Traffic**
  Submissions have been received in objection to the resultant additional traffic utilising the laneway post construction. The application was supported by a Traffic and Parking Assessment which confirms that the traffic associated with the proposed development is not unreasonable and will not exceed the capacity of the laneway. The report has been endorsed by Council's Traffic Engineer in this regard.

- **Exhaust**
  Concern has been raised with regard to exhaust from the basement carpark. The exhaust from the basement carpark is to be expelled from the roof, in accordance with relevant Australian Standards.

- **Drainage**
  The adjoining property owner has raised concerns with regard to drainage along the laneway, and potential impacts upon their property. The application proposes to upgrade the existing laneway adjacent to the development site, inclusive of all stormwater infrastructure. The stormwater plans have been reviewed by Council's Development Engineer and no concerns are raised in this regard.

- **Treatment of Somerville Lane**
  The adjoining property owner has raised concern with regard to the design and construction of

the laneway, requesting the removal of the kerb and gutter along the western edge (to be replaced by rollback kerb), and the installation of no parking signs and speed bumps. The applicant has provided civil plans detailing the construction of the proposed roadworks, which have been supported by Council's Development Engineer and Traffic Engineer. The use of roll back kerb and the installation of speed humps are not supported.

- **Request for additional vehicle access**
  The adjoining property owner has made a request for additional vehicular access to their property from Somerville Lane. Such a request should be made separately to Council under the provisions of s138 of the Roads Act.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**No objection.** *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.* *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.*
Environmental Health (Contaminated Lands)	**No objection, with conditions.** *Demolition of a number of structures (likely) containing hazardous materials such as asbestos and lead based paints, an environmental report was reviewed. Based on the findings in the report, Environmental health are satisfied that the development works can comply with the State requirements for control of contaminated land and hazardous materials by following the recommendations put forward in the environmental report.*
Environmental Health (Industrial)	**No objection, with conditions.** *Environmental health analysis of a proposal for 'shop top housing'. Combination of rooftop exhausts with 33 air conditioning units adjacent existing residential dwellings -consideration of potential noise impacts. Based on the Noise Policy for Industry recommendations and the lowest background measurements in the acoustic report, an industrial interface, RBL/intrusive noise trigger level (Urban, night time) is set at 45 dB(A). The applicant has provided calculations for distance and parapet attenuation (dampening), and a cumulative noise level for rooftop mechanical plant as 44 dB(A). This sits within the allowable noise-creating provisions and will likely only be discernible on the quietest nights when all mechanical plant are operating. Rock breaking of low-medium strength bedrock will have to occur during excavation, therefore surrounding residences will need to be notified of those activities (at least) one week prior. We have not recommended restrictions on operating hours for commercial/retail operations as this*

Internal Referral Body	Comments
	can be done if/when a DA is submitted for the use of each space.
Landscape Officer	**No objection, with conditions.** *The application is for review of determination under section 8.2(1)(a) of the EPA Act for development application DA2020/0824.* *The development application is for demolition of existing site structures and the construction of a shop top housing development located on land zoned B2 Local Centre, and associated works including landscape works.* *The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65), and associated Apartment Design Guide (ADG), and Warringah Local Environmental Plan (WLEP) and Warringah Development Control Plan 2011 (WDCP), including but not limited to the following clauses:* *• Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.....well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity...."* *• WLEP: it is noted that no deep soil requirements exist under Warringah Local Environmental Plan for land zoned B2 Local Centre.* *Landscape Plans are provided with the application including on structure planters within the site. The planters to the landscaped lightwells support taller palm species suitable for the light levels and the depth of planters shall be 1 metre, and all other planters to terraces and boundaries shall be 600mm soil depth. Additionally the Landscape Plans include public domain proposals for paving and street tree planting.* *The public domain works within the road reserve verge shall be part of a road reserve works application under section 138 and 139 of the Roads Act, and subject to conditions of consent. The street tree planting proposed shall be altered to satisfy Council's standard street tree planting detail that requires the tree pit to be located at the back of kerb, and the species type selection shall be based on a suitable outcome in consideration of the constraints of underground utilities across the road verge. Street tree planting locations, species and size shall be as selected and advised by Council.* *Under the Apartment Design Guide, section 4T Awnings and Signs, and in consideration of the Northern Beaches Public Space Vision & Design Guidelines under section D12.2 Street Awnings, the awning structure shall be a continuous awning across the frontage, and shall be setback to provide a minimum 1.5 metre from the face of the kerb*

Internal Referral Body	Comments
	to accommodate utility poles and street trees. Such awning design over the public road verge encourages pedestrian activity along streets and in conjunction with active frontages, and together with building entries provides a public address, thereby contributing to the identity of a development, and additionally provides shelter from the elements. *Landscape Referral raise no objections to the proposal subject to conditions of consent.*
NECC (Development Engineering)	**No objection, with conditions.** *The amended civil plans and stormwater plans are satisfactory. No objection to approval, subject to conditions as recommended.*
NECC (Water Management)	**No objection, with conditions.**
Strategic and Place Planning	**Objection.** *REV2021/0014 seeks a review of the Northern Beaches Local Planning Panel's decision to refuse DA2020/0824 for demolition and construction of a shop top housing development. The applicant has updated this application to purportedly address the Panel's reasons for refusal.* *The Northern Beaches Section 7.12 Contributions Plan 2021 applies to the land. If supported, a condition will need to be imposed requiring the payment of a monetary contribution based on the cost of works. The stated cost of works is $11,279,007 however this is not supported by a report from a quantity survey.* *The Contributions Plan states* "where the proposed cost of carrying out the development is $1,000,001 or more – a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors" *is required to provide the cost estimate. If this application is supported, the applicant should be asked to provide an updated cost estimate from a registered quantity surveyor.* *The submitted Statement of Environmental Effects states:* "the application seeks to provide for the dedication of a 1.4 metre wide x 38.075 metre long strip of land adjacent to Sumerville Place to Northern Beaches Council to provide for future laneway widening consistent with that achieved along the balance of Sumerville Place to the north of the site. This dedication also provides for improved pedestrian and vehicle safety along Somerville Place in response to the concerns expressed by Council in its refusal of the application. We propose that this dedication occur by way of a Voluntary Planning Agreement (VPA) with the requirement to enter into a VPA with Council pursuant to section 7.4 of the Environmental Planning and Assessment Act, 1979 (the Act) dealt with by way of an appropriately worded deferred commencement condition." *On 28 June 2021, Council wrote to the applicant to request additional information. This request also advised that the proposal to dedicate a*

Internal Referral Body	Comments
	1.4m strip of land to Council for pedestrian and vehicular access should include the provision of works to achieve this outcome. *The applicant provided a response to Council's request for additional information on 30 August 2021. This correspondence included a plan identifying the land to be dedicated to Council and a plan showing the proposed works on this land. The applicant also outlined the terms of a potential future VPA as:* "Land to be dedicated – A 1.435 metre wide by 38.075 metre area of the land totalling 54.6m² as depicted on Architectural plan DA-100(A) at Attachment 1. Works within dedicated area of land – The drainage, road pavement widening, kerb and gutter and footpath works proposed within the dedication area of land are depicted on plans C01(A), C02(A), C03(A) and to C04(B) prepared by Istruct Consulting Engineers a copy of which is at Attachment 2. These works will be completed by the developer prior to issue an Occupation Certificate. Cost or works within dedicated area of land – It is anticipated that the civil works proposed within the dedicated area of land will cost approximately $50,000. Timing - The land will be dedicated to Council upon completion of the civil works proposed within the dedicated area of land and prior to issue of an Occupation Certificate. We anticipate that the civil works proposed within the dedicated area of land will be offset against the section 7.11 contributions." *This correspondence also reiterated the request for council to impose a deferred commencement condition requiring the applicant to enter into a planning agreement.* *Council's Planning Agreement Policy encourages an offer to be submitted prior to the lodgement of a DA. The Policy also requires a formal offer to be assessed by the Development Contributions Committee. Any offer will need to demonstrate adequate public benefit. It is noted that the application does not accompany a formal offer to enter into a planning agreement. No assessment has been completed on the terms of the potential future VPA.* *Once a formal offer is received and assessed by the Committee, if supported, a draft Planning Agreement can be prepared and reported to Council for consideration. A draft Planning Agreement will need to be prepared in accordance with the relevant Practice Note and publicly exhibited in accordance with the requirements of the EP&A Regulation.* *I have spoken with the applicant's planning consultant to advise that a deferred commencement condition could be imposed however the applicant will need to consider the risk that the Committee or the Council do not support the terms of a future offer thereby preventing the consent from becoming operational.* *<u>Recommendations</u>*

Internal Referral Body	Comments
	The applicant should be asked to provide an updated cost estimate from a registered quantity surveyor to inform an accurate determination of the required development contribution. *If the application is to be supported, the requirement to enter into a planning agreement could be addressed by an appropriately worded condition of consent.*
Traffic Engineer	**Objection.** *It is noted that the amended plans now provide for 27 units comprised of 2 x 1 bedroom units, 20 x 2 bedroom units and 5 x 3 bedroom units and 327 sqm of retail floor area. A parking supply of 62 spaces comprised of 36 residential car spaces, 6 visitor spaces & 20 retail spaces is to be provided. 3 motorcycle parking spaces have also been provided off Somerville Place.* *The residential parking component exceeds the DCP requirement of 34 residential spaces and 5.4 visitor spaces (rounded up to 6). The retail parking component meets the DCP retail carparking requirement.* *In terms of traffic concerns previously raised:* *The amended plans have failed to address concerns raised in the traffic referral comments dated 14/5/21 with regard to the inadequacy of the loading bay. The loading bay remains inadequate as it provides insufficient clearance even for small rigid vehicles and caters only for passenger vehicles and vans and it is therefore evident that much of the loading and unloading activity generated by the development will take place on-street. It is however considered impractical to cater for a loading bay of appropriate size without significant redesign work and an on-street Loading Zone will therefore be required. A condition of consent will be drafted requiring that plans for an on-street Loading Zone catering for Medium Rigid Vehicles on the Sunshine Street frontage of the site be submitted for consideration by the Traffic Committee.* *There is still concern regarding the adequacy of the vehicular access into the site. AS2890.1 section 2.5.2 (c) requires that a B85 and B99 vehicle should be able to pass at the intersection point of the driveway and carpark access ramp. There should likewise be an ability for traffic entering from Somerville Place to pass an exiting vehicle. The swept path plots provided by the applicant's traffic consultant show that it is not possible for a B85 vehicle and B99 vehicle to concurrently enter and exit the site from Somerville Place or to pass each other when exiting from the basement carpark. To address this shortcoming the traffic consultant proposes that a sign be erected at the top of the ramp asking exiting motorists to Give Way. As this will require exiting vehicles to stop and give way on a regular basis and relies upon exiting motorists having clear sight lines to incoming traffic from Somerville Place which could not be guaranteed the proposed solution is deemed inadequate. It is considered that these concerns can be*

Internal Referral Body	Comments
	addressed by widening of the portion of the driveway between Somerville Place and the basement carpark ramp which would eliminate any conflict. This would result in the deletion of one or two motorcycle passing bays but their presence is not critical to approval of the development application. It is not considered that this concern can be satisfactorily conditioned so further redesign of the vehicular access into the site is required prior to approval of the DA.
Waste Officer	**No objection, with conditions.**

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**No objection, with 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.
NSW Roads and Maritime Services (Traffic Generating Development)	**No objection, with conditions.** Transport for NSW confirmed that the requirements in their letter dated 23 August 2020 remain applicable to the amended development and need to be included in any consent issued by Council under this review.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. In response to the requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation (dated 31 March 2020 and prepared by EI Australia).The report concludes that there are no known or likely sources of contamination and that the land is considered to be suitable for the proposed commercial and residential use. This position is supported by Council's Health Officers (see referral response above).

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a four storey shop top housing development, comprising 27 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Design and Sustainability Advisory Panel
The application was referred to the DSAP on 27 May 2021 for review, the notes from which are attached to this report. The DSAP was not supportive of the proposal, and provided a series of recommendations, which are addressed as follows:

1. *Reduce the overall bulk of the building and reduce the GFA by approximately 600sqm*

   Comment: The GFA of the proposed development was reduced by approximately 182m², with a reduction of three units. This reduction appears to be primarily associated with the increase to the central light well, with no reduction to the bulk of the building as seen from the public domain. The amended proposal has not adequately responded to this recommendation.

2. *Consider an "L" shaped form with a courtyard /roof terrace in the north west corner with the aim of provide dual aspect to as many of the units as possible and improving the relationship to the adjoining sites on Sunshine St.*

   Comment: The applicant has not amended the proposal in this regard. Rather, the applicant has chosen to increase the central lightwell in order to increase the amount of cross-ventilated apartments. However, the size/area of the lightwell is deficient, and the applicant has not demonstrated the three storey height of the lightwell is appropriate on all elevations. The proposal has been designed with the tallest part of the development along the northern elevation of the lightwell, which impacts upon the amount of sunlight penetrating into the lightwell. The amended proposal has not adequately responded to this recommendation.

3. *As noted in previous advice and as outlined above, a variation to the height and an increase from 3 to 4 storeys may be considered favourably if and only if the benefits compared to a complying scheme can be demonstrated, noting that recommendation #1 would still apply.*

   Comment: The applicant has not undertaken any comparative analysis of a compliant scheme, nor is there any suggestion that the height non-compliance enhances the amenity of the proposed development. The amended proposal has not adequately responded to this recommendation.

4. *Improve legibility and ease of vehicular movement.*

   Comment: Access arrangements remain unresolved. The amended proposal has not adequately responded to this recommendation.

5. *Consider a reduction in the amount of car parking on site, this should be discussed with Council staff prior to any amendments to your application.*

   Comment: The comment from DSAP regarding a reduction in parking was made with regard to a numerically compliant scheme. The amended proposal now exceeds the minimum requirements of DCP, which is at odds with the direction provided by the DSAP. The amended proposal has not adequately responded to this recommendation.

6. *Significantly increase the dimensions of the 'light wells or convert to a generous roof terrace or raised courtyard.*

Comment: The central courtyard has been increased from approximately 6m x 6m to 12m x 8m. As above, the amended proposal has not adequately responded to this recommendation.

7. *Consider incorporating an accessible roof terrace for common use.*

   Comment: The application does not propose an accessible roof top terrace for common use. The amended proposal has not adequately responded to this recommendation.

8. *Resolve detailed amenity and interior planning issues, including:*

   - *Natural light and ventilation of lobbies*
   - *Room dimensions*
   - *Locate laundries away from front doors(units 3, 7 etc)*
   - *"I" shaped configuration of K/L/D areas that will mean constant artificial lighting (unit 6)*
   - *Sealed windows (glass block in lieu of openable window)*
   - *Separation between habitable rooms*
   - *Outlook*
   - *Avoidance of 'snorkel' bedrooms (units 8,10,11 etc)*

   Comment: Whilst some aspects of the interior planning issues have been addressed, many remain unresolved and new issues have arisen in the amended scheme. The amended proposal has not adequately responded to this recommendation.

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

   Comment: The application proposes to maintain gas cooktops and water heaters as originally proposed. The amended proposal has not adequately responded to this recommendation.

10. *The Panel recommends inclusion of a substantial amount of rooftop PV (1.5kW/unit).*

    Comment: The application does not propose any photovoltaic solar cells. The amended proposal has not adequately responded to this recommendation.

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

    Comment: 2 of the 27 (7%) units proposed have one bathroom with an operable window. The amended proposal has not adequately responded to this recommendation.

Overall, the amended proposal has not appropriately responded to the recommendations provided by the DSAP.

Design Quality Principles

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

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

- **Principle 1: Context and Neighbourhood Character**
  Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
  Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.
  Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

  Comment: The proposed development is located in the Manly Vale B2 Local Centre zone. Condamine Street is one of the main roadways through the Northern Beaches LGA, with an extremely high volume of passing traffic. Condamine Street is characterised by larger scale development, and the presence of other four storey development is acknowledged. However, the form and massing of the proposed development is not considered to appropriately respond to the context and character of the Condamine Street, including development of a greater scale recently approved further to the south. Furthermore, the proposal does not appropriately respond to character of Sunshine Street, which comprises low density residential development.

- **Principle 2: Built Form and Scale**
  Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
  Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.
  Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

  Comment: The bulk and scale of the building is inconsistent with the existing and desired character of the local centre. Whilst the presence of other four storey development is not denied, the scale and massing of the development is unlike any other development within the visual catchment of the site. The height and bulk of the proposal along all facades is not appropriately modulated or articulated and is unlike any other development along Condamine Street, which is characterised by development that steps back from the street as the height of the development increases. The application places too much emphasis on the concept of nearby four storey development, without any analysis of the pattern of surrounding built form.

- **Principle 3: Density**
  Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
  Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

  Comment: There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment. Whilst a higher density may be appropriate in this general location, the proposed development does not appropriately respond to the constraints of the site and a high level of amenity for future occupants and adjoining properties is not achieved. The proposed development appears to be attempting to squeeze too

many units onto the site.

- **Principle 4: Sustainability**
  Good design combines positive environmental, social and economic outcomes.
  Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

  Comment: The application was supported by a BASIX Certificate, which includes recommendations to ensure that the building performs meets minimum industry standards. However, the BASIX Certificate does not relate to the development before Council. Furthermore, the application does not appear to have made any amendments in response to specific sustainability concerns raised by the DSAP, and the proposal remains highly reliant upon artificial lighting and ventilation.

- **Principle 5: Landscape**
  Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.
  Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.
  Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

  Comment: The site is located within a high density local centre that has no landscaped area requirements prescribed by WDCP 2011. Whilst the amended proposal demonstrates an increase to the area of landscaping within the central light-well, the amended design results in the removal of landscaping along the western facade that assisted to mitigate impacts upon the amenity of dwellings to the west. The landscaped solution along the Condamine Street facade is also questioned, noting the presence of extensive underground infrastructure within the road reserve and the proximity of the canopy to the roadway.

- **Principle 6: Amenity**
  Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

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

- **Principle 7: Safety**
  Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.
  A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

  Comment: Whilst the proposal is generally acceptable in this regard, concern remains with regard to the amenity of the footpath noting the absence of a continual awning along both the Sunshine Street and Condamine Street facades.

- **Principle 8: Housing Diversity and Social Interaction**
  Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.
  Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.
  Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

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

- **Principle 9: Aesthetics**
  Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.
  The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

  Comment: The proportions of the proposed development do not appropriately respond to the context of the site. When compared to previous versions of the scheme, the architectural treatment of the facade is also less resolved and lacks the fine-grain response required in consideration of the width of the development and the context of the site. Further, the angled geometry of the Condamine Street facade does not relate to the rest of the building, specifically the curvature of both corner detailed elements.

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

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

ADG reference	Subclause	Design Criteria	DC	DG	O
Part 3 Siting the Development					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	N	N

ADG reference	Subclause	Design Criteria	DC	DG	O
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	N	N
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	N	N	N
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	N
	3D-3	Communal open space is designed to maximise safety.	-	N	N
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	-	-
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	N	N	N
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	N	N
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	Y
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	-	-
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	N	Y
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	-	-
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade	-	-	-

ADG reference	Subclause	Design Criteria	DC	DG	O
		parking are minimised.			
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-
Part 4 Designing the building					
Amenity					
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	N	N	N
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	N	N	N
	4A-2	Daylight access is maximised where sunlight is limited.	-	N	N
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	N	N
4B Natural ventilation	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y
	4B-3	At least 60% of all apartments are naturally cross ventilated.	Y	Y	Y
		Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Y	Y	Y
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	N	N	N
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas: **Apartment Type** — **Min. internal area** Studio — 35m² 1 Bedroom — 50m² 2 Bedroom — 70m² 3 Bedroom — 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.	N	Y	Y
		Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	N	N	N
	4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	N	N	N

ADG reference	Subclause	Design Criteria	DC	DG	O
		In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	N	N	N
	4D-3	Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).	N	N	N
		Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y
		Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	Y	Y	Y
		The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y
4E Private open space and balconies	4E-1	All apartments are required to have primary balconies as follows: **Apartment Type** / **Min. area** / **Min. depth** Studio / 4m² / - 1 Bedroom / 8m² / 2m 2 Bedroom / 10m² / 2m 3 Bedroom / 12m² / 2.4m	N	N	N
		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 3m².	-	-	-
	4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	Y	Y
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	N	N
	4E-4	Private open space and balcony design maximises safety.	-	Y	Y
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.	Y	Y	Y
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: **Apartment Type** / **Min. area** Studio / 4m³ 1 Bedroom / 6m³ 2 Bedroom / 8m³ 3 Bedroom / 10m³ At least 50% is to be located within the apartment.	Y	Y	Y
	4G-2	Additional storage is conveniently located,	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
		accessible and nominated for individual apartments.			
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	N	N
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	N	Y
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	N	N
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	N	N
Configuration					
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	-	-
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	-	-
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	N	N
	4M-2	Building functions are expressed by the facade.	-	Y	Y
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	N	N
	4Q-2	A variety of apartments with adaptable designs are provided.	-	N	N
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-

ADG reference	Subclause	Design Criteria	DC	DG	O
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	N	N
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	N	N
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on sit before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	-	-
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed ADG Discussion

- **Site analysis (3A-1)**
  Objective 3A-1 identifies the importance of detailed site analysis to inform the proposed design. A detailed site analysis should include the pattern of building frontages, street setbacks, overall heights (storeys and metres) and important parapet heights. In circumstances where a development is reliant upon the precedent of other four storey built form in the streetscape, an application should be supported by comparative analysis demonstrating such height and bulk of other built form. Whilst the application includes photographs of other four storey development along Condamine Street, the application lacks any detail in relation to the massing and proportions of these developments, specifically the heights (in metres) and setbacks of the upper floors.

- **Communal open space (3D-1, 3D-2 and 3D-3)**
  With no communal open space, the proposal is non-compliant with the design criteria of Objective 3D-1 of the ADG that requires an area of communal open space of at least 318m², being 25% of the area of the site. With no communal open space, the proposal is also

inconsistent with the second design criteria of this Objective, which requires good solar access to 50% of the communal open space in midwinter. In circumstances where the number of units receive little to no sunlight in mid-winter, and where the areas of private open space of a number of units are sited in somewhat hostile environments, the provision high quality and usable open space would be of great benefit to the development. Nonetheless, it is also appreciated that each area of private open space proposed is adequately sized to provide functional private open space and the proposed development is sited in close proximity to local parks and community facilities.

- **Deep soil zones (3E-1)**
  The proposal does not provide any deep soil landscaping, and is non-compliant with the design criteria of Objective 3E-1 that requires 7% of the site, or 89m², to be deep soil. Whilst the provision of an area equivalent to 7% may not be reasonable in light of the B2 Local Centre zoning of the site and the absence of any landscaped area requirements in WDCP 2011, the lack of deep soil planting is of detriment to the proposal, specifically with regard to the interface with the adjoining R2 Low Density Residential zoned land. Furthermore, the lack of deep soil is not appropriately compensated by landscaping at upper levels of the development, with integrated planting generally limited to the central light wells and the perimeter of the upper-most level.

- **Visual privacy (3F-1)**
  The central light well has not been designed to achieve the minimum spatial separation requirements prescribed by Objective 3F-1 of the ADG, noting that the distance between the kitchen window of Unit 25 is located at a distance of only 8.5m from the window of Bedroom 2 of Unit 26 (3.5m short of the 12m minimum requirement for setbacks between habitable rooms). The 6m spatial separation between the western facade of the proposed development and the dwelling at 2 Sunshine Street also falls short of the design guidance of Objective 3F-1, which prescribes that the spatial separation should be increased to 9m when adjacent to land of a lower density zoning. The design guidance also identifies that the resultant setback is required to provide for a transition in scale and landscaping, neither of which is achieved in the proposed development, as the entire 6m distance is associated with the resultant laneway.

- **Vehicle access (3H-1)**
  Objective 3H-1 of the ADG prescribes that vehicle access points are to be designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes. Whilst the siting of the proposed driveway along Somerville Place is consistent with the design guidance for driveways to be located on secondary streets or laneways where available, the application has not satisfactorily demonstrated that the driveway has been designed to achieve safe vehicular access.

- **Solar and daylight access (4A-1, 4A-2 and 4A-3)**
  The proposed development is non-compliant with the requirements of Objective 4A-1 of the ADG, which prescribes that 70% of units proposed should receive a minimum of 2 hours of direct sunlight to living room windows and areas of private open space between 9am and 3pm in mid-winter.

Unit No.	Internal	External	Compliance	Unit No.	Internal	External	Compliance
01	Yes**	Yes	Yes	**15**	Yes**	Yes	Yes
02	Yes**	Yes	Yes	**16**	No	No	No
03	Yes**	Yes	Yes	**17**	No*	No*	No*
04	Yes**	Yes	Yes	**18**	Yes	No*	No*
05	Yes**	Yes	Yes	**19**	No	No	No

06	No	No	No	**20**	No	No	No
07	No*	No*	No*	**21**	Yes	Yes	Yes
08	No*	No*	No*	**22**	Yes	Yes	Yes
09	No	No	No	**23**	Yes	Yes	Yes
10	No	No	No	**24**	No	No	No
11	Yes**	Yes	Yes	**25**	Yes	Yes	Yes
12	Yes**	Yes	Yes	**26**	Yes	Yes	Yes
13	Yes**	Yes	Yes	**27**	Yes	Yes	Yes
14	Yes**	Yes	Yes				

*Achieves 2 hours if calculated from 8:30am

**Receives solar access through high level windows

As outlined above, only 16 of the 27 (60%) apartments proposed receive 2 hours of direct sunlight to windows associated with living rooms and areas of private open space between 9am and 3pm in midwinter. The proportion improves (20/27 or 74%) if you consider sunlight received at 8:30am. However, in accordance with Objective 4A-2 of the ADG, high level windows (with sills 1.5m or greater) are only to be used as a secondary light source in habitable rooms. In this regard, it is noted that the living room windows of 10 of the 27 (37%) proposed units are high level windows, and each of these windows is relied upon to meet the 60% currently achieved.

Whilst it is acknowledged that the number of units receiving compliant levels of solar access has increased compared to that proposed in DA2020/0824, concern is maintained in relation to the amenity of the development, specifically with respect to the amount of direct sunlight and natural daylight afforded to the proposed units.

As proposed, 2 of the 27 units (7%) will receive no sunlight to living rooms and areas of private open space. In addition to this, a further 4 units will not receive any direct sunlight to windows associated with the living room and only marginal sunlight to areas of private open space, such that 22% of the proposed dwellings will not receive any sunlight within the units in midwinter. The amount of daylight to these units (Units 06, 09, 10, 16, 19 and 20) is also questioned, noting that the living spaces are located behind deep set covered terraces, up to 3.8m back from the front facade. Units 09, 10, 19 and 20 each share a common wall with an internal light well, yet the proposal has not been designed to allow for these units to benefit from the daylight afforded by these design elements. In light of such design decisions, it is difficult to suggest that the development has been designed to maximise daylight to the units proposed.

Objective 4A-1 of the ADG also identifies that development should be designed to maximise its northern aspect, with single aspect unit facing north or east. Despite the provision of two light wells that would facilitate a northerly aspect, the proposal does not incorporate a single north facing apartment.

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

- **Ceiling heights (4C-1)**
  The ceiling height of the top floor apartments is limited to 2.4m, inconsistent with the 2.7m minimum prescribed for habitable spaces. It is noted that the ground floor plan indicates non-compliance with the minimum ceiling level prescribed in relation to retail spaces. However, this appears to be in error, as greater heights are demonstrated in section. If the application was to be approved, a condition of consent could be imposed to ensure compliant ground floor ceiling heights.

- **Apartment size and layout (4D-1 and 4D-3)**
  Objective 4D-1 of the ADG prescribes the minimum internal areas of each apartment size, as follows:

Type	Area
1 Bedroom / 1 Bath (1+1)	50m²
2 Bedroom / 1 Bath (2+1)	70m²
2 Bedroom / 2 Bath (2+2)	75m²
3 Bedroom / 1 Bath (3+1)	90m²
3 Bedroom / 2 Bath (3+2)	95m²

8 out of 27 (30%) proposed units do not comply with these minimum requirements, as follows:

Unit No.	Type	Area	Compliance	Unit No.	Type	Area	Compliance
01	3+2	90m²	No	**15**	3+2	90m²	No
02	1+1	50m²	Yes	**16**	2+2	71m²	No
03	2+2	72m²	No	**17**	2+2	86m²	Yes
04	2+1	71m²	Yes	**18**	2+2	87m²	Yes
05	3+2	90m²	No	**19**	2+1	71m²	Yes
06	2+2	71m²	No	**20**	2+2	83m²	Yes
07	2+2	86m²	Yes	**21**	3+2	96m²	Yes
08	2+2	86m²	Yes	**22**	2+2	95m²	Yes
09	2+1	71m²	Yes	**23**	2+2	76m²	Yes
10	2+2	83m²	Yes	**24**	2+2	76m²	Yes
11	3+2	90m²	No	**25**	2+1	72m²	Yes
12	1+1	50m²	Yes	**26**	2+1	77m²	Yes
13	2+2	72m²	No	**27**	2+1	70m²	Yes
14	2+1	71m²	Yes				

Objective 4D-3 of the ADG prescribes that each master bedroom is to have a minimum area of 10m², with a 1.8m wide wardrobe. 9 of the 27 (33%) units proposed comprise undersized master bedrooms (<10m²), 2 of the 27 (7%) units proposed have an undersized wardrobe, and one unit (Unit 21) has no wardrobe in the master bedroom.

- **Private open space and balconies (4E-1 and 4E-3)**
  Objective 4E-1 of the ADG prescribes the minimum area of private open space for each apartment type. With an area of 10m², the terraces of 2 of the 27 (6%) units proposed, being Units 5 and 15, are non-compliant with the 12m² minimum prescribed for 3 bedroom units.

  Objective 4E-1 also advises that operable walls or enclosed winter gardens may be appropriate

for balconies in close proximity to roads. None of the balconies oriented to Condamine Street offer any mitigation measures or buffering form the noise levels associated with traffic along Condamine Street.

Objective 4E-3 of the ADG prescribes that private open space and balcony design is to be integrated into and contribute to the overall architectural for of the building. Objective 4E-3 places preference on solid balustrades, and encourages the use of operable screens, hoods and pergolas to control sunlight and wind. The design of the west facing balconies on Levels 1 and 2 comprise an open style balustrade that is inappropriate given the proximity of the balconies to the private open space of the dwelling next door. The design of the upper floor balconies lack appropriate weather protection, specifically with regard to exposure to the south and west. As above, the design of the east facing balconies, that overlook Condamine Street, inappropriately lack any screening measures to buffer the noise associated with traffic along the classified roadway.

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

- **Noise and Pollution (4J-1 and 4J-2)**
  Objectives 4J-1 and 4J-2 of the ADG advise that the development should be designed, with appropriate construction techniques employed, to minimise exposure to noise sources. As above, the Condamine Street facing units have not been sensitively designed to minimise impacts of noise associated with road traffic for the proposed balconies. Whilst conditions of consent could be imposed to ensure appropriate construction measures are employed to minimise internal noise, the acoustic amenity of the balconies remains unresolved.

- **Facades (4M-1)**
  Objective 4M-1 of the ADG prescribes that building facades should provide visual interest along the street while respecting the character of the local area. As discussed in further detail below with regard to the front setback control of WDCP 2011, the scale, massing and composition of the facades of the development do not appropriately respond to that of surrounding and nearby development.

- **Roof design (4N-3)**
  Objective 4N-3 identifies that roof design should maximise solar access to apartments in winter and provide shade during summer, with skylights and ventilation systems integrated into the roof design. The proposed roof form does not incorporate appropriate eaves to protect the development from inclement weather and does not comprise any skylights, which is somewhat of a missed opportunity, particularly when some of the top floor units receive minimal and non-compliant levels of solar access.

- **Universal design (4Q-1 and 4Q-2)**
  Objective 4Q-1 of the ADG prescribes that 20% of units proposed should be designed in accordance with the Liveable Housing Guidelines Silver Level Standard. Objective 4Q-2 of the ADG advises that the development should provide adaptable housing units in accordance with Council policy. As discussed with regard to clause D18 of WDCP 2011, 10% (rounded up) of units should be designed in accordance with Class C of AS4299. The previous application (DA2020/0824) was supported by an Access Report at lodgement, however no updated report has been presented with regard to the amended plans currently before Council, and compliance

with these requirements cannot be confirmed.

- **Awnings (4T-1)**
  Objective 4T-1 prescribes that awnings are to be well located along streets with high pedestrian activity and located over building entries for amenity. WDCP 2011 also emphasises the need for continuous awnings within local centres. The proposed development does not provide a continuous awning over the Condamine Street and Sunshine Street road reserves.

- **Energy efficiency (4U-1)**
  The BASIX Certificate provided to support the application does not relate to the proposal before Council and as such, Council cannot be satisfied that the development has been designed to meet industry standards. Further, the low level of daylight to units increases reliance on artificial lighting and heating, inconsistent with the guidance of this objective. The application also failed to appropriately respond to DSAP's recommendations in this regard.

DA2020/0824 was refused due to inconsistency with SEPP 65 and the ADG, specifically with regard to context, solar access, cross ventilation and building separation to the residential zoned land to the west. Whilst the proposal has made improvements with regard to solar access and natural ventilation, the proposal has not adequately addressed the concerns raised with regard to context, solar access and building separation. Furthermore, the amended proposal is also inconsistent with other aspects of the ADG, such that the proposal presents as an over-development of the subject site. In accordance with clause 30 of SEPP 65, development consent must not be granted to the application, as the proposal does not have adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1112833M_04 dated 30 August 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	35	35

However, upon review, the details relied upon in the amended BASIX Certificate do not align with the amended application before Council. For example, the BASIX Certificate identifies 68 car spaces when only 62 spaces are nominated in the architectural plans. Furthermore, the area of units and the amount of bedrooms listed on page 3 do not align with the architectural plans. As such, Council cannot be satisfied that the proposal meets the minimum required targets of the BASIX Certificate.

SEPP (Infrastructure) 2007

In accordance with clause 45 of this policy, the application was referred to Ausgrid, who raised no objection subject to the imposition of conditions of consent.

The proposed development, which comprises parking for more than 50 motor vehicles,

constitutes Traffic Generating Development, and a referral to TfNSW is required in accordance with clause 104 of this policy. The application was referred to the RMS who did not raise any objection to the proposal, subject to the imposition of conditions of consent:

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

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	11m	13.9m	2.9m (26.4%)	No

Compliance Assessment

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

Detailed Assessment

Zone B2 Local Centre

The proposed development cannot be said to be consistent with all of the objectives of the B2 Local Centre zone, as follows:

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

  Comment: The proposed shop top housing development comprises four retail tenancies at the ground level that will contribute to the range of retail, business, entertainment and community uses within the vicinity of the site.

- *To encourage employment opportunities in accessible locations.*

  Comment: The site is located in close proximity to bus stops serviced by multiple bus routes, including the B1 bus service. The proposed retail facilities will provide for additional employment opportunities at the site, which is located in a highly accessible location.

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

  Comment: The advantageous siting of the development will promote the use of public transport and encourage future residents to use active forms of transport.

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

  Comment: The proposed development appropriately activates the Condamine Street and Sunshine Street facades, and the proposed road widening will maximise pedestrian safety along Somerville Place. However, concern is raised in relation to the lack of a continuous awning along Condamine Street and Sunshine Street, which Council specifically requested to be maintained. The lack of a continuous awning creates an unpleasant and inconsistent street experience along the road reserve, particularly during inclement weather.

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

  Comment: The proposed four-storey development will sit a full storey higher than the recently completed development to the north, and two storeys higher than development permitted to the west. Whilst the existence of other four storey development along Condamine Street is not denied, the scale of the proposal, and the lack of appropriate articulation and landscaping, results in a development that does not favourably relate to the surrounding urban form.

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

  Comment: The land to the west of the subject site is zoned R2 Low Density Residential and contains one and two storey dwelling houses. The proposed development does not appropriately respond to the residential nature of the adjoining land, and the proposal has not been designed to ensure that the amenity of the neighbouring site is appropriately maintained.

4.3 Height of buildings

and 4.6 Exceptions to development standards

With a maximum building height of 13.95m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP

2011 can be applied.

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

What is the extent of the breach?
The proposed development reaches a maximum height of 13.95m, representative of a 2.95m or 26.8% variation to the 11m maximum building height development standard. The maximum height occurs in relation to the northern lift overrun in the centre of the development. However, the extent of non-compliance is not limited to this one portion of the building, but rather the entire upper floor, which reaches up to 2.2m above the height plane on the Condamine Street elevation, up to 1.2m above the height plane on the Somerville Place elevation and up to 2m above the height plane on the Sunshine Street elevation. The extent of non-compliance is illustrated in blue in the diagrams below.

Figure 1 - Condamine Street facade with hei

Figure 2 - Sunshine Street facade with heigh

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

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

   Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater*

Council [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has not satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard, particularly with regard to the following objectives:

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

  Comment: The submission from the applicant relies upon other existing and approved four storey development along Condamine Street, and notes that the upper level is setback from the street and softened by landscaped planters. However, the submission fails to appropriately consider the context of the development site, specifically the presence of a recently constructed three storey building to the north, and two storey development to the south and west. Further, the proposal also fails to consider the scale of the development, and the extent of the proposed breach, which is not insignificant and far exceeds that of other development along Condamine Street.

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

  Comment: The applicant has not demonstrated that the visual impact of the non-compliant portion of the development has been appropriately minimised. The application appears to solely rely upon the presence of planter boxes to soften the visual impact of the upper floor. However, the planter boxes are sited 5m forward of the minimum front setback with nil setbacks to the street and negatively contribute to the overall bulk and scale of the development. In some areas, the planter boxes themselves also extend above the height plane. Increasing the height and bulk of the lower levels of the development to screen the non-compliant upper floor is not considered to be an appropriate response to an objective that aims to minimise visual impact of built form.

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

  Comment: As above, the clause 4.6 submission has not demonstrated that the visual impact of the non-compliant portion of the development has been appropriately managed.

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

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The applicant's submission highlights the following reasons/grounds for the proposed departure from the building height development standard:

1. The four storey height is complementary and compatible with other recent development approvals along Condamine Street. Compliance would require the removal of the entire upper level resulting in a 3 storey built form that would not appropriately respond to the sites prominent corner location and would appear inconsistent with the height and cohesive streetscape established by recently approved development along Condamine Street.

2. Approval of the building height breaches will facilitate the dedication of land along Somerville Place and the widening of the public laneway.
3. The loss of the top floor would make the project unviable noting the purchase price of the land.
4. Approval of the height variation will promote good contextually appropriate design which will facilitate enhanced amenity outcomes to and from the development. The building is of a good design and is an orderly and economic use and development of the land, considered with objectives 1.3(c) and (g) of the EP&A Act.

These propositions are not supported, as follows:

1. The site is located in the middle of the B2 zoned strip of Condamine Street and is not identified in any policy or document as a prominent corner or gateway site. Furthermore, noting the recently constructed three storey building to the north and other surrounding and nearby two storey development, it cannot be said that a three storey building would be inconsistent or incohesive with the streetscape.
2. The applicant is placing too much weight on nearby precedence without any real analysis of whether the situations are comparable. The existence of a fourth storey on a nearby building does not create an automatic entitlement to include seven units about the height plane on the subject site.
3. The dedication of the laneway proposed in the application is essential to the proposed development in order to achieve appropriate access to the site, irrespective of whether the proposal comprises three or four storeys. Furthermore, there appears to be no correlation between the dedication of 54.6m² of land for the purpose of road widening and the 675m² of floor space proposed on the upper level above the height plane.
4. The comment regarding the viability of the proposal is unfounded, and the purchase price of the land if not sufficient planning grounds to justify exceedance of the height control.
5. The applicant has not demonstrated that the height non-compliance provides improved amenity for future occupants or adjoining properties. Further, it is yet to be demonstrated that the height breach is a result of a good design response that is contextually appropriate. The proposed development fails against many provisions of the ADG and WDCP 2011, with non-compliance with multiple general amenity provisions including solar access, room proportions, ceiling heights and privacy.

The applicant's submission is not considered to establish sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

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

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

The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

  Comment: The height and scale of the proposed development is inconsistent with nearby and surrounding built form and will result in an abrupt change when viewed from the west along from Sunshine Street. The scale and massing of the development is also of concern, with little to no vertical articulation to break down the width of the proposal, which exceeds that of all other development sites along Condamine Street. This is considered to be of particular importance noting the non-compliant massing of the upper floors, which extend forward of the 5m front building line and above the 11m height plane.

  As above, whilst the existence of other four storey development is acknowledged, the site is not in the immediate vicinity of any other four storey development and there has been no analysis of the size, scale and setback of the fourth floor proposed compared to other approvals further along the street.

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

  Comment: The visual impact of the proposed development has not been appropriately minimised. Despite an increase to the massing of the third storey in an attempt to hide the non-compliant upper level, the fourth floor is still visually prominent from the public domain. In fact, over the course of the assessment of this application, the height of the development has increased, the setback of the upper floor has decreased, and to address concerns regarding solar access, the setbacks of the lower levels fronting Condamine Street have been altered. As a consequence of these amendments, the visual impact of the upper floor of the development has been increased compared to that proposed at lodgement and that presented in the original development application.

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

  Comment: Not applicable.

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

  Comment: As above, the clause 4.6 submission has not satisfactorily demonstrated that the proposal is will result in an appropriate visual impact when seen from adjoining streets and public places.

Furthermore, as discussed separately above, the proposal is not considered to be consistent with the relevant objectives of the B2 Local Centre Zone.

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

Has concurrence been obtained?
Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the Local Planning Panels Direction issued by the Minister for Planning and Public Spaces on 30 June 2020, the Secretary's concurrence may be assumed by the NBLPP.

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

6.2 Earthworks

The proposal is consistent with the objectives of this clause, as follows:

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Should the application be approved, a condition can be included requiring any fill to be of an 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. Should the application be approved, conditions have been included to limit impacts during excavation/construction.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Should the application be approved, a condition can be included requiring any fill to be of an 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.

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
(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and
(c) the development will not impact on or affect the existing subsurface flow conditions.

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 can be satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

The application has also been assessed in relation to stormwater. Council's Development Engineers have raised no objections to approval, subject to conditions, such that Council can be satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site or that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B2 Number of storeys	3	4	1 storey or 33%	No
B6 Merit Assessment of Side Boundary Setbacks	Merit	North -Nil West (Somerville) - Nil*	See discussion	No
B7 Front Boundary Setbacks	Ground - Nil	Nil	-	Yes
	Level 1 - Nil	Condamine - Nil Sunshine -Nil	- -	Yes Yes
	Level 2 - 5m	Condamine - Nil Sunshine - Nil	5m 5m	No No
	Level 3 - 5m	Condamine - 3.4m Sunshine - 3.4m	1.6m 1.6m	No No

***Note:** In consideration of the relationship and siting of dwelling at 2 Sunshine Street, the setback to Somerville Place has been considered as a side setback in this assessment report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	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

B2 Number of Storeys

The proposed four storey development is inconsistent with the three storey height limit prescribed by this control. Whilst the presence of four storey development along Condamine Street is acknowledged, precedence alone is unable to be relied upon in circumstances where the proposed development is inconsistent with the objectives of the control, as follows:

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

  Comment: The upper floor of the proposed development is visible from the public domain and will clearly read as a fourth storey. The prominence of the fourth storey is somewhat enhanced by the lack of four storey development in the immediate vicinity of the site. The adjoining recently constructed building to the north is three storeys in height, and development to the south and west is two storeys in height and of a considerably reduced scale.

  The proposal has also been amended to remove the vertical breaks along the Condamine Street facade, and whilst the facade now features elements of varying angles, the facade is one continual and unbroken plane. This actively increases the bulk and scale of the development, particularly as the site is the widest development site along Condamine Street.

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

  Comment: The proposal has been amended to reduce the setback of the top floor to Condamine Street and Sunshine Street, resulting in greater visibility of the top floor from the public domain. The proposal attempts to hide the upper floor roof plane with planter boxes in the same alignment of the facade of the level below, however this results in an increase to the bulk of the development immediately adjacent to the street, which is not consistent with the bulk and scale of nearby development.

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

  Comment: The proposed development does not result in any unreasonable impacts upon views.

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

  Comment: The proposed inclusion of a fourth floor results in three additional units with private open space oriented towards the low density residential development to the west. To mitigate this impact, the application proposes a continual 38m long planter box along the western facade of the upper floor comprising hedge planting capable of reaching maturity heights of approximately 1.5m. Whilst mitigation measures are required, the visual dominance of the development as seen from the neighbouring property at 2 Sunshine Street is overwhelming.

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

  Comment: Not applicable.

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

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

B6 Merit Assessment of Side Boundary Setbacks

The subject site is bounded on three side by roadways. In consideration of the relationship and siting of the dwelling at 2 Sunshine Street, the setback to Somerville Place is considered a side setback in this assessment report, as opposed to a third street frontage. Noting that the side setback controls provide for a merit assessment of the proposed setback, this is not considered to prejudice the development in any way.

The application proposes the dedication of 1.4m wide strip of land adjacent to Somerville Lane. For the purpose of this assessment, the setbacks are measured from the resultant boundary to be created as a result of the land dedication.

The application proposes nil setbacks to both the west and the north. These setbacks are considered on merit with regard to the objectives of the control, as follows:

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

Comment: The development does not provide any deep soil landscaping. During the course of this assessment, the application was amended to remove all landscaping along the western side of the development. Whilst the removal of the landscaping was required in order to facilitate necessary road widening, the incorporation of landscaping is equally important along the western facade to minimise the impact of the development at the interface with the adjoining low density zone.

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

Comment: The proposed development is visually dominant as seen from the adjoining dwelling at 2 Sunshine Street. The application provides little to no softening of the development, with 13 of the 27 proposed units oriented towards the dwelling at 2 Sunshine Street. As above, the development previously proposed deep soil landscaping, inclusive of canopy trees, along the western facade of the development, which assisted to soften the visual impact of the development as seen from the west. The difference between the previous version of the proposal that featured landscaping along the western facade and the design now before Council is highlighted by Figures 3 and 4, below.

Figure 3 - Western facade as seen from 2 Suns

Figure 4 - Western facade as seen from 2 Suns

In relation to the upper floor, the need to extend the terraces to within 7.5m of the adjoining property for the full width of each apartment is also questioned. These terraces could readily be reduced to minimise both the visual bulk of the development (associated with the continual run of elevated planters) and the sense of overlooking for the residents of the adjoining R2 zoned properties. Furthermore, it is noted that the minor increase to the setbacks of the upper floor has resulted in the removal of recessed areas of covered private open space, and the reduction to the eaves over the western facade. The necessary amendments to reduce the visibility of the top floor should not result in adverse impacts upon the amenity of the upper floor units proposed.

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

  Comment: The western facade of the proposed development is 38m wide, with only nominal (less than 500mm) variation in the setback of the facade. Furthermore, the articulation that is provided by the balconies is compromised by the proposed sliding screens, which are necessary due to the limited 6m setback between the western facade of the development and the private open space of the dwelling at 2 Sunshine Street.

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

  Comment: As a consequence of the lane-widening proposed, the development will be sited 6m from the adjoining dwelling to the west. As discussed with regard to the ADG, a 6m setback is deemed to be appropriate between development of similar densities, with a greater setbacks required where medium density development adjoins low density development. In most situations, you would also assume that the 6m setback contains some meaningful landscaping, which is absent from this proposal. The 6m spatial separation proposed, particularly in the part of the site directly opposite the private open space of 2 Sunshine Street, is inadequate and does not ensure reasonable amenity for the adjoining dwelling.

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

  Comment: The proposed development does result in any unreasonable impacts upon views.

Whilst no concern is raised in relation to the setback of the development to the north, the setback of the development to the western boundary is inappropriate. Further, it is noted that in some locations, the proposed window treatments extend over the resultant boundary, encroaching on the land to be dedicated to Council.

Overall, the western facade requires strategic setbacks to facilitate deep soil landscaping and improved spatial separation between the private open space of the dwelling to the west. Further vertical articulation is also required to break down the expanse of the building, to limit the number of dwellings overlooking the adjoining low density residential development and reduce the resultant visual dominance of the proposal. The setbacks of the upper floor also require review, to provide appropriate shade and weather protection to areas of private open space without increasing the apparent size of the development.

B7 Front Boundary Setbacks

Clause B7 of WDCP 2011 prescribes a nil setback for the ground and first floor, with a 5m setback for each level above that. The proposal is inconsistent with the 5m minimum setback in relation to the second and third floor on both the Sunshine Street and Condamine Street frontages, with nil setbacks proposed on the second floor and 3.4m minimum setbacks on the third floor.

The NBLPP refused DA2020/0824 due to the bulk and scale of the proposed building, with particular concern in relation to the third floor, which was said to be insufficiently setback from each street frontage to minimise the visibility of the top floor as viewed from surrounding lands.

In relation to Sunshine Street, the height/depth of the upper floor planter boxes has been increased and the setback of the upper floor has been marginally increased to reduce the visibility of the upper floor, as shown in Figures 5 and 6 below. Whilst the upper floor of the amended proposal is less visible than that previously proposed, this has resulted in an increase to the height of the dominant facade, the loss of any articulation along the southern elevation and the removal of all weather protection to the upper floor areas of open space. The amended proposal also results in a reduction of balconies along the Sunshine Street facade, with additional internal floor space extending forward of the 5m minimum front setback and increasing the solidity of the Sunshine Street facade.

Figure 5 - Suns

Figure 6 - Suns

In relation to Condamine Street, the visual prominence of the upper floor remains largely unchanged, as shown in Figures 7 and 8. Furthermore, as a result of amendments to achieve greater solar access, the proposed Condamine Street facade is less refined and lacks the level of detail and articulation previously proposed. The angled treatment of the facade and the amended roof form also seems at odds with the curvature of the feature corner detailing. Similarly to the Sunshine Street facade, the amendments to the Condamine Street facade also include an increase to the height of the upper level planters, resulting in additional bulk along the dominant facade, and the loss of covered areas of private open space.

Figure 7 - Con

Figure 8 - Con

This unbroken and heavy treatment of the second floor roof line with nil (minimum) setbacks to the Condamine Street and Sunshine Street facade is at odds with the massing of surrounding development, where upper floors are distinctly setback from the street. The reduction to the eave projection reduces the amenity of the top floor units and the usability of the private open space. Furthermore, if approved, the proposal may lead to further ad-hoc applications for additional roof structures or awnings at the upper most level, which will erode the intent of the setback to the roof.

Overall, the proposed variations to the front setbacks are not supported, as the proposed development is inconsistent with the objectives of the front boundary setback control, as follows:

- *To create a sense of openness.*

  Comment: The application proposes enclosed floor space with nil setbacks to the street on Level 2, with deep planter boxes along the front boundaries at Level 3, reaching the 11m building height with a nil setback to the boundary. This creates a very solid presentation to the

street, and increases the apparent size of the development as seen from the public domain. This design solution is unlike other development along Condamine Street, which generally comprise open balconies along the Level 2 front facade, or greater setbacks between the enclosed space and the front boundary. The forward projecting enclosed areas may be offset by vertical breaks along the facade, however these have since been removed in the amended proposal. Overall, the proposal has a very solid presentation to the street, antipathetic to the objective to achieve a sense of openness at the upper levels.

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

  Comment: No other development along this stretch of Condamine Street features nil setbacks to enclosing walls at Level 2, or planters/balustrades associated with Level 3 with nil setbacks to the street. The proposal is inconsistent with the pattern of buildings along both Condamine Street and Sunshine Street. Figures 9 and 10 demonstrate the difference between the setbacks of other development along Condamine Street compared to the setbacks proposed in the subject application.

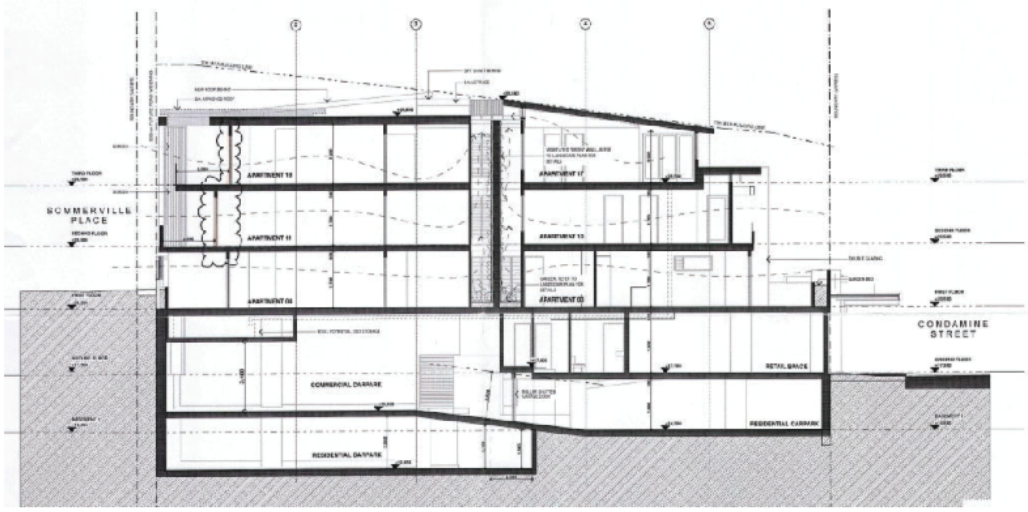


Figure 9 - The front setback

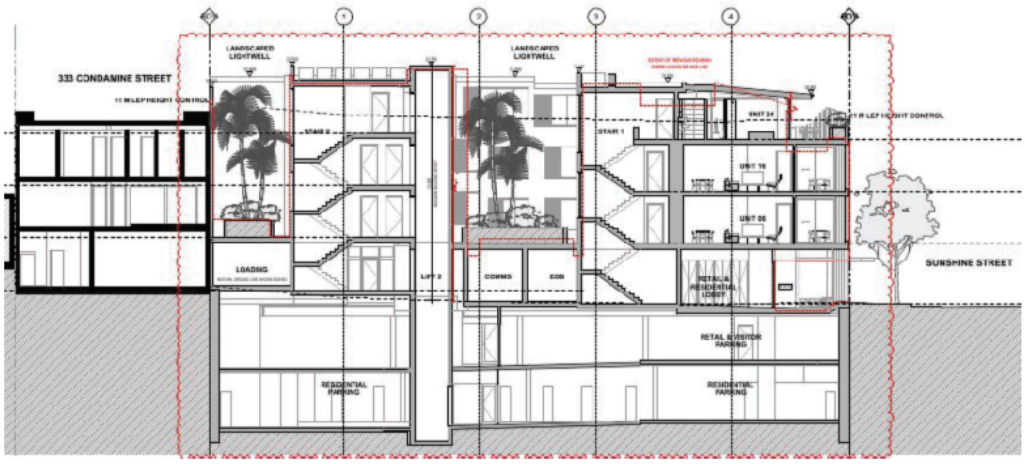


Figure 10 - The front setbac

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

  Comment: The proposed development does not protect the visual quality of the streetscape, in so far as the massing and scale is at odds with that of surrounding development.

- *To achieve reasonable view sharing.*

  Comment: The setbacks of the upper floors to not attribute to any unreasonable impacts upon views.

C2 Traffic, Access and Safety

The proposed development is consistent with the provisions of this control that prescribe that where practicable, access should be gained from minor streets. However, as discussed by Council's Traffic Engineer, the application has not satisfactorily demonstrated that access to/from the proposed driveway and loading bay is adequate or safe, inconsistent with both the requirements and objectives of this clause.

D2 Private Open Space

Clause D2 of WDCP 2011 requires a total area of 10m² with minimum dimensions of 2.5m for each dwelling within a shoptop housing development. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to private open space and balconies have no effect.

D6 Access to Sunlight

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

Adjoining development
Clause D6 of WDCP 2011 also requires at least 50% of the required area of private open space for each adjoining dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. The ADG does not prescribed any minimum requirements in relation to impacts upon neighbours, and as such, these provisions of clause D6 of WDCP 2011 are relevant to the proposal. The application was supported by shadow diagrams that indicate that the proposal will result not result in additional overshadowing of any nearby areas of private open space. In this respect, it is noted that the rear area of private open space at 2 Sunshine Street is both partially self-overshadowed and overshadowed by the adjoining development at 333 Condamine Street at 9am.

It is noted that there are some irregularities in the shadow diagrams provided. The shadow diagrams appear to indicate that the adjoining one and two storey development to the west will overshadow the proposed third floor terrace in the afternoon in midwinter, which is obviously incorrect. However, the diagrams provide sufficient information to demonstrate that area of private open space at the rear of 2 Sunshine Street is both self overshadowed and overshadowed by the adjoining development at 333 Condamine Street at 9am, with no additional impact from the proposed development, which is the

primary purpose of these diagrams.

D8 Privacy

As discussed with regard to the spatial separation requirements of the ADG, the proposed development comprises 14 units that are designed with their primary orientation to the west, 6.0m - 7.5m from the boundary of the adjacent R2 low density zoned land. The applicant has attempted to address privacy concerns with the incorporation of high level sills (1.6m above the FFL) and operable screens or planters along the western edge of the areas of private open space. However, such measures negatively impact upon the internal amenity of the proposed units and do not ensure appropriate levels of privacy to the adjoining property, in so far as the use and maintenance of such screens and plantings are at the discretion of the occupants of the proposed development.

Particularly in the area opposite the rear private open space of the dwelling at 2 Sunshine Street, the setbacks of the proposed development should be increased to facilitate greater spatial separation between dwellings and the incorporation of meaningful landscaping.

D9 Building Bulk

Clause D9 of WDCP 2011 prescribes that:

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. *Building height and scale needs to relate to topography and site conditions.*
4. *Orientate development to address the street.*
5. *Use colour, materials and surface treatment to reduce building bulk.*
6. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
7. *Articulate walls to reduce building mass.*

As discussed at length with regard to building height and front and side setbacks, the setbacks of the upper floors are not appropriately increased as the height of the development increases. Furthermore, whilst the proposal provides varied colours and materials across the facades of the development, the facades are not appropriately articulated in order to reduce the apparent size of the 38m wide development.

The landscaping proposed within the road reserve is unlikely to be achieved due to the extent of underground infrastructure, and with the exception of the top floor planters, there is a general lack of landscaping presenting to the public domain.

The bulk of the building is unacceptable and inconsistent with the objectives of this clause that aim to encourage good design and innovative architecture to improve the urban environment and to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

D18 Accessibility and Adaptability

Clause D18 of WDCP 2011 requires the development to be compliant with AS1428.2. Further, 10% of the proposed units (three units) shall be capable of being adapted to meet the Adaptable House Class C classification level under AS4299.

The Review Application relies upon the Access Report (prepared by BCA Logic dated 4 June 2020)

submitted to accompany DA2020/0824. The Access Report was produced with respect to plans dated 12 May 2020 that have not been presented to Council. The development has been amended on multiple occasions throughout the assessment of DA2020/0824 and the subject Review Application, which have impacted upon access arrangements, internal layouts and the provision of adaptable housing units, all of which are relevant to the findings and recommendations of the Access Report.

Despite request, an amended access report has not been presented to Council and as such, Council cannot be satisfied that the proposed development is compliant with AS1428.2 or that three units are capable of being adapted to meet the Adaptable House Class C classification level under AS4299. As such, the application is recommended for refusal in this regard.

F1 Local and Neighbourhood Centres

Clause F1 of WDCP 2011 prescribes the following in relation to buildings within a local centre:

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.*
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.*

With particular reference to Manly Vale, clause F1 prescribes that *"Condamine Street will be enhanced by ensuring the design of buildings and use of land maintains activity at street level and creates a cohesive and attractive streetscape. Vehicle access will be provided from streets other than Condamine Street"*.

The proposed development is inconsistent with multiple aspects of these controls, as follows:

1. The proposed development, which features built form to heights of 11m with nil setbacks to the front boundary, is not at human scale.
2. The ceiling heights of the upper floor units are a minimum of 2.4m in habitable rooms.
3. The proposed development, with 13 of 27 units orientated to the west, will reduce amenity enjoyed by adjoining residents.
4. The built form of development does not provide an appropriate transition to adjacent residential development above ground floor level.
5. The built form of the upper two levels is not substantially reduced and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.
6. The proposed development has not had adequate regard for the composition, pattern and massing of other buildings along the streetscape (as highlighted in the discussion of clause B7 of WDCP 2011), specifically those in the immediate visual catchment.
7. The proposal does not comprise adequate awnings, in so far as the majority of Condamine Street and Sunshine Street footpaths are to be uncovered.

Non-compliance with the provisions of this clause is not supported, as the proposed development is inconsistent with the objectives of the clause which aim to encourage low-rise shop top housing development, of a good design with innovative architecture, to create places with a village-like atmosphere that is consistent with the established scale and pattern of surrounding development.

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 $112,790 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $11,279,007.

ADEQUACY OF INFORMATION

The application is lacking critical information required to assess the application, and a number of documents provided have been superseded and are no longer relevant to the application. These matters include:

- The BASIX Certificate supplied does not relate to the amended proposal now before Council.
- The Access Report was not updated to reflect the amended architectural plans.
- The Solar Access Diagrams appear to be in error.
- The application was not supported by a QS report.

The absence or inadequacy of supporting documentation is discussed in *SHMH Properties*

Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66, as follows:

> *The absence or inadequacy of documents required by Sch 1, cll 2 and 2A of the EPA Regulation to accompany a development application does not necessarily make the application invalid, but it does make the development application incomplete and, in a particular case, the absence or inadequacy of the documents may be of such significance as to prevent the consent authority from performing its statutory duty under the EPA Act when determining the application (see Currey v Sutherland Shire Council (2003) 129 LGERA 223; [2003] NSWCA 300 at [35]; Cranky Rock Road Action Group Inc v Cowra Shire Council (2006) 150 LGERA 81; [2006] NSWCA 339 at [73]-[78], [88] and McGovern v Ku-ring-gai Council (2008) 72 NSWLR 504; [2008] NSWCA 209 at [198]-[200]).*

The absence of information and the inconsistencies in the information presented to Council are considered to warrant the refusal of the subject 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
b) There are sufficient environmental planning grounds to justify the contravention.

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

The amended application has not adequately responded to the reasons for the refusal of DA2020/0824, 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. The development fails to comply with the provision of SEPP 65, in particular relating to the principals of context and the requirements of the Apartment Design Guide in relation to solar access, cross ventilation and building separation to the residential zoned land to the west. The development does not provide adequate floor to ceiling heights for the retail tenancies 3 and 4 and the residential lobby accessed from Sunshine Street as required by SEPP 65.*

   Comment: The proposal remains non-compliant with regard to solar access and building separation to the residential zoned land to the west. Whilst ceiling heights in the lobby and retail spaces have been increased, the ceiling heights of the upper floor have been reduced and no longer comply. Further concern is also raised with regard to the size and dimensions of proposed units, and the usability of areas of private open space.

2. ***Building Height***
   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. In this regard, the Panel is not satisfied that the applicant's written request demonstrates there are sufficient environmental planning grounds to justify contravening the development standard. The Panel is not satisfied that the development will be in the public interest as the development is not consistent with the objectives of the height of buildings development standard regarding compatibility with the height, bulk and scale of nearby developments and that the development will minimise visual impact of the top floor (Level 3) from the public domain and surrounding lands.

   Comment: The proposal remains non-compliant with the maximum building height to a similar degree as that previously proposed. The bulk and scale of the development has not been appropriately minimised, and in some areas, the apparent size of the development has increased. The clause 4.6 submission remains unsatisfactory, in so far as it does not demonstrate that compliance is unreasonable or unnecessary, with no sufficient planning grounds to justify the proposed contravention. Furthermore, the proposal remains at odds with the objectives of the height standard and the B2 Local Centre zone with regard to the compatibility with the height, bulk and scale of nearby developments.

3. ***Building Setbacks (Top floor)***
   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 B5 Side Boundary Setbacks of the Warringah Development Control Plan. The upper floor is not sufficiently setback to minimise the visual impact of level three as viewed from the surrounding lands and public domain.

   Comment: The setbacks of the upper floor have not been adequately increased to minimise the visual impact of the development as seen from the public domain.

4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access*

and Safety of the Warringah Development Control Plan. The development does not result in a satisfactory outcome with regards to pedestrian and vehicle safety along Somerville Place due to the width of the existing laneway and the intensity of the development proposed.

Comment: Whilst the proposal now provides adequate width to enable satisfactory pedestrian and vehicle safety along Somerville Place, this has resulted in the loss of deep soil landscaping necessary to provide an appropriate transition to the adjoining low density land to the west. Further, whilst the laneway width has been increased, the design of the driveway is not satisfactory, and access issues remain unresolved.

In addition to these unresolved matters, review of the amended proposal has also raised additional concerns with regard to the front setback of the development, the treatment of the facades, and accessibility.

Overall, the proposal is an over-development of the site, resulting in unreasonable impacts upon adjoining properties and the surrounding environment, with poor levels of amenity for future occupants of the proposal development.
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 REV2021/0014 for the Review of Determination of Application DA2020/0824 for demolition works and construction of a shop top housing development and strata subdivision on land at Lot 21 DP 11320,323 - 325 Condamine Street, MANLY VALE, Lot 22 DP 11320,323 - 325 Condamine Street, MANLY VALE, Lot 123 DP 737259,327 - 329 Condamine Street, MANLY VALE, Lot 25 DP 11320,331 Condamine Street, MANLY VALE, Lot 20 DP 11320,321 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. The proposed development breaches the maximum building height development standard, is inconsistent with the objectives of clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP 2011) and exceeds the three-storey height control of clause B2 (Number of Storeys) of Warringah Development Control Plan 2011 (WDCP 2011).

2. The applicant's written request under clause 4.6 of the WLEP 2011 seeking to justify contravention of the height of buildings development standard prescribed by clause 4.3 of WLEP 2011 has not adequately addressed and demonstrated that:
   a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
   b) there are sufficient environmental planning grounds to justify the contravention, and
   c) 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 B2 Local Centre zone.

3. In accordance with clause 30 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), development consent cannot be granted as adequate regard has not been given to the design principles of SEPP 65 or the objectives of the *Apartment Design Guide*.

4. The proposed development is inconsistent with the minimum requirements and objectives of the front and side setback controls, as prescribed by clauses (B6 Merit Assessment of Side Boundary Setbacks) and B7 (Front Boundary Setbacks) of WDCP 2011. The bulk and scale of the proposed built form is excessive, with unreasonable impacts upon adjoining properties and the streetscape.

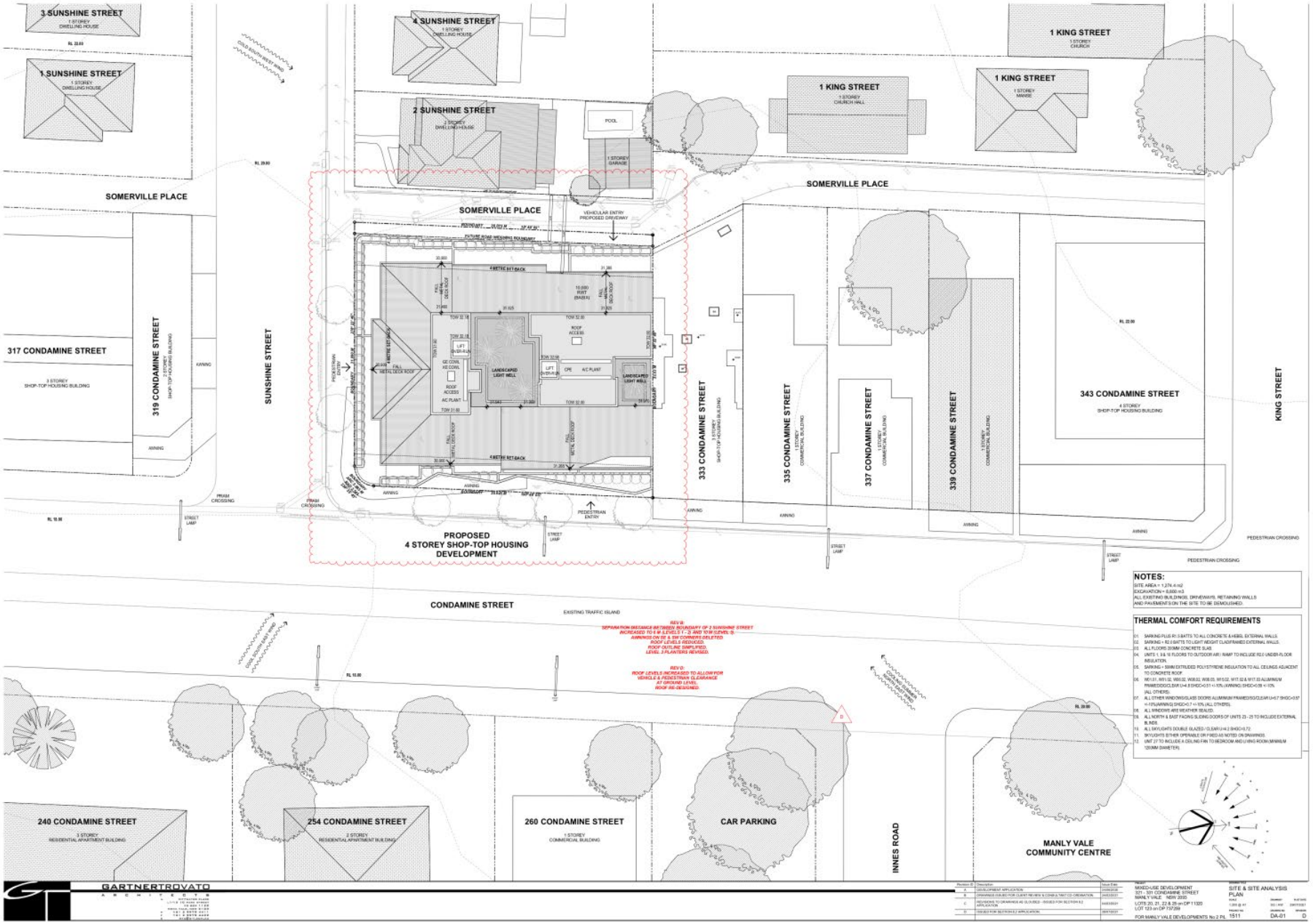
5. The massing and design of the development fails to appropriately respond to the context of the site, inconsistent with the requirements and objectives of clauses D9 (Building Bulk) and F1 (Local and Neighbourhood Centres) of WDCP 2011.

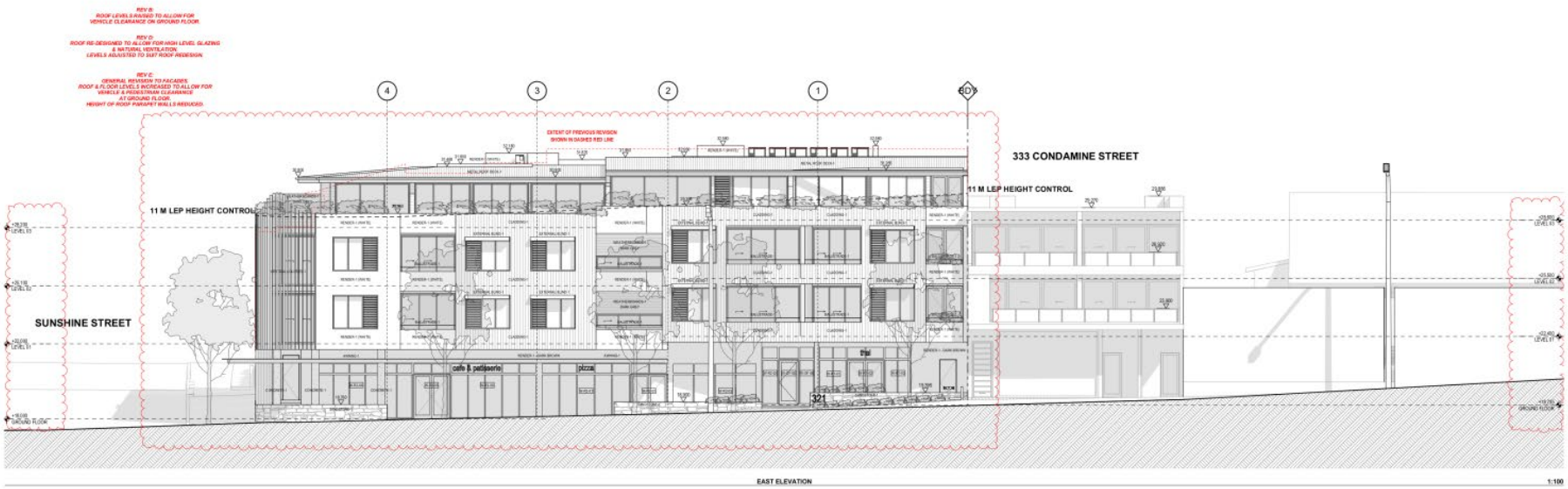
6. The proposed driveway design is inconsistent with the requirements and objectives of clause C2 (Traffic, Access and Safety) of WDCP 2011.

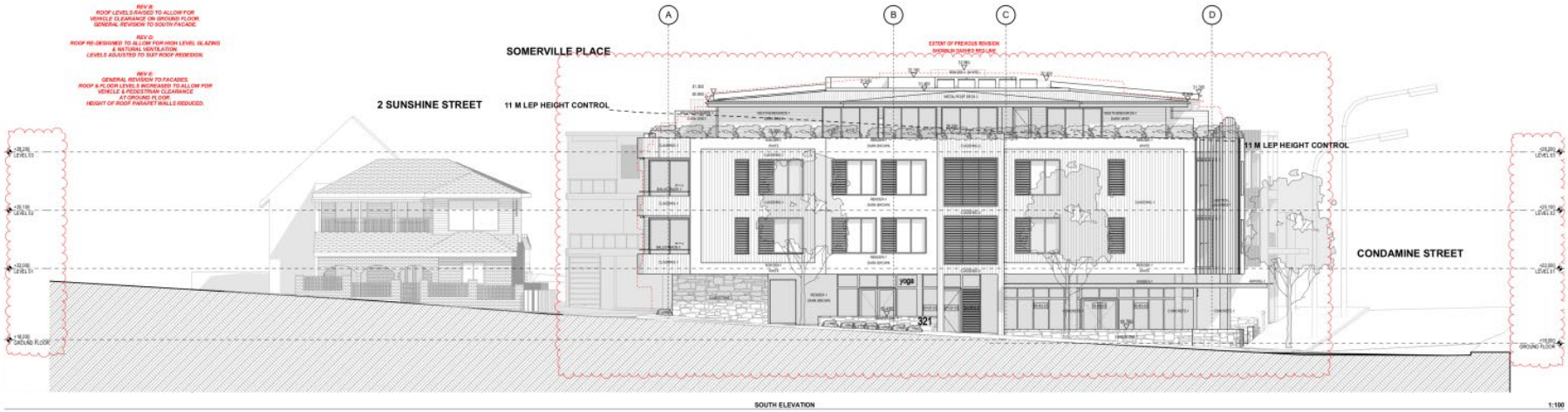
7. The proposed development will result in unreasonable impacts upon the amenity of the dwelling at 2 Sunshine Street, inconsistent with the requirements and objectives of clause D8 (Privacy) of WDCP 2011.

8. The proposed development fails to provide any adaptable housing units, inconsistent with the requirements and objectives of clause D18 (Accessibility and Adaptability) of WDCP 2011.

9. The application fails to satisfy the provisions of clause 50 of the *Environmental Planning and Assessment Regulation,* in so far as the application is not supported by the relevant informationlisted in Schedule 1 applicable to the amended proposal before Council. A proper and comprehensive assessment was therefore unable to be undertaken by Council.


3 SUNSHINE STREET
1 SUNSHINE STREET
4 SUNSHINE STREET
2 SUNSHINE STREET
1 KING STREET
SOMERVILLE PLACE
317 CONDAMINE STREET
319 CONDAMINE STREET
SUNSHINE STREET
333 CONDAMINE STREET
335 CONDAMINE STREET
337 CONDAMINE STREET
339 CONDAMINE STREET
343 CONDAMINE STREET
KING STREET
PROPOSED
4 STOREY SHOP-TOP HOUSING
DEVELOPMENT
CONDAMINE STREET
240 CONDAMINE STREET
254 CONDAMINE STREET
260 CONDAMINE STREET
CAR PARKING
INNES ROAD
MANLY VALE
COMMUNITY CENTRE
NOTES:
THERMAL COMFORT REQUIREMENTS
GARTNERTROVATO
ARCHITECTS





EXTERIOR FINISHES LEGEND

AWNING-1	STEEL FRAME AWNING WITH STEEL ANGLE FACIA, PAINT FINISH "LIGHT GREY"
BALUSTRADE-1	METAL BALUSTRADE 760 - 1000 mm AB. FFL, PAINT FINISH "LIGHT GREY".
BALUSTRADE-2	METAL BALUSTRADE 0 - 1000 mm AB. FFL, PAINT FINISH "LIGHT GREY".
CLADDING-1	COLORBOND STANDING SEAM CLADDING, MATT "MONUMENT" FINISH.
CLADDING-2	CORETEN STANDING SEAM CLADDING.
CLADDING-3	EXPRESS JOINT FIBRE CEMENT CLADDING, PAINT FINISH, COLOUR AS NOTED.
CONCRETE-1	OFF-FORM CONCRETE COLUMN, CLEAR SEAL FINISH.
EXTERNAL BLIND-1	EXTERNAL BLIND, FABRIC DARK GREY COLOUR.
METAL ROOF DECK-1	METAL ROOF DECK, COLOUR "MONUMENT".
MURAL-1	MURAL BY LOCAL ARTIST OF LOCAL FLORA.
RENDER-1	RENDER FINISH TO MASONRY/ CONCRETE SUBSTRATE, PAINT FINISH COLOUR AS NOTED.
SANDSTONE-1	SNADSTONE CLADDING, RANDOM RUBBLE PATTERN.
SLIDING SCREEN-1	SLIDING ALUMINIUM FRAMED SCREEN WITH FIXED HORIZONTAL LOUVRES, P'COAT FINISH "LIGHT GREY".
SLIDING SCREEN-2	SLIDING ALUMINIUM FRAMED SCREEN WITH ADJUSTABLE HORIZONTAL LOUVRES, P'COAT FINISH "DARK GREY".
STEEL FRAMING-1	PFC STEEL FRAMING, PAINT FINISH "DARK BROWN".
SUNSHADE-1	300 MM DEEP WINDOW SUN SHADE, P'COAT FINISH "BLACK".
TRELLIS-1	STAINLESS STEEL PLANTING TRELLIS.
VERTICAL LOUVRE-1	VERTICAL ELLIPTICAL LOUVRE WITH "WOOD-GRAIN" FINISH.
WEATHERBOARD-1	FIBRE CEMENT WEATHERBOARD CLADDING, PAINT FINISH, COLOUR AS NOTED.

COLOUR LEGEND

WHITE	"WHITE" PAINT FINISH EQUAL TO DULUX "WHITE ON WHITE" SW.
LIGHT GREY	"LIGHT GREY" PAINT FINISH EQUAL TO DULUX "DIESKALI" GR12.
MEDIUM GREY	"MEDIUM GREY" PAINT FINISH EQUAL TO DULUX "TINKER" GR17.
DARK GREY	"DARK GREY" PAINT FINISH EQUAL TO DULUX "COOLING" GR16.
DARK BROWN	"DARK BROWN" PAINT FINISH EQUAL TO DULUX "CHOCOLATE SOURLE" A130.1.

ALL WINDOWS CLEAR GLAZING WITH POWDERCOAT ALUMINIUM FRAMING, "DARK GREY" COLOUR.

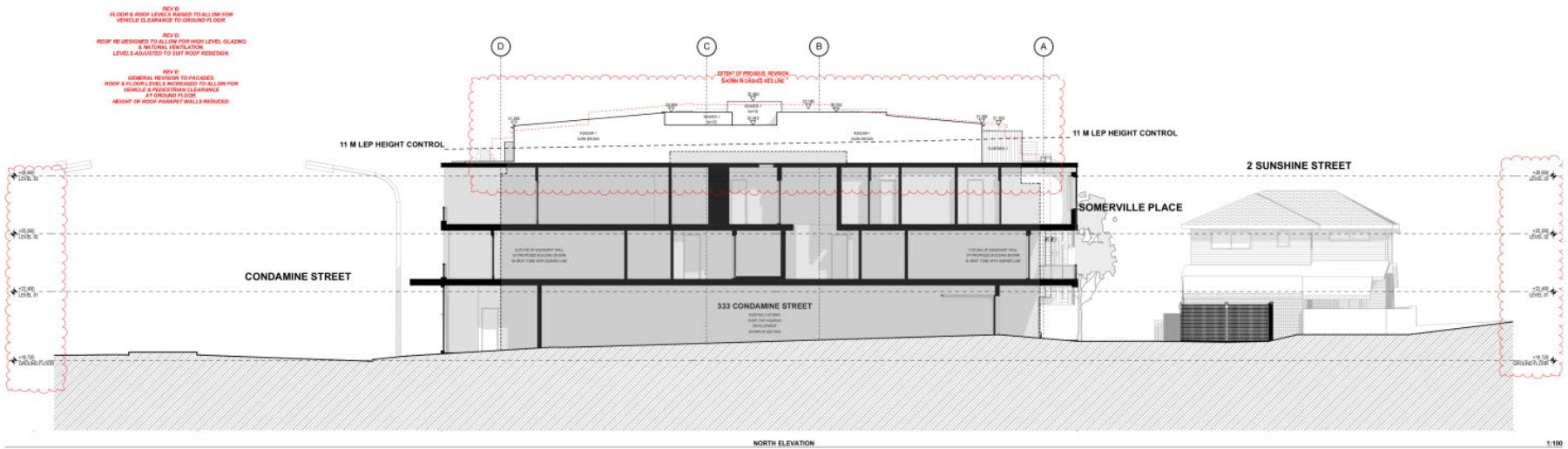
GARTNERTROVATO ARCHITECTS

Revision ID	Description	Issue Date
A	DEVELOPMENT APPLICATION	24/06/2020
B	REVISIONS TO DRAWINGS IN RESPONSE TO COUNCIL'S ISSUES.	15/11/2020
C	DRAWINGS ISSUED FOR CLIENT REVIEW & CONSULTANT CO-ORDINATION.	24/02/2021
D	REVISIONS TO DRAWINGS AS CLOSUSE – ISSUED FOR SECTION 82 APPLICATION	14/05/2021
E	ISSUED FOR SECTION 82 APPLICATION	26/07/2021

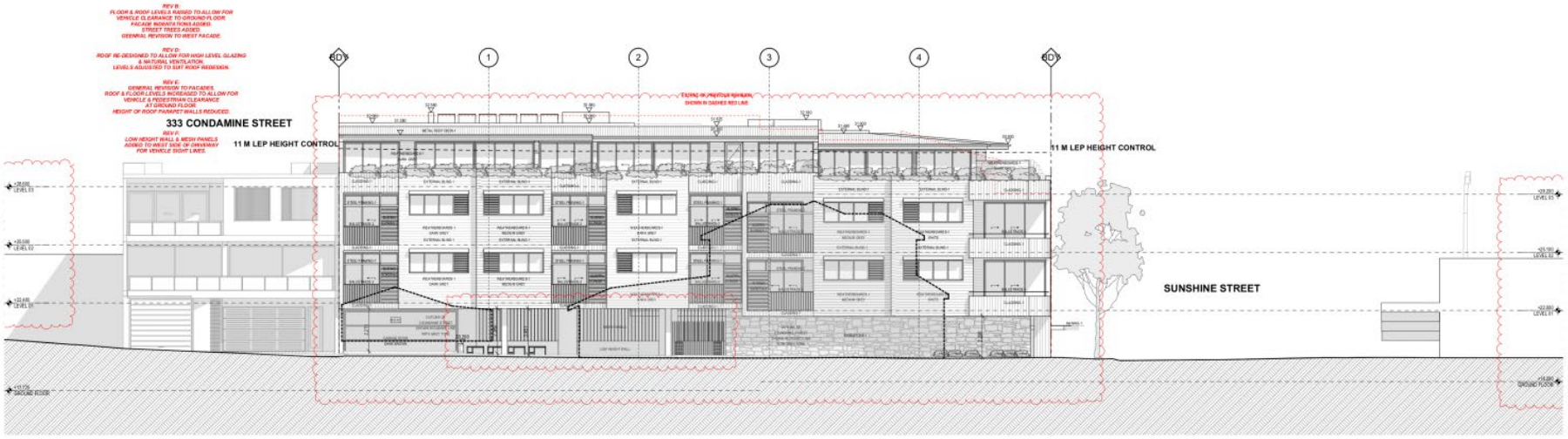
PROJECT: MIXED-USE DEVELOPMENT
321 - 331 CONDAMINE STREET
MANLY VALE NSW 2093
LOTS 20, 21, 22 & 23 in DP 11320
LOT 123 in DP 737269
FOR MANLY VALE DEVELOPMENTS No 2 PTL

DRAWING TITLE: EAST & SOUTH ELEVATIONS

SCALE: 1:100 @ A1
DRAWN BY: DG / MW
PLOT DATE: 23/07/2021
PROJECT No: 1511
DRAWING No: DA-09
REVISION: E



NORTH ELEVATION 1:100



WEST ELEVATION 1:100

EXTERIOR FINISHES LEGEND

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ALL WINDOWS CLEAR GLAZING WITH POWDERCOAT ALUMINIUM FRAMING, "DARK GREY" COLOUR.

GARTNERTROVATO ARCHITECTS

Revision ID	Description	Issue Date
B	REVISIONS TO DRAWINGS IN RESPONSE TO COUNCIL'S ISSUES	13/12/2020
C	DRAWINGS ISSUED FOR CLIENT REVIEW & COORDINATION CO-ORDINATION	24/02/2021
D	REVISIONS TO DRAWINGS AS ISSUED - ISSUED FOR SECTION 4.D APPLICATION	04/03/2021
E	ISSUED FOR SECTION 4.D APPLICATION	28/07/2021
F	ISSUED FOR SECTION 4.D APPLICATION	24/08/2021

PROJECT: MIXED-USE DEVELOPMENT
321 - 331 CONDAMINE STREET
MANLY VALE NSW 2093
LOTS 20, 21, 22 & 23 in DP 11320
LOT 123 in DP 737269
FOR MANLY VALE DEVELOPMENTS No 2 PTL

DRAWING TITLE: WEST & NORTH ELEVATIONS

SCALE: 1:100 @ A1 | DATE: 24/08/2021
PROJECT No: 1511 | DRAWING No: DA-10 | REVISION: F

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BostonBlythFleming
Town Planners

30th August 2021

Application REV2021/0014 for Review of Determination of DA2020/0824
Updated clause 4.6 variation request – Height of buildings
Demolition works and construction of a shop top housing development and strata subdivision
No. 321, 323 - 325, 327 - 329 & 331 Condamine Street, Manly Vale

1.0 Introduction

In the preparation of this updated clause 4.6 variation request consideration has been given to the following amended Architectural plans prepared by Gartner Trovato Architects:

DA-00	COVER SHEET	D
DA-01	SITE & SITE ANALYSIS PLAN	D
DA-02	BASEMENT B2 PLAN	F
DA-03	BASEMENT B1 PLAN	F
DA-04	GROUND FLOOR PLAN	I
DA-05	LEVEL 1 PLAN	K
DA-06	LEVEL 2 PLAN	K
DA-07	LEVEL 3 PLAN	N
DA-08	ROOF PLAN	D
DA-09	EAST & SOUTH ELEVATIONS	E
DA-10	WEST & NORTH ELEVATIONS	E
DA-11	SECTION A & B	E
DA-12	SECTION C	E
DA-13	SECTION 1 & 3	E
DA-14	SHADOW DIAGRAMS	C
DA-15	LANDSCAPE PLAN - GROUND FLOOR	D
DA-16	LANDSCAPE PLAN - LEVEL 1	D
DA-17	LANDSCAPE PLAN - LEVEL 3	D
DA-18	SCHEDULE OF EXTERNAL FINISHES	C
DA-20	VIEW 1	G
DA-21	VIEW 2	G
DA-22	VIEW 3	G
DA-23	VIEW 4	G
DA-24	VIEW 5	G
DA-25	VIEW 6	G
DA-26	VIEW 7	G
DA-27	VIEW 8	G
DA-28	VIEW 9	G
DA-40	HEIGHT CONTROL DIAGRAM - OVER VIEW	E
DA-41	HEIGHT CONTROL DIAGRAM - WEST VIEW	F
DA-42	HEIGHT CONTROL DIAGRAM - SOUTH VIEW	E
DA-43	HEIGHT CONTROL DIAGRAM - EAST VIEW	E

Consideration has also been given to the laneway dedication along Somerville Place which is the subject of a proposed Voluntary Planning Agreement (VPA). The proposed laneway dedication is depicted on Architectural plan DA-100(A) with the civil works proposed within the laneway depicted on plans C01(A), C02(A), C03(A) and to C04(B) prepared by Istruct Consulting Engineers. Copies of these plans are Attachments 1 and 2.

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

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.3 - Height of buildings

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

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

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

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

d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
Building height is defined as follows:

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

The proposed development has a variable upper roof height as measured along its Condamine Street frontage of between 12.045 metres at is northern end and 13 metres at its southern end representing a non-compliance of between 1.045 metres (9.5%) and 2 metres (18%). The western edge of the roof form, as it presents to Somerville Place, exceeds the 11 metre height standard by between 590mm (2.2%) at its southern end and 750mm (10.9%) at its northern end with a maximum height exceedance where the roof with a gutter RL of 30.9 steps up to the roof with a gutter RL of 31.38 of 1.18 metres or 10.7%.

The roof forms then pitch up towards a centrally located circulation/ lift core and a parapeted roof mounted plant enclosure which has a maximum height of 13.950 metres representing a non-compliance of 2.95 metres or 26.8%. The extent of non-compliance is depicted on the height plane drawings DA-40(E) through to DA-43(E) as reproduced at Figures 1 – 4 below and over page.

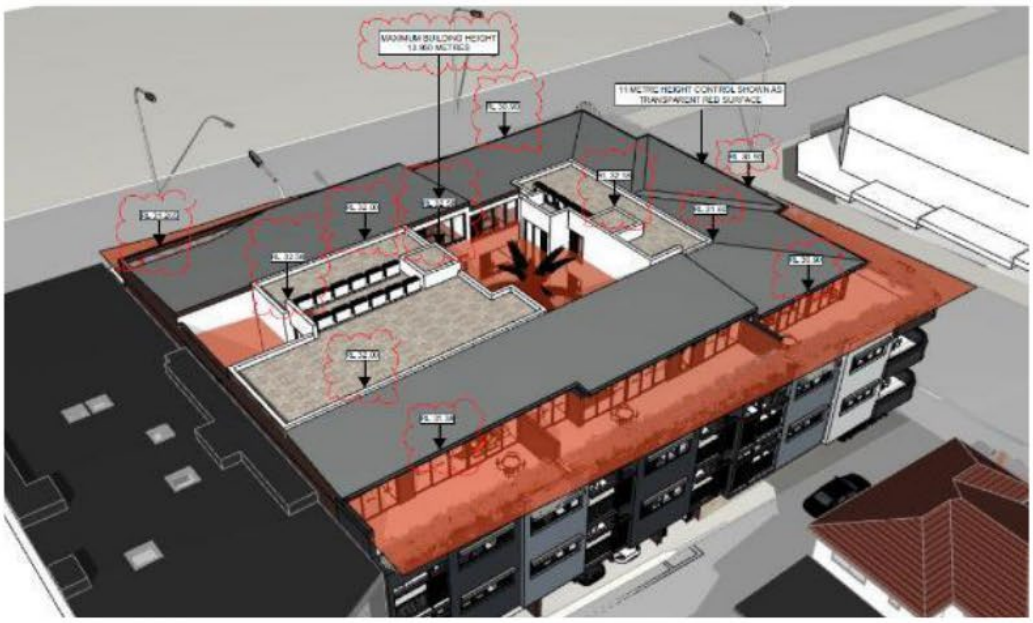


Figure 1 - Plan extract DA040(E) showing the building height breaching elements proposed above the 11 metre building height standard

Figure 2 - Plan extract DA041(E) showing the building height breaching elements proposed above the 11 metre building height standard as viewed from Somerville Place

Figure 3 - Plan extract DA042(E) showing the building height breaching elements proposed above the 11 metre building height standard as viewed from Sunshine Street

Figure 4 - Plan extract DA043(E) showing the building height breaching elements proposed above the 11 metre building height standard as viewed from Condamine Street

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

(1) The objectives of this clause are:

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

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

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

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

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

Clause 4.6(2) of WLEP provides:

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

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

Clause 4.6(3) of WLEP provides:

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

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

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

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

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

Clause 4.6(4) of WLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

(5) In deciding whether to grant concurrence, the Director-General must consider:

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

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

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

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

3.0 Relevant Case Law

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

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

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

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

1. Is clause 4.3 of 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 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

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

4.0 Request for variation

4.1 Is clause 4.3 of WLEP a development standard?

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

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

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

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

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

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

<u>Consistency with objectives of the height of buildings standard</u>

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

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

Comment: Development within the site's visual catchment, and within the 11 metre height precinct, is eclectic in nature and currently in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4/ 5 level stepped shop top housing building forms.

A predominant 4 storey building presentation has been established by recently approved and constructed shop top housing development along Condamine Street including the buildings having frontage to secondary streets including Kenneth Road and King Street.

We note that the non-compliant building height only relates to the upper portion of the upper level floor plate and roof form and centrally located circulation core and screened plant area which are appropriately setback from all 3 street frontages beyond the setbacks proposed that the levels below. Such setbacks will ensure that the breaching elements are recessive in a streetscape context with the building displaying a height and scale compatible with that of other recently approved and constructed 4 storey shop top housing development both within this street block and more broadly along this section of Condamine Street between Burnt Bridge Creek and King Street.

These upper level breaching elements are softened and screened as viewed from each public domain interface through the provision of integrated planter boxes which are capable of accommodating screen planting.

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

The building and design are entirely appropriate for this prominent corner site as it reinforces the building as a strong, robust and defining element within the street block it being noted that a majority of properties have now been approved/ constructed with a 4 storey building form to Condamine Street. In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey form are compatible with the height and scale of surrounding and nearby development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, withstanding the building height breaching elements, offensive, jarring or unsympathetic in a streetscape and urban context.

In this regard, it can be reasonably concluded that notwithstanding the building height breaching elements the development is compatible with surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: Having attended the site and determined potential view lines over the site I have formed the considered opinion that the height of the development, and in particular the non-compliant building height elements, will not give rise to unacceptable visual or view loss impacts. In forming this opinion, I note that in relation to the dwellings located on the western side of Summerville Place that the non-complaint building height breaching elements will be screened from direct view, to a significant extent, by the compliant elements of the development including the landscaping proposed at the upper most level within the integrated planter boxes.

For the same reason, I am of the opinion that the upper level of the development, which incorporates the building height breaching elements, has been designed to minimise loss of privacy through the increased setbacks and intervening landscape opportunity proposed which will minimise direct overlooking opportunity from the upper-level of the development towards the residential properties located on the western side of Somerville Place.

In relation to solar access, I rely on the shadow diagrams at Attachment 3 which demonstrate that the non-compliant building height elements will not give rise to unacceptable loss of solar access with a recessed nature of the upper level minimising associated shadowing impacts.

Notwithstanding the non-compliant building height elements, I am satisfied that the development minimises visual impact, disruption of views, loss of privacy and loss of solar access to surrounding development and the public domain and to that extent achieves this objective.

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

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

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

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

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

Consistency with zone objectives

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

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

Response: The proposed mixed use development provides ground floor retail tenancies which activate the Whistler Street frontage and which are able to accommodate a rage of retail uses that serve the needs of people who live in, work in and visit the local area. The proposal achieves this objective notwithstanding the building height breaching elements.

- *To encourage employment opportunities in accessible locations.*

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

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

Response: The development provides appropriately for vehicle and bicycle parking. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: The development provides for covered outdoor seating and pedestrian circulation space providing an environment for pedestrians that is safe, comfortable and interesting. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: The proposal building scale and landscape treatments proposed provide for an urban and landscape form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Response: The property adjoins the R2 Low Density Residential zone to the south of the site with particular attention given to ensuring the maintenance of appropriate amenity to the properties within this adjoining zone in relation to privacy and solar access. The design response adopted minimises conflict between land uses in the zone and adjoining zones and ensure amenity of any adjoining or nearby residential land uses. The proposal achieves this objective notwithstanding the building height breaching elements.

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

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

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

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

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

matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the building height variation as outlined below.

Ground 1 – Complementary and compatible streetscape

The additional height proposed facilitates a complementary and compatible 4 storey form on this site consistent with the heights and form of recently approved and constructed shop top housing development along this section of Condamine Street.

Strict compliance would require the deletion of the entire upper floor of the development and result in a 3 storey form that would not appropriately respond to the sites prominent corner location and which would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development along this section of Condamine Street.

Ground 2 – Public benefit

Whilst not required by any statutory planning instrument the application proposes the dedication of a 1.435 metre wide by 38.075 metre long area of land to Council to facilitate the widening of Somerville Place consistent with what has occurred along Somerville Place to the north of the site. This represents 54.6m² of private land which is proposed to be dedicated to Council by way of a Voluntary Planning Agreement.

The proposed laneway dedication is depicted on Architectural plan DA-100(A) with the civil works proposed within the laneway depicted on plans C01(A), C02(A), C03(A) and to C04(B) prepared by Istruct Consulting Engineers. Copies of these plans are Attachments 1 and 2.

Approval of the building height breaching elements facilitates the public benefit outcomes achieved through the dedication of private land to enable the widening of Somerville Place and the installation of appropriate roadway, drainage and footpath infrastructure.

Ground 3 - Objectives of the Act

<u>Objective (c) to promote the orderly and economic use and development of land</u>

Strict compliance with the building height standard would require the deletion of the entire upper floor of the development and result in a 3 storey form that would not appropriately respond to the sites prominent corner location and which would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development along this section of Condamine Street.

Such loss of floor space would make the development unviable based on the cost of the land relative to the height and density of development able to be achieved by recently approved and constructed shop top housing development along this section of Condamine Street. Such outcome would not promote the orderly and economic use and development of the land. Approval of the building height variation will achieve this objective.

<u>Objective (g) to promote good design and amenity of the built environment</u>

For the reasons outlined in this submission, approval of the variation of the building height standard will promote good contextually appropriate design which will facilitate enhanced amenity outcomes to and from the development.

The building is of good design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility and the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

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

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

That said, I note that the proposed revised clause 4.6 provisions as recently identified by the NSW Department of Planning indicates that the clause 4.6 provisions may be changed such that the consent authority must be directly satisfied that the applicant's written request demonstrates the following essential criteria in order to vary a development standard:

- *the proposed development is consistent with the objectives of the relevant development standard and land use zone;* ***and***
- *the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes.*

In this particular instance, I am satisfied that the proposed development is consistent with the objectives of the relevant development standard and land use zone and the contravention of the standard will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.

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 propose 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 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

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

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

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

5.0 Conclusion

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

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

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

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

Boston Blyth Fleming Pty Limited

Greg Boston
B Urb & Reg Plan (UNE) MPIA

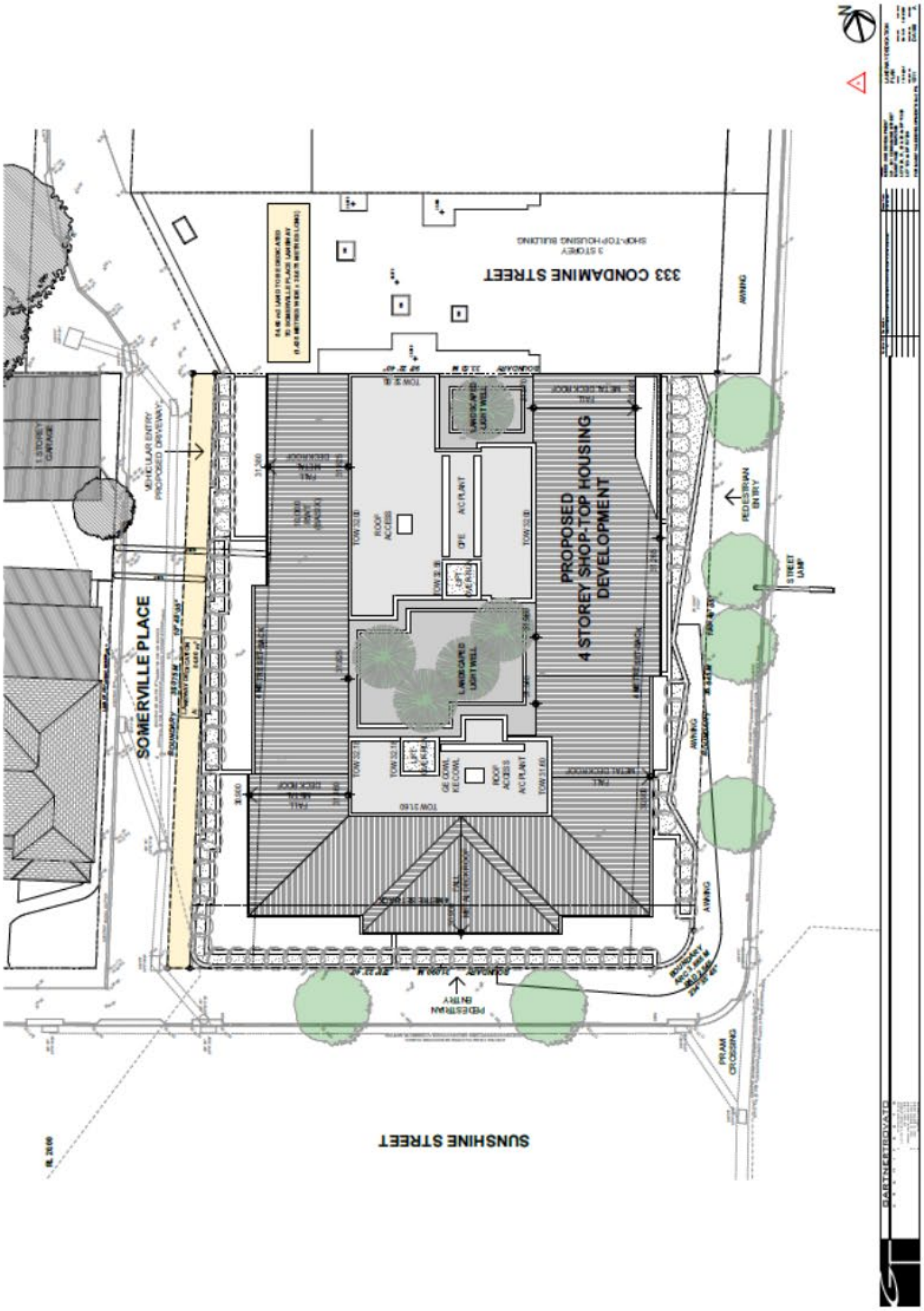
Director

Attachment 1 Proposed laneway dedication plan

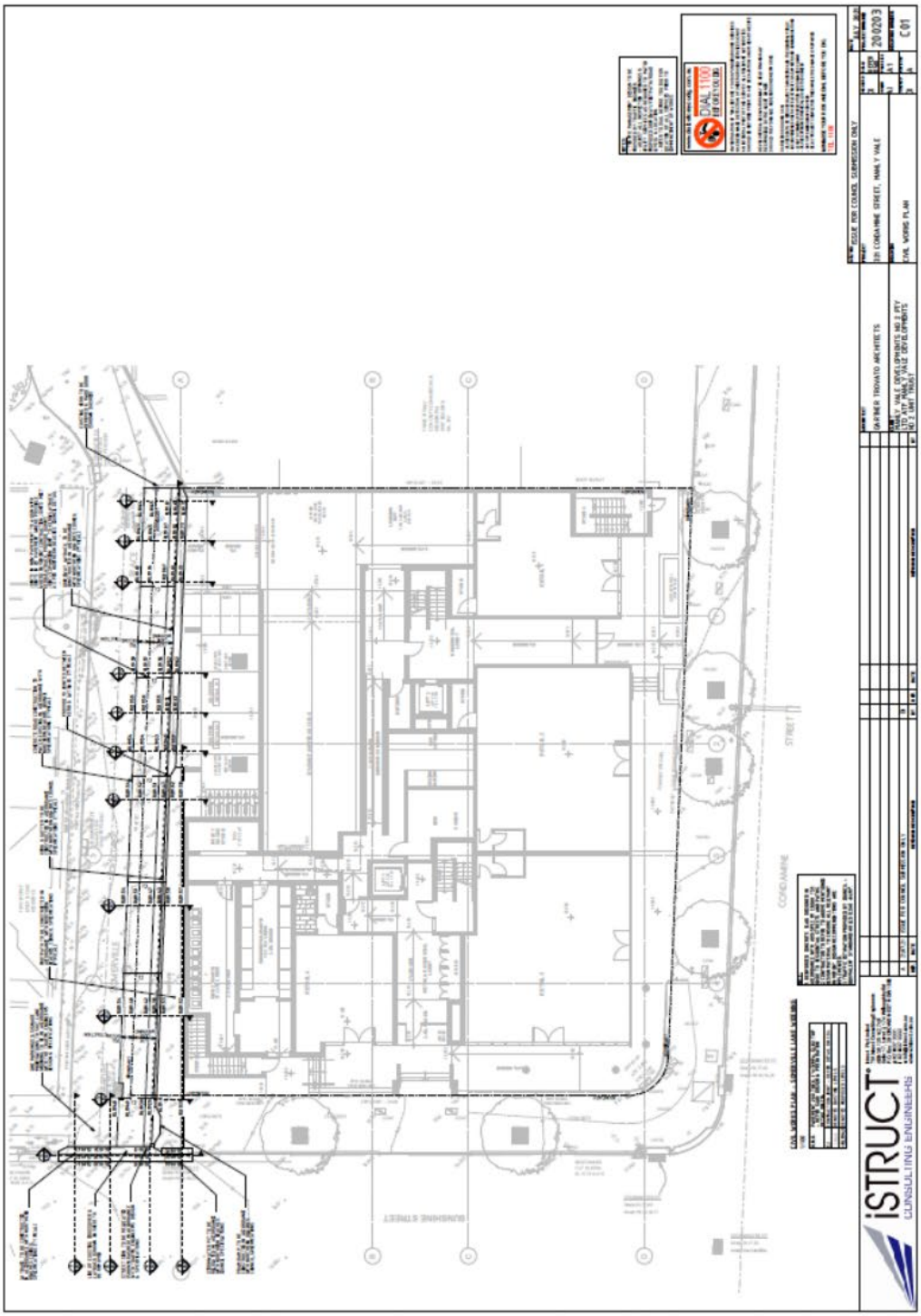
Attachment 2 Plans showing civil works proposed within the laneway

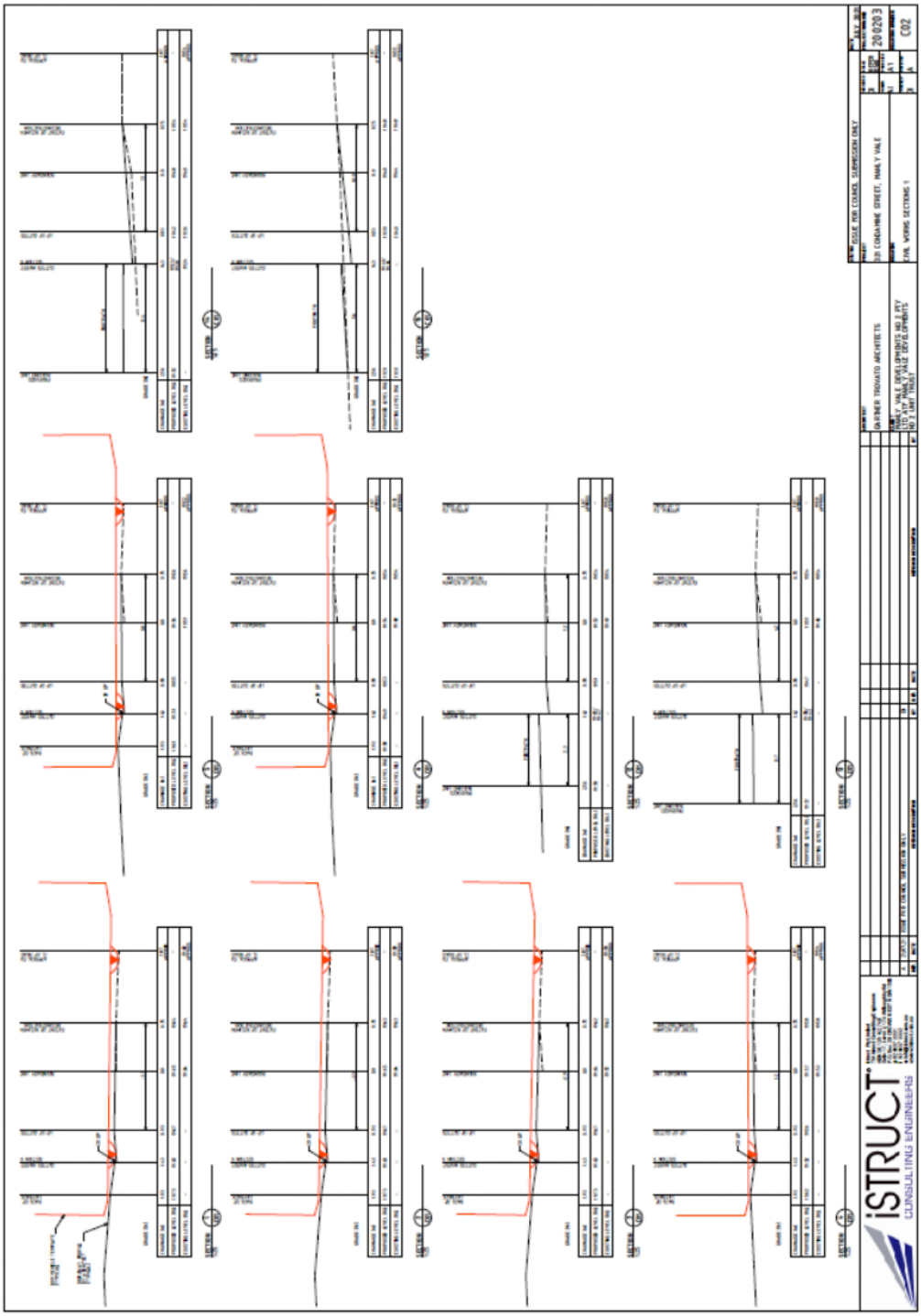
Attachment 3 Shadow diagrams

Attachment 1 Proposed laneway dedication plan



Attachment 2 Plans showing civil works proposed within the laneway

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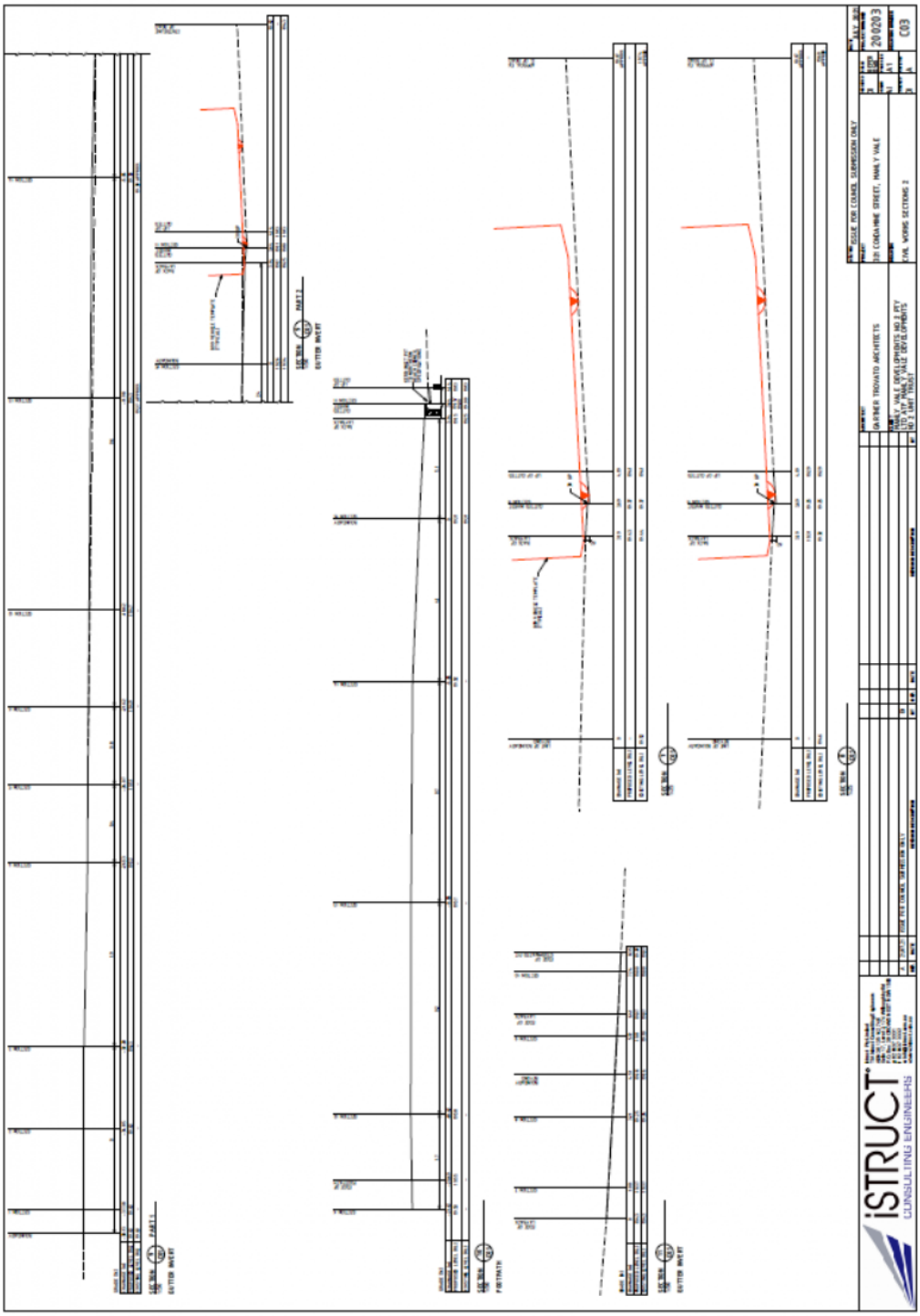
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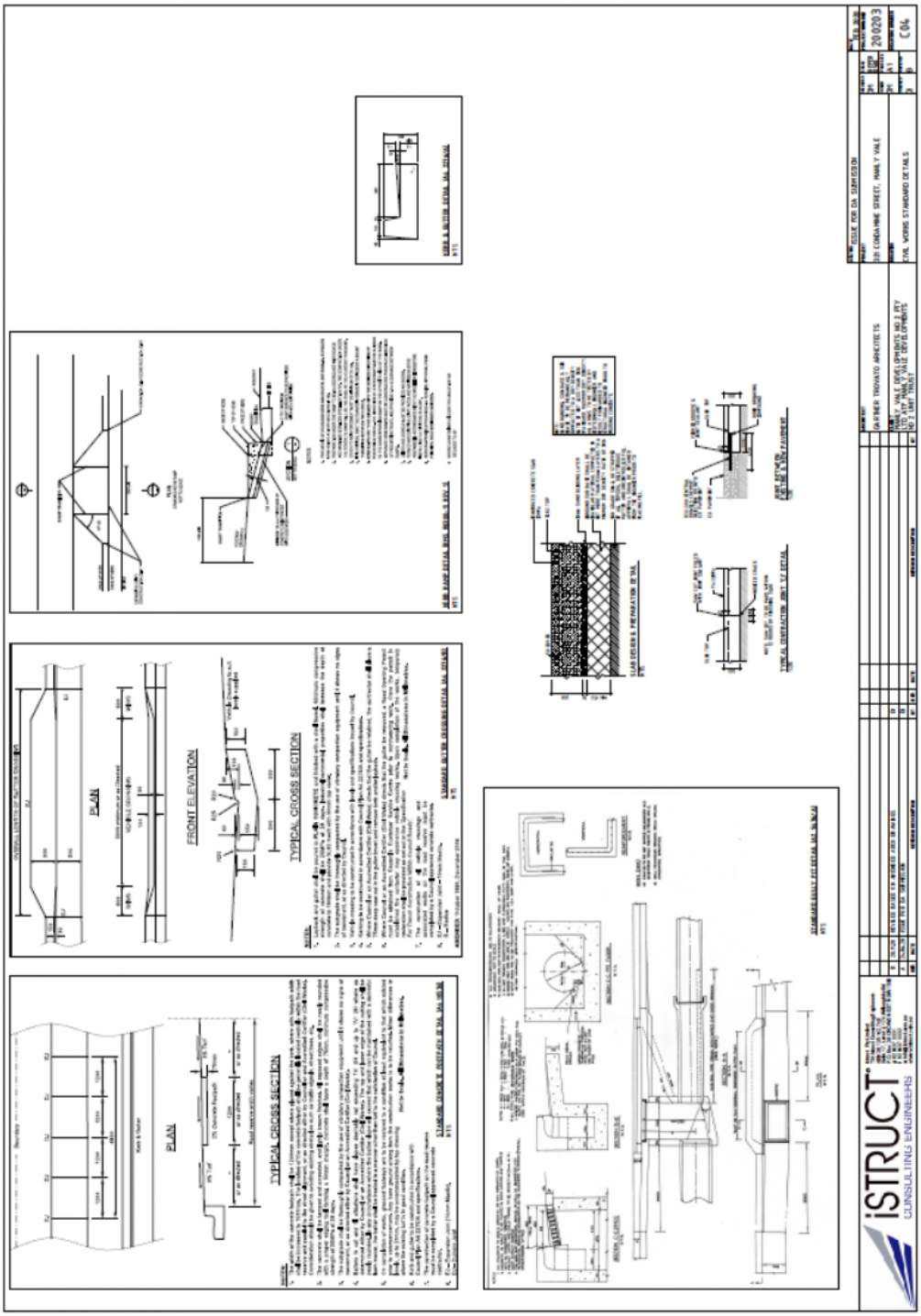
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TYPICAL CROSS SECTION
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C04
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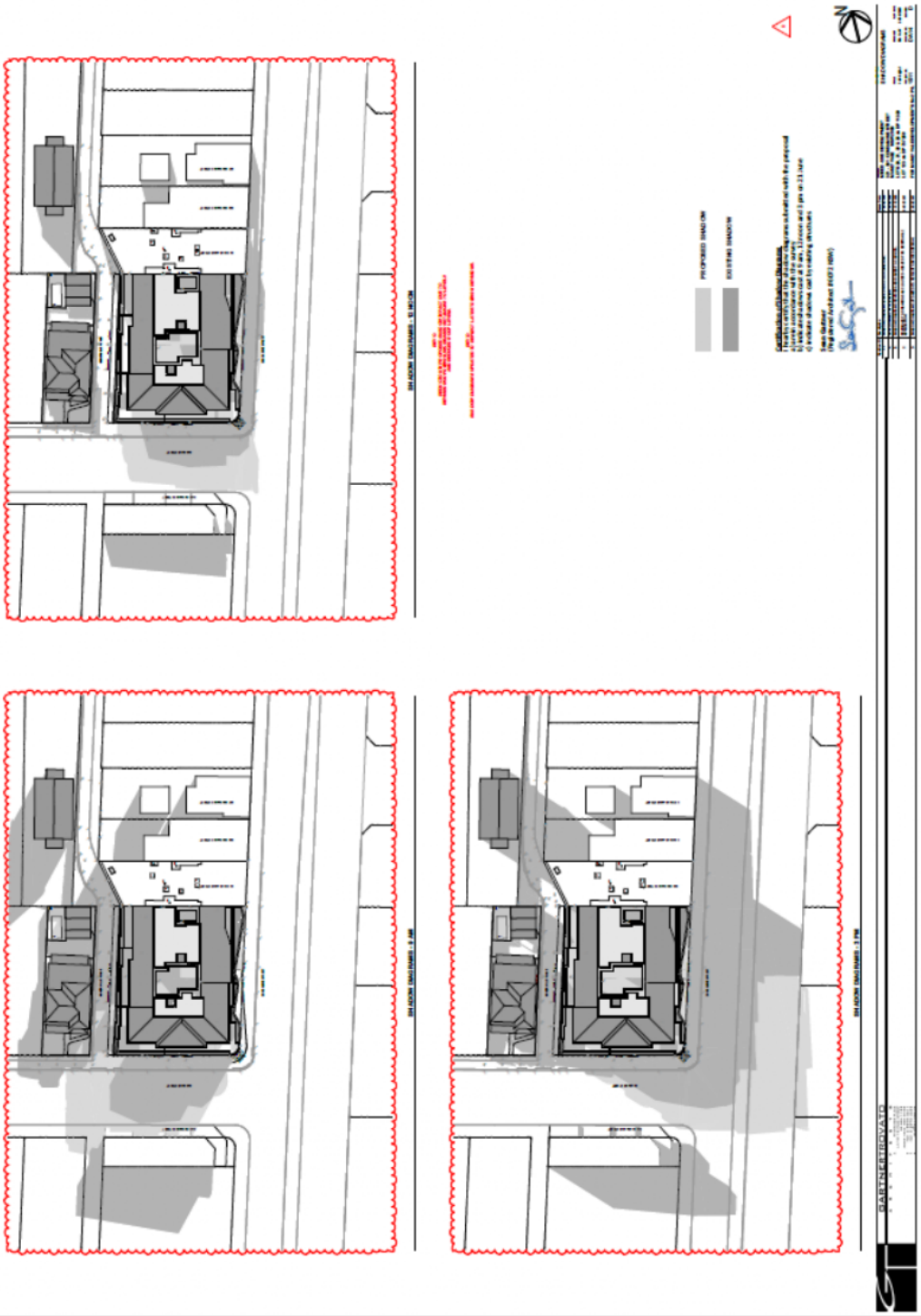
Attachment 3 Shadow diagrams



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Design + Sustainability Advisory Panel Meeting Report – 27 May 2021

3. REV2021 0014- 321 Condamine St MANLY VALE

PANEL COMMENT AND RECOMMENDATIONS

General

The Panel reviewed an earlier version of the proposal (DA2020/0824 - PLM2019/0190) on 24 September 2020.

The Panel acknowledges that some of the less significant concerns:

- overlooking of adjacent properties to the west,
- resolution of the levels of shop entries relative to the adjoining footpath
- treatment and width of Somerville Place,

have been satisfactorily resolved in consultation with council.

The Panel did not support the previous design and recommended that the proposal should be re-designed *"to provide improved solar access and living areas that can open away from the main road towards the north and west, for all units including units facing Sunshine Street"*.

The Panel also suggested that *"exceeding the height limit and number of storeys in some parts may be supported if it can be shown that amenity within the development and in relation to adjoining sites is significantly improved"*.

This aligns with the general approach of the panel that may be summarised as follows:

Development potential

In the view of the Panel, the ultimate development potential (yield) of a site is determined by the quality of the design, amenity, impacts and perceived public benefit.

It follows that in general, proposals should comply with numerical standards (heights, FSR, setbacks) and other envelope controls.

In other words, the development potential defined by these standards will be taken as a maximum that may only be achieved if the quality of the design is adequate.

Non-compliance

In the Panel's consideration of any non-compliance with planning controls, it is expected that there will be:

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

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

Reference to precedents

Precedents of non-compliance in other proposals, or on other sites, will not be considered a basis for non-compliance in a proposal unless they simply illustrate the benefits noted above.

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The Panel notes that there is no density control in the form of a floorspace ratio (FSR) applying to the site. However, an analysis of FSR is a useful guide to what is possible and what may be considered over development.

As a rule-of-thumb shop top housing would achieve a maximum of approximately:

- 0.4-0.5 :1 FSR on the ground level once service areas, car park entries and so are taken into account
- 0.3- 0.4 per level above and where there is a corner site that might achieve a ***maximum*** of approximately 0.5:1

These approximate FSRs allow for good natural cross ventilation, solar access, avoidance of overshadowing within developments and flexibility in the building confirmation on the site.

Building envelope controls apply to the site, with a height limit of 11m. This assumes a ***maximum*** 3 storeys.

From this, it is reasonable to interpret the maximum FSR applying to the site to be in the range of 1.0:1 to 1.5:1.

The proposal is approximately 2.1:1 or 140% of what would be considered a maximum amount of development to achieve good solar access and cross-ventilation.

The proposal has very poor (unacceptable levels) of natural ventilation and solar access, has units with single aspect facing an inhospitable main road, and poor outlook.

It has been suggested that the development is 'consistent with the ***desired future character*** of the area that has been established by the development that has occurred nearby'. The Panel rejects this assertion, and would refer to the nearby development as ***undesirable past character***, and as noted above rejects the suggestion that these developments should be referred to as 'precedents' other than to illustrate the pitfalls of overdevelopment on these difficult sites.

Strategic context, urban context: surrounding area character

The Panel is very supportive of shop-top housing but notes that this may be sited in inhospitable locations and that the overall arrangement and built form should take this into account. In general the type of development is in character and has an appropriate range of uses.

Scale, built form and articulation

The proposal exceeds the height limit.

The Panel notes that there is no density control applying to the site in the form of an FSR. However the Panel considers that the revise proposal is still a significant over-development of the site.

The built form effectively fills the entire envelop and exceeds the height limit.

It is not the role of the Panel to redesign proposals, however in this circumstance , and to be clear the panel recommends a significant reduction in the number of units/floorspace, and evidence of the benefits of exceeding the height limit, with reference to a complying scheme. Then and only then could a variation to the height limit be considered.

Recommendations.

1. Reduce the overall bulk of the building and reduce the GFA by approximately 600sqm
2. Consider an "L" shaped form with a courtyard /roof terrace in the north west corner with the aim of provide dual aspect to as many of the units as possible and improving the relationship to the adjoining sites on Sunshine St.
3. As noted in previous advice and as outlined above, a variation to the height and an increase from 3 to 4 storeys may be considered favourably ***if and only if*** the benefits compared to a complying scheme can be demonstrated, noting that recommendation #1 would still apply.

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The notes and recommendations that follow should not be interpreted as an acceptance of the current scheme. A comprehensive re-design is required, but the Panel also notes that there are many detailed aspects that also require resolution in any revised scheme.

Access, vehicular movement and car parking

Vehicular movement should be easy and sweep paths for visitor and 'shopper' should be generous. Service access to retail is good, but access for 'shoppers' to retail is circuitous. This raises the question more widely of the efficacy of requiring underground retail parking for patrons when it is so difficult to access and mixed with residential parking and lobbies.

Recommendations

4. Improve legibility and ease of vehicular movement.
5. Consider a reduction in the amount of car parking on site, this should be discussed with Council staff prior to any amendments to your application.

Landscape

There should be a landscaped courtyard or roof terrace on level 1.

Consideration should be given to a common area roof terrace. If this requires additional height this could be acceptable if located to minimise visual and overshadowing.

Recommendations.

6. Significantly increate the dimensions of the 'light wells or convert to a generous roof terrace or raised courtyard.
7. Consider incorporating an accessible roof terrace for common use.

Façade treatment

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

Amenity

The amenity of the dwellings is very poor. There are many aspects that could be improved, but these should be resolved in the re-design. The applicant should refer to the ADG for guidance.

Recommendation.

8. Resolve detailed amenity and interior planning issues, including:
   - Natural light and ventilation of lobbies
   - Room dimensions
   - Locate laundries away from front doors (units 3, 7 etc)
   - "I" shaped configuration of K/L/D areas that will mean constant artificial lighting (unit 6)
   - sealed windows (glass block in lieu of openable window)
   - separation between habitable rooms
   - outlook
   - avoidance of 'snorkel' bedrooms (units 8,10,11 etc)

Sustainability

No sustainability measures in excess of minimum compliance has been included.

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Recommendations

9. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.
10. The Panel recommends inclusion of a substantial amount of rooftop PV (1.5kW/unit).
11. 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. A complete redesign and substantial reduction in the floor area is required. As noted, any breaching of the height controls would need to be supported by an analysis of the benefits compared to a complying scheme.

The Panel refer the applicant to the Apartment Design Guide for aspects related to amenity and internal planning of apartments.

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	**DA2021/0139 - 2 CROSS STREET, BROOKVALE - DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE BUILDING ACCOMMODATING 17 SELF STORAGE UNITS AND 23 INDUSTRIAL UNITS INCLUDING CARPARKING AND LANDSCAPE WORKS**
AUTHORISING MANAGER	**Rebecca Englund**
TRIM FILE REF	**2021/680383**
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. DA2021/0139 for demolition works and construction of a mixed use building accommodating 17 self storage units and 23 industrial units including carparking and landscape works at Lot 100 DP 817162, 2 Cross Street, Brookvale for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0139

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 100 DP 817162, 2 Cross Street BROOKVALE NSW 2100
Proposed Development:	Demolition works and construction of a mixed use building accommodating 17 self storage units and 23 industrial units including carparking and landscape works
Zoning:	Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Cross Street Holdings Pty Ltd
Applicant:	Leda Holdings Pty Ltd

Application Lodged:	10/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	18/03/2021 to 01/04/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 28.18%
Recommendation:	Refusal

Estimated Cost of Works:	$ 9,283,744.00

EXECUTIVE SUMMARY

The proposed industrial storage / warehouse seeks a height variation of up to 28.18%, with a maximum breach of 3.1m above the 11m height limit that applies 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 for determination. The height variation is not supported pursuant to related objectives for the zone, LEP and DCP requirements. The height variation creates an unfavourable precedent by projecting the non-complying element with a concurrent breach into the 4.5m front building setback area.

No objections by way of public submissions were received for the proposal, however a number of

Internal Referrals do not support the development application for development engineering, landscaping and flood planning. In addition, Council's *Design and Sustainability Advisory Panel* (DSAP) do not support the proposal due to inconsistencies with setback controls in association with the design response provided. DSAP review comments were provided in May 2021 and they recommended a range of changes to the proposal. Amended documents were prepared in June and a review of the amended plans reveals that they do not satisfy the concerns raised and did not achieve an acceptable design response for the fundamental issues raised.

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, bulk, insufficient flood planning details, impact on streetscape character, and inconsistency with achieving the design excellence outcomes within reasonable built form compliance consistent with adjacent industrial buildings.

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the erection of a building for the purposes of a storage / warehouse premises, specifically self-storage units.

In detail, physical works will consist of:

- a four-storey building (2 x main levels and 2 x mezzanine levels) of panel style construction, with a total of 3,907 sqm in gross floor area (excluding loading areas, parking stairways and utilities. Within the GFA 634sqm (16.2%) is for ancillary office space.
- carparking for 56 cars evenly distributed between the two main floor (including disabled access parking spaces);
- vehicular access from Cross Street, with and internal ramp system for the two main levels.
- fascia signage to identify the building (3 x business identification signs, standard under awning signs and a pylon sign at the driveway entry);
- narrow landscaped strip along the Cross Street frontage with no / limited landscape setback for the Green Street frontage.

Operational aspects of the proposal include:

- Maximum of (2) staff; and
- Electronic security controlled entry for self storage 24 hours per day , 7 days per week.

The applicant has amended the plans since lodgement, in response to correspondence from DSAP and Council's internal referral responses provided to the applicant in May 2021. The original proposal was not supported, based on non-compliance with the Height of Buildings development standard, non-compliance with objectives of the front boundary setback control, inadequate landscape setbacks and insufficient information in regard to potential impact on Council's stormwater flood planning. The proposal was amended with revised plans and further information provided in July 2021. However, having reviewed these amended plans in overlay with the original plans the applicant has not provided an appropriate design response to resolve the principle or fundamental design concerns regarding front boundary setbacks, building bulk, building height variation and flood impacts.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 104 Traffic-generating development)
Warringah Local Environmental Plan 2011 - Zone IN1 General Industrial
Warringah Local Environmental Plan 2011 - 5.21 Flood planning
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - C6 Building over or adjacent to Constructed Council Drainage Easements
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E11 Flood Prone Land

SITE DESCRIPTION

Property Description:	Lot 100 DP 817162 , 2 Cross Street BROOKVALE NSW 2100
Detailed Site Description:	The site is a regular shape corner lot on the northwestern side of the intersection of Green Street and Cross Street, Brookvale. The site has a frontage of 80.4m to Green Street with a 60.43m frontage to Cross Street. The total site area is 4,862sqm. The site is currently developed an industrial premises with a single storey building (pre-dating 1970's) and the main driveway / parking area on the western side of the site and a minor driveway along the northern setback. The land is has a gradual cross-fall of 0.5m toward the south-east (street frontage). The site is generally flat, being in a low-lying area potentially

	affected by flooding within the Brookvale / Warringah Mall catchment and has a main stormwater line within the site near the western boundary and local sewer lines across the middle of the site. An electrical substation easement is located in the northeastern corner of the site. There are no significant trees or heritage listed items on the subject land. Adjoining and surrounding development is characterised by a range of industrial and warehouse activities to the west, east and north of the site. To the south is a B3 Commercial Core zone dominated by Warringah Mall. Other uses adjacent include storage / warehouse units (recently constructed) along the western boundary, Warringah Mall carpark, 'Aldi' supermarket and various industrial / commercial operations along Green Street and Cross Street.

Map:

SITE HISTORY

Building Application No.C722/65 for factory alterations and additions ("Tilt-a-Door Pty Ltd") was approved by Council on 11 March 1965.

The existing industrial building on the site is to be completely demolished and foundations removed and therefore no further site history is relevant to the proposal.

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. (See details also under 'SEPP 55' heading within this report)
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested and advised with the Internal Referrals - Flood Engineering and DSAP review advice. Amended plans and documents were received 24.6.2021. These amended / reviewed documents have been assessed in overlay as part of this assessment in context of the proposal as whole being part of the application response to DSAP review. The amended plans and documents maintain similar non-compliance to height and setbacks and do not resolve all referral / assessment issues. Changes that would be required to address assessment issues with the original plans and amended plans are not suitable to be conditioned. Clause 92 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. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is able to be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is able to be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is able to be addressed via a condition of consent.
Section 4.15 (1) (b) – the	(i) **Environmental Impact**

Section 4.15 Matters for Consideration'	Comments
likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	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 along the 4.5m front boundary setback (across the vertical wall plane) with regard to landscape setting required.
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 requirements of Warringah LEP and Warringah DCP controls and desired character and envisaged with the *Brookvale Draft Structure Plan* (in preparation for future commitments toward draft urban plan for Brookvale by Northern Beaches Council) 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 18/03/2021 to 01/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	**Supported with conditions.** <u>General Comments</u> A *Preliminary Environmental Site Assessment* has been prepared by *Environmental Inve* This report covered the site and the immediately adjoining properties at No.13 and No.1 report identified that potential contamination would be anticipated to be associated with t ▪ Potentially contaminated imported fill material; ▪ Potential asbestos material associated with the demolition of existing structures; ▪ Potentially two (2) underground storage tanks (USTs); ▪ Historical use of the site for commercial/ industrial purposes; and ▪ Historical activities such as the use of pesticides. This investigation found that no elevated concentrations or contaminants were found in s samples. However, the pH of the groundwater was found to be outside the acceptable ra hydrocarbons below the GILs were detected that indicate a potential localised contamina Asbestos was also detected in a fill sample that was collected from one of the boreholes site. Based on the findings of the investigations conducted as part of the Preliminary Environ Assessment, it was concluded the contamination encountered may pose a risk to humar environment. Subsequently, it was recommended that a Stage 2 environmental site asse undertaken, noting a gap in the data in relation to potential contamination associated wit USTs. An *Additional Site Environmental Assessment* was prepared by *Environmental Investiga* accordance with the conclusions of the Preliminary Environmental Site Assessment and application. A ground penetrating radar (GPR) scan and site inspections were undertake USTs. This scan identified that a UST was located in the north-west corner of the site ur driveway. Separate cuts in the concrete were located that suggest the UST was decomr removed. The other UST was suspected to be the northern part of the site being 13-15 (Brookvale. Environmental Investigation Services did not find any obvious indication of a However, the potential for a UST to be located in this section of the site was still require Further asbestos was detected within the Fill samples analysed as part of the Additional Assessment. An elevated concentration of PAH Anthracene was also encountered in on samples. However, the potential for significant widespread groundwater contamination v Given the asbestos encountered it was concluded that it may pose a risk to human healt *Environmental Investigation Services* concludes that the site can be made suitable for th development provided that the following recommendations are implemented to minimise risks: ▪ The preparation of a friable Asbestos Management Plan; ▪ The undertaking of a Hazardous Materials Assessment; and ▪ The undertaking of inspections during demolition phase to assess any unexpected con The preparation of this reports and the undertaking of inspections can be imposed as a c <u>Further Information and Detailed Assessment</u> *Environmental Investigation Services* in their 2nd report Feb 2013 (supplementary to th

Internal Referral Body	Comments
	assessment report November 2012) conclude that the following recommendations are minimise these risks: • An Acid Sulfate Soil Management Plan should be prepared for the proposed exc intrusive works and soil testing may be required at deeper soil profiles to determi liming rates; • A friable Asbestos Management Plan should be prepared for the proposed devel the removal of asbestos contaminated fill material and address Work Health and during site works; • A Remediation Action Plan (RAP) should be prepared for the removal of the UST The RAP should include a contingency plan that can be implemented if any additional U sub-surface structures are encountered; • A Hazardous Materials Assessment (Hazmat) should be undertaken for the exist the commencement of demolition works; and • Inspections during demolition and excavation works should be undertaken to ass conditions or subsurface facilities that may be discovered between investigation should facilitate appropriate adjustment of the works program and schedule in re changed site conditions. • Inspections should be undertaken by experienced environmental personnel. Note EIS comment An inspection found evidence that the UST potentially located on th removed. Therefore, the preparation of a RAP for the proposed development is consider although Council could impose a condition also requiring the preparation of such if a US It is our opinion that issues raised can be dealt with by way of conditions to avoid pollutic <u>Planning comment:</u> Development application details and supplementary information is addressed with referr
Environmental Health (Industrial)	**Supported without conditions.** <u>General Comments</u> The applicant advises: This SEE relates to the development proposal comprising: ▪ Demolition of all existing structures on the site; ▪ Minor earthworks and regrading; ▪ Construction of a new two-storey industrial development comprising: - Seventeen (17) self-storage units (of which five (5) have mezzanine levels); - Twenty-three (23) industrial units with ancillary office space at the mezzanine levels; - Amenities; ▪ Provision of fifty-six (56) car parking spaces across two levels; ▪ Landscaping; ▪ Stormwater drainage works; and ▪ Strata subdivision. This referral only relates to use following construction. Demolition and construction noise the 'Contamination referral'. Use is within community expectations of the commercial/ind

Internal Referral Body	Comments
	regard to noise and hours of use. Planning comment: Development application details are sufficient without referral conditions.
Landscape Officer	**Not supported.** The comments from Council's Urban Design / DSAP section are concurred with regardir landscaped setbacks and tree planting, WDCP front setback requirements and the Broo Plan (2017) . The non-compliance with the setback requirements is not supported with regard to lands The proposal is therefore not supported with regard to landscape issues. Planning comment: Supplementary information and amended plans has not resolved this issue and the desi are not suitable to be addressed by conditions.
NECC (Development Engineering)	**Not supported.** The application has been assessed. However, Development Engineering team cannot support the application as below: 1) The applicant proposed to discharge the whole site areas into the a Council existing The discharge is about 200l/s in 5% AEP. It may lead a significant surcharge from the pi shall provide a capacity check to the related pit and downstream pipe to ensure the cour adequate capacity. Alternative, the applicant can discharge directly separate Council pit: surcharge in low storm events. 2) Any proposed retaining wall and stair must be relocated within the private property. T Green Street and Cross street shall be removed. 3) On the western side of the building, the applicant proposed the egresses on the grou However, the existing ground level is about RL10.51 on the side pathway. In the landsca are proposed to access the ground floor from the side pathway. However, no structure s 3 m wide " stormwater easement". At least 3 m wide drainage easement shall be created c development. 4) The proposed private fire Hydrant on Green Street must be located within the private As the above, Development Engineering cannot support the application. Planning comment: Supplementary information and amended plans has not resolved this issue and the desi are not suitable to be addressed by conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	**Not supported.** The proposed building is larger than the existing building, and the width of open space a boundary has decreased significantly to only 3m. This would cause the depth of the floo therefore impact on the adjacent property. The *Flood Management Report* (Tonkin Consulting, 11.11.20) states that "Level adjustm

Internal Referral Body	Comments
	easement from north to south has been provided to replace the function of the existing fl unclear what this actually means. The report needs to detail how this issue is to be addr details need to be shown on the plans. The *Flood Management Report* also needs to de Flood Planning Level (FPPL) needs to be raised in accordance with the higher 1% AEP Planning comment: Supplementary information and amended plans has not resolved this issue and the desi are not suitable to be addressed by conditions.
Strategic and Place Planning (Urban Design)	**Not supported.** **PANEL COMMENT AND RECOMMENDATIONS** Design + Sustainability Advisory Panel Meeting Report – 29 April 2021 **General** • Demolition works and construction of an industrial warehouse with 17 self-storag industrial units, including parking for 56 cars. **Strategic Context** • The site is in a prominent location opposite Warringah Mall and within the area s Brookvale Structure Plan. Principal concerns raised included building height non- building bulk and wall articulation, wall height, non-compliant road boundary setb and stormwater / flood engineering. • The *Brookvale Draft Structure Plan* (August 2017) has identified Cross Street to investigations to create landscaping initiatives for enhancement of the pedestriar maintaining vehicle connectivity throughout the precinct. The objective will be to streets that provide workable and attractive access for the east and west precinc Centre and also link the green grid assets across Brookvale. **Urban context: Surrounding Area Character** • The site is located at the northwest corner Cross Street and Green Street, oppos • The site is rectangular in shape having two broad street frontages of 55.8 metres and 75.8m to Green Street. • The western side setback area contains a major stormwater line. **Scale, Built form and Articulation, Façade treatment** • Currently the proposal exhibits non-compliance with maximum building height up 11m height controls for parapet and ceiling void spaces. • Non-compliance with the front boundary setback requirement of 4.5m for street fi Street. • Currently the Green Street set back proposes public stairs which are located on therefore is not supported. • Well-designed facades should reflect the use, internal layout and structure of the proposed elevation treatment to create interest such as the big overhanging hoo

Internal Referral Body	Comments
	should be more meaningful applications e.g. to provide privacy or sun-shading pu • The Panel discussed the possibility and advantages of a more articulated façade massing on the upper level that could project 'in and out' and could accommodat larger trees in the recessed sections. • The Panel would not support the upper level protruding out to the boundary line a length of the building. Recommendations: *1. The ground level facade should be set back to the required 4.5 m. This will have an in proposed building form* *2. Upper-level units at RL 16.88 could and should cantilever over the ground floor facad colonnade around the street frontages and a more interesting built form which avoids the "big box". This cantilevered form could be supported by a colonnade of columns or canti facade line but in either case the cantilever should be high enough to accommodate son trees along both street frontages* *3. The applicant should consider a potential full height colonnade treatment at the groun prescribed setbacks.* *4. The applicant should explore larger and more distinctive pedestrian entries including c compliant access and entry points from Cross and Green Street as not all users of the c private vehicle.* **Landscape Area and Car parking** • The landscaped setbacks and tree planting are not consistent with WDCP front b requirements or the *Brookvale Draft Structure Plan* (2017). • From the current perspectives provided the Panel is not convinced of how the ch street level to the ground FFL and setback is designed to meet the flooding requi Recommendations: *5. The 4.5m setback should accommodate a combination of walkway along the front of t landscaped terraces or planters. Terrace and planter walls should not exceed 900mm at* *6. The 4.5m WDCP front building setback requirement should be complied with along bo street tree canopies to overlap and to maintain adequate landscape buffer.* *7. Revise the Landscape plan to create an engaging and sustainable street, building and interface including suitable canopy and shade trees based on Councils suggested street evolving precinct.* *8. Detailed design and consideration of the type, material selection and detailing of the w (flood level) level change of level from street level to the ground FFL and setback is requ* **Amenity** • Although the proposal is for industrial /commercial uses some consideration shou amenity provided on site for workers.

Internal Referral Body	Comments
	Recommendations: *9. The communal facilities for users of this building - commonly shared kitchens and rec should be considered in additional to just an entrance and lift.* *10. Office mezzanines would benefit from re-location against external walls where natur illumination is available* **Sustainability** • Industrial development like the proposal provide the opportunity for the installatio photovoltaic arrays (PV) on buildings that generally have a good maintenance ar regimes associated with them. • The Panel notes the location of the substation on the site. Recommendations: *11. Include and optimise the amount of PV on the roof given the potential to clip peak lo strongly encourages the proponent to engage with the energy retailer and Ausgrid to op system.* *12. The Panel encourages the applicant to include stormwater capture and reuse for the* **PANEL CONCLUSION** • The Panel does not support the Proposal in its current form due to the range of is particular non-compliance with the setback that should be landscaped area and t in the public domain. • The recommended amendments to the design are important and should be incor revision to the design. Planning comment: Supplementary information and amended plans has not resolved these issues satisfactc appropriate design response. The extent of design changes required are not suitable to conditions. The image montage below indicates the "before" and "after" design response comments.

Internal Referral Body	Comments
	 Image: Original DA design facade proposed Image: Amended design facade proposed.
Traffic Engineer	**Not supported.** The proposal is to demolish the existing building and construct a new building comprisin Units (total 2,736 sqm), 23 associated Mezzanine Offices (total 634 sqm), and Self-Stora The proposal includes the provision of a total of 56 parking spaces, including 2 accessib It is proposed to retain the existing combined ingress/egress driveway on the Cross Stre <u>Traffic:</u> The traffic generation of the proposed development is projected to be a total of 18 vtph c peak time. Taking into account the existing floor area, the proposal is not expected to ge

Internal Referral Body	Comments
	traffic generation. Therefore, the proposal is not considered to have significant impact or Parking: The proposed parking provision complies with the DCP parking requirements which requ 49 parking spaces spaces for the warehouse units. Also the provision of 5 spaces for th considered acceptable. Adequate bicycle parking spaces in compliance with Warringah DCP are to be provided. Vehicular access and car park design: A swept path analysis is required to demonstrate that two small trucks (SRVs) can ingre same time while using one trafficable lane. Also, a swept path analysis is to be provided Rigid Trucks(HRVs) can ingress and egress the site in forward direction to ensure that tl accommodative of occasional access of larger trucks. The gradient of the first 6m of the driveway commencing from the property boundary is t Given the proposal being located within less than 100m from a signalised intersection, tl NSW(TfNSW) concurrence is required. Subject to the TfNSW requirements, the vehicula may need to be restricted to left in left out only. Conclusion: Given the above, the proposal is unsupported.. Planning comment: Supplementary information and amended plans has not resolved this issue and the desi are not suitable to be addressed by conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**Supported with conditions.** The proposal was referred to Ausgrid who provided a response on 18.3.2021 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards / clearances and SafeWork NSW Codes of Practice. These recommendations are able to 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 industrial purposes for a significant period of time. A site investigation has been carried out as detailed under Environmental Health (Contaminated Lands) Referral.

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

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

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. A further Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. See Environmental Health Officer expert assessment which has evaluated the preliminary and detailed secondary assessment within this report under the heading "Internal Referrals". In summary,

The additional Site Environmental Assessment was prepared by *Environmental Investigation Services* in accordance with the conclusions of the Preliminary Environmental Site Assessment and accompanies this application. A ground penetrating radar (GPR) scan and site inspections were undertaken to identify the USTs. This scan identified that a UST was located in the north-west corner of the site underneath the driveway. Separate cuts in the concrete were located that suggest the UST was decommissioned and removed. The other UST was suspected to be the northern part of the site being 13-15 Green Street, Brookvale. *Environmental Investigation Services* did not find any obvious indication of a UST in this location. However, the potential for a UST to be located in this section of the site was still required to be considered.

Further asbestos was detected within the Fill samples analysed as part of the *Additional Site Investigation Assessment.* An elevated concentration of PAH Anthracene was also encountered in one of the borehole samples. However, the potential for significant widespread groundwater contamination was found to be low. Given the asbestos encountered it was concluded that it may pose a risk to human health if disturbed at the time and may be contained by appropriate methods during site works.

Environmental Investigation Services concludes that the site can be made suitable for the proposed development provided that the following recommendations are implemented to minimise these potential risks:
▪ The preparation of a friable Asbestos Management Plan;
▪ The undertaking of a Hazardous Materials Assessment; and
▪ The undertaking of inspections during demolition phase to assess any unexpected conditions or facilities.

The preparation of this reports and the undertaking of inspections can be imposed as a condition of consent and Council's Environmental Health Officer concurs with this approach and the details provided to warrant conditions.

Clause 7(1)(c) stipulates that "if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose". The proposal is consistent with this clause being able to be practically achieved and satisfied.

The land is considered to be suitable for the industrial land use, as all structures on site are to be demolished, the land cleared and re-graded with height adjustment for flood protection and use as a storage warehouse. Should any lead based paint or asbestos material or other contamination concerns be identified during works appropriate conditions and *WorkCover* requirements, will apply to ensure the safe handling and appropriate disposal of any hazardous material.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation may be addressed with appropriate conditions.

SEPP 64 - Advertising and Signage

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

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

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

- One (1) x building identification sign in the form of a pylon sign is proposed within the Cross Street setback area. The sign is located immediately adjacent the proposed development's vehicular access off Cross Street. It will be 4.54 metres in height by 2.12 metres in width and will have an area of 9.62sqm on each side. The street address, developer's name and the name of individual tenancies will be displayed on this pylon sign.
- Three (3) x business identification signs are also proposed in association with the self-storage units. These signs identify the name of the business 'The Lock Up' and will be displayed on the south, east and west elevations in proximity to the vehicular access of Cross Street and the pedestrian entry point off Green Street. The signs will be mounted flush to the wall on each of the elevations and vary in size from 2sqm to 23sqm.
- A signage zone 2.88m in height and 2.11m in width is located above each units pedestrian entry. Located within the signage zone will be the name of the future business that occupies the correlating warehouse.
- Under awning signage is proposed for individual tenancies at the ground floor fronting Cross and Green Streets.

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is	The character of the surrounding area is industrial land uses to the north, east and west and high-intensity retail and commercial land uses to the south. In this context, the proposed signage is	YES

proposed to be located?	appropriate.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Signage in the immediate vicinity is typified by business identification signage for surrounding industrial and commercial activities, some of it large-scale. The proposed signage is of a scale and style that is consistent with proportionality of the building and external materials.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No such areas exist within close or visual proximity to the site.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	No views will be affected by the proposed signage.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the surrounding landscape as it it below parapet height.	YES
Does the proposal respect the viewing rights of other advertisers?	No adjoining existing signage will be compromised by the proposed signage.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage presents a scale, proportion and form consistent with the surrounding built environment.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage will represent as a contemporary visual form that acceptable to the existing built environment on Green Street and Cross Street which has a mix of newer building, less than 20 years old, and older industrial or commercial buildings.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	As the site is to be fully redeveloped this is not applicable to the proposed signage.	N/A
Does the proposal screen unsightliness?	Not applicable.	N/A
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed wall signs will not protrude above adjoining buildings adjacent and conditions are to be applied to ensure the signs are consistent with the maximum building height. Hence, the proposed signage is consistent with this requirement. It is uncertain how many under awning signs might be required, therefore this is limited to 1 only per external pedestrian doors for the ground level.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other	The proposed signage represents an appropriate proportion and style to the proposed building.	YES

characteristics of the site or building, or both, on which the proposed signage is to be located?		
Does the proposal respect important features of the site or building, or both?	Not applicable, as the site is to be fully redeveloped	N/A
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is consistent with the architectural style of the proposed building to be of a business style appearance for self storage and industrial storage facility to service commercial and industrial uses nearby.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not applicable.	N/A
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The illuminated pole sign will not be readily visible from the distant adjoining residential areas. The illuminated wall sign is located on the south and east elevations is visible to the adjacent street. No impacts to pedestrians or vehicles is likely given the relatively location and styling of the signs in relation to the other existing signs in the area.	YES
Can the intensity of the illumination be adjusted, if necessary?	Under the context, no adjustment to the signage is necessary.	YES
Is the illumination subject to a curfew?	Given the industrial / commercial nature of the surrounding area and the sites significant distance from residential areas, no curfew is considered necessary.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No adverse road safety impact is likely from the proposed signage.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No adverse pedestrian safety impact is likely from the proposed signage.	YES

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

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 18 March 2021 raising no objection to the proposal, subject to the design submission must comply with relevant Ausgrid Network Standards and Safe Work NSW Codes of Practice for construction works near existing electrical assets.

Other Service Infrastructure Authorities
Due to local traffic conditions such as proximity to signalised intersections, significant traffic around Warringah Mall and road links to Pittwater Road / Old Pittwater Road referral advice is sought from *Transport for NSW* (TfNSW). No comment has been received from TfNSW within the referral period.

Any changes to *Sydney Water* assets are managed by *Sydney Water* under their separate processes.

No other service infrastructure referral issues are raised pursuant to the SEPP.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	14.1m	38.18%	No

Compliance Assessment

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

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone IN1 General Industrial

A merit assessment of the proposal against the objectives of the IN1 General Industrial zone is addressed as follows:

Objectives

- *To provide a wide range of industrial and warehouse land uses.*

Comment:
The proposed storage / warehouse premises are a permissible use in the zone and will be able to service the surrounding area.

- *To encourage employment opportunities.*

Comment:
Two (2) staff will be employed on the premises with staff carparking. The use of the site will continue to make a contribution to the employment generating potential of the Brookvale industrial area.

- *To minimise any adverse effect of industry on other land uses.*

Comment:
The proposed storage premises increase the range of options and choice for storage / warehouse facilities. This particular facility is designed to include vehicle access to storage / warehouse rooms including office style space for administration of distribution style uses. The proposal includes the supply of changing style of distribution style warehouse / self storage facilities and is compatible with surrounding area, including service opportunities to Warringah Mall.

- *To support and protect industrial land for industrial uses.*

Comment:
The proposal will result in no loss of existing industrial land, as the storage / warehouse premises is a complimentary land use to industry.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment:
This objectives is not relevant to the application. Any change to internal occupancy such as mechanical or manufacturing style use would be subject to a separate development application as applicable.

- *To enable a range of compatible community and leisure uses.*

Comment:
This objectives is not relevant to the application.

- *To maintain the industrial character of the land in landscaped settings.*

Comment:
The proposed building represents a modern industrial style warehouse character. Placement of the building footprint and upper bulk deliberately within the front setbacks compounds the appearance of building streetscape presence in a dominating effect toward the public street domain and diminishes opportunities to establish a landscape setting commensurate with the scale of the building. Therefore the development has an adverse effect on the streetscape and future character, including that envisaged by the draft *Brookvale Structure Plan*. The proposal effectively establishes defacto build-to lines above the 11m height plane and along extensive wall plane sections within the 4.5m front boundary setback. This is not supported and is contradictory to this objective for the zone.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	14.1m
Percentage variation to requirement:	38.18%

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, considering the non-compliance with the development standard.

In doing so, 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 (as summarised):

- *The proposed development has been designed to be consistent with the approved development on the neighbouring property and its height variation, with the roof feature over the pedestrian entry off Cross Street having a maximum height of 14.1 metres and the building (at the parapet) having a maximum height of 13.4 metres;*
- *The proposed development provides a land use and built form outcome that provides an appropriate transition between the two land use zones, while also ensuring it is compatible with the land's flood hazard;*
- *The proposed development is located on a relatively flat site within an established industrial area where there are no existing significant views.*
- *The non-compliant element of the proposal of the proposal at its greatest extent relates to the blade walls and hood surrounding the staircase entry.*
- *The proposed development has been designed to minimise any potential adverse impacts in terms of visual impacts, views, privacy and solar access.*
- *Along the proposed development's southern and eastern elevations fronting Cross and Green Streets, any potential privacy impacts have been minimised through the consolidation of windows that are limited to the mezzanine office spaces at the first floor as shown in the figures below, noting the corner location of the site is such that it is setback from the surrounding development by roads*
- *Its location within an established industrial area on a relatively flat parcel of land is such that the proposed variation to the 11-metre height of buildings development standard and the proposed development as a whole will not result in any potential adverse impacts on the scenic quality of Warringah's coastal and bush environments.*

<u>Assessment Comments</u>

These reasons are considered to be limited in justifying that strict compliance with the Height of Buildings development standard is unreasonable or unnecessary and ignore objects of the act to "*promote good design and amenity*" and do not respond to the '*orderly development of land*' in so far as minimising variations to the associated development controls in order to reduce unfavourable precedents. As such the variation sought has not been isolated to ensure the non-compliance only relates to building height within the primary core of the building where reasonably necessary, thereby minimising the extent of the variation. Comparison to DA2020/0433 reveals that this adjacent building complied with the front boundary setback which is inconsistent with the subject site and the particulars of the merit variation proposed there were restricted only to the primary core. In the case of DA2020/0433 the variation was isolated to the lift core in the central area of the building and only the height needed to meet the FPL. The front the building fully complies with the 11m height control up to 10m back from the 4.5m front setback line to ensure a responsive setback and height line is maintained.

The overall built form of the surrounding area is typified by functional buildings designed to accommodate industrial and warehouse uses. In comparing examples of non-compliance with similar building height these height variations area located behind the front boundary setback zone, so that they do not compromise other built form controls for setbacks and landscaping. A direct comparison to single frontage sites is incompatible with the circumstances of the site having 2 frontages. While the added height to set the building ground floor at RL11.38 to comply with the FPL is supported, the actual height non-compliance at its greatest involves blade walls and 'feature work' that protrude unnecessarily into the front setback. This is inconsistent with adjacent sites, in that on the subject site, a deliberate forward encroachment as well a height non-compliance creates more visible non-compliance rather than a more responsive approach would. Effectively going higher and further forward creates the opposite effect to minimise any height variation and should also be stepping back forward protruding elements.

The upper level, blade wall protrusions along the mid to upper floor levels have not been setback or reduced to minimise the non-compliant elements along the streetscape. Instead they exacerbate and extend the appearance of height and bulk along the frontages. Therefore, the non-compliant setback pushes the building height and bulk forward into the 4.5m front setback zones along both street frontages all the way along the 11m height plane. This in effect presents a more prominent, rather than recessive bulk and is contrary to the objectives of the associated controls under the DCP for building bulk and front setbacks requirements for wall planes. This demonstrates an unresponsive approach and inappropriate consideration of the 11m height line which has been used for both the original and amended plans.

Focusing on this upper level height variation, the design is not responsive to ameliorating the building bulk above the height plane by increased setbacks and recessing the upper elements further back. The forward setting of the building over the 4.5m front boundary setbacks for Green Street and Cross Street eliminates opportunities to screen the additional scale with medium to large trees by a suitable width landscape setback. Therefore, the proposal sets an unfavourable precedent for future redevelopment of other corner sites to replicate combined height and setback non-compliances without sufficient regard to the desired future character. The building height plane has adequate height to accommodate the FPL / stormwater issues in responsive manner to the streetscape for any permissible redevelopment of the site without the extent of non-compliance proposed in this case with appropriately responsive design.

The elevation images below illustrate the proposed building in context with the part of the building scale and bulk across the width of the 11m height plane and elements of the building proportions that exceed the control along both the street frontages.

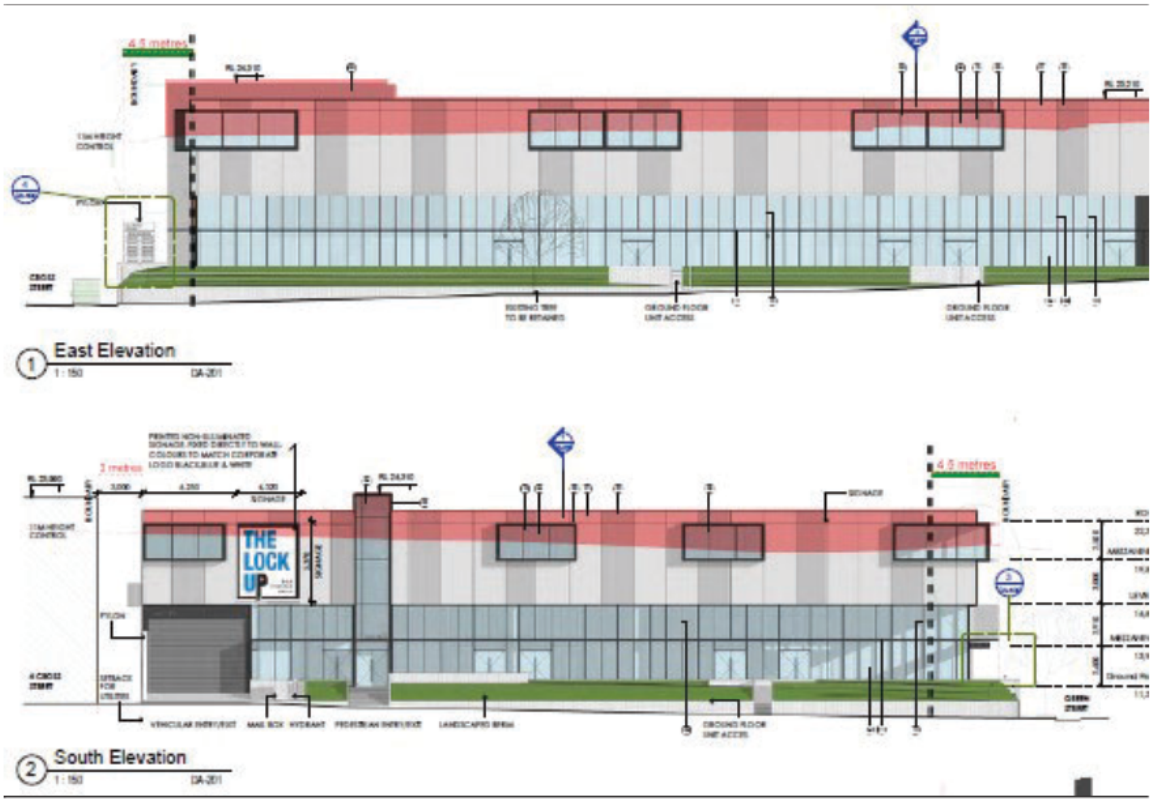


Image: Red shaded area depicting the extent of non-compliance above the 11m height control.

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'* in accommodating site constraints in combination with minimising the visual appearance of non-compliance to the planning controls 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.

As such, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b), and Council cannot be not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the IN1 General Industrial 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 proposal has been designed to represent largely as a compliant wall plane setback to the principal frontage on Cross Street. The blade walls and over-extended hoods reach well into the front setback that accentuate height and scale by comparison to surrounding development where facade used recessed elements to break up scale. Along Green Street frontage the non-compliant upper level is more extensive and incompatible the pattern and repetition of narrower site frontages extending northward that include wider setbacks and which lessens the visual height and scale close to the street. Given the overall sheer size and scale of the building, generous site area it is not in the public interest to have such extensive massing protruding well forward into the narrow 4.5m setback and above the 11m height plane along the public streetscape.

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

Comment: In the context of the adjacent industrial buildings, separation from other commercial offices and there being no residential dwellings in close proximity to the site, there is not loss of coastal views, residential privacy or solar access.

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

Comment: There are no significant coastal or bush environments in close proximity to the site. Allenby Park bushland area is approximately 570m to the west and the coastal area more than 2.5km to the east. The extent of the proposed variation, when viewed from these areas, is likely to have negligible impact given the extensively developed land between these bushland or coastal areas and the subject site.

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

Comment: As detailed previously, the overall design of the proposal has not achieved an acceptable visual impact when viewed from the adjoining public domain along the roads of Cross Street and Green Street.

Zone objectives

The underlying objectives of the IN1 General Industrial zone are:

- *To provide a wide range of industrial and warehouse land uses.*

  Comment: The proposed storage / warehouse premises are a permissible use in the zone and will be able to service the surrounding area.

- *To encourage employment opportunities.*

  Comment: A maximum of two (2) staff will be employed on the premises. This continues the previous industrial style use of the site and will make a contribution to the employment generating potential of the Brookvale industrial area.

- *To minimise any adverse effect of industry on other land uses.*

  Comment: The proposed storage premises will have a minimal impact on the operations of other land uses (commercial / residential / recreational / special uses) in the surrounding area, including service opportunities to Warringah Mall.

- *To support and protect industrial land for industrial uses.*

  Comment: The proposal will result in no loss of existing industrial land, as the storage premises is a complimentary land use to industry. However, use of industrial land requires responsive design to achieve associate land use planning requirements for drainage, public amenity, streetscape character and the like. In this regard efficient design should accommodate area for infrastructure, stormwater and landscaping and not off-set one of these as a site constraint for other land use gains.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

  Comment: Not relevant to the application.

- *To enable a range of compatible community and leisure uses.*

  Comment: Not relevant to the application.

- *To maintain the industrial character of the land in landscaped settings.*

  Comment: The proposed building represents a sufficient industrial character however the height and bulk has been over-accentuated above the height control. The character of the area includes an 11m height limit and while there is no storey limit there is a mix of lower single storey and two storey buildings present also. The proposal has not sought to minimise the elements of non-compliance in terms of building elements that extend above the height line and are unnecessary over-extensions of blade walls and parapet elements above the height plane. Placement of the building footprint and upper bulk deliberately within the front setbacks compounds the appearance of building height much closer to the public domain and diminishes opportunities to establish a landscape setting commensurate with the scale of the building to ensure the development does not have an adverse effect on the streetscape and future character. The proposal effectively established defacto build-to lines above the 11m height plane that are also within the front boundary setback area depicted in the image below. This is not supported and diminishes the ability to maintain the industrial character of the land in landscape settings.

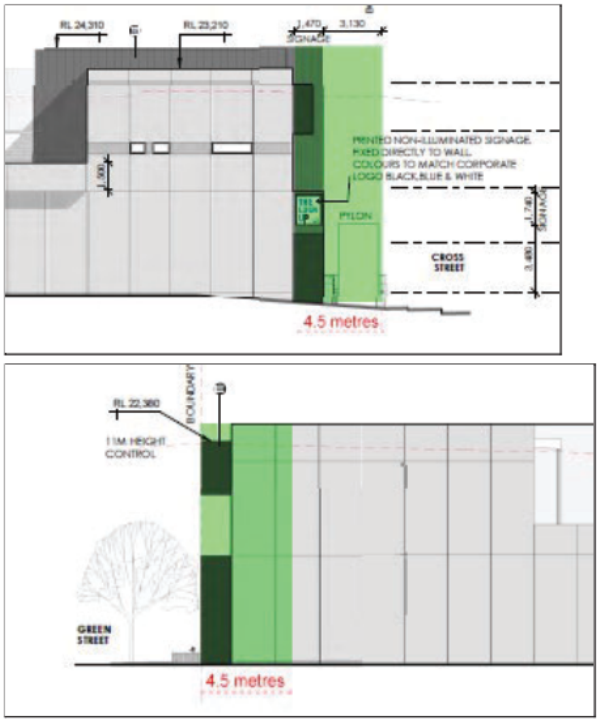


Image: Height of building visible along the streetscape frontages and impact on diminishing the landscape setting objective possible for street amenity.

Conclusion:

For the reasons detailed above, the proposal is not considered to be consistent with the objectives of the IN1 General Industrial 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 20-002 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 inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is not assumed by the Local Planning Panel.

5.21 Flood planning

The objective of this clause seeks to minimise flooding risks, allow development that is compatible with floor function and behaviors on the land, avoid adverse and cumulative flood impacts and enable safety to during flood events.

As consent authority Council must be satisfied that the proposed development addresses these objective as well as also not result in detrimental increases in potential flood affectation of other

development and not aversely affect the natural environment by was if erosion and degrade riparian areas. Details provided with the development application do not satisfy this requirement regarding potential impact on adjacent land due to new raised building footprint and potential displacement of flood waters including the ability to dissipate water along the narrower 3.0m western setback that contains the main Council stormwater line for the catchment drainage northwest of the site. Insufficient information has been provided to address in full *Clause 5.21 Flood Planning* of the Warringah LEP 2011.

Therefore, the proposal is not supported pursuant to this clause.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	Merit assessment (West)	3.0m to 2.03m (stormwater line / flood easement)	32% Car park overhang	Yes (Merit*)
	Merit assessment (North)	0.0m Wall line	N/A	Yes (Merit*)
B7 Front Boundary Setbacks	**4.5m** Cross Street	4.9m to 3.0m Ground floor main level to Mezzanine level (1.3m to 3.0m to walkway, stair, structures and ramps) 4.5m to 3.0m Main upper level wall to upper Mezzanine level	33% 33%	No* No*
B7 Front Boundary Setbacks	**4.5m** Green Street	1.5m Ground floor main level to Mezzanine level (0.0m to walkway with stair, and structures within road reserve) 1.5m to 0.5m Main upper level wall to upper Mezzanine level	66% 66% to 88%	No* No*

*Refer to detailed merit assessment within this report under the heading 'Built Form Controls' . Note the amended plans removed the steps from the road reserve. The subject zone does not have a numerical limit on landscape area under Part D1 Landscaped Open Space. This is addressed by Part B7 Front Boundary Setback.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	No
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	No	No

Detailed Assessment

A.5 Objectives

The overriding objectives of the DCP is to create and maintain a high level of environmental quality throughout Warringah. Development should result in an increased level of local amenity and environmental sustainability.

Objectives
• *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*

Comment
The proposal has not responded appropriately to the characteristics of the site and has sought to push the building bulk over the 4.5m Green Street front building setback line which will reduce the qualities of Green Street and future ability to ensure landscape settings within the surrounding industrial

neighbourhood. The proposal does not satisfy this objective.

• *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*

Comment
The proposal does not reinforce the importance of the landscape setback area for pedestrian amenity and potential future streetscape changes to achieve attractive design outcomes. The building accentuates the height and scale by the diminished landscape setbacks which diminishes the opportunities to create a unified landscape of industrial uses within landscape settings along the streetscape. The proposal does not satisfy this objective.

• *To inspire design innovation for residential, commercial and industrial development*

Comment
In achieving this objective innovative design will inspire future development to comply (rather demonstrate or portray non-compliances to replicate) and minimise building bulk and scale, including responsive compliance with the planning controls. Displacing numerical and non-numerical controls by non-compliance is not considered *design innovation*. The proposal does not satisfy this objective.

• *To provide a high level of access to and within development.*

Comment
The proposal is situated in a location with a high level of access. Through access to ground floor and upper storey is discussed with regard to traffic considerations and pedestrian safety under the Traffic Engineering comments within this report.

• *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained.*

Comment:
The site currently developed for industrial use and does not contain any significant scenic, biological or ecological values.

• *To achieve environmentally, economically and socially sustainable development for the community of Warringah*

Comment:
The location and size of the site will achieve this objective over the long term for the community of Warringah.

B7 Front Boundary Setbacks

Description of non-compliance

The subject building has two road frontages to which the proposal is required to maintain a minimum 4.5 metre landscape setback. The building includes minor elements encroaching with the Cross Street frontage and has more extensive non-compliance along Green Street.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To create a sense of openness.*

  Comment:
  In achieving this objective Part B7 Font Boundary Setbacks requires that *development is to maintain a minimum setback to road frontages*. The proposal has not done this despite the requirement of this clause reinforcing the importance of maintaining the minimum setback and the proposal has substantially extended wall lines, floor space, roof area and ancillary elements extensively into the front setback along Green Street and also that (shown to a lesser extent) along Cross Street.

  To achieve a sense of openness the DCP requires that the front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences. With a wide 4.5m landscaped setback the space required for any minor structures of pathways, retaining walls, steps, ramps and the like is easier to be accommodated while ensuring deep soil landscaping for substantial trees and other suitable planting within a spaced frontage. Cantilevering the building into this zone and reducing the front setback diminishes the sense of openness and reverses the sense of openness by overhanging building bulk, being projected forward into the landscape zone and compromises the canopy space of any medium / larger sized trees.

  Additionally a number of ancillary elements have been identified to be inappropriately located around the periphery of the building including steps, hydrants and the like as detailed within Council's Development Engineering internal referral assessment.

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

  Comment:

  The site is on a corner location within a busy sector of Brookvale and the extent of non-compliance into the front setback along such and extensive double street frontage creates an unfavourable precedent for other future development to replicate, breaking the ability of being able to maintain visual continuity and the same pattern of building elements behind a 4.5m width of landscape elements. The proposal goes against the existing examples of recent development that have complied with the 4.5m front setback and ensured a dominance of landscaped elements along the streetscape for their re-developed frontages. (examples include No.117 Old Pittwater Road, No.1 to 15 Green Street).

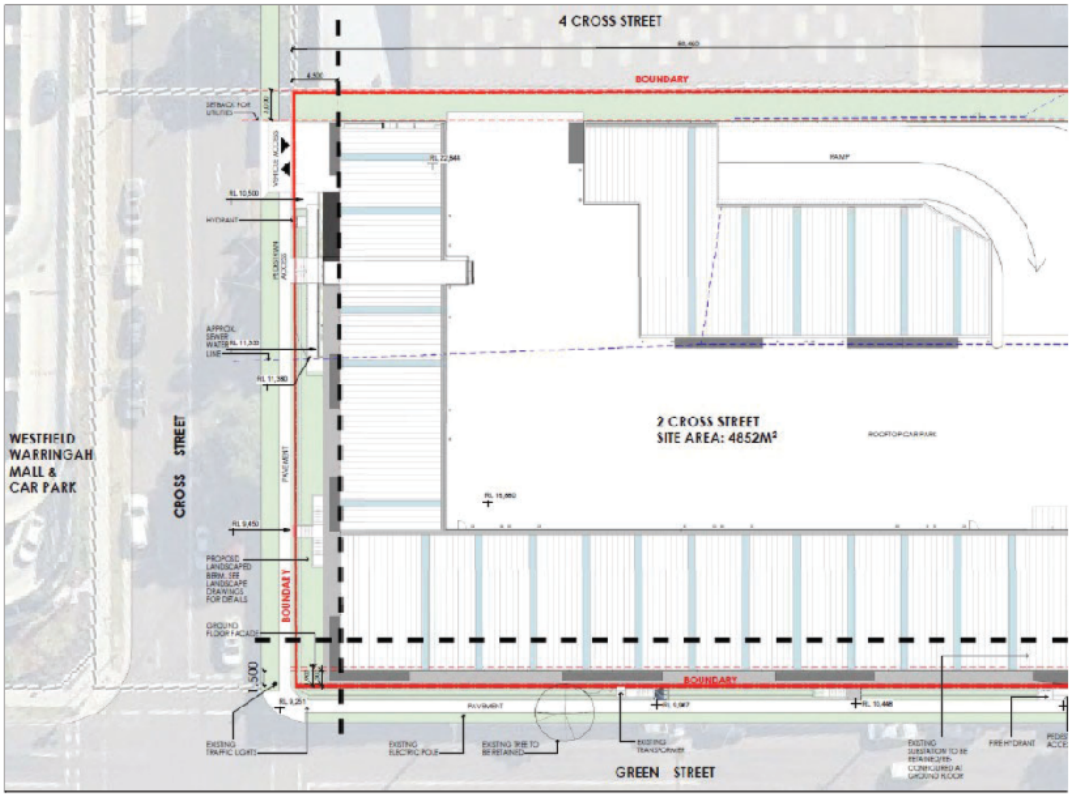


Image: Extent of non-compliance along the 4.5m (black dotted) line shown with limited or no area retained for landscape zone in front of the building.

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

  Comment:

  The Brookvale Draft Structure Plan (August 2017) (BDSP) has identified Cross Street to undergo future investigations to create landscaping initiatives for enhancement of the pedestrian environment whilst maintaining vehicle connectivity throughout the precinct. The objective will be to create tree lined streets that provide workable and attractive access for the east and west precincts of the Strategic Centre and also link the 'green grid' assets across Brookvale. While the BDSP is not yet adopted it outlines the future direction being considered and its aims and objectives are consistent with the objectives of Part B7. That means a landscaped setback interface between buildings and the public domain of the footpath area will be required along Cross Street including Green Street to account for future footpath widening and pedestrian links. As such the 4.5m DCP front building setback requirement should be complied with along both streets to allow street tree canopies to overlap and to maintain adequate landscape buffer. The proposed non-compliance with the front setback is counteractive to that future intent being considered by the BDSP before it is even adopted / implemented.

  In order to '*protect and enhance*' the streetscape the 4.5m setback needs to be retained along the frontages and Green Street and Cross Street for the site. The visual impact on the streetscape by the proposed non-compliance within the front boundary setback is compounded by the building

height of up to 14.1m ie.3.1m over the 11m control will set a negative building height precedent for the surrounding future developments and therefore cannot be supported.

The design of facades contributes greatly to the visual interest of the building and the character of the local area. Facades that face the streets have an impact on the public domain. High quality facades are a balanced composition of building elements, textures, materials and colour selections. Well designed facades also reflect the use, internal layout and structure of the building. The proposed elevation treatment to create interest such as the big overhanging hoods framing windows should provide meaningful applications such as to provide sun-shading purposes without accentuating bulk and increasing non-complying elements.

- *To achieve reasonable view sharing.*

  Comment:

  This objective is not raised in association with the proposal for the site location or any surrounding land.

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

C2 Traffic, Access and Safety

Merit consideration

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

- *To minimise traffic hazards.*

  Comment:

  A swept path analysis is required to demonstrate that two small trucks (SRVs) can ingress and egress at the same time while using one trafficable lane. Also, a swept path analysis is to be provided showing Heavy Rigid Trucks(HRVs) can ingress and egress the site in forward direction to ensure that the site is accommodative of occasional access of larger trucks. The gradient of the first 6m of the driveway commencing from the property boundary is to be 5% or less. The swept paths shown do not show trucks being able to pass on the curb of the ramp or an overlay for sight lines at the footpath crossover for the safety of pedestrians. Therefore, the proposal has not been provided with sufficient information to satisfy this objective for Traffic Engineering safey purposes.

- *To minimise vehicles queuing on public roads.*

  Comment:

  In order to address this objective further requirements / design details may be required to ensure a left in / left out arrangement (and median if necessary) at the vehicle entry to Cross Street. Assessment details to the satisfaction of Council's Traffic Engineer have not been provided to satisfy this objective.

- *To minimise the number of vehicle crossings in a street.*

  Comment:

  Previous redundant crossings / layback kerbs are to be re-instated with the establishment of the the new access arrangements. A single vehicle (dual lane) entry is proposed

- *To minimise traffic, pedestrian and cyclist conflict.*

  Comment:

  The building does not have a dedicated through access from the ground level parking area to Cross Street frontage (being the main entry) which is unsafe as pedestrians would therefore be inclined to walk down the man vehicle entry ramp to reach the public footpath in Cross street. Therefore, the proposal does not provide sufficient design detail to satisfy this objective.

- *To minimise interference with public transport facilities.*

  Comment:

  See comments from Transport NSW (TfNSW) where provided pursuant to any referral response by TfNSW.

- *To minimise the loss of "on street" kerbside parking.*

  Comment:

  Minimal change is required for on-street parking for the redevelopment of the site.

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

C4 Stormwater

Merit consideration

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

- *To ensure the appropriate management of stormwater.*

  Comment:

  The proposal does not meet this objective in addressing stormwater management issues raised by Council's Development Engineering assessment. This includes ensuring connection to appropriate Council pits and site levels within the area around the main line along the western side of the property that will require a 3m wide easement. Details are provided within the Development Engineering assessment under the heading 'Internal referrals' in this report.

- *To minimise the quantity of stormwater run-off.*

  Comment:

  The proposal does not meet this objective in addressing stormwater management issues raised by Council Development Engineering assessment under the heading 'Internal referrals in this report.

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*

  Comment:

  The proposal does not comply with Council's *On-Site Stormwater Detention (OSD) Technical Specification* as detailed within the Development Engineering assessment under the heading 'Internal referrals' in this report.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

  Comment:

  The proposal does not meet this objective in addressing the limits on discharge rates for the stormwater runoff as detailed by Council's Development Engineering assessment. Amended plans have not been provided that adequately address this issue and therefore the proposal requires redesign of elements of the stormwater management system.

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

C6 Building over or adjacent to Constructed Council Drainage Easements

Merit consideration

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

- *To ensure efficient construction, replacement, maintenance or access for emergency purposes to constructed public drainage systems located within private property.*

  Comment:

  The site contains a Council's stormwater line that services a wide catchment area upstream though an inter-allotment system. In order to ensure the long term management of the system including any replacement and effective drainage during potential flooding Council's engineers will require a future 3m wide easement to be created on property title as part of the redevelopment of the site. Prior to this occurring, finished levels and stormwater / flood management engineering consideration are required to be satisfactory for the redevelopment. The proposal does not meet Council's Floodplain Engineering and Development Engineering requirements as detailed under the heading 'Internal Referral's' within this report due to

insufficient or inadequate design.

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

D9 Building Bulk

Merit consideration

The development is considered against the underlying Objectives and requirements of the DCP *Part D9 Building Bulk* Control as follows:

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

  Comment:

  The requirements of this part of the DCP seeks that large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief. While the proposal is a warehouse / storage building and situated within an industrial area the streetscape presentation requires priority consideration since the side wall elements are matched with the adjacent buildings for function / fire separation. The side setbacks are subject to merit consideration of the circumstances (similarities and differences) of adjacent industrial buildings. Good design and innovative architecture responds to the build from controls and desired local character for the front setback.

  Non-compliant elements that project large elements of building bulk into the front setback area do not *improve the urban environment* and set an unfavourable precedent against Council's ability to maintain consistent streetscape outcomes. In this case setbacks newer development along Green Street and Cross Street have sought to not protrude bulky building elements forward of the 4.5m setback area. In this case the building is over-extended into the front setback at both the upper and lower storey levels, particularly along Green Street. This effectively eliminates future opportunities for suitable trees and landscape elements due to the setbacks space being further compromised by ramps, stairs, retaining walls and pathways also required in front of the building.

  The submitted plans and amended plans are inconsistent with this objective.

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

  Comment:

  The requirements of this part of the DCP seek that building height and scale needs to relate to topography and site conditions. The site is to be completely cleared of the existing building and the main site constraints for the proposal to respond are the stormwater easement along the western side and the flood planning level (FPL) affecting the building ground floor level whereby a minimum freeboard applies which therefore influences the 11m height control. The topography of the land is near level. In response to this a 4.5m wide setback would allow a gentle sloping

embankment and minimise the need for any retaining walls along the street frontages.

Addressing Part D9 of the DCP seeks that the use of colour, materials and surface treatment is used to reduce building bulk. In this regard, the building design has created a reverse approach to this requirements and used colours and reverse articulation (for both the original and amended plans) that exaggerate and draw attention to visual bulk. This includes overhanging elements and eliminating large areas of the 4.5m street frontage setbacks to bring the building visually closer to the front boundaries.

Achieving Part D9 of the DCP requires that landscape plantings are to be provided to reduce the visual bulk of new building and works. This outcome has not been done and the building brought forward which significantly compromises the available space for any large full canopy trees of 10m to 12m height with a 10m diameter canopy to be suitable for the setback areas to screen the building bulk and complement the existing larger trees along Green Street and Cross Street (including future planting and any likely public footpath widening).

Part D9 of the DCP seeks to ensure that the appearance of building mass is reduced by articulating walls, which is particularly important to minimise visual impact when viewed from the street and nearby properties. In applying the use of wall articulation the proposal has sought to exploit the front setback rather than recess and reduce forward bulk. Visual impact is general exacerbated by cantilevered and over-extended elements into the front setback area, including the over-height wall sections. Neither sets of plans are appropriate by way of excessive non-compliance with the front boundary setback which is exacerbated by over height elements. Facades that face the streets have an impact on the public domain. High quality facades are a balanced composition of building elements, textures, materials and colour selections. The proposal includes elements that over-exaggerate window hoods or overextend wall elements into the front setback that deliberately magnifies and draws visual attention to non-compliances within the front setback.

Given the above reasons and requirements the submitted plans and amended plans are inconsistent with this objective.

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

E11 Flood Prone Land

Merit consideration:

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

- *To ensure the development is compatible with the flow regime of the waterway.*

  Comment:

  The proposed building is larger than the existing building footprint on the site, and the width of open space along the western boundary has decreased significantly to only 3m. This would cause the depth of the floodwaters to rise, and therefore impact on the adjacent property. It is proposed that this will be accommodated by site level adjustments to replace the volume

function of the existing wider ground level driveway and open areas along the western side of the building. Details of these changes have not been shown on the plans to address this issue to the satisfaction of Council Flood Engineering assessment. The proposal has not met this objective.

- *To ensure that existing development is not adversely affected through increased flood damage and/or flood hazard as a result of new development.*

  Comment:

  The proposal has not provided sufficient detailed information to address this issue. Consideration of the proposal includes the narrowing of the existing space along the western side of the site and potential displacement. It is noted that the property to the east has a constructed wall to the boundary and sections of the stormwater line run under building in some section of the catchment. A flood management report has been provided and Council's Flood Engineering assessment is not satisfied that the potential increased flood hazard and potential flood damage risk has been eliminated by the redevelopment design proposed. Insufficient detail is provided with the development application to address whether the FPL needs to be raised in accordance with the higher 1% AEP as detailed by Council's Flood Engineering referral response. Therefore, the proposal has not met this objective.

- *To provide for the safety of people and property.*

  Comment:

  The ground floor level will be raised in order to comply with the FPL and the site is not in a location with hazardous velocity flows (by steep terrain). Suitable exits are provided to ensure egress from the building. Subject to conditions (including evacuation / FPL safety measures re materials, electrical systems and the like) the proposal is able to satisfy this clause.

- *To provide a mechanism to control development on flood prone land.*

  Comment:

  The objective of this clause requires that development addresses the appropriate flood engineering considerations and is of a satisfactory design. The proposal has not demonstrated this which includes obligations under Clause 5.21 of the Warringah LEP 2011.

- *To ensure a sustainable and holistic catchment wide approach is taken to development on flood prone land.*

  Comment:

  The objective of this clause requires that development addresses the appropriate catchment considerations and holistic requirements of council for the long term planning considerations applicable to Brookvale in context of the site and catchment. The proposal has not demonstrated this to the satisfaction of Council's Flood Engineering considerations which includes obligations under Clause 5.21 of the Warringah LEP 2011.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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 $92,837 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $9,283,744.

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 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 inconsistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application has raised a number of concerns with regard to internal referral advice sought from referral bodies of Council's *Design & Sustainability Advisory Panel*, Traffic, Development Engineering and Flood Engineering have not been resolved to the satisfaction of Council to support the proposal in either its original development application plans submitted or the amended plan version submitted.

The development has been found to not comply with the numerical Height of Buildings Development Standard contained in the Warringah LEP 2011 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 to be supported. In this regard, the proposal is inconsistent with the underlying objectives of cl 4.3 Height of Buildings and development standard of the *IN1 Industrial* zone under the Warringah *LEP 2011*.

The development is inconsistent with the objectives contained within the WDCP 2011 relating to building bulk, front boundary setbacks, building height and streetscape. These issues would require some substantial re-design (including the amended plans provided) 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 DA2021/0139 for the Demolition works and construction of a mixed use building accommodating 17 self storage units and 23 industrial units including carparking and landscape works on land at Lot 100 DP 817162,2 Cross Street, BROOKVALE, 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 Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.

2. Pursuant to Section 4.55 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone IN1 General Industrial of the Warringah Local Environmental Plan 2011.

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 4.3 Height of Buildings 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. Pursuant to Section 4.55 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.21 Flood Planning of the Warringah Local Environmental Plan 2011.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.

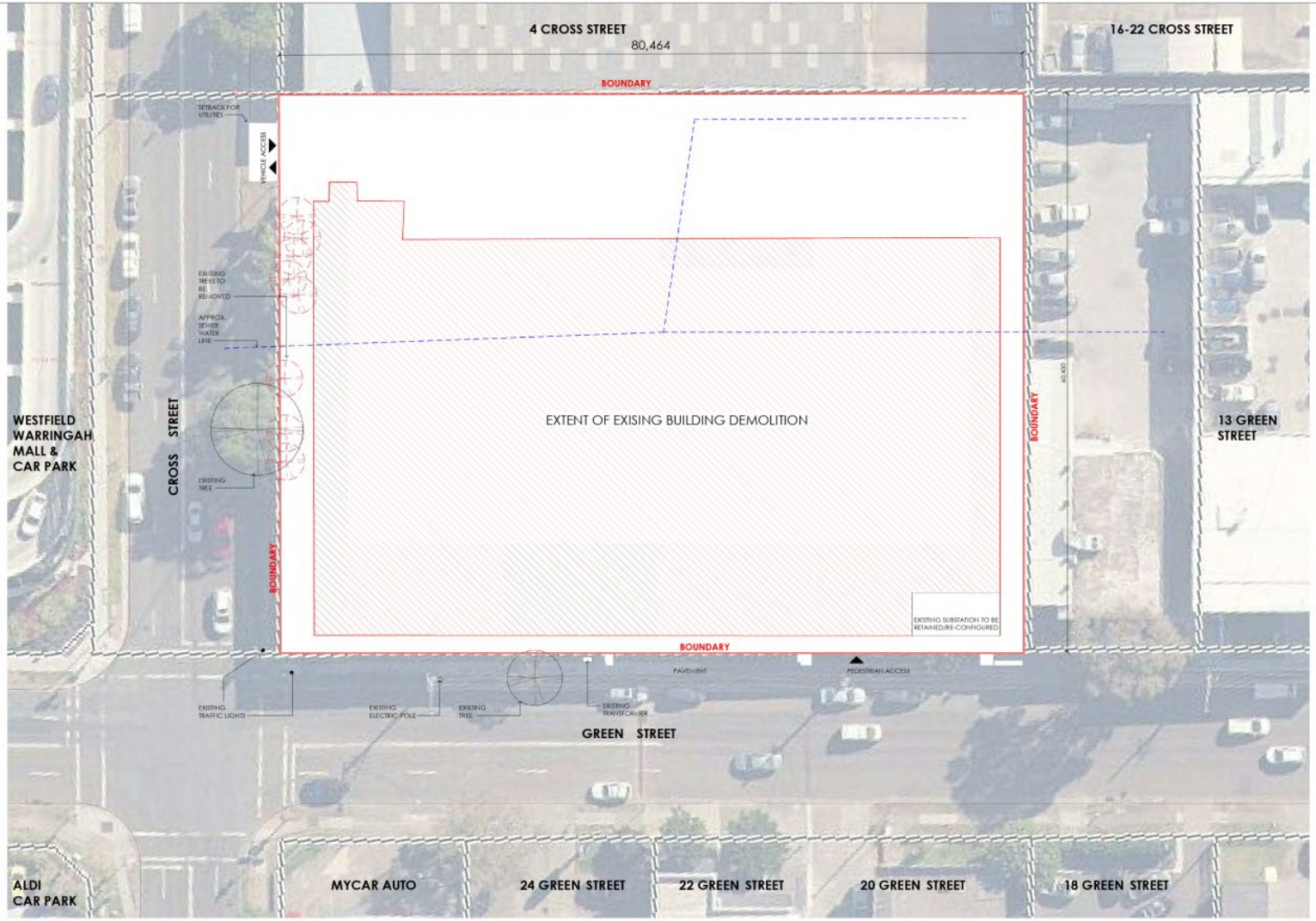
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan.

8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.

9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C6 Building Over or Adjacent to Constructed Council Drainage Easements of the Warringah Development Control Plan.

10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E11 Flood Prone Land of the Warringah Development Control Plan.



1 SITE PLAN - DEMOLITION
1 : 200 DA-600

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THE LOCK UP
2 Cross Street Brookvale 2100

DEVELOPMENT APPLICATION

REVISION	DESCRIPTION	DATE
1	Revision 15	19.11.20
2	DA DRAFT FOR CLIENT REVIEW	25.11.20
3	DA DRAFT	02.12.20
4	DA DRAFT 2	10.12.20
5	DA ISSUE	11.12.20

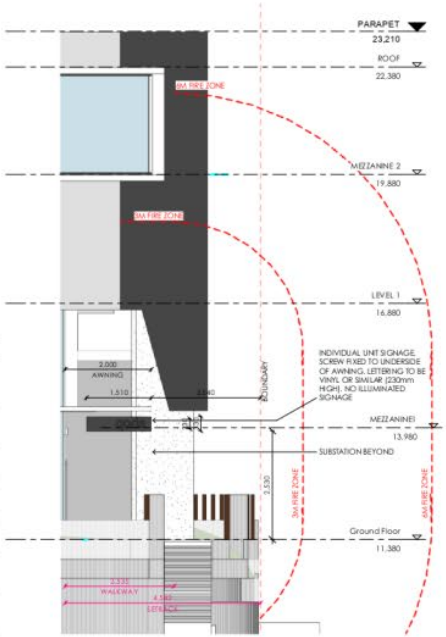
ARCHITECT: PACE ARCHITECTS
BUILDER / PROJECT MANAGER
CLIENT: LEDA

GRAPHIC SCALE 1:100
purpose DA
SITE PLAN - DEMOLITION

scale 1 : 200 A1
project no 200826
date 11.12.20
dwn AA
dwg no 200826 - DA-104
issue 5

1 East Elevation
1 : 150 DA-201

2 South Elevation
1 : 150 DA-201



3 INDIVIDUAL UNIT SIGNAGE
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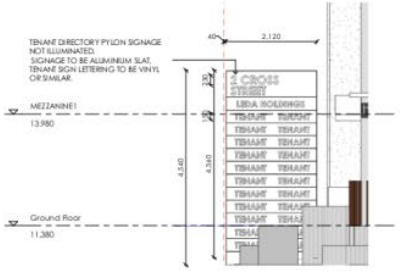

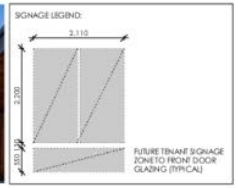

4 PYLON
1 : 50 DA-600

SHEDULE OF FINISHES	
03	METAL CLADDING MONUMENT LAID VERTICALLY
04	STOREFRONT GLAZING WITH ANODIZED METAL FRAMING - CLEAR
09	VERTICAL METAL FIN WITH POWDER-COATED PAINT FINISH - BROWN
10	VERTICAL METAL FIN WITH POWDER-COATED PAINT FINISH - BEIGE
11	METAL AWNING WITH POWDER-COATED PAINT FINISH - MONUMENT

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THE LOCK UP
2 Cross Street Brookvale 2100

DEVELOPMENT APPLICATION

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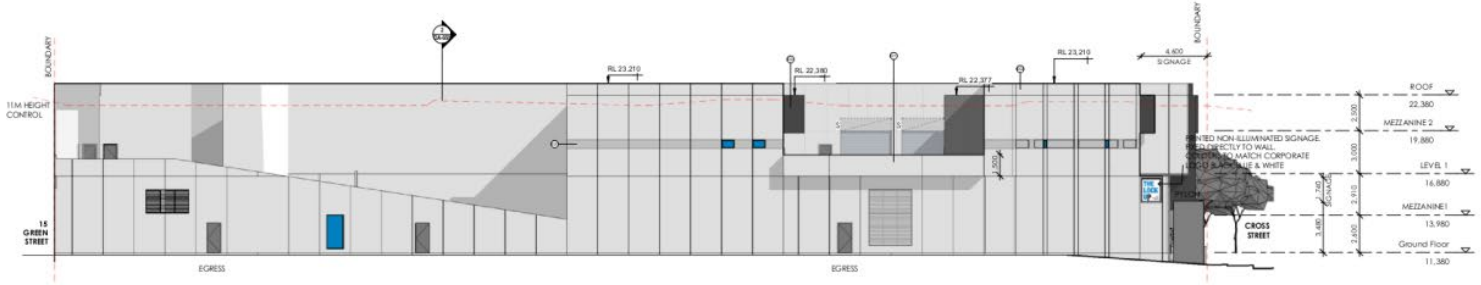
7	DA ISSUE	11.12.20
8	SIGNAGE UPDATES	18.12.20
9	GFA GLA & PARKING CLARIFIED	28.04.202 1

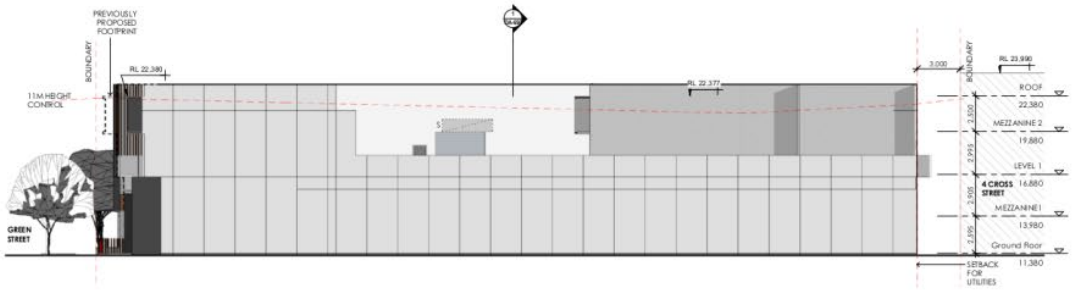
ARCHITECT: PACE ARCHITECTS
BUILDER / PROJECT MANAGER
CLIENT: LEDA

SCALE 1:50 — 0 1 2 3 4 5 10 15
purpose DA
ELEVATION - SHT 1

scale As indicated A1
project no 200826
date 28.04.2021
drn PGT
dwg no 200826 - DA-600
issue 9

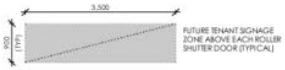


1 West Elevation
1 : 150 DA-201



2 North Elevation
1 : 150 DA-201

S (TYPICAL SIGNAGE ZONE)



SHEDULE OF FINISHES		
01	PRECAST CONCRETE - SMOOTH FINISH - LIGHT GREY	
02	PRECAST CONCRETE - SMOOTH FINISH - DARK GREY	
03	METAL CLADDING MONUMENT LAID VERTICALLY	

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THE LOCK UP
2 Cross Street Brookvale 2100

DEVELOPMENT APPLICATION

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5	DA ISSUE	11.12.20
6	SIGNAGE UPDATES	18.12.20
7	FINAL DA	22.01.21
8	GFA GLA & PARKING CLARIFIED	28.04.202 1

ARCHITECT
PACE ARCHITECTS

BUILDER / PROJECT MANAGER

CLIENT
LEDA

0 1 2 3 4 5 10 15
DRAWING TO

purpose DA

ELEVATION - SHT 2

scale As indicated A1
project no 200826
date 28.04.2021
status PGT
dwg no 200826 - DA-601
issue 8

CITY PLAN

Clause 4.6 Variation Request

Height of Buildings

(Clause 4.3) Warringah LEP 2011

2 Cross Street, Brookvale

Submitted to Northern Beaches Council
On Behalf of Leda Holdings Pty Ltd

February 2021

CITY PLAN

4.6 Request
2 Cross Street, Brookvale
20-287
February 2021

REPORT REVISION HISTORY

Revision	Date Issued	Revision Description	
01	28/01/21	Draft for internal review	
		Prepared by	**Verified by**
		Ashleigh Coombes *Associate*	Mark Schofield *Director*
02	04/02/21	Draft for client review	
		Prepared by	**Verified by**
		Ashleigh Coombes *Associate*	Mark Schofield *Director*
03	08/02/21	Final for lodgement	
		Prepared by	**Verifed by**
		Ashleigh Coombes *Associate*	Mark Schofield *Director*

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1. EXECUTIVE SUMMARY

This is a formal written request that has been prepared in accordance with clause 4.6 of the *Warringah Local Environmental Plan 2011* (WLEP 2011) to support an industrial and self-storage development at No. 2 Cross Street, Brookvale (the site).

The proposal generally involves:

- Demolition of all existing structures on the site;
- Minor earthworks and regrading;
- Construction of a new two-storey industrial development comprising:
  - Seventeen (17) self-storage units (of which five (5) have mezzanine levels);
  - Twenty-three (23) industrial units with ancillary office space at the mezzanine levels; and
  - Amenities;
- Provision of fifty-six (56) car parking spaces across two levels;
- Landscaping;
- Signage;
- Stormwater drainage works; and
- Strata subdivision.

As a result of the flood hazard of the land, the proposed development has been designed with raised floor levels, which requires fill of up to 1.57 metres across the site. However, portions of the building depart from the applicable 11m "height of buildings" development standard by a maximum of 3.1m, or 28.18%, along the southern elevation where a roof feature is located over the main pedestrian entry of the building. This maximum variation is only for a minor portion of the development, with the remainder of the variation being less. The variation of the building height (at the top of the parapet) differs across the site as a result of the site's topography, with the maximum variation being 2.4 metres, or 21.81%, at the site's south-eastern corner.

This formal request demonstrates that compliance with the 11m height development standard would be unreasonable and unnecessary in the circumstances of this development, and there are sufficient environmental planning grounds to justify the variation. Further, the proposal is consistent with the objectives of the zone for the subject site.

2. INTRODUCTION

This is a formal request that has been prepared in accordance with clause 4.6 of the WLEP 2011 to justify a variation to the height of buildings development standard proposed in a development application submitted to Northern Beaches Council for the proposed industrial and self-storage development at 2 Cross Street, Brookvale (site).

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];
3. That 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 [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the height of buildings development standard which is set out in clause 4.3 of the WLEP 2011 as follows:

> *4.3 Height of buildings*
>
> *(1) The objectives of this clause are as follows—*
>
> *(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
>
> *(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
>
> *(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
>
> *(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
>
> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
>
> *(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

The numerical value of the development standard applicable in this instance is 11 metres (see Figure 1).

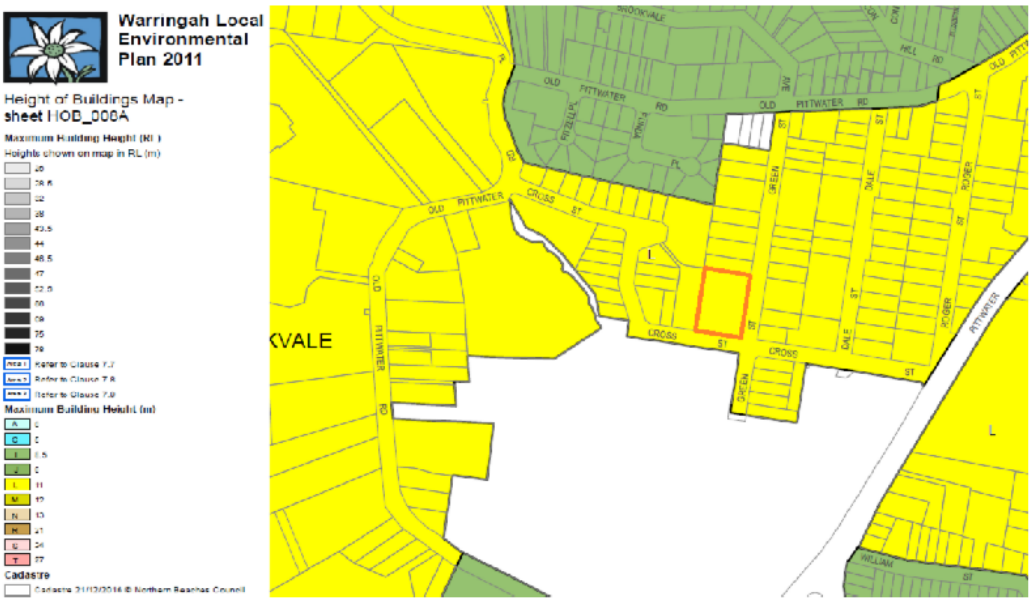

Figure 1: WLEP 2011 Height of Buildings Map extract - site outlined in orange (Source: NSW Legislation)

The development standard to be varied is not excluded from the operation of clause 4.6 of the WLEP 2011.

4. EXTENT OF VARIATION

The majority of the site is located within a medium risk precinct, and therefore has been designed in accordance with the flood planning level of RL 11.38 metres, which requires fill of up to 1.57 metres across the site.

As demonstrated on the architectural plans prepared by Pace Architects and included at **Appendix 1**, the proposed development has a maximum height at RL 24.31, which represents a maximum building height of 14.1 metres measured from the existing ground level below (i.e. RL 10.21). Subsequently, the proposed development varies the 11-metre maximum building height development standard prescribed for the site by 3.1 metres (i.e. 28.18% variation). The maximum breach of the standard relates to the roof feature over the pedestrian entry off Cross Street. However, it is important to note that the maximum variation is only for a minor portion of the development, with the roof feature only being 2.24 metres wide and the remainder of the variation being less. The building (at the top of the parapet) has a maximum height at RL 23.21, which represents a maximum building height of 13.4 metres measures from the existing ground level below (i.e. RL 9.81) at the corner of Cross and Green Streets and a variation of 2.4 metres, or 21.81%, to the 11-metre building height development standard. Of note, only part of the first floor contains built form, with a large portion comprising open air car parking.

The parts of the building that exceed the maximum height are shown in Figures 2 to 5 below.

Figure 2: East Elevation extract (Source: Pace Architects)

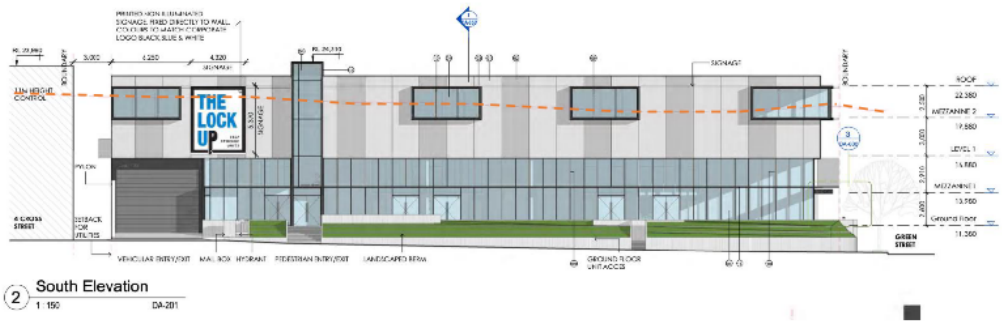

Figure 3: South Elevation extract (Source: Pace Architects)

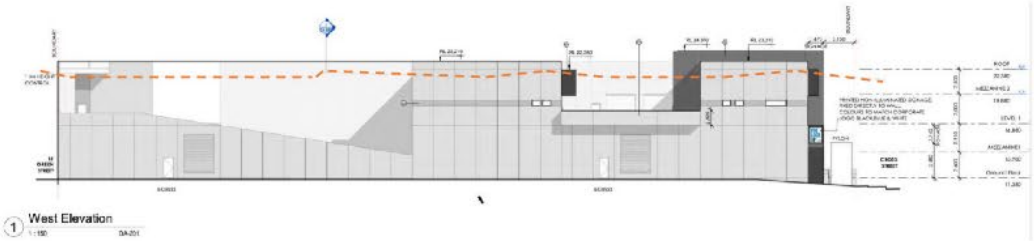

Figure 4: West Elevation extract (Source: Pace Architects)

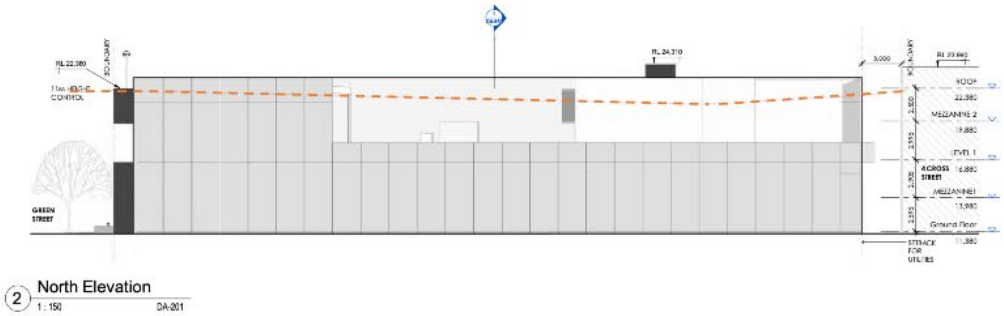

Figure 5: North Elevation extract (Source: Pace Architects)

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

In this case, it is demonstrated below that Test 1 has been satisfied.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (Test 1 under Wehbe).

Table 1: Achievement of Objectives of Clause number of LEP.

Objective	Discussion
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,	Notwithstanding the proposed development's variation to the development standard, the building is compatible with the height and scale of surrounding and nearby development. Most recently, a development for self-storage premises was approved on the neighbouring property at 4 Cross Street, Brookvale (DA2020/0433) with a maximum height of 14.04 metres to the top of the lift overrun and 13.4 metres to the top of the roof. The proposed development has been designed to be consistent with the approved development on the neighbouring property and its height variation, with the roof feature over the pedestrian entry off Cross Street having a maximum height of 14.1 metres and the building (at the parapet) having a maximum height of 13.4 metres. Moreover, the RL heights of the proposed development at the top of the roof feature over the pedestrian entry off Cross Street and the building at the parapet are below the maximum RL heights for the lift overrun and roof of the

Objective	Discussion
	approved development on the neighbouring property. It is noted that the proposed development and approved development on the neighbouring property have both had to raise their floor levels to ensure they comply with the required flood planning levels under the WLEP 2011. As more properties within the surrounding locality are redeveloped for industrial purposes, it is expected that the height and scale of development within the precinct will change, as new buildings are design and constructed in accordance with the applicable flood planning levels. More broadly the surrounding area provides for a range of building heights and scales, including the Westfield Warringah Mall opposite the site, which while located in the B3 Commercial Core zone, does include the provision of a multi-deck car park at the corner of Cross and Green Streets. This multi-deck car park is 5-storeys in height and will sit well above the proposed development. Other existing development such as that at 13 Green Street to the north of the site. Comprises a part three and part-four storey building. <u>Public Interest</u> The development as a whole achieves this objective of the development standard in that it comprises a two-storey industrial development that is compatible with the height and scale of surrounding and nearby development in the locality. The site is uniquely located at the interface between the IN1 General Industrial zone and B3 Commercial Core zone. The proposed development provides a land use and built form outcome that provides an appropriate transition between the two land use zones, while also ensuring it is compatible with the land's flood hazard.
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,	The parts of the proposed development that sit above the 11-metre height limit prescribed for the site do not result in any adverse amenity impacts. However, it is noted that industrial development does not require the same high level of amenity of other types of development such as residential. The roof feature over the pedestrian entry off Cross Street is only approximately 2-metres wide and comprises light weight materials (i.e. glazing), which seek to minimise the visual impact of the maximum proposed variation to height. Moreover, the visual impact of the part of the second storey that seeks to vary the height limit has also been minimised through the use of different materials and colours and horizontal and vertical elements that distinguish it from the

Objective	Discussion
	ground floor level and reinforce the appearance of the proposed development as a two storey building. The proposed development is located on a relatively flat site within an established industrial area where there are no existing significant views. There are no windows along the north and west elevations of the proposed development as shown in the elevations included at **Appendix 1** to minimise the loss of privacy to neighbouring properties. Along the proposed development's southern and eastern elevations fronting Cross and Green Streets, any potential privacy impacts have been minimised through the consolidation of windows that are limited to the mezzanine office spaces at the first floor as shown in the figures below, noting the corner location of the site is such that it is setback from the surrounding development by roads. Moreover, the pedestrian entry off Cross Street is a transient area in which people will not linger, albeit noting that this part of the proposed development looks out onto a multi-deck car park. The proposed variation to the height of buildings development standard does not preclude surrounding industrial and commercial developments from achieving adequate solar access as demonstrated by the shadow diagrams included in the architectural plans at **Appendix 1**. The shadows cast by the parts of the proposed development that sit above the 11-metre height limit are limited to the multi-deck car park of the Westfield Warringah Mall to the south of the site and the Cross Street and Green Street road reserves. There are no windows located on the eastern elevation of the self-storage premises development approved on the neighbouring property west of the site at 4 Cross Street, Brookvale. <u>Public Interest</u> The proposed development has been designed to minimise any potential adverse impacts in terms of visual impacts, views, privacy and solar access. It has been appropriately setback, incorporates a mix of materials, finishes and vertical and horizontal elements and includes the provision of landscaping within the Cross Street setback area and public domain areas to minimise the potential for any adverse visual impacts. There are no significant views to or from the site that are required to be maintained by the development. No windows are proposed along the north and west elevations at the ground floor

Objective	Discussion
	or first floor levels and the site's corner location are such that there will be no adverse privacy impacts, noting the roads provide for separation to neighbouring development to the south and east. The proposed development does not result in any loss of solar access to residential development and results in minimal overshadowing to surrounding industrial development due to site's north-south orientation.
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,	The site is located over 2 kilometres from the coastline and approximately 640 metres east of the nearest bush environment being Allenby Park. Its location within an established industrial area on a relatively flat parcel of land is such that the proposed variation to the 11-metre height of buildings development standard and the proposed development as a whole will not result in any potential adverse impacts 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.	Refer to the response under objective (b) above. The site is located within an established industrial area, neighbouring Westfield Warringah Mall, and is not visible from any parks, reserves or community facilities in accordance with this clause. The site and proposed development is only visible from surrounding development and the public domain areas of Cross and Green Streets.

As demonstrated in Table 1 above, the objectives of the height of buildings development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the height of buildings development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

5.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon. However, it is noted that Council recently approved a variation to the height of buildings development standard as part of the DA for a self-storage development on 4 Cross Street adjacent the site.

5.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and therefore is not relied upon.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As discussed in Section 4, the elements of the development which contravene the height of buildings development standard are the roof feature over the pedestrian entry off Cross Street and the upper portion of the second storey across the site.

The environmental planning grounds to justify the departure of the height of buildings development standard are as follows:

- Compliance with the height of buildings development standard would prevent the development of the upper floor and result in a poorer environmental outcome due to less employment GFA being delivered.
- The site is generally located with a medium risk precinct in terms of flooding and is affected by the 1% annual exceedance probability (AEP) and 1:100 average recurrence interval (ARI) flood events. Subsequently, a minimum finished floor level (FFL) of RL 11.38 is required for the proposed development to ensure that it is compatible with the flood hazard of the land. The requirement for this FFL directly contributes to the extent of the variation that is proposed, noting at the location of the maximum variation to the height of buildings development standard, the required FFL of RL 11.38 is 1.17 metres higher than the existing ground level (RL 10.21) directly below.
- The provision of a roof feature over the pedestrian entry off Cross Street provides visual interest and assists in breaking up the bulk of the building when viewed from Cross Street. Furthermore, the roof feature clearly delineates the pedestrian entry and makes it more easily identifiable to visitors.
- The topography of the site is generally flat but it does fall slightly to the corner of Cross and Green Streets. This slight variation within the site's topography does contribute to the maximum variation to the height of buildings development standard in relation to the building at the top of the parapet.
- The building has been skilfully designed to meet the operational needs of future tenants, noting the variation to the height of buildings development standard is required to allow for trucks to access the loading bays within the warehouse units located at the first floor of the proposed development.
- The variation to the height of buildings development standard and the proposed development as a whole do not result in any adverse amenity impacts on neighbouring properties or the public domain areas of Cross Street and Green Street in terms of visual impact, views, privacy and overshadowing.
- The variation to the standard will provide additional employment opportunities on the site, noting that the Northern Beaches *Local Strategic Planning Statement* (LSPS) is targeting growth of 3,000 to 6,000 jobs by 2036 within the Brookvale-Dee Why centre in which the site is located. Further, the variation allows for additional employment/industrial floor place to be included on a site considered suitable for this particular use and compatible with the zone and neighbouring properties. The site is also highly accessible in terms of public transport such as the B Line bus services and is also located directly opposite the Westfield Warringah Mall and its various offerings.
- The proposed development is consistent with the Greater Sydney Commission's (GSC) views in terms of the economic significance of industrial and urban services lands in Greater Sydney. The Greater Sydney Region Plan, *A Metropolis of Three Cities*, released by the GSC in 2018, identifies the planning, retention and management of industrial and urban services land as a key objective. The proposed development is consistent with this objective of the Greater Sydney Region Plan in that it seeks to provide for industrial-type land uses on land that is zoned for industrial purposes.

- The proposed development is compatible with the height and scale of surrounding development, noting that the Brookvale Industrial Area comprises development of varying heights and scales, including an approved but unconstructed development west of the site at 4 Cross Street, Brookvale, which involved a maximum variation of 27% to the height of buildings development standard.

7. PUBLIC INTEREST

In this section it is explained how 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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In Section 5 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with Zone Objectives.

Objectives of Zone IN1 General Industrial	Discussion
To provide a wide range of light industrial, warehouse and related land uses.	The proposed development will provide a mix of industrial and self-storage units within Brookvale's existing and established industrial area, and in doing so increase the small-scale industrial offerings that are available in this locality, while also providing for more self-storage units that are located close to residents and businesses.
To encourage employment opportunities and to support the viability of centres.	The proposed development will provide jobs within an existing and established industrial area during the demolition, construction and operation phases, both directly on the subject site and indirectly via the supply chain multiplier effect. These jobs will also increase the workforce population in proximity to Westfield Warringah Mall, thereby supporting the viability of this retail centre.
To minimise any adverse effect of industry on other land uses.	The proposed development is of a light industrial nature such that it will not generate any harmful emissions that would have the potential to adversely impact on other land uses and the environment, including noise and air and water quality.
To support and protect industrial land for industrial uses.	The proposed development will provide industrial type land uses on industrial zoned land. These uses will contribute to the strengthening of the existing and established Brookvale industrial area, which is one of the main industrial areas that is located within the Northern Beaches region.
To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.	The proposed development does not preclude the site or neighbouring properties from being redeveloped in the future for facilities or services to meet the day to day needs of the area's workers.
To enable a range of compatible community and leisure uses.	The proposed development does not preclude the site or neighbouring properties from being redeveloped in the future for a range of compatible community and leisure uses

Objectives of Zone IN1 General Industrial	Discussion
	permitted with consent in Zone IN1 General Industrial.
To maintain the industrial character of the land in landscaped settings.	The proposed development will provide a landscaped setback to Cross Street that will include trees that will grow up to 6 metres. Additionally, landscaping is also proposed within the Cross Street and Green Street public domain areas.

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

9. CONCLUSION

This submission requests a variation, under clause 4.6 of the WLEP 2011, to the height of buildings development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- The development achieves the objectives of the development standard (Wehbe test 1) and is consistent with the objectives of the IN1 General Industrial zone;
- There are sufficient environmental planning grounds to justify the contravention;

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of Zone IN1 General Industrial notwithstanding non-compliance with the height of buildings standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

APPENDIX 1: ARCHITECTURAL PLANS

Design + Sustainability Advisory Panel Meeting Report – 29 April 2021

6 DA2021/0139- 2 Cross Street, BROOKVALE

PANEL COMMENT AND RECOMMENDATIONS

General

Demolition works and construction of an industrial warehouse with 17 self-storage units and 23 industrial units, including parking for 56 cars.

Strategic context

The site is in a prominent location opposite Warringah Mall and within the area subject to the *Draft Brookvale Structure Plan*. Principal concerns raised included building height non-compliance, building bulk and wall articulation, wall height, non-compliant road boundary setback, streetscape and stormwater / flood engineering.

The Brookvale Draft Structure Plan (August 2017) has identified Cross Street to undergo future investigations to create landscaping initiatives for enhancement of the pedestrian environment whilst maintaining vehicle connectivity throughout the precinct. The objective will be to create tree lined streets that provide workable and attractive access for the east and west precincts of the Strategic Centre and also link the green grid assets across Brookvale.

Urban context: surrounding area character

The site is located at the northwest corner Cross Street and Green Street, opposite Warringah Mall.

The site is rectangular in shape having two broad street frontages of 55.8 metres (m) to Cross Street and 75.8m to Green Street. The western side setback area contains a major stormwater line.

Scale, built form and articulation, façade treatment

Currently the proposal exhibits non-compliance with maximum building height up to 3.1m over the 11m height controls for parapet and ceiling void spaces.

Non-compliance with the front boundary setback requirement of 4.5m for street frontages - Green Street. Currently the Green Street set back proposes public stairs which are located on public land and therefore is not supported.

Well-designed facades should reflect the use, internal layout and structure of the building. The proposed elevation treatment to create interest such as the big overhanging hoods framing windows should be more meaningful applications e.g. to provide privacy or sun-shading purposes.

The Panel discussed the possibility and advantages of a more articulated façade and building massing on the upper level that could project 'in and out' and could accommodate the canopy of larger trees in the recessed sections.

The Panel would not support the upper level protruding out to the boundary line along the entire length of the building.

northern beaches council

Recommendations:

1. The ground level facade should be set back to the required 4.5 m. This will have an impact on the proposed building form

2. Upper-level units at RL 16.88 could and should cantilever over the ground floor facade to provide a colonnade around the street frontages and a more interesting built form which avoids the appearance of a "big box". This cantilevered form could be supported by a colonnade of columns or cantilever from the facade line but in either case the cantilever should be high enough to accommodate some large canopy trees along both street frontages

3. The applicant should consider a potential full height colonnade treatment at the ground level behind the prescribed setbacks.

4. The applicant should explore larger and more distinctive pedestrian entries including coordinated DDA compliant access and entry points from Cross and Green Street as not all users of the complex will travel by private vehicle.

Landscape area and car parking

The landscaped setbacks and tree planting are not consistent with WDCP front boundary setback requirements or the Brookvale Draft Structure Plan (2017).

From the current perspectives provided the Panel is not convinced of how the change of level from street level to the ground FFL and setback is designed to meet the flooding requirements.

Recommendations:

5. The 4.5m setback should accommodate a combination of walkway along the front of the units and landscaped terraces or planters. Terrace and planter walls should not exceed 900mm at any point.

6. The 4.5m WDCP front building setback requirement should be complied with along both streets to allow street tree canopies to overlap and to maintain adequate landscape buffer.

7. Revise the Landscape plan to create an engaging and sustainable street, building and public realm interface including suitable canopy and shade trees based on Councils suggested street tree list for this evolving precinct.

8. Detailed design and consideration of the type, material selection and detailing of the way the required (flood level) level change of level from street level to the ground FFL and setback is required.

Amenity

Although the proposal is for industrial /commercial uses some consideration should be given to the amenity provided on site for workers.

Recommendations:

9. The communal facilities for users of this building - commonly shared kitchens and recreational areas should be considered in additional to just an entrance and lift.

10. Office mezzanines would benefit from re-location against external walls where natural ventilation and illumination is available

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Sustainability

Industrial development like the proposal provide the opportunity for the installation of large arrays of photovoltaic arrays (PV) on buildings that generally have a good maintenance and management regimes associated with them.

The Panel notes the location of the substation on the site.

Recommendations:

11. Include and optimise the amount of PV on the roof given the potential to clip peak loads. The Panel strongly encourages the proponent to engage with the energy retailer and Ausgrid to optimise the onsite system.
12. The Panel encourages the applicant to include stormwater capture and reuse for the landscape setback.

PANEL CONCLUSION

The Panel does not support the Proposal in its current form due to the range of issues identified, in particular non-compliance with the setback that should be landscaped area and the reliance on stair in the public domain.

The recommended amendments to the design are important and should be incorporated in any revision to the design.

ITEM 4.2	**DA2021/0957 - 108A ELIMATTA ROAD, MONA VALE - CONSTRUCTION OF A SWIMMING POOL**
AUTHORISING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2021/680429**
ATTACHMENTS	**1 Assessment Report**
	2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0957 for construction of a swimming pool at Lot C DP 417868, 108A Elimatta Road, Mona Vale subject to the conditions set out in the Assessment Report.

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DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0957

Responsible Officer:	Tyson Ek-Moller Creative Planning Solutions Pty Limited
Land to be developed (Address):	108A Elimatta Road Mona Vale NSW 2103 Lot C DP 417868
Proposed Development:	Construction of a swimming pool
Zoning:	E4 Environmental Living,
Development Permissible:	Yes, with consent
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Liam Gavin and Barbara Mary Gavin
Applicant:	Jacqui Ray

Application Lodged:	30/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Alterations and Additions
Notified:	07/07/2021 to 21/07/2021
Advertised:	Not Advertised
Submissions Received:	One (1)
Clause 4.6 Variation:	No
Recommendation:	Approval, subject to conditions.

Estimated Cost of Works:	$106,920.00

EXECUTIVE SUMMARY

Council is in receipt of a development application DA2021/0957 for the construction of a swimming pool at 108A Elimatta Road, Mona Vale (Lot C – DP417868). The site is zoned E4 Environmental Living under *Pittwater Local Environmental Plan 2014* (PLEP 2014) and the proposed development is permissible with consent.

The proposal is to be determined by the Northern Beaches Local Planning Panel (NBLPP) as a relative to the owner of the property is a member of Council staff who is principally involved in the exercise of Council's functions under the EP&A Act 1979.

The application was notified for a period of 14 days in accordance with Council's Community Participation Plan and one (1) submission was received during that time. The submission raised concerns regarding the construction methodology of the proposed swimming pool, specifically the use of a crane to lift the proposed fibreglass pool into its proposed position. The submission requests that conditions be imposed to address concerns about construction risks to that resident's site. A discussion of the concerns and conditions to be imposed are contained later within this report.

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Following an assessment of the application, it is recommended the application be approved, subject to conditions.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A Act 1979 and the EP&A Regulations 2000. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the EP&A Act 1979, and the EP&A Regulations 2000;
- 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 EP&A Act 1979, EP&A Regulations 2000 and Community Participation 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.

SITE DESCRIPTION

Property Description:	Lot C DP417868 108A Elimatta Road Mona Vale NSW 2103
Detailed Site Description:	The subject site is a battle-axe lot located on the southwest side of Elimatta Road, and has a total site area of 1601.9m^2 (1,325.5m^2 (survey), if the 60.9-metre-long access handle to Elimatta Road is excluded). The subject site is mostly located to the rear of 108 Elimatta Road, which adjoins the southeast side of the access handle and the northeast side of the main part of the site. The side and rear boundaries adjoin other residential allotments. Development on the subject site consists of a two-storey detached dwelling house, which is situated towards the front of the section of the lot that excludes the access handle. A garage is located on the northwest side of the dwelling and a carport is located on the northeast/front of the dwelling. Other development includes paved areas, a shed and chicken coop. The subject site crests the top of a ridge. The area where the dwelling is situated is relatively level. The front setback and access handle is steeply sloped, with a fall towards Elimatta Road of approximately 13 metres. The rear setback also contains a steep slope, with a fall towards the rear boundary of approximately 5.96 metres. The site is affected by class 5 acid sulphate soils and a geotechnical hazard, however no other major affectations are mapped as impacting the site. The site does not contain a heritage item, is not within a heritage conservation area, and is not in close proximity to a heritage item.

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	Detailed Description of Adjoining/Surrounding Development The site is located to the rear of No. 108 Elimatta Road, which contains a detached two storey dwelling of brick construction with a tile roof and integrated two (2) car garage. The adjoining sites to the northwest and southeast of the site include 106, 106A and 108B Elimatta Road. 106 Elimatta Road contains a two-storey detached dwelling and swimming pool, while 106A and 108B Elimatta Road contain single-storey dwellings; the rear of 108B Elimatta Road also contains multiple singe-storey buildings. The adjoining sites to the rear include 18 and 16 Bertana Crescent, which contain one and two storey detached dwelling houses respectively. On the northeast side of Elimatta Road, opposite the subject site, is 83A Elimatta Road and 33 Turimetta Road, which each contain a two-storey detached dwelling. Development within the surrounding area consists predominately of low-density residential areas containing mostly dwelling houses and associated development. Many allotments along the ridgeline adjacent to Elimatta Road also contain large lot areas and front setbacks.

Figure 1: Ariel view of 108A Elimatta Road, Mona Vale (subject site outlined in red).
Source: Nearmap (02/06/2021)

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PROPOSED DEVELOPMENT IN DETAIL:

The subject application proposes construction of a swimming pool within the rear setback. The specifics of the proposal are as follows:

Swimming Pool

- The pool is to be of a prefabricated fibreglass construction that is to be mostly in-ground.
- The maximum dimensions of the pool include a 9.4 metre length, maximum 4 metre width and depths (measured from the pool coping) of between 1.095 and 1.86 metres.

Associated works

- 1.2-metre-high aluminium barrier around the pool.
- Tiled paving around the pool, with widths of between 400mm and 4 metres.
- A sound-proofed box containing the pool filter and equipment, which is to be set back 900mm from the northwest common boundary of the subject site and 108B Elimatta Road.
- A drop-edge concrete beam below the southwest side of the aforementioned paving.

SITE HISTORY

- Development Application N0162/99 approved for additions to a dwelling house.
- Development Application DA2021/0957 (subject application) submitted for alterations and additions – construction of a swimming pool.

APPLICATION HISTORY

- 30 June 2021: Subject development application lodged.
- 7 July – 21 July 2021: Notification undertaken.
- 12 August 2021: Site inspection undertaken by consultant planner.
- 16 August 2021: Request for additional information prepared by Council's consultant planner and forwarded to Council. Such information sought clarification of the proposed swimming pool volume (required in order to ascertain whether a BASIX certificate was required) and details of construction methodology, in order to address issues within a submission (see below).
- 6 September 2021: Additional information received.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the EP&A Act 1979, the EP&A Regulations 2000 and Council's Community Participation Plan.

As a result of the public exhibition process, Council have received one unique (1) submission.

The issues raised within the submission are outlined as follows:

1. The fibreglass pool shell will be lifted over the house and into place by a crane from the front setback of the subject site.
   - Both the pool and crane to lift it are bulky and heavy. They both need to be positioned up the end of a long steep concrete driveway. To reach the front setback, the crane will likely need to utilise both driveways for 108A and 108B Elimatta Road.
   - Does the driveway for 108B Elimatta Road at the Council crossover need to be protected from damage, and if damaged how is it to be fixed? A condition of consent will probably be required to protect Council's interests and the site/driveway at 108B Elimatta Road.

Response

Additional information has been submitted by the crane company that will be contracted to lift the pre-fabricated swimming pool into place. Information received indicates that the width and gradient of the driveway/access handle and the clearance distance to the overhead power lines (located

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above the driveway crossover within the Elimatta Road road reserve) will not be an impediment for the crane and pool delivery vehicle. Such information also advises that the 'slew sweep path' for the pool will be above the northwest side of the dwelling house on the subject site (i.e. no part the pool will need to be swung above adjoining sites to move it into position).

It is agreed with the submission that there may be a risk that large/heavy construction vehicles could cause damage to infrastructure within the adjoining road reserve and the adjoining access handle.

As such, it is recommended that conditions be imposed for the developer to provide pre-and-post construction dilapidation reports for:

- Sites adjoining the front and side boundaries, and
- The adjoining Council road reserve.

2. Despite their size, the crane and pool should fit as they are moved up the driveway of the subject site, and should therefore not enter my property at any stage. A condition is sought to limit construction movements to within the boundary of the subject site.

Response

Additional information has been submitted by the crane company, which indicates that the width and gradient of the driveway/access handle will be sufficient for the crane and pool delivery vehicle and will not result in encroachment upon adjoining sites. The 'slew sweep path' for the pool also demonstrates that it will not encroach upon the boundaries of, and the airspace above, adjoining sites when being lifted into position.

A condition is recommended that will require adherence with the construction plan that has been provided as additional information.

3. When the pool is being lifted into place, the submission does not want anything overhanging the adjoining site at 108B Elimatta Road; the crane and pool is not to be encroach over the adjoining site. A condition is sought to prevent this from occurring.

Response

The construction plan provided by the applicant demonstrates that the required craning of the pool will not require for it to be swung above adjoining sites while being installed.

A condition is recommended that will require adherence with the construction plan that has been provided as additional information.

4. While the work will likely be professionally done there have been known instances of instability of cranes when lifting pools. It is requested that a condition be imposed that places responsibility of the work onto the developer and that any damage be fixed and paid for by the developer. It is also requested that a condition be imposed to provide residents of the adjoining site at 108B be given advance notification of crane operations, in order to ensure that all residents are clear when such lift activity occurs.

Response:

As indicated above, conditions are recommended regarding pre-and-post construction dilapidation reports to identify whether works result in damage. It is not proposed to include a condition regarding damage caused on the basis that the dilapidation report would identify potential damage (if any) that is caused by the works, in which event the cost of rectification would be the responsibility of the developer.

As indicated above, the pool is not proposed to be craned over adjoining sites. Nonetheless a condition that the construction report be amended to require 48 hours' notice to the residents of 108B and 110 Elimatta Road prior to the commencement of craning activity has been recommended (i.e.

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notice is to be given to adjoining sites where habitable structures will be in close proximity to crane-lifting activities).

REFERRALS

Internal Referral Body	Comments
Landscape Referral	Comments summarised below: • The site contains existing trees and vegetation that are not impacted by the proposed works as the works are adjacent to the existing dwelling where no prescribed trees and vegetation are located that are protected by the Pittwater 21 DCP. The existing trees and vegetation shall be protected by standard conditions of consent. • The proposed works do not impact on the landscape setting required under the E4 Environmental Living Zone objectives for landscape outcome, and Landscape Referral raise no objections. • The proposal is therefore supported. The proposal was supported by the landscape referral given the comments summarised above. Standard conditions of consent will be incorporated to ensure compliance with the relevant standards and controls.

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None of particular relevance.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 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 regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via conditions of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

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Section 4.15 'Matters for Consideration'	Comments
	Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Council requested additional information in order to address construction impacts and confirm whether a BASIX certificate was required. The Applicant provided amended information which addressed such concerns/ Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). No such upgrade is warranted in this instance. Clause 98 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. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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.

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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. In this regard it is considered that the site poses little 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 proposed development.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

An external referral was made to the relevant electricity supply authority. A response was received on 14 July 2021 which confirmed that a decision was not required from that authority.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was not submitted with the application. Additional information provided by the applicant included specifications confirming that the volume of the proposed pool is 39,800L. As such, the proposal is not 'BASIX affected development', as defined by the Regulations. A BASIX certificate is therefore not required.

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

Compliance Assessment

Clause	Compliance with requirements
4.3 Height of buildings	Development standard: 8.5m

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Clause	Compliance with requirements
	Proposed: 1.7m (pool barrier and drop-edge beam).
4.4 Floor Space Ratio	N/A
5.10 Heritage conservation	N/A The site does not contain a heritage item, is not within a heritage conservation area and is not in close proximity to a heritage item.
5.21 Flood planning	N/A The site is not within a flood-prone area.
7.1 Acid sulfate soils	Yes The site is mapped as being affected by Class 5 acid sulfate soils. The proximity of the site and level of excavation is such that the watertable is unlikely to be lowered more than one metre. An acid sulfate management plan is therefore not required.
7.2 Earthworks	Yes Excavation required for the swimming pool is unlikely to result in issues relating to drainage, soil/slope stability and redevelopment potential of the subject site and surrounding sites. The submitted geotechnical report indicates that the works will not result in significant risk to the site and surrounding sites, subject to recommendations.
7.7 Geotechnical hazards	Yes Areas at the rear of the subject site are affected by an H2 Geotechnical Hazard. Subject to recommendations within the submitted geotechnical report, the proposal will satisfy the requirements of the clause, and will not increase geotechnical risks to the site and surrounding sites.
7.10 Essential services	Yes The proposal will have no impact on the continued provision of essential services to the site.

Pittwater Development Control Plan
Built form Assessment:

Built Form Control	Requirement	Proposed	Complies
C1.7 Private Open Space	80m²	703.1m2	Yes
D9.7 Side and rear building line	Side: 2.5m for one side, 1m for the other Rear: 6.5m	Dwelling: Unchanged Pool: Side:	Yes

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		• Northwest: 6.35m • Southeast: 2.9m Rear: 28.02m	
D9.11 Landscaped Area - Environmentally Sensitive Land	60%	Total site area: 1,601.9m^2 Site area excluding access handle: 1,322.3m^2 Landscaped area (incl. variations): 846.5m^2 Landscaped area: • Incl. access handle: 52.84%% • Excl. access handle: 64%	No

Compliance Assessment

Control	Compliance with Requirements	Consistency Aims/Objectives
A4.9 Mona Vale Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	-	-
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition – Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition – Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	-	-
D9.7 Side and rear building line	Yes	Yes
D9.11 Landscaped Area – Environmentally Sensitive Land	Yes	Yes

D9.11 Landscaped Area – Environmentally Sensitive Land

If the access handle were to be excluded from areas to be calculated, then the 846.5m^2 of proposed landscaped area (inclusive of variations) would account for 64% of total site area. If the entirety of the site (inclusive of the access handle) were used for the landscape calculation, the landscaped area would account for 52.84% of the total site area. The latter of these calculations equates to an 11.93% variation to the development control.

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Despite such a noncompliance, the outcomes of the control will continue to be met. The variation will have no impact on building bulk and scale, solar access, tree retention and appearance from the public domain; while the location of the site is such that it will have no impact on local areas of biodiversity significance. The proposal will also not adversely affect the collection and dispersal of stormwater.

The location of the pool and associated paving adjacent to the rear of the dwelling will also continue to allow large parts of the site (both within the front and rear setbacks) to provide appropriately-sized landscape areas (including deep soil areas) for the establishment and growth of larger vegetation and trees.

With regard to the above, the variation will satisfy the objectives of the control and will not adversely affect surrounding sites nor the locality more broadly. As such, the proposed variation is acceptable and supportable on merit.

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 $ 534.60 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 106,920.

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 2014;
- 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 concludes that the proposal 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 EP&A Act 1979

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

RECOMMENDATION

THAT the Local Planning Panel as the consent authority grant approval to DA2021/0957 for construction of a swimming pool on land at Lot C DP 417868, 108A Elimatta Road, Mona Vale, subject to the conditions printed below:

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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***
1-D (Site Plan)	*8 June 2021*	*Landscape Design by Jacqui Ray*
2-D (Section/Elevation Plan)	*8 June 2021*	*Landscape Design by Jacqui Ray*

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	***Dated***	***Prepared By***
Geotechnical Assessment (AG 21183)	*21 June 2021*	*Ascent Geotechnical Consulting*
Site Assessment	*Undated*	*Top Gun Cranes*

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

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

Waste Management Plan		
Drawing No/Title.	***Dated***	***Prepared By***
Waste Management Plan	*8 June 2021*	*Jacqui Ray*

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

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(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

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(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.

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(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)

northern beaches council

Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi)

Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. ***Policy Controls***
   Northern Beaches 7.12 Contributions Plan 2021

   A monetary contribution of $534.60 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 $106,920.00.

   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.

5. ***Security Bond***

   A bond (determined from cost of works) of $1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials

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and equipment to and from the development site.

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

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

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

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

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

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

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

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

7. ***Construction Traffic Management Plan***

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

The CTMP must address following:

- *The proposed phases of construction works on the site, and the expected duration of each construction phase*
- *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*
- *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 rates through the Council area*
- *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*
- *Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior*

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- *Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic*
- *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 requested Work Zones (if any), anticipated use of cranes, concrete pumps and/or any other large construction vehicles and any structures proposed within the public road reserve (if any)*
- *Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site (if any), to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site*
- *The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, run-off from anywashing down of vehicles shall be directed to the sediment control system within the site*
- *Proposed protection for Council and adjoining properties*
- *The location and operation of any on site crane*

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

8. ***Amendment to Site Assessment***

The construction report (prepared by Top Gun Cranes) is to be amended to incorporate notification processes, to ensure that any contractor is aware of their responsibilities during works. Such information shall include the following information:

Written notice is to be provided to the residents of 108B and 110 Elimatta Road at least 48 hours prior to the commencement of crane-lifting activities. Such notice is to:

- *Advise that crane lifting activities are to be undertaken in close proximity to the common boundary of the notified sites and the subject development site, and*
- *Contain phone and email contact details for a person(s) that can address any enquiries from those residents relating to crane-lifting activities.*

Reason: To satisfy the conditions of this consent

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. ***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

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condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- *Structures on the site at 108 Elimatta Road, Mona Vale*
- *Structures on the site at 108B Elimatta Road, Mona Vale*
- *Structures within the adjoining Council road reserve (i.e. Elimatta Road)*

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 rising 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. ***Tree and Vegetation Protection***

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) 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

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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.

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.

11. ***Implementation of Construction Traffic Management Plan***

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

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

12. ***Implementation of Site Assessment***

Written notice is to be provided to the residents of 108B and 110 Elimatta Road at least 48 hours prior to the commencement of crane-lifting activities. Such notification is to be in accordance with the construction report (prepared by Top Gun Cranes), as modified by condition number 8.

Reason: To satisfy the conditions of this consent

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

13. ***Post-Construction Dilapidation Report***
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- *Compare the post-construction report with the pre-construction report,*
- *Clearly identify any recent damage and whether or not it is likely to be the result of the development works,*

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- *Should any damage have occurred, suggested remediation methods.*

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

14. ***Swimming Pool Requirements***
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009;
(iii) Swimming Pools Regulation 2008
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

*(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.*

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the Division of Local Government.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

15. ***Geotechnical Recommendations***
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

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Reason: To ensure geotechnical risk is mitigated appropriately.

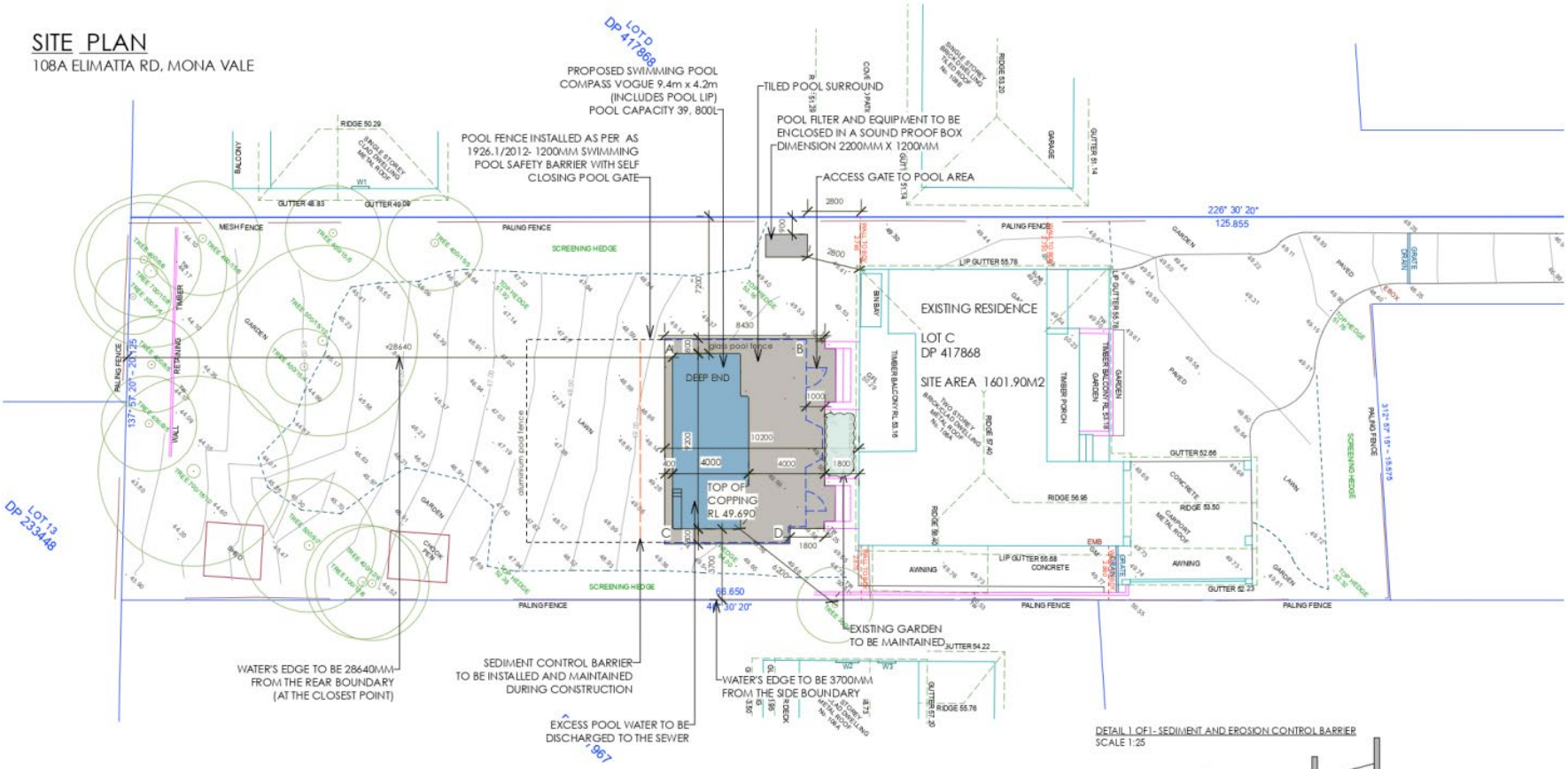
16. ***Pool Filter Noise***

The maximum noise level associated with the pool filter does not exceed 5dB(A) above ambient background level when measured from any adjoining premises.

Reason: To protect the amenity for adjoining properties.

SITE PLAN

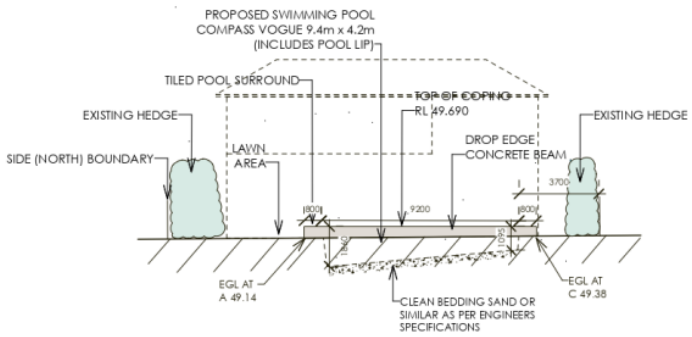
108A ELIMATTA RD, MONA VALE


LOT D DP 417868
PROPOSED SWIMMING POOL
COMPASS VOGUE 9.4m x 4.2m
(INCLUDES POOL LIP)
POOL CAPACITY 39, 800L
TILED POOL SURROUND
POOL FILTER AND EQUIPMENT TO BE ENCLOSED IN A SOUND PROOF BOX
DIMENSION 2200MM X 1200MM
POOL FENCE INSTALLED AS PER AS 1926.1/2012- 1200MM SWIMMING POOL SAFETY BARRIER WITH SELF CLOSING POOL GATE
ACCESS GATE TO POOL AREA
EXISTING RESIDENCE
LOT C
DP 417868
SITE AREA 1601.90M2
DEEP END
TOP OF COPPING RL 49.690
226° 30' 20"
125.855
LOT 13 DP 233448
137° 57' 20" - 20.26
WATER'S EDGE TO BE 28640MM FROM THE REAR BOUNDARY (AT THE CLOSEST POINT)
SEDIMENT CONTROL BARRIER TO BE INSTALLED AND MAINTAINED DURING CONSTRUCTION
EXCESS POOL WATER TO BE DISCHARGED TO THE SEWER
WATER'S EDGE TO BE 3700MM FROM THE SIDE BOUNDARY
EXISTING GARDEN TO BE MAINTAINED
PALING FENCE
SCREENING HEDGE
MESH FENCE
GARDEN
LAWN
PAVED
CONCRETE
AWNING
GARAGE
BALCONY
TIMBER PORCH
TIMBER BALCONY
CHICKEN PEN
SHED
WALL
TIMBER RETAINING
GRATE DRAIN
EMB
RIDGE 50.29
RIDGE 53.50
RIDGE 56.95
RIDGE 55.78
GUTTER 48.83
GUTTER 46.09
GUTTER 52.86
GUTTER 52.23
GUTTER 54.22
LIP GUTTER 55.78
LIP GUTTER 55.68 CONCRETE
CARPORT METAL ROOF
SINGLE STOREY BRICK DWELLING METAL ROOF
TWO STOREY BRICK DWELLING METAL ROOF
TREE 400/10.5
TREE 400/10.0
TREE 300/7.5
TREE 300/6.0
TREE 700/19.0
TREE 500/6.0
TREE 400/9.0
TREE 400/8.0
TREE 300/6.0
TREE 400/8.0
TREE 300/6.0
TREE 400/8.0
TREE 300/6

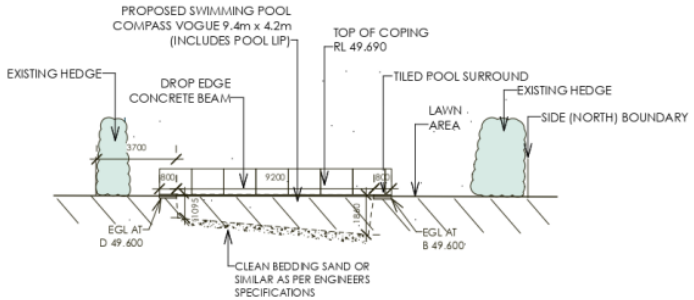
SIECTION/ELEVATION PLAN

108A ELIMATTA RD, MONA VALE

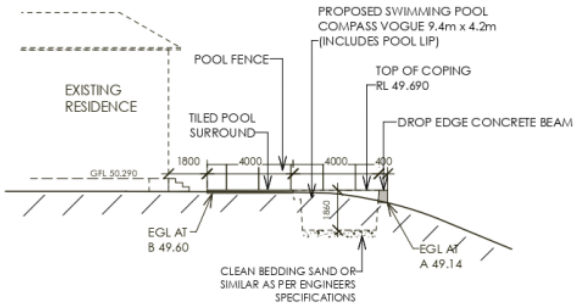
WESTERN SECTION/ELEVATION



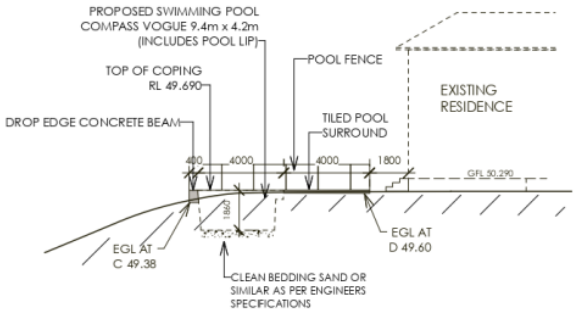
EASTERN SECTION/ELEVATION



NORTHERN SECTION/ELEVATION



SOUTHERN SECTION/ELEVATION



LANDSCAPER DESIGNER	NOTES	PROJECT	DRAWN	SCALE	DATE	DWG NO	REV
LANDSCAPE DESIGN BY JACQUI RAY PO Box 844, ST IVES, 2075 M: 0417680228 F: 43771433 E: jacqui@jacquiray.com.au	1. Drawing not suitable for construction purposes. 2. Do not scale from drawings- use written dimensions only. 3. Contractor to verify location of all pipes and services prior to starting Works. 4. All Works to carried out in accordance with the BCA. 5. DA approved plans are required to be constructed as approved to obtain occupancy certificate. 6. Plans are protected by Copyright Laws. No plan or part thereof may be used, copied or reproduced in any way without the prior written permission of Dig This	SWIMMING POOL AND SURROUNDS LOCATION GAVIN RESIDENCE 108A ELIMATTA RD MONA VALE	JR	1:200@A3	8/6/21	2 of 3	D
			TITLE SECTION/ELEVATION PLAN				

ITEM 4.3	**DA2021/1069 - 172A HUDSON PARADE, CLAREVILLE - CONSTRUCTION OF COASTAL PROTECTION WORKS (SEAWALL AND LAND STABILISATION)**
AUTHORISING MANAGER	**Lashta Haidari**
TRIM FILE REF	**2021/680452**
ATTACHMENTS	**1 Assessment Report** **2 Site Plan & Elevations**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1069 for construction of Coastal Protection Works (seawall and land stabilisation) at Part Lot 142 DP 13760, 172A Hudson Parade, Clareville subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1069

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 142 DP 13760, 172 A Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Construction of Coastal Protection Works (seawall and land stabilisation)
Zoning:	RE1 Public Recreation
Development Permissible:	Yes, under SEPP (Coastal Management) 2018
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council

Application Lodged:	14/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Infrastructure
Notified:	23/07/2021 to 06/08/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,141,854.96

Executive Summary

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposed works are upon a public reserve which is owned by Northern Beaches Council and Northern Beaches Council is the applicant. The proposed works are for 'coastal protection works' to construct a seawall measuring 19m long by 2.5m high and bank stabilisation works. The proposed seawall replaces a previously failed seawall in the same general location along the Pittwater Foreshore.

The application was notified for a period of 14 Days and one (1) public submission was received raising concern about potential impacts to protected Pittwater Spotted Gum Trees in the vicinity of the site. The submission is addressed below in this report and the proposed development does not propose removal of any protected trees.

The application has been assessed by Council Coast and Catchment Team, Biodiversity Team and Water Management Team who are each satisfied that the proposed seawall and stabilisation works will not result in any unacceptable impacts upon the foreshore area or aquatic environment. The proposed seawall will maintain existing public access arrangements and will improve public safety along the foreshore.

The proposed development is therefore recommended for approval to the NBLPP subject to the conditions outlined at the end of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for Coastal Protection works which consist of the construction of a new Seawall to replace a previously collapsed sea wall and provide slope stabilisation for the embankment adjoining the waterway. The proposed coastal protection works consist of the following:

• Rock bolts through the slope above the proposed seawall to stabilise the upper part of the slope
• An anchored shotcrete seawall at the location of the original seawall. The proposed seawall is generally lower than the original seawall and will extend to the east to meet the adjacent gabion wall.
• Gabion cladding (with sandstone fill) to the shotcrete seawall;.
• A rock (sandstone) scour mattress immediately behind the seawall to reduce scour in the event of wave overtopping during storms.

The seawall has a length of 19m and a wall height of up to 2.5m.

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 RE1 Public Recreation
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 - D15.18 Seawalls

SITE DESCRIPTION

Property Description:	Lot 142 DP 13760 , 172 A Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	The subject site is a public reserve which sits to the north of a number of dwellings along Hudson Parade. The area of land below the Mean High Water Mark (MHWM) is Crown Land and the public reserve is owned by Council. The reserve consists of (1) allotment located on the Northern side of Hudson Parade and to the north of the private residential allotments. The area which the proposed seawall is located is to the north of the private dwellings sites of 146, 148 and 150 Hudson Parade. The site is irregular in shape and the reserve has a total site area of 3699m². The site is located within the RE1 Public Recreation zone and consists of foreshore vegetation, the foreshore area and an informal coastal access track that runs to the north of the private residential dwellings above the area of the seawall. There is a steep fall away from the southern boundary of the land down to the waters edge. A number of informal tracks and stairs connect the upper access path to the lower foreshore area. The area of site at present has a temporary seawall consisting of sandbags, a temporary work platform and sediment control measures to stop further erosion and damage to the embankment. The bottom and foreshore area below the seawall is not accessible by foot at high tide. However, at low tide the area can be traversed by members of the public. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by detached residential dwellings to the south and the foreshore area of the Pittwater to the north. There is a private boatshed to the north of the seawall.

Map:

SITE HISTORY

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

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 application is accompanied by a Remediation Action Plan (RAP) to address contaminated soils found within the subject site area. Following the recommendations of the RAP are followed (which will be requires as consent conditions), Council can be satisfied that the land will be suitable for the intended use. A detailed assessment follows later in this assessment report under SEPP 55.
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) –	Division 8A of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration'	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	
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 23/07/2021 to 06/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Sue Diane Anderson	PO Box 755 AVALON BEACH NSW 2107

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

- Concerns regarding impact upon existing spotted gums trees in the vicinity of the site works

The matters raised within the submissions are addressed as follows:

- Concerns regarding impact upon existing spotted gums trees in the vicinity of the site works.

  Comment:
  There are no significant canopy trees or Pittwater Spotted Gum trees directly above the area of seawall works. There are spotted gums to the east and west of the subject area however are to be retained as part of the proposal. Council's landscape and biodiversity team are satisfied the proposal will not have an impact on significant vegetation or biodiversity value of the site. A landscape plan is provided which provides new landscape planting above the seawall and Council's Landscape Officer has recommended conditions that the species be consistent with the Pittwater Spotted Gum ecological community.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid	**Supported Subject to Conditions**

Internal Referral Body	Comments
Sulphate)	Environmental Health has reviewed the Statement of Environmental Effects (SoEE) by Royal HaskoningDHV dated 3 June 2021, which identified that the proposed works are located in an area classified as Class 5 for Acid Sulfate Soils (ASS). An ASS Management Plan was deemed unnecessary due to limited excavation required within the Class 5 area however, the SoEE did not acknowledge the Class 1 area where temporary containment measures are partially located at present and unloading platforms will be located. Should any excavation be required within the Class 1 area, an updated preliminary ASS assessment should be conducted. Whilst the LEP provides certain exemptions to the requirement for an ASS Management Plan (NB these are model clauses which are more appropriate for land-based developments), the Protection of the Environment Operations Act 1994 and the Fisheries Management Act 1994 are still applicable. When disturbed, ASS will react with dissolved oxygen in surface waters, which may facilitate the release of heavy metals and other pollutants of concern into the waterway. Seagrasses including Posidonia australis (endangered population) have been recorded in the immediate vicinity of the proposed development by DPI Fisheries and more recently by one of Council's suitably qualified contractors. They are also readily visible in satellite images. As such, pollutants entering the waterway in this area may have detrimental effects on seagrass survival. Sediment curtains may cause localised smothering of seagrasses and will not provide protection against the release of chemical or metal contaminants, therefore disturbance of ASS and migration of sediment, cement, materials, fuel etc. into the waterway should be prevented in the first instance. Also, barge movements and unloading operations must be conducted in such a manner that prevents physical damage to seagrasses.
Environmental Health (Contaminated Lands)	**Supported Subject to Conditions** Environmental Health has reviewed the Remediation Action Plan, Asbestos Management Plan and Construction Management Plan - all by JK Environments dated 2 June 2021. Preliminary investigations determined that the site contains fill of unknown origin. Asbestos containing materials (ACM) were present both on the surface and within surface fill. One of the bore hole samples tested positive for TRHs. Whilst TRH levels were of little concern for the type of development proposed, the ACM poses a risk to public health and as such, requires remediation. Environmental Health agrees with the preferred remediation method outlined in the RAP, which is to consolidate and cap the asbestos-contaminated soils onsite. An ongoing Long-term Environmental Management Plan (LTEMP) will then be required. The RAP states that an amount of contaminated fill may need to be removed during seawall repair works. This material is to be classified in accordance

Internal Referral Body	Comments
	with NSW EPA guidelines for waste disposal and disposed of at an EPA licenced waste facility. A Class A licenced contractor is to be engaged to conduct asbestos works at the site and clearance from a SafeWork NSW Licenced Asbestos Assessor will be required once removal of surface ACM is complete.
Environmental Health (Industrial)	**Supported Subject to Conditions** Environmental Health recommends approval with conditions.
Landscape Officer	**Supported Subject to Conditions** The development application is for the construction of the replacement seawall and associated slope stabilisation works to remove the safety risk to the public of the existing land, upon land within Taylors Point Reserve owned and managed by Northern Beaches Council. The area below the proposed seawall is Crown land at the mean high water mark within zone W1 Natural Waterways. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) 2014 under the RE1 Public Recreation land zone objectives and clauses 7.3 Earthworks and 7.8 Limited development on foreshore area, and the following Pittwater 21 DCP Control: C5.1 Landscaping, D15.1 Character as viewed from a public place, and D15.18 Seawalls. The common focus of the objectives are that development is sympathetic to the natural character of the Pittwater Waterway, that development adjacent to waterways and other public open spaces compliments the landscape character, public use and enjoyment of that land, and that built structures are minimised below mean high water mark. Landscape documents are provided with the application and are assessed as achieving the objectives of the PLEP and landscape controls of the Pittwater 21 DCP. Landscape Referral raise no objections to the proposal.
NECC (Bushland and Biodiversity)	**Supported Subject to Conditions** A condition assessment of the seawall was undertaken for Council in May 2018 and it was concluded that the existing seawall's condition represented an extreme risk to safety. As such, remediation or replacement of the seawall was required to remove the safety risk to the public and to restore its function as a retaining wall and for coastal protection. Prior to any remediation or replacement works being undertaken, the seawall collapsed during February 2020. Following the collapse, Council undertook works to stabilise temporarily the slope that had previously been retained by the collapsed seawall. A new permanent seawall is therefore required for the site. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Internal Referral Body	Comments
	Biodiversity Conservation Act 2016 (BC Act) **State Environmental Planning Policy (Coastal Management) 2018** • Coastal Environment Area **Pittwater Local Environmental Plan (PLEP)** • 7.6 Biodiversity Protection Council's Natural Environment Unit - Biodiversity referral team raise no objection to the works. The proposal is consistent with the objectives and controls listed in cl.7.6 of the PDCP and cl.13 of the Coastal Management SEPP.
NECC (Coast and Catchments)	**Supported Subject to Conditions** The DA proposes a new anchored concrete seawall with sandstone filled gabion cladding and slope stabilisation works to replace temporary emergency stabilisation works that were installed following the collapse of the previous seawall at the site. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP. The application has been assessed noting that consent cannot be granted until landowners consent to lodge the DA has been gained from NSW Planning, Industries & Environment - Crown Lands. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016. The design of the proposed seawall acknowledges the risk associated with wave runup and overtopping of the structure associated with sea level rise and includes measures to address these risks. The proposed seawall is unlikely to impact adversely on surrounding properties, coastal processes, coastal environmental values or the amenity of public foreshore lands. The proposed works are also unlikely, for the life of the works, to pose a threat to public safety or to unreasonably limit public access to or use of the public foreshore. As the application proposes construction of a seawall (coastal protection works) the proposed development is affected by the requirements of s 27 of the Coastal Management Act 2016. It is considered that the proposed seawall is able to satisfy the requirements of Section 27(b)(ii) subject to conditions. **State Environmental Planning Policy (Coastal Management) 2018**

Internal Referral Body	Comments
	The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report (3 June 2021) prepared by Royal Haskoning DHV, the proposed development is considered to satisfy the relevant requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the DA does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Pittwater LEP 2014** Development Below Mean High Water Mark Components of the proposed development are located below the MHWM and clause 5.7 Development below mean high water mark will apply to these works. The objective of this clause, to ensure appropriate environmental assessment for development carried out on land covered by tidal waters, is considered to have been satisfied subject to conditions. Development on Foreshore Area As the subject site is within the foreshore building line Part 7, clause 7.8 – Limited development on foreshore area of Pittwater LEP 2014 applies for any development within the foreshore area. The proposed development works are located, in part, within the foreshore area. Seawalls are a permitted use within the foreshore area and the new seawall is proposed to be built on the same footprint and no further seaward than the previous seawall. As assessed in the SEE the proposed development is not contrary to the objectives of the zone, is unlikely to cause environmental harm or, compared to the previous seawall, have an adverse impact on the amenity or appearance of the foreshore. Sea level rise, coastal erosion and recession have been considered and the previously available public access along the foreshore and to the waterway will not be compromised by the proposed development. It is therefore considered that the development proposal satisfies the objectives and requirements of Clause 7.8 – Limited development on foreshore area of Pittwater LEP 2014. **Pittwater 21 DCP** Estuarine Hazard Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3 Estuarine Hazard Controls will apply to any proposed

Internal Referral Body	Comments
	development of the site. The impact & risk associated with the seawall has been assessed in a Coastal Risk Management Report prepared by Royal Haskoning DHV dated 16 April 2021. The proposed seawall is designed to accommodate inundation in excess of the 100 year ARI still water level plus sea level rise and includes a scour apron behind the top of the wall to address the risk of wave runup and overtopping. The report concludes that the seawall would be designed and constructed so that it would have a low risk of damage and instability due to wave action and/or oceanic inundation hazards over the design life of 50 years. As such it is considered that the proposed development is able to satisfy the relevant requirements of the Estuarine Risk Management Policy and Estuarine Hazard Controls subject to conditions. Development Seaward of Mean High Water Mark Development works are proposed on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. While the new seawall is proposed to be constructed largely above the MHWM, the concrete block temporary unloading platform and an unloading barge are located below the MHWM. Materials delivery and waste removal by barge will also transit the intertidal zone adjoining the construction site. DPI - Fisheries mapping indicates that Posidonia, an endangered ecological community, is present in the waterway adjoining the subject site, so there is potential for harm to marine vegetation. This issue will be addressed through the application of appropriate conditions. On internal assessment the DA is considered to satisfy most of the requirements under the Section D15.12 control. An analysis of the application including the SEE and the Construction Management Plan (19 May 2021) prepared by Royal Haskoning DHV demonstrates that the proposed development will not adversely impact on the visual amenity of the foreshore or the water quality of the Pittwater waterway. As such, it is considered that the application is able to satisfy the requirements of the D15.12 Controls of the Pittwater 21 DCP subject to conditions.
NECC (Development Engineering)	**Supported without conditions** No objections to the proposed coast seawall reconstruction works. No conditions are required.
NECC (Water Management)	**Supported without conditions** The DA proposes a new anchored concrete seawall with sandstone filled gabion cladding and slope stabilisation works to replace temporary emergency stabilisation works that were installed following the collapse of the previous seawall at the site. The application has been assessed in consideration of Pittwater 21 DCP noting that consent cannot be granted until landowners consent to lodge the DA has been gained from NSW Department of Planning, Industry and Environment and a Controlled Activity Approval under the provisions of the Water Management Act 2000.

Internal Referral Body	Comments
	Pittwater 21 DCP B5.13 Development on Waterfront Land controls The aim of the DCP controls are: -Protection of waterways and improved riparian health -Stormwater and creek flows are safely managed -Appropriate setback between waterways and development In relevance to the project it is noted that variations may be considered when an activity or work is permissible with a controlled activity approval. Variations will be considered where the activity or work is required to mitigate risk including landslip and geotechnical risk. The documentation submitted for the project is considered satisfactory. Refer to the NECC Coast assessment for applicable conditions **Assessment Planner Notes:* *1. Following completion of this referral, owners consent from Department of Primary Industries - Crown Lands has been received for the proposal with regards to the works seaward of the MHWM.* *2. Following completion of this referral, the Natural Resource Access Regulator (NRAR) (formally DPI - Water) was contacted to clarify if a Controlled Activity Approval (CAA) was required for the proposed development. The NRAR confirmed in an email to Council that a CAA is not required where Council is the applicant for the DA. Therefore, a CAA is not required in this circumstance.*
Parks, reserves, beaches, foreshore	**Supported Subject to Conditions** The development application is for the construction of the replacement seawall and associated slope stabilisation works to remove the safety risk to the public of the existing land, upon land within Taylors Point Reserve owned and managed by Northern Beaches Council. The area below the proposed seawall is Crown land at the mean high water mark within zone W1 Natural Waterways. Council's Parks, Reserves and Foreshores Referral is assessed against the Pittwater Local Environment Plan (PLEP) 2014 under the RE1 Public Recreation land zone objectives and clauses 7.3 Earthworks and 7.8 Limited development on foreshore area, and the following Pittwater 21 DCP Control: B8.2 Construction and Demolition - Erosion and Sediment Management, and D15.18 Seawalls. The site is located along the Pittwater waterway located downslope, and all works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from entering the waterway. Additionally the works are required to ensure public access is maintained within the reserve for the benefit of the community.

Internal Referral Body	Comments
	The proposed works are planned and designed in consideration of the impact of the proposed seawall and stabilisation works on the natural and built environment, and the proposed method of mitigating any adverse effects. The design does not move the proposed structure seaward of the existing collapsed seawall and thus does not remove any Crown public land, and there are no impacts to the existing ground levels to adjoining properties. The objectives of PLEP clause 7.8 are satisfied as the development will not impact on natural foreshore processes or affect the significance and amenity of the area, will ensure continuous informal public access along the foreshore area and to the waterway as per existing, is compatible with the surrounding area. Parks, Reserves and Foreshores Referral raise no objections to the proposal subject to conditions.
Traffic Engineer	**Supported Subject to Conditions** The application has been assessed and whilst the works are within the Council foreshore reserve along Pittwater, there are potential impacts to the local road network, reserves, and on street parking. The construction traffic management plan will require further work to determine the actual impact, transport routes and site management requirements prior to commencement. The application is supported subject to the conditions provided.

External Referral Body	Comments
Aboriginal Heritage Office	**Supported Subject to Conditions** Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Condition recommended regarding unexpected finds.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Contamination Screening (PCS) dated 19 June 2019 and prepared by JK Environments. In its conclusion, the investigation states:

JKE prepared a PCS report for the proposed development in 2019. The primary aim of the PCS was to identify the potential for site contamination, make a preliminary assessment of the soil contamination conditions and provide a preliminary waste classification for the soil.

The scope of work included a review of site information; preparation of a Conceptual Site Model (CSM); design and implementation of a sampling, analysis and quality plan (SAQP); interpretation of the analytical results against the adopted Site Assessment Criteria (SAC); data Quality Assessment; and preparation of a report including a Tier 1 risk assessment.

The CSM identified the following areas of environmental concern (AEC) on the site:

- *Fill material (entire site) – The site appears to have been historically filled to achieve the existing levels. The fill may have been imported from various sources and could be contaminated. The boreholes drilled for the investigation encountered fill ranging in depth from approximately 0.3m to 1.2m below ground level (BGL). ACM were encountered at the surface;*
- *Use of pesticides – Pesticides may have been used at the site for pest control; and*
- *Hazardous Building Material – Hazardous building materials may be present as a result of former building and/or demolition activities. These materials may have been imported onto the site with the fill.*

Soil samples for the PCS were collected from five locations. Two ACM were obtained for the site surface. The sampling locations are shown on Figure 2.

The laboratory results identified the following:

- *Slight detections of Total Recoverable Hydrocarbons (TRH) F1, ethylbenzene and total xylenes were encountered in fill sample BH5 (0-0.1m). A natural soil sample analysed from the same borehole at a depth of approximately 0.4-0.5m did not detect these Contaminants of Potential Concern (CoPC) indicating the impact is confined to the fill soil. These CoPC are not limiting (NL) under the NEMP 2013 Public open space human health SAC. Considering that no*

buildings or confined spaces are proposed for the development, the SAC is considered applicable to the development; and

- *ACM was detected at the surface. The majority of the ACM were detected in the top (south) section of the site in the vicinity of BH5 as shown on the attached Figure 2. The ACM is considered to pose a risk to human receptors and will require remediation.*

Based on the findings of the assessment, the PCS concluded that the ACM encountered at the site poses a risk to human receptors and will require remediation. The PCS recommended the following:

- *Undertake a Stage 2 Environment Assessment (ESA) or Detailed Site Investigation (DSI) to identify and map the extent of ACM at the site;*
- *Prepare a RAP for the proposed development;*
- *Prepare an Asbestos Management Plan (AMP) for the proposed development works; and*
- *Prepare a Site Validation Report for the remediation works undertaken at the site.*

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

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

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. However, the environmental consultant proposed the following steps be taken following the Phase 1 Preliminary Assessment:

For the PCS asbestos was assessed on the basis of presence/absence. The NEMP 2013 asbestos Health Screening Levels (HSLs) were not adopted and asbestos quantification was not undertaken for the PCS screening. Although the PCS recommended that a Stage 2 or DSI be undertaken to meet the NSW EPA Sampling Design Guidelines 1995 to further assess the extent of ACM contamination, upon further review of available information we considered the seawall repairs can proceed directly to remediation based on the following lines of evidence which suggest that the ACM in fill soil contamination is widespread at the site:

- *The site has been subject to widespread filling containing visible ACM at the surface and imbedded in the surface fill soil;*
- *Asbestos was either visually identified during field works and/or via laboratory analysis and was widespread at the site as shown on Figure 2 and the photographs provided in PCS;*
- *The Guidelines for the Assessment, Remediation and Management of Asbestos-Contaminated Sites in Western Australia (2009)7 (endorsed in NEPM 2013) suggest that a DSI and associated extensive may not be necessary if an in-situ remediation /management approach is adopted and further states that a DSI should only be undertaken when delineation of asbestos impacts must be accurate. Therefore, a potential cap and contain remediation/management approach for the site is preferable; and*
- *Other than asbestos, CoPC were not encountered at concentrations above the adopted SAC. Therefore, the potential risk posed by these CoPC is consider to be low.*

The applicant has provided a Remediation Action Plan and Aesbestos Management Plan which containes recommendations for the remediation of the site to enable the development to be safely

carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the Remediation Action Plan which are included as conditions in the Recommendation of this report. Council's Environmental Health Team have reviewed the report put forward by the applicant and are satisfied with the proposed Remediation Action Plan.

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

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

SEPP (Coastal Management) 2018

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

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

(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

(c) the carrying out of any of the following:
(i) earthworks (including the depositing of material on land),
(ii) constructing a levee,
(iii) draining the land,
(iv) environmental protection works,

(d) any other development.

Comment:
Not within coastal wetlands or littoral rainforest area.

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

(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
Not within coastal wetlands or littoral rainforest proximity area.

12 Development on land within the coastal vulnerability area

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

(a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

(b) the proposed development:

(i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and

(ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and

(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
Not within coastal vulnerability area.

13 Development on land within the coastal environment area

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

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate

Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

(e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

(f) *Aboriginal cultural heritage, practices and places,*

(g) *the use of the surf zone.*

Comment:
Council's Coast and Catchment Team have undertaken a review of the application regarding Clause 13 (see their comments in the referrals section of this report) and are satisfied the development meets the requirements of Clause 13 to allow development consent to be granted. Continuous Public Foreshore Access is not inhibited by the proposal to rebuild the seawall, with the public access path to be maintained at all times to the south(above) the seawall and the ability to walk along the foreshore to the north of the seawall at low tide.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
Council is satisfied the development has been designed to avoid and minimise impacts to the foreshore area and coastal environment.

14 Development on land within the coastal use area

(1)

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and

(b) is satisfied that:
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:
The application enhances the safe access to the foreshore by rebuilding a previously failed seawall and providing a new improved solution in terms of public safety. The sea wall will cause minimal additional overshadowing given the topography of the site and will not impact upon views. Conditions have been recommended with regards to unexpected finds for aboriginal heritage. The wall has been designed with regards to visual amenity with a 'gabian' finish consisting of natural rock to compliment the surrounding sandstone features of the foreshore.

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

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

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

Comment:
The proposal does not increase the risk of coastal hazards and improves safety along the foreshore by rebuilding a previously failed section of wall.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Up to 2.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone RE1 Public Recreation

The proposed development is defined as 'Coastal Protection Works' which is defined under the *Coastal Management Act 2016* as *'activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to)* ***seawalls****, revetments and groynes'*. The land is subject to the SEPP (Coastal Management) 2018 and under Clause 19 Coastal Protection Works may be carried out with development consent by or on behalf of a Public Authority. Therefore, the proposed development is permitted with development consent meeting the requirements of Clause 19 SEPP (Coastal Management) 2018.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments

and conditions that have been included in the consent.

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

Comment: The application has been considered by Council's NECC Water Management and Riparian/Creeks team. The proposal is acceptable subject to the recommended conditions.

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

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

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

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

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

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid,

minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

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

Development consent must not be granted to development on land to which this clause applies unless:
(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

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

(b) the consent authority is satisfied that:
(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or

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

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

Pittwater 21 Development Control Plan

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
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.4 View Sharing	Yes	Yes
C5.10 Protection of Residential Amenity	Yes	Yes
C5.17 Pollution control	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.18 Seawalls	Yes	Yes

Detailed Assessment

D15.18 Seawalls

The proposed seawall is required to replace an existing failed seawall, to protect private property and

public land from further erosion and damage. See Council's Coastal Team assessment regarding the proposed sea wall who is satisfied the proposal meets the requirements of the Coastal Management Act and SEPP (Coastal Management) 2018.

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 $11,419 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,141,855.

CONCLUSION

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

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

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

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

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

The proposed development is not considered to result in any acceptable impacts upon the foreshore area and improves public safety by construction of a new seawall and bank stabilisation works. The proposed development does not result in any removal of significant trees and is supported by each of

the relevant referral officers in Council with regards to environmental impacts. The proposal is therefore recommended for approval.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1069 for Construction of Coastal Protection Works (seawall and land stabilisation) on land at Lot 142 DP 13760, 172 A Hudson Parade, CLAREVILLE, 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**
DR-MA-0001, Rev C	3/06/2021	Royal HoskoningDHV
DR-MA-0011, Rev C	3/06/2021	Royal HoskoningDHV
DR-MA-0012, Rev D	3/06/2021	Royal HoskoningDHV
DR-MA-0013, Rev C	3/06/2021	Royal HoskoningDHV
DR-MA-0021, Rev B	3/06/2021	Royal HoskoningDHV
DR-MA-0031, Rev A	24/04/2021	Royal HoskoningDHV
DR-MA-0041, Rev B	14/05/2021	Royal HoskoningDHV
DR-MA-0042, Rev A	14/05/2021	Royal HoskoningDHV
32115RMspecRev1 Fig 1	1/06/2021	JK Geotechnics
32115RMspecRev1 Fig 2	1/06/2021	JK Geotechnics
32115RMspecRev1 Fig 3	1/06/2021	JK Geotechnics

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Traffic Management Plan	19/05/2021	Royal HaskoningDHV
Remediation Action Plan, E32115Brpt2-RAP-rev1	2/06/2021	JK Environments
Geotechnical Report, 32115Rrpt2 Rev 1	3/06/2021	JK Geotechnics
Construction Management Plan	19/05/2021	Royal HaskoningDHV
Coastal Risk Management Report	16/04/2021	Royal HaskoningDHV
Aesbestos Management Plan	2/06/2021	JK Environments

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L.SK.01, Rev B	3/06/2021	SCAPE Design
L.SK.02, Rev B	3/06/2021	SCAPE Design
L.SK.03, Rev B	3/06/2021	SCAPE Design
L.SK.04, Rev B	3/06/2021	SCAPE Design

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	2/07/2021	Applicant

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under

that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not

commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $11,418.55 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 $1,141,854.96.

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.

5. **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

6. **Amendment of Landscape Plans**
The submitted Landscape Plan is to be amended in accordance with the following:
   - Deletion of Corymbia gummifera
   - Replacement with Corymbia maculata

Only species diagnostic of the Pittwater Spotted Gum Forest - Endangered Ecological Community are to be used for landscaping purposes:

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

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

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

7. **Working and Access on Reserves Permit**
Works (undertaken by principal contractors working without Council supervision) on land owned or managed by Council require a “Working on Reserves” permit prior to commencement. Applications can be obtained from Council’s website or the Parks and Recreation business unit.

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

Reason: Public safety and the protection of Council infrastructure.

8. **Construction Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Transport Team prior to issue of any Construction Certificate.
Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:
- The proposed phases of construction works on the site, and the expected duration of each construction phase
- 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
- 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 rates 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
- 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 onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- 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 Seven (7) 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
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- 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 adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

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

Reason: To minimise potential hazards associated with development in the coastal zone.

10. **Structural Engineering for Estuarine Risk**
Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the development is able to withstand the wave impact forces and loadings identified in the approved Coastal Risk Management Report prepared by Royal Haskoning DHV dated 16 April 2021.
Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

11. **Engineers Certification of Plans**
The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering design is prepared by an appropriately qualified professional

12. **Seawall Structure to be Properly Maintained**
A maintenance schedule shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life the development is maintained in a sound structural condition. The maintenance schedule shall be submitted to the Certifying Authority prior to the release of the Construction Certificate and incorporated as necessary into the relevant asset management plan .

Reason: To ensure appropriate maintenance of the development and to fulfil maintenance requirements under clause 27(b)(ii) of the Coastal Management Act 2016.

13. **Compliance with Coastal Risk Management Report**
The development is to comply with all recommendations of the approved Coastal Risk Management Report prepared by Royal Haskoning DHV, dated 16 April 2021, and these recommendations are to be incorporated into construction plans and maintained over the life of the development. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure coastal hazard risks are addressed appropriately

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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.

16. **Construction Management Plan - Council Assets**
Prior to commencement of works on site, appropriate environmental site management measures must be in place and incorporate the following throughout demolition and construction:
i) access to and from the site during construction and demolition,
ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting,
iii) methods of loading and unloading machinery and building materials,
iv) location of storage materials, excavation and waste materials,
v) methods to prevent material being tracked off the site onto surrounding roadways,
vi) erosion, sediment and dust control measures, and
vii) protection of existing trees and vegetation including the tree protection zone, in accordance with AS 4970-2009 Protection of Trees on Development Sites.

During works, the site management measures listed above must remain in place and be maintained until the completion of works.

Construction materials must not be stored on Land owned or managed by Council unless approval is provided by Council. Safe pedestrian access free of trip hazards must be maintained at all times on or adjacent to any public access routes connected to Land owned or managed by

Council.

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

17. **Installation and Maintenance of Sediment and Erosion Control**
Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004), and in accordance with the Erosion & Sediment Control Plan PA1900-RHD-00-DR-MA-0031.

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. 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. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road or car park area for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

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

19. **Installation and Maintenance of Sediment and Erosion Control**
Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation. The proposed development shall also comply with all the environmental management provisions outlined in the Construction Management Plan (19 May 2021) and Erosion and Sediment Control Plan (Dwg No. PA1900-RHD-00-DR-MA-0031) prepared by Royal Haskoning DHV and shall be maintained for the duration of all construction activities.

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

20. **Protection of Marine Vegetation**
To ensure that marine vegetation in the waterway adjacent to the development site is not harmed during the construction phase, in accordance with the D15.12 Control in P21 DCP, the proponent shall consult with the Department of Primary Industries - Fisheries in regard to potential impacts of the proposed development prior to the commencement of works. Any requirements of DPI - Fisheries shall be incorporated into the approved Construction Management Plan and shall be maintained for the duration of all construction activities.

Reason: To ensure estuarine habitat is protected during construction of the development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Protection of Council's Public Assets**
Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

22. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

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

23. **Requirement to Notify about New Contamination Evidence**
Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

24. **Site Remediation Works/ Remediation Action Plan/ Asbestos Management Plan**
All remediation and validation works are to be carried out in accordance with the 'Remediation Action Plan' Report No. E32115Brpt2-RAP-rev1 prepared by JKEnvironments dated 2 June 2021 and the 'Asbestos Management Plan' Report No. E32115Brpt3-AMP-rev1 prepared by JKEnvironments dated 2 June 2021.

Reason: To ensure compliance with relevant guidelines and legislation to protect the environment and public health.

25. **Management of Noise and Vibration**
The requirements of the 'Construction Management Plan' Ref No. PA1900-RHD-ZZ-XX-RP-Z-0001 by JKEnvironments dated 19 May 2021, are to be fully implemented from commencement of any excavation, demolition or development works until the issue of any interim / final occupation certificate.

Reason: To protect amenity of the area (DACHPEDW1)

26. **Barge and Vessel Movements Not to Disturb Sediment or Seagrasses**

Any works undertaken with the use of a barge or any other vessel, along with barge or vessel movements to, from and within the approved development envelope, must be timed and performed appropriately with respect to tides, weather conditions and bed-morphology of the waterbody so as to not disturb sediment, or cause any damage to aquatic flora or fauna.

Reason: Protection of the environment.

27. **Requirement to notify about new Acid Sulfate Soils evidence**
Any new information revealed during works that has the potential to alter previous conclusions about Acid Sulfate Soils made in the Development Application, shall be immediately notified to the Council prior to further commencement of works.

Reason: Protection of the environment.

28. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area or associated construction compound. All waste material is to be removed off site and disposed of according to applicable regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

29. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

30. **Staff and Contractor Parking**
The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the Clareville Beach Reserve car park. No on-street parking is to be used by the contractors or staff.

Reason: To ensure minimum impact of construction activity on local parking amenity.

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 Documents L.SK.01, L.SK.02, L.SK.03 and L.SK.04.

Prior to the issue of any Occupation Certificate details from a landscape architect shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

32. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (Scape Design 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.

33. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) 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.

34. **Removal of All Temporary Structures/Materials and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.

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

Reason: To protect reserve amenity and public safety.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

35. **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.

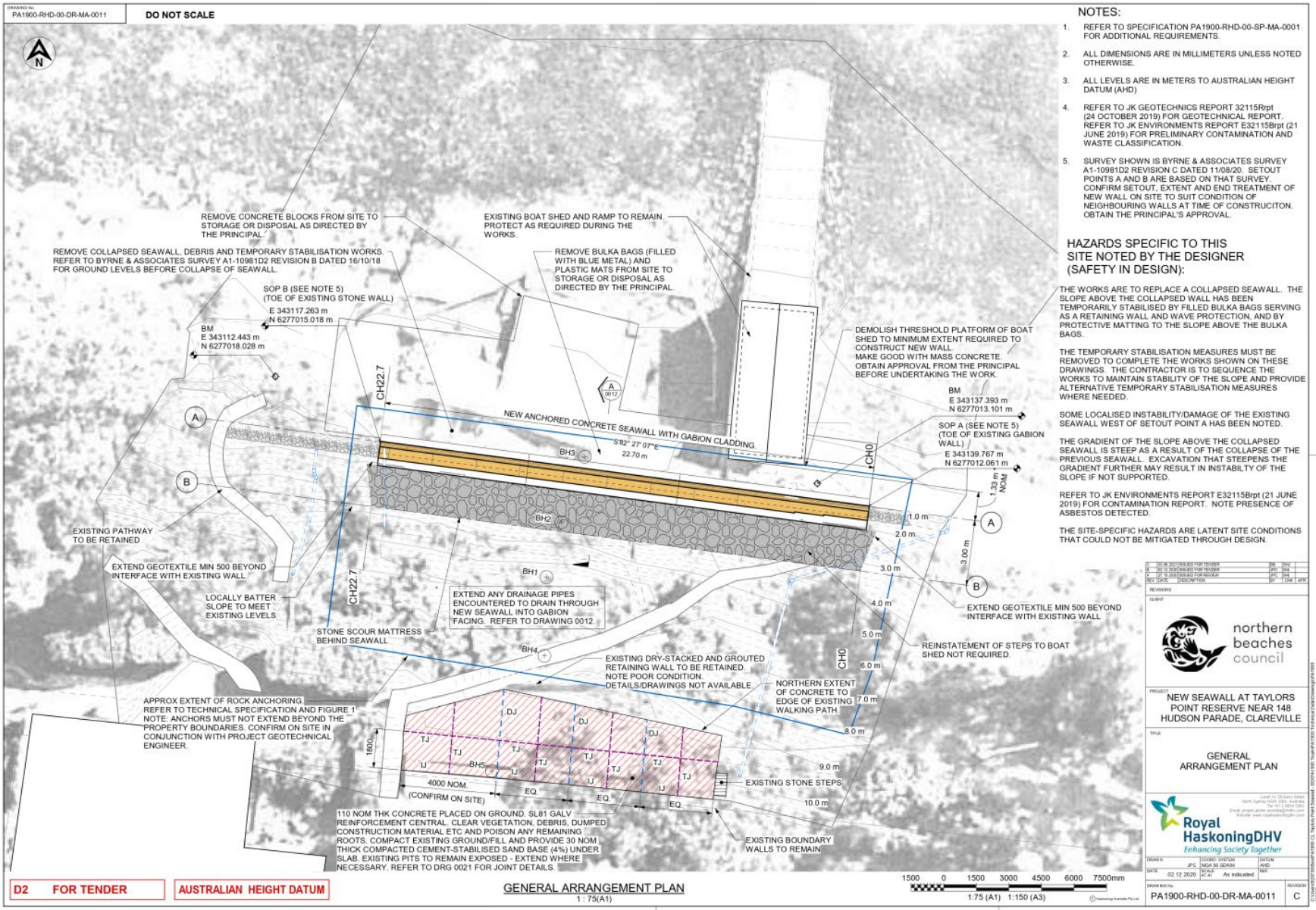
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape documents and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

36. **General Foreshore Matters**
Unless in accordance with the approved works the Consent holder must ensure that:
a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.


DRAWING No. PA1900-RHD-00-DR-MA-0011
DO NOT SCALE
NOTES:
1. REFER TO SPECIFICATION PA1900-RHD-00-SP-MA-0001 FOR ADDITIONAL REQUIREMENTS.
2. ALL DIMENSIONS ARE IN MILLIMETERS UNLESS NOTED OTHERWISE.
3. ALL LEVELS ARE IN METERS TO AUSTRALIAN HEIGHT DATUM (AHD)
4. REFER TO JK GEOTECHNICS REPORT 32115Rrpt (24 OCTOBER 2019) FOR GEOTECHNICAL REPORT. REFER TO JK ENVIRONMENTS REPORT E32115Brpt (21 JUNE 2019) FOR PRELIMINARY CONTAMINATION AND WASTE CLASSIFICATION.
5. SURVEY SHOWN IS BYRNE & ASSOCIATES SURVEY A1-10981D2 REVISION C DATED 11/08/20. SETOUT POINTS A AND B ARE BASED ON THAT SURVEY. CONFIRM SETOUT, EXTENT AND END TREATMENT OF NEW WALL ON SITE TO SUIT CONDITION OF NEIGHBOURING WALLS AT TIME OF CONSTRUCITON. OBTAIN THE PRINCIPAL'S APPROVAL.
HAZARDS SPECIFIC TO THIS SITE NOTED BY THE DESIGNER (SAFETY IN DESIGN):
THE WORKS ARE TO REPLACE A COLLAPSED SEAWALL. THE SLOPE ABOVE THE COLLAPSED WALL HAS BEEN TEMPORARILY STABILISED BY FILLED BULKA BAGS SERVING AS A RETAINING WALL AND WAVE PROTECTION, AND BY PROTECTIVE MATTING TO THE SLOPE ABOVE THE BULKA BAGS.
THE TEMPORARY STABILISATION MEASURES MUST BE REMOVED TO COMPLETE THE WORKS SHOWN ON THESE DRAWINGS. THE CONTRACTOR IS TO SEQUENCE THE WORKS TO MAINTAIN STABILITY OF THE SLOPE AND PROVIDE ALTERNATIVE TEMPORARY STABILISATION MEASURES WHERE NEEDED.
SOME LOCALISED INSTABILITY/DAMAGE OF THE EXISTING SEAWALL WEST OF SETOUT POINT A HAS BEEN NOTED.
THE GRADIENT OF THE SLOPE ABOVE THE COLLAPSED SEAWALL IS STEEP AS A RESULT OF THE COLLAPSE OF THE PREVIOUS SEAWALL. EXCAVATION THAT STEEPENS THE GRADIENT FURTHER MAY RESULT IN INSTABILTY OF THE SLOPE IF NOT SUPPORTED.
REFER TO JK ENVIRONMENTS REPORT E32115Brpt (21 JUNE 2019) FOR CONTAMINATION REPORT. NOTE PRESENCE OF ASBESTOS DETECTED.
THE SITE-SPECIFIC HAZARDS ARE LATENT SITE CONDITIONS THAT COULD NOT BE MITIGATED THROUGH DESIGN.
REMOVE CONCRETE BLOCKS FROM SITE TO STORAGE OR DISPOSAL AS DIRECTED BY THE PRINCIPAL.
EXISTING BOAT SHED AND RAMP TO REMAIN. PROTECT AS REQUIRED DURING THE WORKS.
REMOVE COLLAPSED SEAWALL, DEBRIS AND TEMPORARY STABILISATION WORKS. REFER TO BYRNE & ASSOCIATES SURVEY A1-10981D2 REVISION B DATED 16/10/18 FOR GROUND LEVELS BEFORE COLLAPSE OF SEAWALL.
REMOVE BULKA BAGS (FILLED WITH BLUE METAL) AND PLASTIC MATS FROM SITE TO STORAGE OR DISPOSAL AS DIRECTED BY THE PRINCIPAL.
SOP B (SEE NOTE 5) (TOE OF EXISTING STONE WALL)
E 343117.263 m
N 6277015.018 m
BM
E 343112.443 m
N 6277018.028 m
DEMOLISH THRESHOLD PLATFORM OF BOAT SHED TO MINIMUM EXTENT REQUIRED TO CONSTRUCT NEW WALL. MAKE GOOD WITH MASS CONCRETE. OBTAIN APPROVAL FROM THE PRINCIPAL BEFORE UNDERTAKING THE WORK.
BM
E 343137.393 m
N 6277013.101 m
SOP A (SEE NOTE 5) (TOE OF EXISTING GABION WALL)
E 343139.767 m
N 6277012.061 m
CH22.7
CH0
NEW ANCHORED CONCRETE SEAWALL WITH GABION CLADDING
S 82° 27' 07" E
22.70 m
BH1
BH2
BH3
BH4
BH5
1.33 m NOM
1.0 m
2.0 m
3.00 m
3.0 m
4.0 m
5.0 m
6.0 m
7.0 m
8.0 m
9.0 m
10.0 m
EXISTING PATHWAY TO BE RETAINED
EXTEND GEOTEXTILE MIN 500 BEYOND INTERFACE WITH EXISTING WALL
LOCALLY BATTER SLOPE TO MEET EXISTING LEVELS
EXTEND ANY DRAINAGE PIPES ENCOUNTERED TO DRAIN THROUGH NEW SEAWALL INTO GABION FACING. REFER TO DRAWING 0012.
STONE SCOUR MATTRESS BEHIND SEAWALL
EXTEND GEOTEXTILE MIN 500 BEYOND INTERFACE WITH EXISTING WALL
REINSTATEMENT OF STEPS TO BOAT SHED NOT REQUIRED.
EXISTING DRY-STACKED AND GROUTED RETAINING WALL TO BE RETAINED. NOTE POOR CONDITION. DETAILS/DRAWINGS NOT AVAILABLE.
NORTHERN EXTENT OF CONCRETE TO EDGE OF EXISTING WALKING PATH
APPROX EXTENT OF ROCK ANCHORING. REFER TO TECHNICAL SPECIFICATION AND FIGURE 1 NOTE. ANCHORS MUST NOT EXTEND BEYOND THE PROPERTY BOUNDARIES. CONFIRM ON SITE IN CONJUNCTION WITH PROJECT GEOTECHNICAL ENGINEER.
1800
DJ
TJ
IJ
4000 NOM.
(CONFIRM ON SITE)
EQ.
EXISTING STONE STEPS
110 NOM THK CONCRETE PLACED ON GROUND. SL81 GALV REINFORCEMENT CENTRAL. CLEAR VEGETATION, DEBRIS, DUMPED CONSTRUCTION MATERIAL ETC AND POISON ANY REMAINING ROOTS. COMPACT EXISTING GROUND/FILL AND PROVIDE 30 NOM THICK COMPACTED CEMENT-STABILISED SAND BASE (4%) UNDER SLAB. EXISTING PITS TO REMAIN EXPOSED - EXTEND WHERE NECESSARY. REFER TO DRG 0021 FOR JOINT DETAILS.
EXISTING BOUNDARY WALLS TO REMAIN
D2 FOR TENDER
AUSTRALIAN HEIGHT DATUM
GENERAL ARRANGEMENT PLAN
1 : 75(A1)
1500 0 1500 3000 4500 6000 7500mm
1:75 (A1) 1:150 (A3)
REVISIONS
CLIENT
northern beaches council
PROJECT
NEW SEAWALL AT TAYLORS POINT RESERVE NEAR 148 HUDSON PARADE, CLAREVILLE
TITLE
GENERAL ARRANGEMENT PLAN
Royal HaskoningDHV
Enhancing Society Together
DRAWN
JPC
DESIGNED
MGA 56 GDA94
DATUM
AHD
DATE
02.12.2020
SCALE
A1 A3
As indicated
REF
DRAWING No.
PA1900-RHD-00-DR-MA-0011
REVISION
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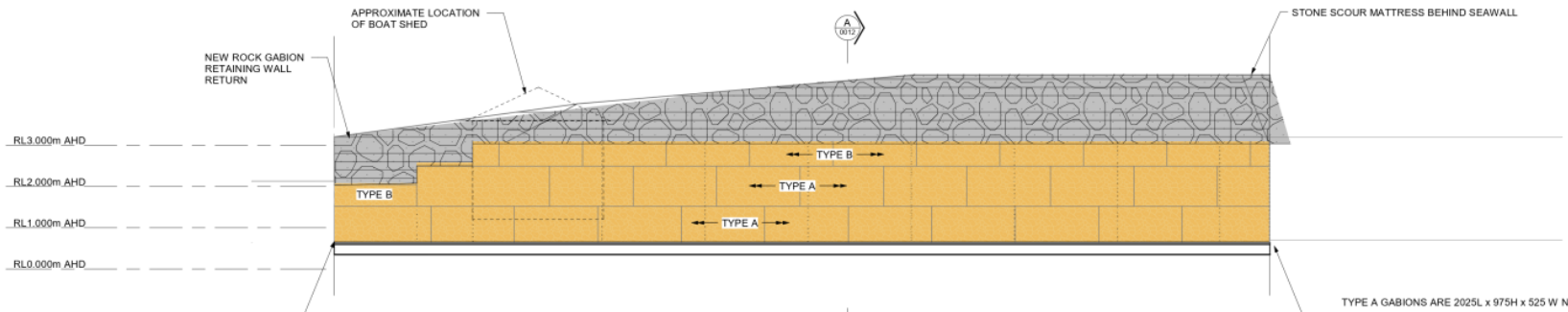
DRAWING No. PA1900-RHD-00-DR-MA-0013

DO NOT SCALE



ELEVATION - GABION SEAWALL CLADDING
1 : 50(A1)

TYPE A GABIONS ARE 2025L x 975H x 525 W NOM.

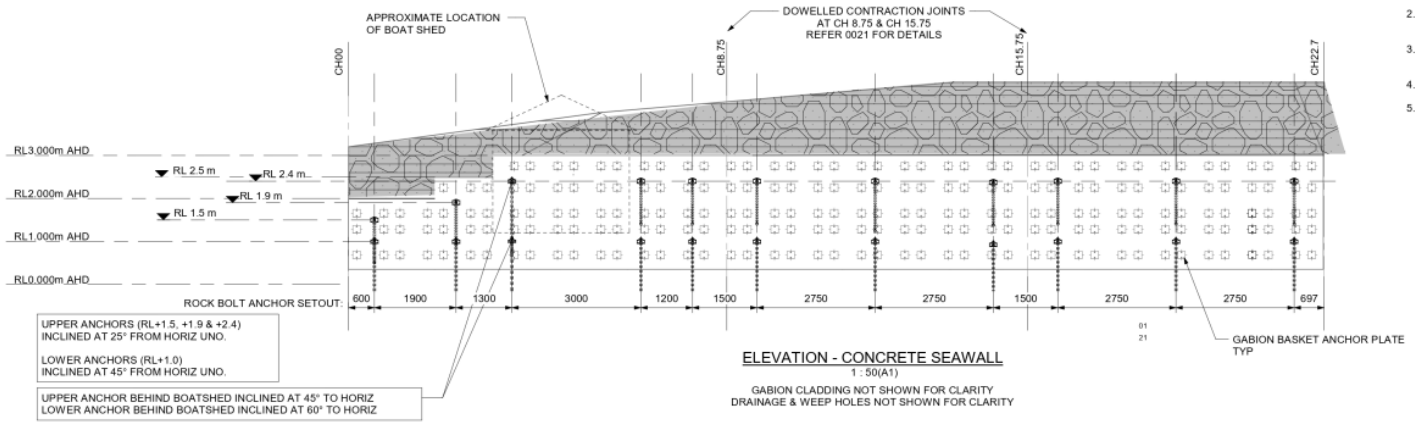
TYPE B GABIONS ARE 2025L x 525H x 525 W NOM.

ALL GABIONS 75 x 75 APERTURE WITH 4mm WIRE.

WHERE GABION CAGE LENGTH MUST BE ADJUSTED TO SUIT WALL LENGTH, SHORTEN CAGES BETWEEN CHAINAGES 10 AND 20. MINIMUM CAGE LENGTH IS 975mm.

NOTES:

1. REFER TO SPECIFICATION PA1900-RHD-00-SP-MA-0001 FOR ADDITIONAL REQUIREMENTS.
2. ALL DIMENSIONS ARE IN MILLIMETERS UNLESS NOTED OTHERWISE.
3. ALL LEVELS ARE IN METERS TO AUSTRALIAN HEIGHT DATUM (AHD)
4. REFER '32115RMLET' FOR GEOTECHNICAL REPORT
5. WALL EXTENT BASED ON SURVEY OF ORIGINAL WALL BEFORE COLLAPSE. WALL EXTENT AND ROCK ANCHOR SETOUT TO BE CONFIRMED ON SITE. REFER TO DRG 0011.



ELEVATION - CONCRETE SEAWALL
1 : 50(A1)

GABION CLADDING NOT SHOWN FOR CLARITY
DRAINAGE & WEEP HOLES NOT SHOWN FOR CLARITY

REV	DATE	DESCRIPTION	DR	CHK	APR
C	03.08.2021	ISSUED FOR TENDER	DR	CHJ	
B	02.12.2020	ISSUED FOR TENDER	JPC	SHL	
A	27.10.2020	ISSUED FOR REVIEW	JPC	SHL	

REVISIONS

CLIENT: northern beaches council

PROJECT: NEW SEAWALL AT TAYLORS POINT RESERVE NEAR 148 HUDSON PARADE, CLAREVILLE

TITLE: SEAWALL ELEVATIONS

Royal HaskoningDHV
Enhancing Society Together

Level 14, 38 Bligh Street
North Sydney NSW 2060 Australia
Tel +61 2 8854 5000
E:mail: project.admin.australia@rhdhv.com
Website: www.royalhaskoningdhv.com

DRAWN	JPC	COORD. SYSTEM	MGA 56 GDA94	DATUM	AHD
DATE	02.12.2020	SCALE AT A1	As indicated	REF	

DRAWING No. PA1900-RHD-00-DR-MA-0013 REVISION C

D2 FOR TENDER

AUSTRALIAN HEIGHT DATUM

1000 0 1000 2000 3000 4000 5000mm
1:50 (A1) 1:100 (A3)

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