

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 1 DECEMBER 2021

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Peter Biscoe	Chair
Brian Kirk	Town Planner
Kara Krason	Town Planner
Frank Bush	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 1 December 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 17 November 2021	
3.0	CATEGORY 3 APPLICATIONS	
4.0	PUBLIC MEETING ITEMS.....	5
4.1	REV2021/0034 - 231 Whale Beach Road, Whale Beach - Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision.....	5
4.2	DA2021/0744 - 50 Lawrence Street, Freshwater - Demolition works and construction of shop top housing.....	97
4.3	DA2021/1311 - 1031 Barrenjoey Road, Palm Beach - Use of premises as a cafe including a change of hours.....	207
4.4	DA2021/0521 - 111 Bower Street, Manly - Alterations and additions to a semi-detached dwelling.....	235
5.0	NON PUBLIC MEETING ITEMS.....	296
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
5.1	DA2021/1533 - 13 Morgan Road, Belrose - Demolition works and construction of new dwelling.....	296

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

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 17 NOVEMBER 2021

The Panel note that the Minutes of the Northern Beaches Local Planning Panel held 17 November 2021 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1 **REV2021/0034 - 231 WHALE BEACH ROAD, WHALE BEACH -
REVIEW OF DETERMINATION OF APPLICATION
DA2020/0442 FOR DEMOLITION WORKS AND
CONSTRUCTION OF A MIXED USE DEVELOPMENT
COMPRISING SHOP TOP HOUSING AND RETAIL PREMISES,
WITH ASSOCIATED CARPARKING, LANDSCAPING AND
STRATA SUBDIVISION**

AUTHORISING MANAGER **Rodney Piggott**

TRIM FILE REF **2021/815798**

ATTACHMENTS **1 Assessment Report
2 Site Plan & Elevations**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a 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, **approves** Application No. REV2021/0034 for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision at Lot B DP 316404, 231 Whale Beach Road, Whale Beach subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0034
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision
Zoning:	B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Leslie Anthony Cassar Diana Nancy Cassar
Applicant:	Leslie Anthony Cassar
Application Lodged:	31/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/10/2021 to 08/11/2021
Advertised:	25/10/2021
Submissions Received:	84
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 16,492,961.00

EXECUTIVE SUMMARY

The applications seeks a review of the determination of DA2020/0442, which was refused by the NBLPP on 2 December 2020. The development was refused primarily due to bulk and scale, side setbacks, view loss, landscaped treatment, driveway design and insufficient information.

In response to the refusal of DA2020/0442, the review application has been accompanied by amended plans to reduce the bulk and scale of the development compared to that previously refused, with larger

landscaped setbacks to both side boundaries. The driveway and parking area has also been redesigned, and all necessary supporting documentation and technical reports/certification have been presented. In addition to these matters, the height of the development presenting to Whale Beach Road has been reduced and the volume of excavation has been minimised.

The proposed development is of a different scale to that of surrounding dwelling houses. However, this is consistent with the provisions of PLEP 2014 and P21 DCP that anticipate development of a different typology and scale on the B1 Neighbourhood Centre zoned site, compared with that anticipated on surrounding E4 Environmental Living zoned land. Nonetheless, the proposed development is compatible with the bulk and scale of surrounding development and is a contextually appropriate response to the development of the site.

A total of 84 submissions were received in response to the notification of the application. Of these submissions, 56 were in support of the proposal, including one from the Palm Beach and Whale Beach Residents Association, and 28 were received in objection to the development. Despite the number of objections received, no matters were raised that warrant the refusal of the application or that cannot be addressed via the imposition of conditions.

Given the level of public interest, the proposal is referred to the Northern Beaches Planning Panel (NBLPP) for determination, with a recommendation of approval subject to the draft conditions attached.

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 "five-storey" mixed use development, comprising:
 - 5 residential apartments
 - 3 retail tenancies
 - basement parking for 21 cars
- strata subdivision

Note: Whilst described in the original assessment report as a "five-storey" development, the proposal was more accurately described as a three storey development, as no part of the building reached a height of more than 3 storeys in any one place.

In response to the refusal of the application of the 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 three-storey mixed use development comprising:
 - 5 residential apartments
 - 3 retail tenancies
 - basement parking for 14 cars
- strata subdivision

The mixed use development comprises shop top housing with additional retail premises (being those in addition to the ground floor retail premises anticipated in the definition of shop top housing). The

proposal will be commonly described as a shop top housing development throughout this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 -
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
 Pittwater 21 Development Control Plan - B2.6 Dwelling Density and Subdivision - Shop Top Housing
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C2.3 Awnings
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The site is irregularly shaped, with a 30.275m wide frontage to Whale Beach Road, a 20.175m wide frontage to Surf Road and a total area of 844.7m ² . The site currently contains a multi-level mixed-use development, with retail and business premises fronting Whale Beach Road and residential development fronting Surf Road. A double carport is located at the south-east corner of the site, with access to/from Surf Road. A single garage is located in the north-west corner of the site, with access to Whale Beach Road. The current buildings and a number of retaining walls are in a state of disrepair. The site does not contain any significant

landscaping or natural features.

The site experiences a fall 12.62m from the north-west corner of the site down to the south-east corner of the site, with a slope of approximately 30%. An overland flow path runs along the southern side boundary of the site (and the northern boundary of the site to the south).

Whale Beach Road is a two lane local road. The portion of the public road reserve immediately adjacent to the site is paved and currently features outdoor furniture and movable landscaping elements associated with an outdoor dining licence. A significant street tree is located within the road reserve. Time restricted parking is available along the frontage of the site, inclusive of a mail zone.

Surf Road is a two lane local road that connects Whale Beach Road to the beach car park. The public road reserve immediately adjacent to the site is nominal, and contains retaining walls associated with the existing building at the site.

The site is zoned B1 Neighbourhood Centre and is surrounded by land zoned E4 Environmental Living. With the exception of Whale Beach Surf Club (two properties to the south), the area is characterised by dwelling houses.

Map:



SITE HISTORY

On 7 February 2019, a pre-lodgement meeting was held between the applicant and Council staff. The key advice provided in the pre-lodgement notes is summarised, as follows:

"It is critical that retail premises be maintained on both the Surf Road and Whale Beach Road ground floor levels, in order to meet the definition of shop top housing. Given the very steep slope of the site, having residential dwellings on the eastern side of the development that are at or below the Whale Beach Road level, can be supported. Should a design be lodged with no retail fronting Whale Beach Road, Council would not be in a position to support that proposal..."

On 6 May 2020, Development Application DA2020/0442 was lodged with Council.

On 23 September 2020, Council requested the withdrawal of DA2020/0442 and suggested that any amendments should be presented in a new development application. The applicant did not withdraw the application.

On 2 December 2020, development application DA2020/0442 was reported to the NBLPP with a recommendation of refusal. The NBLPP endorsed the recommendation, refusing DA2020/0442 for the following reasons:

1. Pursuant to Section 79C(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 and its associated Apartment Design Guide.
2. 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 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.
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 C1.3 View Sharing of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
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 D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

Following the determination of DA2020/0442, a number of meetings were held between the applicant and Council staff to resolve outstanding issues. Council's Urban Designer provided the following feedback in relation to the amended proposal:

Following several meetings with the applicant to address varying concerns raised regarding the development the applicant has submitted revised plans. The overall design and architectural intent of the development has demonstrated a merit worthy response to the site context and locality, notwithstanding the constraints of the topographic challenges of the site.

The overall form as it reads from Whale Beach Road presents a restrained and considered architectural resolution, responding to its unique locality. Material selections demonstrating a well-

considered and limited 'natural' palette work to reduce the bulk and scale of the project to provide a holistic response to sustainable material selection representing what will be a reduced maintenance regime over time for the 'whole of life' of the building. Similarly, the architectural form (bulk and scale) response to the Surf Road frontage has somewhat reduced the impacts on the streetscape through considered reduction of elements; floor plate (balcony) geometries that serve to soften and minimise the bulk and scale when viewed from the street(s).

Generally the proposed development is well considered and represents a calculable improvement to the immediate context and broader urban enclave.

On 25 August 2021, the review application was lodged with Council. At the time of lodgement, the driveway extended further to the east of the site, encroaching within the adjacent Council reserve.

On 8 October 2021, amended plans were received to relocate the driveway to be maintained within the property boundaries.

On 11 October 2021, amended plans were received to reduce the extent of the awning over the upper floor eastern terrace.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may 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 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 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.

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 Notice of Determination was issued on 3 December 2020, the subject review application must be determined before 3 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 a reduction to the volume of excavation and increased side setbacks. The proposal is considered to remain essentially and materially the same as that previously proposed, and thus Council can be satisfied in this regard.

Furthermore, the relevant amendments are considered to address the reasons for refusal, as follows:

1. *Pursuant to Section 79C(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 and its associated Apartment Design Guide.*

Comment: The primary issues raised in the SEPP 65 discussion of the original assessment relate to character, bulk and scale, setbacks, landscaped treatment and vehicular access.

To address concerns regarding character, bulk and scale, the size of development has been reduced, with increased setbacks to both side boundaries. The Whale Beach facade has also been refined, to enhance the legibility of the "steps" in the building and to reduce the dominance of the upper floor and balcony. The height of the upper floor has also been reduced, removing the larger plant area from the Whale Beach Road facade. Council's Urban Designers are supportive of the revised scheme in this regard.

It is noted that significant weight was placed on an alleged inconsistency with the two storey height limit prescribed. However, it is important to note that the reference to two storeys both within the desired future character statement and the clause D12.1 of P21 DCP is only made with respect to dwelling houses.

Concerns regarding landscaping were tied with the concerns raised in relation to side setbacks, with comments from Council's Landscape Architect suggesting that the side setbacks and the extent of excavation within the setbacks removed the opportunity for appropriate planting, commensurate with the height and bulk of the development. The increased setbacks and the reduction to excavation along the boundaries has satisfied Council's Landscape Officer in this regard.

Vehicular access issues have also been addressed in the amended proposal, to the satisfaction of Council's Development Engineer and Traffic Engineer.

2. *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 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.*

Comment: The geotechnical report provided for DA2020/0442 was not supported by Forms 1 and 1a, as required by Council's *Geotechnical Risk Management Policy for Development in Pittwater*. These forms have now been submitted.

3. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is*

an over-development of the site.

Comment: The previous assessment found the development to be inconsistent with the desired future character statement for development within the Palm Beach Locality. As discussed in detail with regard to clause A4.12 of P21 DCP, the amended development the subject of the review application is considered to satisfactorily respond to the desired future character of the locality.

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 C1.3 View Sharing of the Pittwater 21 Development Control Plan.*

Comment: Clause C1.3 of P21 DCP was not discussed in the original assessment report. However, based on the discussion in responses to submissions, it appears that the primary concern in relation to views was any impact associated with the side elevations, which were said to be located too close to the side boundaries. As discussed with regard to clause C1.3 of P21 DCP further in this report, the proposed development does not result in any unreasonable impacts upon views, particularly with respect to the side setbacks of the proposal.

5. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.*

Comment: The form, massing and height of the development has been reduced and refined, such that the presentation of the development to both Whale Beach Road and Surf Road is acceptable. The proposal is consistent with the requirements of clause D12.1 of P21 DCP, particularly noting that the controls and outcomes for shop top housing development are markedly different from those that relate to dwelling houses.

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 D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.*

Comment: The side setbacks have been increased by 1m on both sides, to allow for adequate spatial separation between buildings and the incorporation of landscaping along the side setbacks. The proposal generally exceeds the side setbacks prescribed by this control, and as discussed with regard to clause D12.6 of P21 DCP, the outcomes of the control are achieved.

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 D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.*

Comment: Clause D12.14 of P21 DCP is not discussed in the original assessment report. It is assumed that the concerns relate to landscaping, noting that the control aims to ensure that development is appropriately softened by landscaping. As above, Council's Landscape Officer is satisfied that the amendments to the setbacks and extent of excavation within the setback areas will now facilitate/provide an appropriate landscaped treatment for the site.

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 3 December 2021.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/10/2021 to 08/11/2021 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 84 submission/s from:

Name:	Address:
Ross Clarke	9 A Morella Road WHALE BEACH NSW 2107
Annabelle Ewen	Address Unknown
Catherine Treweeke Lawyer	11A Avenue Road MOSMAN NSW 2088
Stephanie Fegan	31 Attunga Road NEWPORT NSW 2106
Leigh Brian Clapham	2 The Circle BILGOLA PLATEAU NSW 2107
Mrs Valda Jean Ewen	2 Iluka Road PALM BEACH NSW 2108
Mr Barry Garth Brown	4 Welch Street NORTH MANLY NSW 2100
Karen Esmore	7 Norma Road PALM BEACH NSW 2108
Mr Andrew Francis Goldsmith	18 Norma Road PALM BEACH NSW 2108
Benjamin James Isaac	5 Bibbenluke Avenue DUFFYS FOREST NSW 2084
Andrew Morrow	5/21 Baden Road KURRABA POINT NSW 2089
Simon Fox	13 Walter Street BONDI JUNCTION NSW 2022
Mr Glenn Raymond Moore	30 Prince Alfred Parade NEWPORT NSW 2106
Mr Jonathon Allan Isaac	72 Lagoon Street NARRABEEN NSW 2101
Alberto Cubeddu	Address Unknown
Mr Jeremy Colin Hassall	283 Whale Beach Road WHALE BEACH NSW 2107
Mr Harley Joseph Groot	12 Amelia Place NORTH NARRABEEN NSW 2101
Mr Michael Brendon Ian Moss	133 Whale Beach Road AVALON BEACH NSW 2107
Mr Bryan Christie Webster	194 Whale Beach Road WHALE BEACH NSW 2107
Sierra Chamberlain	Address Unknown
Mr Samuel David Watson	2 / 33 Elaine Avenue AVALON BEACH NSW 2107
Mrs Helen Mary Hamilton	31 Attunga Road NEWPORT NSW 2106
David Holman	20 Burrawong Road AVALON BEACH NSW 2107
Ms Monique John	1 / 53 George Street AVALON BEACH NSW 2107
Mrs Shane Lisa Daglish	20 Albert Road AVALON BEACH NSW 2107

Name:	Address:
Ms Jacqueline Anne Green	1 Coral Close AVALON BEACH NSW 2107
Ms Amanda Jane Brodie	10 Riverview Road AVALON BEACH NSW 2107
John Pantaleo	Address Unknown
Jack Robert Webster	11 / 19 Clarke Street NARRABEEN NSW 2101
Mr Brett Ashley Robinson	260 Whale Beach Road WHALE BEACH NSW 2107
Ellie Keft	4 Ironside Street WESTON NSW 2611
Brita Benjamin	169 Whale Beach Road WHALE BEACH NSW 2107
Emily Carruthers	104 Harbord Road FRESHWATER NSW 2096
Andrew Ellis	10 Walker Avenue EDGECLIFF NSW 2027
Mr Jeremy Wade Cleaver	206 Whale Beach Road WHALE BEACH NSW 2107
Mrs Maria Salome Munoz Jimenez	11 Burrawong Road AVALON BEACH NSW 2107
Mr Eric Oliver Jiminez	11 Burrawong Road AVALON BEACH NSW 2107
Morgan Webster	22 Rayner Road WHALE BEACH NSW 2107
Shane Conwell	194 Whale Beach Road WHALE BEACH NSW 2107
Clare Julia Crawford	8 Gunjulla Place AVALON BEACH NSW 2107
Richard West	87 Florida Road PALM BEACH NSW 2108
Mrs Tegan Kate Murdoch	3 / 14 Cove Avenue MANLY NSW 2095
Chris Pick	31/244 Alison Road RANDWICK NSW 2031
Mr Daniel Franklin Hofbauer	22 Gilliver Avenue VAUCLUSE NSW 2030
Mr Vien Van Luong Ms Uyen Doan Le	200 Whale Beach Road WHALE BEACH NSW 2107
Tia Collings	9 Daisy Street NORTH BALGOWLAH NSW 2093
Pauline Ryan	40/267 Miller Street NORTH SYDNEY NSW 2060
Ms Janette Ailsa Davie	887 Barrenjoey Road PALM BEACH NSW 2108
Belinda Mainprize	Address Unknown
Mr John Charles Gorman	17 Prince Edward Parade HUNTERS HILL NSW 2110
Ms John R Molyneux	Level 1 63 William Street EAST SYDNEY NSW 2010
Col Hughes	20 Eastbourne Road DARLING POINT NSW 2027
Design Collaborative Pty Ltd	Suite 304 105 Pitt Street SYDNEY NSW 2000
Mr Robyn Lee Jarvis	3 Queens Avenue VAUCLUSE NSW 2030
Ms Molly Loloma Treweeke	41 Gurney Crescent SEAFORTH NSW 2092
Mr Michael Urban Roger Crivelli	167 Whale Beach Road WHALE BEACH NSW 2107
Mrs Virginia Lizelle Stack	5 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Kalinda Anne Hawson	60 Whale Beach Road AVALON BEACH NSW 2107
Mr William Lindsay White	14 Crane Lodge Place PALM BEACH NSW 2108
Mr Jacqueline Susan Rees	1 Boanbong Road PALM BEACH NSW 2108
Lorenzo Crepaldi	Address Unknown
Mr Denis George Pierce	10 Etival Street PALM BEACH NSW 2108
Tess Lazareff	22 / 52 - 58 Howard Avenue DEE WHY NSW 2099

Name:	Address:
Mr Ian William Lothringer	112 Whale Beach Road WHALE BEACH NSW 2107
Mrs Dorothy Margaret Mary Kamaker	158 A Whale Beach Road WHALE BEACH NSW 2107
Ratu Rimartini	112 Whale Beach Road WHALE BEACH NSW 2107
Ms Kaylee Gail Falkner	610 Barrenjoey Road AVALON BEACH NSW 2107
The Palm Beach & Whale Beach Association Inc	Palm Beach/Whale Beach Areas AB Dummy For Daba Notification WARRIEWOOD NSW 2102
Mr Catherine Naito	229 Whale Beach Road WHALE BEACH NSW 2107
Mr Bill Tulloch	9 Barrabooka Street CLONTARF NSW 2093
William Chamberlain	792 Barrenjoey Road PALM BEACH NSW 2108
Mr John Warburton	106 Whale Beach Road AVALON BEACH NSW 2107
Alan Joseph Joyce	Quadrant Building 4201/129 Harrington Street THE ROCKS NSW 2000
Mr Roger Dominic Byrne	5 Robert Street FRESHWATER NSW 2096
Steven Craig Smith	233 Whale Beach Road WHALE BEACH NSW 2107
Mark Azzopardi	Address Unknown
Mr Wallace Macarthur King	41 The Point Road WOOLWICH NSW 2110
Mr Richard Hugh West	87 Florida Road PALM BEACH NSW 2108
Mr Julian Patrick Dibbs	4 Brighton Street CURL CURL NSW 2096
Mr Julian Edward Bloomfield	38 Surf Road NORTH CURL CURL NSW 2099
Mr Owen Leo Coughlan	868 Barrenjoey Road PALM BEACH NSW 2108
Hon. Sandra Christine Nori	19 Raymond Road BILGOLA PLATEAU NSW 2107
Geoff Dixon	Address Unknown
Mr Rowan William Millar	23 Ross Street NORTH CURL CURL NSW 2099

Of the submissions received, 28 are in objection to the proposal, with the remaining in support of the proposal, including the submission received from the Palm Beach and Whale Beach Residents Association.

The matters raised in the objections are considered, as follows:

- **Bulk and scale**

Submissions have been received in objection to the bulk and scale of the development, stating that the proposal should be refused as it is inconsistent with the bulk and scale of surrounding low density residential development. The proposal is undeniably larger than surrounding dwellings, however this is a consequence of the zoning of the site and the type of development proposed.

The subject site is the only property zoned B1 Neighbourhood Centre throughout the entire suburb of Whale Beach, and is one of only a handful of sites zoned for commercial purposes north of the Avalon Town Centre. The site is predominantly surrounded by single dwellings on land zoned E4 Environmental Living, which have a distinctly different bulk and scale as a consequence of the development that is permitted and the controls that are applicable to the land. The expectation that the bulk and scale of a shop top housing development on land zoned B1 Neighbourhood Centre will be the same as that of surrounding dwellings on land zoned E4

Environmental Living is somewhat unrealistic.

Rather, the aim should be to achieve a development that is compatible with surrounding development. As discussed with regard to the 'Context and neighbourhood character' and 'Built form and scale' Design Principles of SEPP 65, the proposed development is compatible with the bulk and scale of development in the surrounding locality.

- **Character**

Submissions have been received in objection to the development on the basis that it is inconsistent with the character of the low density area. As above, the character of the types of development permitted on the site are innately different from what is permitted on surrounding low-density residential land, and as such, the expectation for any development on the site to be consistent with the character of surrounding dwelling houses is considered to be unreasonable.

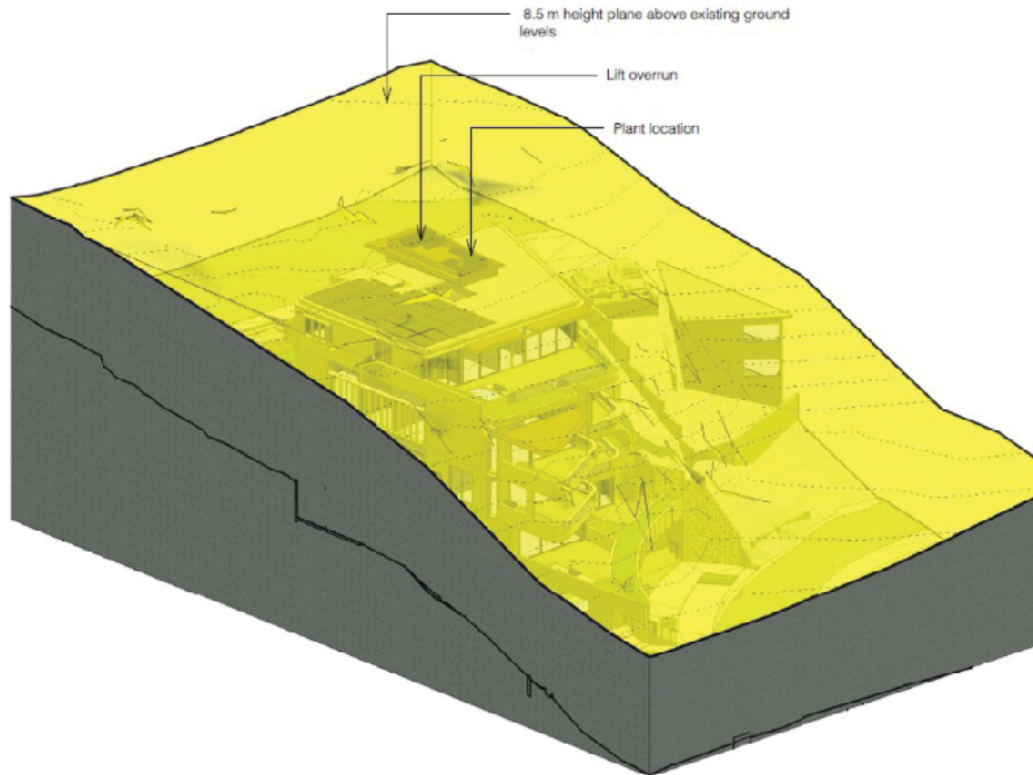
However, that does not mean that a development should not respond to the desired future character statement. As discussed with regard to the desired future character statement in clause A4.12 of P21 DCP, the proposal is considered to appropriately respond to the desired future character for the locality, in light of the zoning of the land.

- **Building height**

Submissions have been received in objection to the height of the building, specifically in relation to impacts upon views. As discussed separately, the proposal will not result in any unreasonable impacts upon existing views.

Two submissions have also been received challenging whether the height of the building complies with the 8.5m height limit. When the roof plan is superimposed onto the detailed survey, the consent authority can be satisfied that no part of the upper roof form (at RL26.45m AHD) is above the 8.5m height plane (ie: no part of the roof form overlaps with a spot height or contour of RL17.95m ADH or less).

There is a natural depression along the southern side boundary that generally aligns with the overland flow path. At the time of lodgement, the upper level awning projected slightly over this area, resulting in a minor non-compliance with the height plane. To ensure that the development is maintained below the 8.5m height limit, the awning has been pulled away from the southern side boundary and the natural occurring depression. The awning is now maintained within the footprint of the existing building, and the application has been supported by an interpolated height blanket based on survey data that confirms compliance in this regard.



- **View loss**

Submissions have been received from adjacent and nearby property owners raising concerns in relation to the potential loss of views arising from the proposed development. The impacts upon existing views have been assessed in accordance with the provisions of clause C1.3 of P21 DCP and the View Sharing planning principal developed by the NSW Land and Environment Court. The proposal does not result in any unreasonable impacts upon existing views, and in some instances, views may be somewhat improved.
- **Visual impact**

Submissions have been received from and on behalf of the two immediately adjoining property owners raising concern with regard to the visual impact of the proposal. The height of the proposed development is not dissimilar to the existing structure on the site, yet the bulk and scale is considerably reduced by virtue of the high degree of modulation, increased side setbacks and enhanced landscaping. The side facades feature varied materials and finishes to further reduce the apparent size/scale of the proposal. The proposal is not considered to result in an unacceptable visual impact as seen from adjoining properties.
- **Visual privacy**

Concern has been raised by and on behalf of the two immediately adjoining property owners in relation to visual privacy. The proposal currently includes balconies and windows that are located in close proximity to the side boundaries that provide opportunity to overlook the adjoining properties. As discussed with regard to clause C1.5 of P21 DCP, it is considered that conditions of consent can address areas of concern. Subject to these conditions, the proposal will result in an acceptable privacy outcome between neighbouring properties.
- **Acoustic privacy**

Submissions have been received in objection to the noise associated with the on-going use of the proposed development, including garbage collection, plant equipment, outdoor dining, live music, and potential use of the premises for functions.

Residential waste will be collected by Council contractors at the same time as surrounding residential development and is not considered to present an unreasonable nuisance to adjoining properties. Commercial waste is to be managed separately on the site. Should the application be approved, conditions of consent are recommended to require a Plan of Management for the site, inclusive of a requirement for commercial waste to be collected during the day after 7am and before 7pm.

Council's Health Officer supports the conclusions of the Acoustic Report that confirm that the noise levels associated with proposed plant equipment and the proposed retail tenancies, including outdoor dining areas, are acceptable. Further conditions of consent are recommended to ensure compliance with the recommendations of the Acoustic Report, including the following limitations:

- No background music in the ground floor retail space or the associated outdoor dining area.
- The capacity of the ground floor premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.
- Trading hours are limited to 7am to 10pm, 7 days.

Further submissions were received from the property owners of the dwelling to the south, raising concern in relation to the noise associated with the use of the sunken terraces along the southern side boundary. The areas in question are landscaped planters, and are not proposed or designed for use as terraces or the like.

- **Trading hours**

Submissions have been received which question the intended trading hours of the retail premises proposed. The application seeks consent for the retail premises to trade between being 7am to 10pm, daily. As above, these hours are supported by Council's Health Officer.

- **Traffic**

Objection has been raised in regards to the additional traffic generated by the proposed development and the impact upon the existing street network, both during construction and over the life of the development. Particular concern is raised in relation to the Christmas holiday period, when the beach is at its busiest. The traffic generation associated with the proposed development is not dissimilar to that of the existing building, and will not result in any unreasonable impacts upon the local road network.

Given the weight capacity of the surrounding local road network and the access constraints associated with the site, a condition of consent is recommended to require the production of a Construction Traffic Management Plan to be adhered to during construction.

- **Parking**

The proposed retail parking shortfall is a key issue highlighted in the objections received. With 3 retail spaces and one accessible visitor space (which may be shared with the retail component), the proposal is non-compliant with the provisions of clause B6.3 of P21 DCP that prescribes the need for 10 retail parking spaces based on the area of GFA proposed.

The basement has been designed to maximise the amount of on-site spaces whilst also providing sufficient setbacks to neighbouring properties. Whilst previous schemes incorporated car-stackers to increase the amount of parking spaces within the confined area, this resulted in an increase to excavation to a degree that was not supported by Council. Further, car stackers cannot be relied upon for retail parking. As such, it is considered that the proposal accommodates as many parking spaces as is reasonably practical within the basement level.

Whilst the retail floor space could be reduced to lessen the demand for retail car parking, the amount of retail floor space is considered appropriate for the site and the incorporation of retail floor space presenting to Surf Road is required to ensure consistency with the shop top housing definition, and in turn, the permissibility of the development. The retention of retail to Whale Beach Road is also considered to be essential with regard to the context of the site.

The allocation of parking could be redistributed to reduce the extent of retail parking non-compliance, with only one space for each unit. However, the single lane driveway to Surf Road is only supported by Council's Traffic Engineer on the basis that there is a comparably low amount of public vehicles entering the site. The change to the allocation of parking would necessitate the widening of the proposed driveway, which would remove the on-street loading area and erode the Surf Road ground floor public domain.

The proposal is considered to be the most appropriate solution to the myriad of challenges presented on this site. For the vast majority of the year, parking within the locality is readily available. It is appreciated that the area faces parking stress during the summer holidays, however, at that time, the retail premises will serve those already in the area. The demand for parking is not dissimilar to that associated with the existing building, which provides no retail on-site parking. Overall, the proposal should not result in any unreasonable impacts upon parking supply within the locality.

- **Pedestrian safety**

Concern has been raised in regards to pedestrian safety along Surf Road. The proposed development includes public domain upgrades including a footpath to connect to the public car park. Subject to conditions requiring the installation and maintenance of a pedestrian warning system, the proposal is not considered to result in an unsafe environment for pedestrians.

- **Extent of excavation**

Objections have been received in relation to the extent of excavation proposed. The volume of excavation is significant, however, not unreasonable in the circumstances. The extent of excavation is largely derived by the size and layout of the basement car park, which has been appropriately minimised, specifically in comparison to previous schemes for the site.

- **Impact to trees**

Submissions have been received from the adjoining property owner at 229 Whale Beach Road, raising concern about potential impacts to an existing mature Norfolk Island Hibiscus (an exempt species) located centrally along the common boundary with the site. The existing tree has excellent screening properties and acts as a buffer between the two sites. Whilst it is appreciated that the Arborist Report indicates that the proposed works may result in a decline in the health of the tree, the report also acknowledges that this particular species is robust and adaptable and is likely to tolerate the level of impact proposed. This position is supported by Council's Landscape Officer.

The submissions also note that the commentary in the Arborist Report has changed between the current report and the report lodged with the previous application. This is largely due to the change to the level of excavation proposed in the vicinity of the tree, noting that the side setback

of the lower levels has been increased from 1.3m to 2.5m, moving further away from the tree in question.

Whether the Arborist Report considers the works associated with the overland flow path has also been questioned in the submissions. Page 9 of the Arborist Report includes specific relating to the construction of any footings associated with overland flow path. Should the application be approved, conditions of consent are recommended to ensure that the works undertaken in accordance with the recommendations of the Arborist Report, under the supervision of the Project Arborist.

- **Overshadowing**

The submissions from the adjoining property to the south at 229 Whale Beach Road raise concern in relation to increased overshadowing associated with the proposed development. The proposed development will result in additional overshadowing of the adjacent property throughout the year. However, sunlight will be retained to the principal area of private open space, being the deck area facing Whale Beach, for 3 hours in midwinter and as such, the proposal is consistent with the provisions of clause C1.4 of P21 DCP.

The submissions specifically raise objection to the loss of afternoon sunlight to the front of the property. The portion of the proposed development attributing to this impact is setback 4.6m from the southern side property boundary and is maintained below the height limit. Noting that the front yard is not the principal area of private open space and noting the compliance of the built form, the resultant impact is considered to be acceptable.

- **Proximity of substation**

The submissions from the adjoining property owners of 229 Whale Beach Road also raise concerns in relation to the proximity of the proposed substation to the common boundary. The proposed substation is located 1.6m from the common side boundary and 12m from the adjacent dwelling. The substation is to be screened by a concrete wall and a timber fence, and the proposed design and location is supported by Ausgrid.

- **Roof Finish**

A submission has been received raising concern with the proposed membrane roof finish, with concerns about the colour of a membrane roof and any potential glare. A condition of consent is recommended to ensure that the roof membrane is a dark and earthy colour.

Subject to the imposition of conditions of consent, none of the matters raised in objections warrant the refusal of the proposed development.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	No objection, with conditions. <i>Review of the proposed changes to the development reveal no significant difference in outcomes for Environmental Health's areas of focus. We have no objections, subject to a condition.</i>
Environmental Health (Food Premises, Skin Pen.)	No objection, with conditions. <i>Review of the proposed changes to the development reveal no significant difference in outcomes for food premises. We have no</i>

Internal Referral Body	Comments
	<i>objections, subject to the application of a number of conditions similar to the original proposal.</i>
Landscape Officer	No objection, with conditions. <i>Council's Landscape Referral is assessed against State Environmental Planning Policy No. 65 Design Quality for Residential Apartment Development, Pittwater LEP Zone B1 Neighbourhood Centre, and the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation; C2.1 Landscaping; C2.20 Public Road Reserve - Landscaping and Infrastructure; and D12 Palm Beach Locality, including D12.1 Character as viewed from a public place.</i> <i>The SEPP 65 Design quality principles included in Schedule 1 that are relevant to the landscape outcomes of the proposal include: Principle 1: Context and neighbourhood character; Principle 4: Sustainability; and Principle 5: Landscape. In addition, under SEPP 65, the following provisions are to be considered: 3E: Deep Soil Zones; 3D: Communal Open Space; and 3F: Visual Privacy.</i> <i>The Review of Determination incorporates amended Landscape Plans by Trish Dobson and amended Arborist's Report by Urban Forestry Australia.</i> <i>Review of the amendments proposed indicate that existing street trees are to be retained and improved landscape outcomes are provided to address the planning controls.</i> <i>Some landscape works are included in the proposed works within the road reserves. Whilst not objected to in principle, approval of such works will be subject to a separate application under the Roads Act. Conditions have been included to address this aspect of the proposal.</i> <i>Subject to specific conditions regarding tree protection and completion and ongoing maintenance of landscape works, the proposal is considered satisfactory in consideration of the relevant controls.</i>
NECC (Coast and Catchments)	No objection, no conditions. <i>The development proposal is for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision at 231 Whale Beach Road, Whale Beach.</i> <u><i>Coastal Management Act 2016 and State Environmental Planning Policy (Coastal Management) 2018</i></u> <i>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 subject site is included on the 'Coastal Use Area' map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and the provisions of Clauses 14 and 15 of the CM SEPP are relevant to the proposed development.</i>

Internal Referral Body	Comments
	<i>While the subject site is not included on the Pittwater Coastal Risk Planning Map in Pittwater LEP 2014, as a consequence of the relatively low crest level (about 7.2m AHD) of the vehicle access ramp to the proposed basement carpark and the direction the driveway faces, there is potential for coastal hazards (in particular coastal inundation) to impact the proposed development over its design life. Coastal hazards may therefore constitute a risk to life and property if the basement carpark is inundated as a result of wave run-up during extreme, but rare, ocean storm events. In this regard, clause 15 of the CM SEPP states that:</i> 15 Development in coastal zone generally—development not to increase risk of coastal hazards <i>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.</i> <i>In order for Council to assess the proposed development in accordance with the requirements of clause 15 of the CM SEPP, a coastal risk management report should be lodged in support of the application. For guidance, the Coastline Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 DCP) outlines the requirements of a coastal risk management report.</i> <i>The report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.</i> <i>The additional Coastal Engineering Advice has been received and contains the necessary information. The proposal is supported without conditions.</i>
NECC (Development Engineering)	No objection, with conditions. <u>Vehicular Access</u> <i>The proposal includes the provision of a new driveway crossing off Surf Rd to gain access to the basement parking area. The driveway has been modified to ensure no portion of the driveway burdens Council's property at Lot 10 DP 11067. The width of the modified driveway limits vehicular access to one a single lane. This issue must be addressed by Council's Traffic Engineers as it is contrary to the original proposal. The revised driveway grades provided by the applicant's Traffic consultant including swept paths are considered acceptable.</i> <u>Civil Works in Road Reserve</u> <i>The civil works in the public domain have been reviewed by Council's Landscape Architect and Traffic Team and are acceptable subject to conditions. The proposed stormwater diversion and overland flow path are also acceptable subject to conditions.</i>

Internal Referral Body	Comments
	<u>Geotechnical Report</u> The Geotechnical report addresses the relevant DCP controls. Development Engineering support the application, subject to conditions as recommended.
NECC (Stormwater and Floodplain Engineering – Flood risk)	No objection, no conditions. The site is located outside the 1% AEP flood extent and as such, the provisions of clause 5.21 of PLEP 2014 and clause B3.11 of P21 DCP are not applicable in this instance. The development engineers have noted that the design of the trunk drainage line and overland flow path is acceptable.
Parks, reserves, beaches, foreshore	No objection, with conditions. This application is for the review of a previously determined Development Application. Proposed works include the demolition of existing site structures, and the construction of a new shop top housing development, alongside associated car parking, landscaping and strata subdivision. The property adjoins Whale Beach Reserve to the East, which is located down slope of proposed works. All works adjoining public land and foreshore must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries, and prevented from entering across the boundary and into the foreshore area and public reserve. No encroachments are permitted on public land and all works shall be confined within the legal boundaries of the site. It is noted that the original Architectural Plans demonstrated new driveway access was to utilise public reserve, however this has since been amended and removed. For this reason, no major concerns are raised with the amended Architectural Plans, and no encroachments on public land is anticipated. It is further noted that proposed works are inclusive of a four new car spaces and adjacent pathway on the southern side of surf road, with a new pathway linking to Whale Beach Road on the northern side of Surf Road. Although these works are subject to a Section 138 Roads Act application and are to be assessed by Councils Road Assets and Development Engineering Teams, no major concern is raised from a Parks perspective. It is however recommended that the new pathway on the northern side of the Surf Road be extended further east to the intersection of Surf Road and The Strand, providing better amenity and access for residents of Whale Beach Road. Parks Referral raises no objections to the proposal, subject to the following conditions.
Road Reserve	No objection, with conditions.

Internal Referral Body	Comments
	<i>There is some impact on existing road assets however there is insufficient details to fully assess.</i> <i>DA Level 3 Plan - Neighbour View Study (DA63) - shows indented parking bays onroad to the east of the development.</i> <i>The existing longitudinal grade of Surf Road between the existing driveway crossing and the car park is inconsistent and will need to be resolved as part of resolving the vehicle access and roadworks that will need to form part of the required s138 Roads Act application to Development Engineering.</i> <i>The conveyance for stormwater in the road gutter to the existing drainage system will need to be detailed, as well as in the vicinity of the loading bay.</i> <i>Plan Site Analysis - Proposed - DA24 - seems to suggest additional works to Surf Road although no details are provided. Council should be supportive of these works if they are being considered by the applicant.</i> <i>The blade wall on the western side must ensure 1.5m clearance from the kerb for future pedestrian access</i> <i>Further consideration by Development Engineering in relation to requiring a Road Act application for infrastructure works (paving, retaining, driveways, and other improvements within the roadway.)</i> <i>Road Assets have no specific requirements.</i> <i>Development Engineering to review and apply requirement for s138 Road Act Application for all civil roadworks and landscaping within the public road reserve.</i> <u>Planner comment:</u> The concerns relating to a lack of information have been resolved through the imposition of conditions of consent.
Strategic and Place Planning (Urban Design)	No objection, with conditions. <i>The proposal can be supported provided the following issues are addressed:</i> <i>Apartment Design Guide - Objective 4B-1 - Light wells are not the primary air source for habitable rooms</i> <i>The light wells where bedroom windows are orientated in apartment 1 and 2 should be cut right through to open up to the eastern boundary.</i>
Traffic Engineer	No objection, with conditions. <i>The application has been reviewed on parking and transport grounds. The DCP parking requirements indicate that the proposal should provide parking based on the following allocated basis:</i> <i>Residential - 2 spaces per apartment - 10 spaces</i> <i>Residential - 1 space per 3 apartments rounded up - 2 spaces</i>

Internal Referral Body	Comments
	<i>Retail - 1 space per 30 m² (299m² total) - 10 spaces.</i> <i>The proposal provides 10 allocated parking spaces for the residential component, 3 retail and 1 visitor/accessible space and relies on the adjoining public parking availability, and the customer base being local to the property.</i> <i>The parking deficiency is partly made up with the formalisation of the on-street parking directly to the east of the subject site in Surf Road, and the parking provided within the beach car park area further east of the site.</i> <i>The driveway access will need to have signals installed to manage the priority for access to the carpark.</i> <i>The proposal is supported subject to conditions provided.</i>
Waste Officer	No objection, with conditions.

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 *State Environmental Planning Policy 55 - Remediation of Land* (**SEPP 55**) requires the consent authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial purposes for a significant period of time, with no prior use that would indicate any potential for land contamination. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the continued residential and commercial land use proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a three storey shop top housing development, comprising 5 dwellings, and as such, the provisions of SEPP 65 apply to this development.

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: With the exception of Whale Beach Surf Club, which comprises a function centre at the upper levels of the building, the site is surrounded by dwelling houses on land zoned E4 Environmental Living. The age, character and scale of the dwelling houses varies considerably, with original single storey beach houses interspersed between more recent dwelling multi-level dwellings. The form and scale of the dwellings is also influenced by the steep sloping topography of the area, with dwellings that step down the slope of the land, with multiple levels presenting towards the ocean/beach views. With this in mind, whilst the desired character statement aims to achieve dwellings that a limited to two storeys, a number of nearby and surrounding dwellings comprise 3-4 levels that are visible from the public domain.

Irrespective of the scale of development, there is a distinct landscaped character to the area which has been preserved and enhanced at the expense of available views. This is somewhat unique and is considered to be a defining feature of the locality.

The proposed development is limited to a height of three storeys in any one place, as measured above existing ground level, and has been stepped to follow the fall of the land, consistent with surrounding dwellings. The proposal provides an appropriate landscaped outcome that adequately balances the landscaped character of the area with the development outcomes anticipated on the B1 Neighbourhood Centre zoned site.

- **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 height of the development is maintained under the 8.5m height plane, which is the height standard that applies to all sites within the suburb of Whale Beach. However, it is noted that PLEP 2014 provides a variable height limit of 10m for dwelling houses on steeply sloping sites, and as such, it can be said that the proposal is equal to or less than the permissible height of existing and future development in the locality.

The proposed development also provides setbacks greater than the minimum prescribed by P21 DCP for dwelling houses and shop top housing development. This not only allows for landscaping to be incorporated along the side setbacks but ensures that the width of the development presenting to the public domain is reasonably minimised.

Whilst 5 levels present to Whale Beach, the development will not read as a five storey building. The landscaped podium above the Ground Floor acts to break down the massing of the development and provides a clear landscape buffer between the retail level and the residential levels above. Furthermore, the upper level is sufficiently set back, with no more than 3 storeys above ground in any one plane.

The proposed development is a skilful architectural design solution for the constrained site, that is an appropriate response to the form and massing of nearby and surrounding development.

- **Principle 3: Density**

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

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

Comment: With 5 dwellings, the proposed development is compliant with the maximum density of 5.6 dwellings (1 per 150m² of site area) prescribed by clause 5.4A of PLEP 2014. The proposed dwellings will have a high level of internal amenity and will not result in any unreasonable impacts upon surrounding properties or the natural environment. The proposed massing is consistent with that anticipated on the site, and overall, the density of the proposed development is considered to be appropriate for 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 performance exceeds minimum industry standards.

- **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 meets the minimum landscaped area and deep soil requirements of the ADG and P21 DCP. The proposal will have the appearance of being integrated with the landform and landscape, consistent with surrounding development and the desired future character of the Palm Beach locality. The proposed development is considered to achieve an

appropriate landscaped solution that ensures that the built form is softened by landscaping, as required by Clause D12.1 (Character as viewed from a public place) of P21 DCP.

- **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 P21DCP, the proposed development performs well against the relevant design criteria, guidance and amenity controls. The proposal will achieve a high level of amenity for future occupants of the development, without unreasonably impacting upon the amenity of adjoining and nearby residences.

- **Principle 7: Safety**

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

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

Comment: The proposed development maximises opportunities for passive surveillance of the public domain. The proposal provides an appropriate interface with the public domain, and adequate delineation between the residential and commercial components of the development can be achieved by controlling access to stairs and lifts.

- **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: The application provides a reasonable mix of apartment sizes, appropriate to the Whale Beach housing market.

- **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 proposed development is well articulated, with a material palette that is

appropriate for the development's beach-side setting.

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.	-	Y	Y
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.	Y	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	Y	Y
	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	3H-1	Vehicle access points are designed and located to	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
access		achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.			
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	-	-
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	-	-
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-
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.	Y	Y	Y
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y
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	Y	Y
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	Y	Y	Y
		Apartment Type			
		Studio			
		1 Bedroom			
		Min. internal area			
		35m ²			
		50m ²			

ADG reference	Subclause	Design Criteria		DC	DG	O															
		2 Bedroom	70m ²																		
		3 Bedroom	90m ²																		
		The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.																			
			Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Y	Y	Y															
	4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y																
		In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y	Y	Y																
	4D-3	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobes).	Y	Y	Y																
		Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y																
		Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	N	Y	Y																
		The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y																
4E Private open space and balconies	4E-1	All apartments are required to have primary balconies as follows:		Y	Y	Y															
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m²</td><td>2.4m</td></tr></table>					Apartment Type	Min. area	Min. depth	Studio	4m ²	-	1 Bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom	12m ²	2.4m
		Apartment Type	Min. area				Min. depth														
		Studio	4m ²				-														
		1 Bedroom	8m ²				2m														
		2 Bedroom	10m ²				2m														
		3 Bedroom	12m ²				2.4m														
		For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m ² .																			
	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.	-	Y	Y																
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																

ADG reference	Subclause	Design Criteria	DC	DG	O										
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:	Y	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. area</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 Bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3 Bedroom</td><td>10m³</td></tr></table>	Apartment Type	Min. area	Studio	4m³	1 Bedroom	6m³	2 Bedroom	8m³	3 Bedroom	10m³			
		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.															
4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	-	Y	Y											
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y										
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	Y	Y										
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y										
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y										
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.	-	Y	Y										
	4M-2	Building functions are expressed by the facade.	-	Y	Y										
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y										
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y										
	4N-3	Roof design incorporates sustainability features.	-	Y	Y										
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y										
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y										
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y										
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y										
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y										

ADG reference	Subclause	Design Criteria	DC	DG	O
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	Y	Y
	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 site 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

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

The proposed development does not provide any areas of communal open space, and as such,

is inconsistent with the design criteria of Objective 3D-1 of the ADG that requires an area of communal open space of at least 211m², 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. The absence of an areas of communal open space is justified in this instance as all units comprise areas of private open space of high amenity, that exceed the minimum requirements prescribed by Objective 4E-1 of the ADG. Furthermore, the site is advantageously located in close proximity to Whale Beach with ample space for outdoor recreation.

- **Visual privacy (3F-1)**

With varied setbacks ranging from Nil to 4.6m on the northern side and 2.5m to 4.6m on the southern side, the proposal is non-compliant with Objective 3F-1 of the ADG that prescribes a 6m minimum setback between habitable rooms/balconies and side boundaries, with recommendations for increased setbacks up to 9m where the site adjoins a different zone that permits lower density residential development.

With E4 zoned land to both sides of the subject site, and a minimum width of 19.8m, the 9m minimum side setback prescribed by this objective would essentially sterilise the site. Even at 6m, the developable area of the subject site is significantly diminished.

The proposed development incorporates varied setbacks to respond to the circumstances of the site. The lesser setbacks (ranging from Nil - 2.5m are proposed at the Basement and Ground Level, with soil to be reintroduced such that the lesser setbacks are not perceived from the public domain. As the development protrudes above ground, the setbacks increase to 4.0m at Level 1, 2 and 3. The Level 1, 2 and 3 side setbacks exceed the 3m minimum requirement of P21 DCP, and provide sufficient spatial separation to the adjoining properties in light of the height and density proposed. The setbacks also allow for increased landscaping along the side boundaries to reduce the visual impact of development and minimise impacts upon the adjoining dwellings. The Level 5 setback is increased further to 4.6m, to reduce the apparent size of the development as seen from the public domain.

Objective 3F-1 aims to ensure that adequate separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. Subject to conditions of consent (as discussed with regard to clause C1.5 Visual Privacy of P21 DCP), the proposed development will comprise adequate screening along the side setbacks, comprising both fixed screens and landscaping, to ensure that reasonable levels of privacy are achieved between properties. The proposal is not overly reliant upon the adjoining sites to achieve the necessary separation, with the proposed above ground setbacks approximately equal to that of the adjoining dwellings to achieve 9m (minimum) spatial separation distances between buildings on both sides.

- **Ceiling heights (4C-1)**

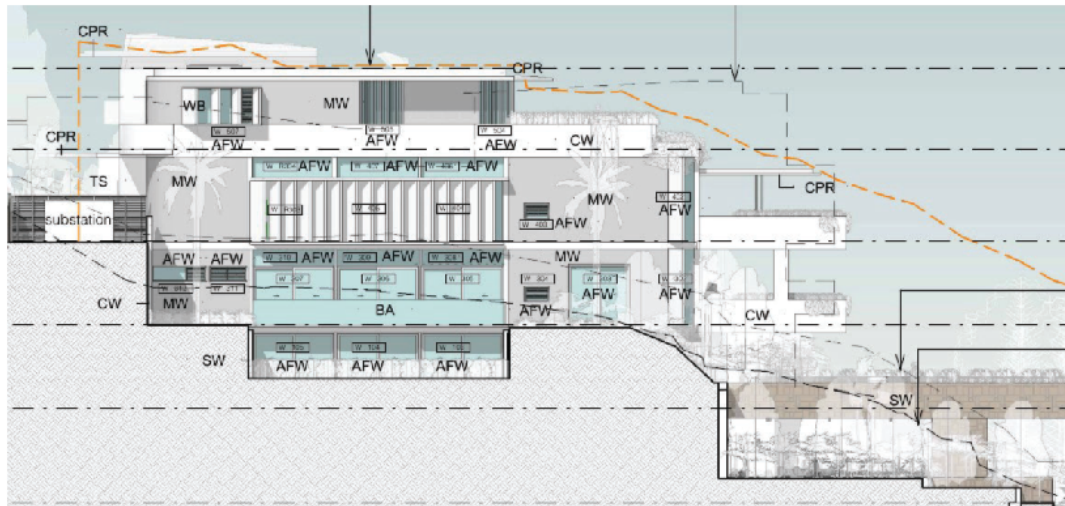
The Level 4 retail tenancies have a ceiling height of 3.2m, just shy of the 3.3m minimum ceiling height prescribed by Objective 4C-1 of the ADG. The minor non-compliance is supportable in circumstances where the area of the retail spaces is limited, and noting the large expanse of glass and views available from within the spaces proposed. The retail areas will have an abundance of natural light, with a high internal amenity for occupants and visitors alike.

Whilst the floor-to-floor measurements indicate adequate ceiling heights for the residential levels, when measured, the ceilings heights depicted in the Sections appear to be approximately 2.6m, resulting in slight non-compliance with the 2.7m minimum ceiling height prescribed by this objective. It is assumed that this is a scaling issue with the plans, and there is no reason why 2.7m ceiling heights cannot be achieved. This has been confirmed by

the Architect, who is happy for the matter to be the subject of a condition, if necessary.

- **Daylight & Natural ventilation (4A-2 and 4B-1)**

The proposed development includes rooms that are excavated into the slope of the land. At worst, the FFL of Bedroom 3 in Apartment 1 is up to 4.7m below existing ground level, as shown in the Southern Elevation, below.



Southern Elevation - The lower black dashed line depicts

natural ground,

with the boundary fence depicted by the light grey dashed

line above.

The areas of excavation beyond the proposed rooms are 2.9m* wide, comprise landscaping, and are designed to provide natural light and ventilation to these rooms. Whilst by no means ideal, the design essentially mimics an enclosed courtyard design or a light well, both of which are anticipated by the ADG and seen throughout shop top housing developments and residential flat buildings in the wider local government area. The proposed design solution is supported in these circumstances, noting that:

- The size of the courtyard space is sufficient (2.9m* x 9.8m) and increases at the level above,
- In addition to the 2.9m* width of the courtyard, the boundary is located a further 1.1m away, resulting in a 4m setback from the fence line,
- The primary orientation of each of the units is to the east, and the units are not single aspect apartments,
- The windows extend across the full width of each room (3.2m wide glazed panels),
- Each room has a minimum ceiling height of 2.7m high, with 2m high windows,
- The amenity of the unit is otherwise high, with excellent solar access and magnificent views of Whale Beach.

The image below was provided by the Architect to demonstrate the internal amenity of the proposed bedrooms.



Council's Urban Designer has suggested that the amenity of these spaces can be improved by extending the level of excavation all the way across to the east of the site, as opposed to reintroducing natural ground level to the east of the rooms in question. This will mean that the excavation is open to the east, with only two enclosing walls as opposed to three. A condition of consent is recommended in this regard.

*Note: The width of the excavated terrace is increased to 2.9m as a result of conditions recommended by Council's Development Engineer to reduce the width of the overland flow path.

Whilst minor elements of the proposal are inconsistent with the minimum requirements of the ADG, the proposal is considered to be a skillful design solution for the constrained site. In accordance with clause 30 of SEPP 65, the consent authority can be satisfied that the proposal has had adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

SEPP (Infrastructure) 2007

The application was referred to Ausgrid in accordance with the provisions of clause 45 of *State Environmental Planning Policy (Infrastructure)* (**SEPP Infrastructure**). Ausgrid provided a response confirming that there are no objection to the proposed development, with conditions recommended with regard to safe work methods.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Use Area under the provisions of *State Environmental Planning Policy (Coastal Management) 2018* (**CM SEPP**), and the provisions of this policy are

applicable in relation to the proposal. Following detailed assessment of the proposal development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development, and
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 14 and 15 of this policy.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.5m	-	Yes
Density	1 per 150m ² 5.63 dwellings	1 per 168.8m ² 5 dwellings	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

7.2 Earthworks

The matters prescribed by clause 7.2 of PLEP 2014 are considered, as follows:

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

Comment: The proposed development proposes works to existing stormwater infrastructure and overland flow paths, however the works will provide an improved outcome that will not detrimentally effect drainage patterns or soil stability.

- b. *the effect of the proposed development on the likely future use or redevelopment of the land*

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

- c. *the quality of the fill or the soil to be excavated, or both*

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

- d. *the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The impacts upon the amenity of adjoining properties associated with the proposed earthworks are limited to the short-term impacts during construction. Should the application be approved, conditions of consent are recommended 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, conditions of consent are recommended to require any fill to be of a suitable quality.

- f. *the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment: The proposed development will not result in any adverse impacts upon Whale Beach. Should the application be approved, conditions of consent are recommended to ensure that the waterway is protected during construction and over the life of the development.

- 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, the consent authority can be satisfied that the matters listed in clause 7.2 of PLEP 2014 have been considered.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Retail Percentage	25% of GFA (338.5m ²)	332.4m ² or 24.5%	6.15m ² or 1.8%	No
Front building line	Whale Beach Rd: 3.5m	3.5m	-	Yes
	Surf Rd: 3.5m	Nil	3.5m or 100%	No
Side building line	North: 3.0m	Basement: Nil - 4.5m Ground: 1.2m - 4.5m Levels 1-3: 4.0m Level 4: 4.6m	3.0m or 100% 1.8m or 60% - -	No No Yes Yes
	South: 3.0m	Basement: 2.5m Ground: 2.5m Levels 1-3: 4.0m Level 4: 4.6m	0.5m or 16% 0.5m or 16% - -	No No Yes Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	No	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	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	N/A	N/A
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	No	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	No	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The site is located within the Palm Beach Locality, as defined and identified in clause A4.12 of P21 DCP. The proposed development is considered with respect to the desired future character statement for the Palm Beach Locality, as follows:

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

Comment: The proposed development is located on land zoned B1 Neighbourhood Centre and dwelling houses are prohibited on the land. Whilst reference to a two storey character is important to understand the dominant form and massing of surrounding development, the two storey height restriction does not apply to the proposed development. The size and scale of the proposed development does not detract from the locality's ability to remain a primarily low density residential area. As a result of the zoning of the land, the subject site is the exception to this part of the character statement.

Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Comment: The location of medium density development is set by the zoning of the land, and the proposed shop top housing development is permissible with consent on the site. The proposal includes commercial/retail floor space that will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Comment: The site has appropriate access to necessary infrastructure, with upgrades proposed to stormwater infrastructure and the public domain.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.

Comment: The proposed development will be maintained below the height of existing and proposed canopy trees. Whilst the bulk and scale of the development is greater than that of surrounding dwelling houses, it has been reasonably minimised in light of the type of development that is proposed and that which is anticipated on the site. The height of the upper roof form is generally consistent with that of surrounding development, and contributes to the horizontal massing of existing built form, which is generally a consequence of the subdivision pattern and the way in which buildings are sited along the roadways. The proposed development has a high level of facade modulation, and the proposed colours and materials will harmonise with the beach-side setting.

Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Comment: The exposed built form is appropriately stepped to follow the slope of the land. Whilst the

proposal involves significant excavation, this is somewhat unavoidable due to the design of the basement and the provision of retail floor space to both road frontages. The development has been supported by certification from appropriately qualified Geotechnical and Coastal Engineers to ensure that the development is designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

Comment: Whilst not within a nominated 'centre', the site is within the B1 Neighbourhood Centre zone. The proposal is a high quality architectural response that incorporates materials and landscaping that is appropriate for a site in such close proximity to the beach.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Comment: As above, the proposal includes a significant volume of excavation. However, this is not unreasonable in light of the zoning of the land and the type of development proposed. The proposal provides a landscaped outcome that is commensurate with surrounding and nearby development.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Comment: The development proposes upgrades to the public domain, including the footpaths along each street frontage. The proposed development will not result in any unreasonable impacts upon vehicular, pedestrian or cycle access.

As such, the proposed development is consistent with the desired future character of the Palm Beach Locality.

B2.6 Dwelling Density and Subdivision - Shop Top Housing

Clause B2.6 of P21 DCP requires a minimum of 338.5m² or 25% of the gross floor area of the building to be retail/commercial floor space. The proposal is just shy of this requirement, with 332.4m² (24.5%) of retail floor space proposed. The proposed non-compliance (6.15m² or 1.8%) is relatively minor and does not detract from consistency with the outcomes of the control, as follows:

- *Achieve the desired future character of the Locality.*

Comment: The minor area of non-compliance does not detract from consistency with the desired character of the locality.

- *The density and scale of development reflects the infrastructure capability of the area.*

Comment: The proposed development includes upgrades to existing public infrastructure where required (stormwater and public domain works) such that the resultant local infrastructure will accommodate the density and scale of the development.

- *Design opportunities and site layout efficiencies are improved through amalgamation of allotments.*

Comment: Not applicable - The site cannot amalgamate with adjacent lots as it is the only property with the B1 Neighbourhood Centre zoning.

- *The development does not adversely impact upon adjoining residential development.*

Comment: Neither the minor shortfall in retail floor space or the minor exceedance in residential floor space will result in adverse impacts upon adjoining residential development.

- *An appropriate mix of residential and commercial development is provided, ensuring the functionality of commercial centres.*

Comment: The proposed development provides an appropriate mix of retail and residential floor space. In particular, the area will benefit from the incorporation of retail premises presenting to both street frontages.

- *Meet the economic and employment needs of Pittwater Community.*

Comment: The proposed development provides three retail tenancies, with an increase in commercial floor space compared to the current development.

B6.3 Off-Street Vehicle Parking Requirements

The number of parking spaces proposed is inconsistent with the minimum requirements of this clause, as follows:

Type	Required	Proposed	+/-
Residential	10	10	0
Visitor	2	1	-1
Retail	10	3	-7
Total	22	14	-8

The proposed parking shortfall is supportable on merit, as the proposal is consistent with the outcomes of this clause, as follows:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

Comment: The number of on-site parking spaces is considered to be adequate in light of the constraints of the site and noting the proximity of the development to the large public car park along the beach front. The proposed development provides an increase in parking compared to the existing site circumstances, which is also complemented by on-street time restricted parking along the Whale Beach Road frontage.

The application was supported by a Traffic Assessment that identifies the availability of parking within the vicinity of the site, which is supported by Council's Traffic Engineer.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*

Comment: The proposed basement car park is a functional design response. Should the application be approved, conditions of consent are recommended to require the installation of a system that alerts pedestrians when a vehicle is leaving the site to ensure pedestrian safety.

- *Safe and convenient parking.*

Comment: The proposed basement provides secure parking for residents and visitors to the development. On-street parking along Whale Beach Road or within the public beach car park is within convenient walking distance from the site.

C1.3 View Sharing

and C2.5 View sharing of P21 DCP

Beach and ocean views are currently enjoyed over the subject site by neighbouring and nearby properties. In response to the notification of the application, submissions were received raising concerns with regard to the potential impact of the development upon such views from the owners of the following properties:

- 229 Whale Beach Road
- 194 Whale Beach Road
- 198 Whale Beach Road
- 200 Whale Beach Road
- 11 Morella Road

Height poles were erected to demonstrate the indicative height of the proposal. An assessment of the level of impact based upon these height poles and with regard to the four step View Sharing Planning Principle has been undertaken, as follows:

229 Whale Beach Road

1. The dwelling at 229 Whale Beach Road is located immediately to the south of the subject site. The occupants of the dwelling at 229 Whale Beach Road currently enjoy expansive views of Whale Beach from all east facing windows of the property.
2. On the upper level of the dwelling at 229 Whale Beach Road, views in a north-easterly and easterly direction are obtained from bedrooms and a central hallway/stairway. On the ground level, views are obtained in a north-easterly and easterly direction from the living area, kitchen, dining area and the balcony (primary area of private open space) The views obtained in an easterly direction are obtained over the rear of the site itself, where as views in a north-easterly direction towards the northern headland are obtained across the common side boundary. All views obtained are generally available in a seated and standing position, with the exception of the kitchen.
3. The potential impact of the development is limited to the views available in a north-easterly direction from the rooms/areas on the northern side of the building, being the master bedroom on the upper floor and balcony at the ground floor. From the master bedroom, the proposed

development will obstruct a minor portion of the carpark in the foreground, with the land and water interface and the headland beyond unaffected by the proposal, as shown in Image 1. As the bulk of the development is to be stepped back from that which currently exists on the site, the occupants of the dwelling at 229 Whale Beach Road are likely to obtain greater views of the northern end of the beach and the headland beyond.



Image 1 - North-easterly view from master bedroom at 229 Whale Beach Rd.
Height pole highlighted in red.

From the balcony, the proposal will obstruct a minor portion of the northern end of the beach, as shown in Image 2, below. In light of the expansive views retained throughout the property, the impact is considered to be negligible.



Image 2 - North-easterly view from balcony at 229 Whale Beach Rd.
Height pole highlighted in red.

4. The portion of the development visible from the east facing rooms at 229 Whale Beach Road is maintained below the height limit, with setbacks of 4m from the common side boundary (and greater than the 3m setback of P21 DCP). In light of both the level of impact and in consideration of the applicable controls, the level of impact associated with the development upon views currently enjoyed from 229 Whale Beach Road is reasonable.

194 Whale Beach Road

1. The dwelling at 194 Whale Beach Road is located to the south-west and up slope of the site, on the opposite side of Whale Beach Road. The occupants of 194 Whale Beach Road enjoy ocean and beach views in a north-westerly and easterly direction.
2. Ocean views are available from the primary living room on the ground floor, and beach and ocean views are available in a north-easterly and easterly direction from a loft above. The views in question are obtained in both a seated and standing position, over the front property boundary of the 194 Whale Beach Road and over downslope properties (including the site).
3. The subject site and the height poles are not visible from the ground floor living room. The potential impact is limited to the beach views available from the loft space above the primary living area, as shown in Image 3, below. Whilst it is appreciated that views that comprise the land/water interface are valued more highly than ocean views, in consideration of the nature of the space affected, and the extent of views available to the property as a whole, the impact is considered to be minor.



Image 3 - North-easterly view from loft at 194 Whale Beach Rd.
Approximate extent of impact highlighted in red, noting all height poles are not visible.

4. The portion of the development attributing to this impact is the upper floor, which is sited in a manner that is consistent with relevant DCP controls and is maintained below the permitted height limit. The level of impact is considered to be reasonable.

198 Whale Beach Road

1. 198 Whale Beach Road is located to the west and up slope of the site, on the opposite side of Whale Beach Road. The occupants of 198 Whale Beach Road currently enjoy ocean and beach views from all east facing rooms and balconies.
2. The ocean and beach views are available in an easterly direction from the primary living room and adjacent balcony, with more expansive views available from the master bedroom and adjacent balcony on the level above. All views are gained over the front boundary of 198 Whale Beach Road and over properties downslope (including the site).
3. The potential impact to views currently enjoyed from the primary living area and adjacent balcony is limited to a portion of the beach view, currently gained over the roof of the single storey portion of the building fronting Whale Beach Road, as shown in Image 4, below. The potential impact to views enjoyed from the master bedroom and adjacent balcony is also limited to this same view corridor, as shown in Image 5, below. The level of impact upon the available views is considered to be appropriately described as minor.



Image 4 - View from east facing living room balcony at 198 Whale Beach Road.
Height poles highlighted in red.



Image 5 - View from east facing master bedroom balcony at 198 Whale Beach Road.
Height poles highlighted in red.

4. The portion of the development attributing to this impact is the upper floor, which is sited in a manner that is consistent with relevant DCP controls and is maintained below the permitted height limit. The level of impact is considered to be reasonable.

200 Whale Beach Road

As seen from 200 Whale Beach Road, the proposed development is maintained the volume of the existing development, with no additional impacts to views. As shown in Image 6 (below), the proposal is likely to enhance views from 200 Whale Beach Road, as the massing is to be redistributed closer to Whale Beach Road.



Image 6 - View from east facing terrace at 200 Whale Beach Road.
Height pole highlighted in red.

11 Morella Road

As seen from 11 Morella Road, the proposed development is generally maintained within the volume of the existing development, with no additional impacts to views. As shown in Image 7 (below), the proposal is likely to enhance views from 11 Morella Road, as the massing is to be redistributed closer to Whale Beach Road.



Image 7 - View from east facing terrace at 11 Morella Road.
Height poles highlighted in red.

Overall, the proposed development does not result in any unreasonable impacts upon existing views and the proposal is consistent with the requirements of this control.

C1.5 Visual Privacy

and C2.12 Protection of residential amenity

Clauses C1.5 and C2.12 of P21 DCP prescribe the need to protect windows and areas of private open space of adjoining dwellings within 9m from overlooking. Whilst it is appreciated that privacy measures may restrict a portion of the expansive of views available from the property, there is scope to achieve a more appropriate balance between the obtainment of views and the protection of privacy of neighbouring properties.

The areas with no screening or inadequate screening are considered individually, as follows:

- Level 1 - Apartment 1 Terrace
The terrace of Apartment 1 is located 4m from the southern side boundary, within 9m of areas of private space of the adjoining property to the south, with no screening along the side elevation. This lack of screening in this location is supported as the boundary fence and proposed landscaping will act as a privacy screen to prevent overlooking of the adjoining property to the south.
- Level 1 - Apartment 2 Lower Terrace

The lower level terrace of Apartment 2 is located in close proximity to the northern side boundary. Whilst within 9m of private open space of the adjoining dwelling to the north, the terrace is located down slope of the area and will be screened by existing and proposed landscaping. The lack of any additional screening is supported.

- Level 2 - Apartment 3 Terrace

The terrace of Apartment 3 is located 4m from the side boundary and is within 9m of areas of private space of the adjoining property to the south. The majority of the southern edge of the balcony features a fixed planter containing Snow Maiden's, which are a hedging plant that can grown to 1m in height. A BBQ is also proposed along the southern elevation. Someone standing at the BBQ will be able to overlook the private open space of the adjoining dwelling, and until such time that the plants achieve maturity, a person standing at the terrace will also be able to look down into the neighbours rear yard. With this in mind, it is considered that additional screening is required along the southern elevation of the terrace.

A condition of consent is recommended to require the planter box to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.

- Level 2 - Apartment 2 Upper Terrace

The upper level terrace of Apartment 2 is located in close proximity to the northern side boundary. Whilst within 9m of private open space of the adjoining dwelling to the north, the terrace is located down slope of the area and will be screened by existing and proposed landscaping. The lack of any additional screening is supported.

- Level 3 - Apartment 4 Terrace

The terrace of Apartment 4 is located 4m from the side boundary and is within 9m of areas of private space of the adjoining property to the south. Similar to the Apartment 3 terrace, the majority of the southern edge of the balcony features a fixed planter containing Snow Maiden's, which are a hedging plant that can grown to 1m in height. A BBQ is also proposed along the southern elevation. Someone standing at the BBQ will be able to overlook the private open space of the adjoining dwelling, and until such time that the plants achieve maturity, a person standing at the terrace will also be able to look down into the neighbours rear yard. As with the terrace of Apartment 3, it is considered that additional screening is required along the southern elevation of the terrace.

A condition of consent is recommended to require the planter box to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.

- Level 4 - Apartment 5 Terrace

The northern elevation of the terrace is located 4.6m from the northern side boundary and is located within 9m of private open space of the adjoining dwelling to the north. Whilst the terrace below in the same location incorporates fixed louvre screening, no screening is proposed on Level 4. This is considered appropriate with regard to the different levels of the development, as overlooking will only be achieved when someone walks up to the balustrade and looks down, away from the available views beyond.

The southern elevation of the terrace is located 4.6m from the southern side boundary and is

located within 9m of private open space of the adjoining dwelling to the south. The south-eastern corner also incorporates a spa, elevating people above the level of the balustrade. The full length planter is considered to appropriately prevent people from approaching the edge of the balcony and looking down into the neighbouring property. However, it is questionable as to whether the spa can be accommodated in that position, as it compromises the height of the balustrade. The spa is not supported in this location.

A condition of consent is recommended to require the deletion of the proposed spa on the Level 4 terrace.

Subject to the imposition of conditions, the proposed development is considered to achieve reasonable privacy between properties.

C2.3 Awnings

Clause C2.3 of P21 DCP prescribes that continuous awnings are to be provided to the footpaths adjoining the development site. The proposed development incorporates awnings, however they do not extend beyond the property boundaries. In light of the circumstances of the site, being a stand alone B1 Neighbourhood Centre zoned site, and with regards to the nature of the adjoining road reserves, a continuous footpath awning is not required or appropriate in this instance.

D12.5 Front building line

Whale Beach Road

With a proposed setback of 3.5m, the portion of the development fronting Whale Beach Road is consistent with the minimum front setback prescribed by this control.

Surf Road

With a setback that ranges from Nil to 11.6m, the portion of development fronting Surf Road is non-compliant with the 3.5m setback prescribed by this control. The areas of non-compliance are addressed individually, as follows:

- Basement
The proposed basement level is sited with a Nil setback to Surf Road. The Nil setback is supported in circumstances where the non-compliance is not readily visible and noting that the additional floor space is required to maximise the number of off-street parking spaces.
- Level 1 (Podium Level)
The proposed podium level has been designed to follow the curvature of the road and skillfully delineates between the excavated retail space and the residential levels above. The protruding landscaped podium also acts to screen the upper levels when viewed from Surf Road, to create a more 'human scale' along the narrow frontage of the site. Whilst portions of the Level 1 terraces also encroach within the 3.5m setback area, the podium structure essentially acts as an awning to the outdoor commercial area below, which is anticipated under the provisions of both P21 DCP and the ADG.

The areas of non-compliance are supportable on merit, as the Outcomes of the control are otherwise achieved, as follows:

- *Achieve the desired future character of the Locality.*

Comment: The areas of non-compliance do not detract from consistency with the Palm Beach

Locality. If anything, the non-compliant podium level assists in breaking down the scale of the development and gives the appearance that the building is integrated with the natural landform, in a manner that is consistent with the desired future character statement.

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

Comment: The areas of non-compliance do not attribute to any unreasonable impacts upon views.

- *The amenity of residential development adjoining a main road is maintained.*

Comment: Not applicable - the site does not adjoin a main road.

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

Comment: The proposed podium structure incorporates a landscaped planter enhancing landscaping across the frontage of the site.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment: Vehicle movement in a forward direction is achieved.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment: The proposed development appropriately responds to the landscaped character of the area.

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

Comment: The protruding nature of the podium level actively reduces the apparent size of the development, and acts as a buffer between the retail and residential components of the development.

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

Comment: The proposed development will result in a significant improvement to the aesthetic quality and amenity of both the Whale Beach Road and Surf Road streetscapes. The proposal also incorporates upgrades to the public domain which will improve pedestrian safety in the area.

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

Comment: The proposed development, particularly the non-compliant podium level, is a highly considered architectural form that sensitively relates to the constraints of the site.

D12.6 Side and rear building line

With Nil - 4.3m setbacks proposed on the northern side boundary and 2.5m setbacks proposed along the southern side boundary, the Basement and Ground Floor are non-compliant with the 3m minimum

setbacks prescribed.

The non-compliant portions of the development are appropriately minimised and are maintained below existing and proposed ground level, such that the non-compliance will not be discernible from the public domain. All structure above ground have been sited in compliance with this control. Where non-compliance is proposed, the application proposes to reintroduce soil and plantings above, such that the landscaped quality of the setback area will not be compromised.

In circumstances where the non-compliance will not be perceived and landscaping can still be accommodated, and when the exposed portions of the buildings are sited with setbacks greater than the 3.0m minimum, the minor areas of non-compliance are supportable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$164,930 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$16,492,961.

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 amended proposal the subject of the review application has satisfactorily addressed the reasons for the refusal of DA2020/0442, with no new issues arising that would warrant the refusal of the application.

Whilst the proposal is larger than the majority of surrounding dwelling houses, this is not an unreasonable or unacceptable outcome, as the zoning of the site and the relevant design requirements differ from that of surrounding sites.

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 REV2021/0034 for Review of Determination of Application DA2020/0442 for demolition works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404, 231 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 Site Plan, Revision W	8 November 2021	Richard Cole Architecture
DA03 Basement Plan, Revision V	7 October 2021	Richard Cole Architecture
DA04 Ground Floor Plan, Revision V	7 October 2021	Richard Cole Architecture
DA05 Level 1 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA06 Level 2 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA07 Level 3 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA08 Level 4 Plan, Revision V	7 October 2021	Richard Cole Architecture
DA09 Roof Plan, Revision W	8 November 2021	Richard Cole Architecture
DA10 Elevations, Revision V	7 October 2021	Richard Cole Architecture
DA11 Elevations, Revision W	8 November 2021	Richard Cole Architecture
DA12 Boundary Elevations, Revision V	7 October 2021	Richard Cole Architecture
DA13 Section, Revision V	7 October 2021	Richard Cole Architecture
DA14 Section, Revision V	7 October 2021	Richard Cole Architecture
DA35 Finishes Board - Surf Road,	7 October 2021	Richard Cole

Revision V		Architecture
DA36 Finishes Board - Whale Beach Road, Revision V	7 October 2021	Richard Cole Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
21078/01 Proposed Car Park Layout, Revision D	10 November 2021	TEF Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report, Issue B	28 July 2021	Accessible Building Solutions
Acoustic Report, Revision B	5 February 2020	JHA Services
Acoustic Report Addendum Letter	26 July 2021	JHA Services
Geotechnical Report	27 September 2019	Douglas Partners Pty Ltd
Geotechnical Forms 1 and 1a	28 October 2021	Douglas Partners Pty Ltd
Coastline Risk Management Report	7 October 2021	Cardno (NSW/ACT) Pty Ltd
Coastline Risk Management Form 1	7 October 2021	Cardno (NSW/ACT) Pty Ltd
Arboricultural Impact Assessment	July 2021	Urban Forestry Australia
BCA Design Compliance Report	2 August 2021	MBC Modern Building Certifiers
Stormwater Asset Relocation Investigation & Report	October 2020	Barrenjoey Consulting Engineers Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-L01C Landscape Site Plan	9 August 2021	Trish Dobson
DA-L02C Site Planting Plan	9 August 2021	Trish Dobson
DA-L07C Planting Schedule	9 August 2021	Trish Dobson
DA-L08C Tree Retention Plan + Details	9 August 2021	Trish Dobson
DA-L09C Street Elevations	9 August 2021	Trish Dobson

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By

Waste Management Plan	23 April 2020	Diane Cassar and Leslie Cassar
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In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	[undated]

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

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

3. **Approved Land Use**

This consent authorises a mixed-use development, comprising shop top housing and additional retail premises.

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) (Repealed)
 - (b) cellar door premises,
 - (c) food and drink premises,
 - (d) garden centres,
 - (e) hardware and building supplies,
 - (f) kiosks,
 - (g) landscaping material supplies,
 - (h) markets,
 - (i) plant nurseries,
 - (j) roadside stalls,
 - (k) rural supplies,
 - (l) shops,
 - (la) specialised retail premises,
 - (m) timber yards,
 - (n) vehicle sales or hire premises,
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

This consent authorises the first use of the Ground Floor and Level 3 retail premises. Retail 1 is specifically approved for the purpose of a restaurant or cafe.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

Any variation to the approved land use and/occupancy of the building or any part of the building beyond the scope of the above definitions will require separate development consent.

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

4. Prescribed Conditions

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

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

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

the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$164,929.61 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 \$16,492,961.00.

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.

7. 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.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$150,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$100,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a maintenance bond of \$25,000 for the construction of public domain works. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

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

11. **Public Domain Plan**

A Public Domain Plan for works within the Whale Beach Road and Surf Road public road reserve, generally in accordance with the approved plans, and in compliance with Council's

Northern Beaches Public Spaces Vision & Design Guidelines, shall be submitted as part of a Infrastructure Works on Council Roadway application under Section 138 of the Roads Act, for approval by Council, with sufficient detail design information including the following development requirements:

- a. all civil works shall be accompanied by Engineering drawings including existing and proposed levels, long and cross sections, proposed design layout and materials, for the works proposed within the road reserve,
- b. proposed stormwater diversions works as required by the Development Engineer Referral response,
- c. reinstatement of the existing driveway crossing along Whale Beach Road to kerb and footpath, including details plans and sections, and selection of materials, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties,
- d. footpath material shall comply with the Northern Beaches Public Spaces Vision & Design Guidelines applicable to the 'Beach' Character Area Map, requiring: insitu concrete, off-white cement, and broom finish,
- e. tactile ground surface indicators at kerb ramps crossings and crossovers in accordance with Australian Standard 1428.4.1-2009 - Design for Access and Mobility,
- f. details of any utility alignment and level changes,
- g. existing street trees retained or removed, and any street tree replacement planting,
- h. any proposed street tree planting within pavement shall be in accordance with Northern Beaches Council's Standard Drawing 1300 - Tree Pit Details, and the tree species shall be at a pre-ordered 200 litre container,

The following works shall also be documented:

- i. any public seating in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- j. any bicycle racks in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- k. kerb ramps in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- l. any other additional relevant works within the road reserve.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council and utility authorities in place prior to commencement to conduct such works.

Reason: compliance with Council standards for works on public land.

12. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

13. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the proposed Council piped drainage system in Surf Road. The plans are to include an overland flow path a minimum of 600mm wide along the southern boundary of the site.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Douglas Partners dated September 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

15. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1:2004.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

16. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

17. **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 Traffic 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 routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- 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 prior
- 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 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

- i 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
- i 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
- i 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
- i 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
- i Proposed protection for Council and adjoining properties
- i 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.

18. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

19. **Amendments to the Approved Plans**

The following amendments are to be made to the Approved Plans:

- i Excavation: The proposed area of excavation adjacent to the bedrooms of Apartment 1 is to be continued through to the east, extending to the point where the proposed excavated level meets existing ground level.
- i Overland flow path: The 1.0m wide overland flow path along the Southern Boundary is to be reduced in width to 0.6m. Conversely, the setback between the overland flow path and the southern elevation is to be increased by 0.4m.
- i Apartment 3 terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 3 is to continue the entire length of the terrace. A fixed

privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.

- Apartment 4 Terrace: The planter box proposed on the southern elevation of the terrace associated with Apartment 4 is to continue the entire length of the terrace. A fixed privacy screen to a height of 1.7m above the FFL of the terrace is to be incorporated on the inside edge of the planter, for a minimum distance of 3m measured from the eastern facade of the external wall. The privacy screen can be constructed of translucent glazing or timber screens (TS), of the same detail of those proposed on Level 4.
- Spa: The spa on the Level 4 terrace is to be deleted from the plans and is not authorised by this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the development achieves appropriate internal amenity.

20. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

21. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the public domain works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified civil engineer. The design must include the following information:

1. The diversion of the existing Council stormwater pipeline from Whale Beach Road to Surf Rd. The kerb and gutter is to be reconstructed under the path of the pipeline.
2. Stormwater pits must be provided at each bend in the pipeline, including a lintel with a minimum size of 1.8 metres.
3. The pits are to be designed in accordance with Council's standard details.
4. Reinstatement of all redundant crossings to kerb, footpath and grass.
5. Reconstruction of the kerb and gutter along Surf Road.
6. Provision of a 4 metre wide driveway crossing off Surf Rd generally in accordance with Council standard drawing A4/3330/3 NL.
7. Details of the service bay and associated footpath and retaining walls in Surf Road.

8. Details of the parking bays and footpath to the east of the site in Surf Road to The Strand.
9. Details of all works proposed in the Public Domain Plan condition of this consent.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

22. **Utilities Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

23. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

24. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being in Surf Road and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- i Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- i Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

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

to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

25. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

26. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the overland flow path along the southern boundary of the site which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The design must include the following information.

1. The perimeter walls are to be watertight to ensure no flows enter the site or adjoining property.
2. The overland flow path is to be clear of any vegetation that will impede the flow.
3. Turf is to be provided between the rear of the public footpath in Whale Beach Road and the opening of the overland flow path at the boundary of the site, graded to ensure all flows enter the channel.
4. Details of the removal of the existing 450 mm pipeline traversing the site.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

27. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

28. **Mechanical Ventilation Plans**

Detailed plans of mechanical ventilation that demonstrate compliance with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be submitted to and approved by the Certifying Authority. Any external exhaust discharge must also be above the roofline and discharged in a manner that is not likely to cause an amenity impact. These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

29. **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.

30. **External Finishes to Roof**

With the exception of the copper detailing, the upper floor membrane roof is to be a natural tone, in the medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

31. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- i "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- i Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

32. **Internalised Services**

Service ducts, drainage, plumbing, pipes, cables and conduits are to be internalised and must

not be visible from the public domain. All service, communication and electricity connections must be provided underground.

Provision must also be made for any future ventilation or exhaust system required for the retail tenancies throughout the development.

Details demonstrating compliance with this requirement must be provided to the certifying authority prior to the issuance of the construction certificate.

Reason: To remove visual clutter and ensure a high-quality finish to the development.

33. **Acoustic Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the Acoustic Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure appropriate amenity.

34. **Access Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the Access Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure the development is accessible.

35. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

36. **Project Arborist**

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

b) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots,

trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

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

d) All tree protection measures specified must:

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

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

- Note:
- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
 - ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

37. **No Access Through Adjoining Park/Reserves**

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

38. **Works on Land Owned or Managed By Council**

No works are to be carried out on Land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

Reason: To protect the land owned and managed by Council.

39. **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). 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.

40. **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 pavement for the parking of vehicles associated with a construction site.

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

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

41. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

1. 229 Whale Beach Road, Whale Beach
2. 233 Whale Beach Road, Whale Beach

The dilapidation reports are to be prepared by a suitably qualified person. A copy of the reports 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.

42. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

43. **Protection of Sites of Significance**

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

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

Reason: Preservation of significant environmental features.

44. **Protection of Existing Street Trees**

a) All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia and Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

b) As a minimum, the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

c) All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

d) Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

45. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected including:

- i) all trees and vegetation within the site not indicated for removal on Tree Retention Plan Dwg No. DA L08C dated 24.4.20 Prepared by Trish Dobson, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated July 2021 prepared by Urban Forestry Australia and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5

- metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

46. **Road Reserve**

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

Reason: Public safety.

47. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

48. **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.

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.

Asset Protection Zones as defined within Planning for Bush Fire Protection 2019, shall be contained wholly within development sites, and shall be managed by the development site owner in perpetuity.

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.

49. **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 basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

50. **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.

51. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

52. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

53. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

54. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the

wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

55. **Progress Certification (Road & Subdivision)**

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Roads Authority for the following stages of works:

- (a) Silt and sediment control facilities
 - (b) Laying of stormwater pipes and construction of pits
 - (c) Proof Roll
 - (d) Sub-grade trimmed and compacted **
 - (e) Base-course laid and compacted **
 - (f) Kerb and gutter construction
 - (g) Pavement
 - (h) Landscaping and vegetation
 - (i) Clean-up of site, and of adjoining Council roadway and drainage system.
- (**To be tested by a recognised N.A.T.A. approved laboratory).

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

Reason: To ensure compliance of civil works with Council's specification for engineering works.

56. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 and Section 68 application approvals are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

57. **Public Domain Construction**

The applicant shall construct the public domain works in accordance with the following:

- (a) All works are to be constructed in accordance with the Section 138 Road Act approval
- (b) Council is to inspect the the works to ensure compliance with Section 138 Road Act approval.

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

Reason: To ensure compliance of Public Domain works with Council's specification for engineering works.

58. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, footpath and driveway crossing
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

59. **Vehicle Crossing**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the Section 138 Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

60. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

61. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the Approved Waste Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

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

62. **Required Planting**

- a) Trees shrubs and groundcovers shall be planted in accordance with the Site Planting Plan

Dwg No. DA-L02C dated 9.8.21 and Planting Schedule Dwg No. DA-L07C 24.4.20 Prepared by Trish Dobson

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

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Government's 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

Reason: To maintain environmental amenity.

63. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plans.

b) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

64. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

65. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

66. **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 Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect reserve amenity and public safety.

67. **Signage and Linemarking – Implementation**

The applicant is to install all signage and linemarking, as per any Roads Act approval. These works are to be completed prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with the Road Act.

68. **Basement Garage Traffic Signal System**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;

- i be clearly visible from ramp entrances,
- i is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- i Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

69. **Allocation of parking spaces**

All residential units must be assigned two parking spaces, and each retail tenancy must be assigned one parking space. The visitor/disabled parking space is to remain common property.

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

Reason: To ensure parking availability for residents.

70. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

71. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

72. **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 reports 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,
- ; 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.

73. **Acoustic Certification Prior to Occupation Certificate**

A suitably qualified Acoustic Consultant is to confirm that the development was constructed in accordance with the recommendations of the Acoustic Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate amenity.

74. **Plan of Management**

A Plan of Management is to be produced for the management of the site and adjacent road reserves identifying:

- a. Consistency with all 'on-going' conditions of consent over the life of the development
- b. Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- c. Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure the on-going management of the site over the life of the development.

75. **Driveway and Parking Facility Work**

The Applicant shall submit a Traffic Engineers' certificate certifying that the driveway and parking facility was constructed in accordance with this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking.

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

Reason: Compliance with this consent.

76. **Retaining Wall in Public Domain**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer.

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

Reason: Public and private safety

77. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

78. **Certification of Civil Works and Works as Executed Data within the Public Domain**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 and Section 68 approvals. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to Council for acceptance and the acceptance issued to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

79. **Restriction as to User (Stormwater Overland Flow Path)**

The Applicant shall create lodge a Legal Documents Authorisation Application with Council to create a restriction as to user on the title over the area affected by the 100 year ARI stormwater overland flow path in order to:

1. Prohibit the alteration of the final stormwater overland flow path. (A copy of the Works-as-Executed plan details overdrawn on a copy of the approved drainage plan of the overland flow path and Hydraulic Engineers certification must be submitted to Council).
2. Prohibit the erection of any structure (including fencing) within the overland flow path without the written permission of Northern Beaches Council.

Northern Beaches Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: To ensure no modification of the stormwater overland flow path and the building platform without Council's approval.

80. **Kitchen Design, Construction and Fit-out of Food Premises Certification**

Prior to the issuing of the occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

81. **Mechanical Ventilation Certification**

Mechanical ventilation must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" prior to any Occupation Certificate (OC) being issued.

Certification is to be provided to the Principal Certifying Authority by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

82. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

83. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

84. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site

www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

85. **Access Certification Prior to Occupation Certificate**

A suitably qualified Access Consultant is to confirm that the development has been constructed in accordance with the recommendations of the Access Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate accessibility.

86. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

87. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

88. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

89. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying

Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

90. **Landscape Maintenance**

a) 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.

b) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

c) All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

91. **Sight lines within carparks**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

92. **Hours of Operation**

The hours of operation of the retail premises and restaurant or cafe are to be restricted to 7:00am to 10:00pm, seven days.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Deliveries of goods and waste collection associated with the retail premises and restaurant or cafe must not occur between 7:00pm and 7:00am.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

93. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

94. **Odour Control for Ventilation Systems to Commercial Kitchens**

Ventilation systems for any commercial kitchen must be designed, operated and maintained to prevent odour being smelt within any nearby habitable rooms, including when windows and

doors are open.

Reason: To prevent a negative impact on residents both within the complex and surrounding properties.

95. **Music or Amplified Noise**

No background music is permitted in the Ground Floor restaurant/cafe space or the associated outdoor dining area. No speakers are to be placed in any outside areas of retail premises.

No music or amplified noise is to be audible within habitable rooms of residents within the complex or surrounding premises, including when windows and doors are open.

Reason: To ensure no negative impact on residents within the complex or surrounding premises.

96. **Plant Equipment - Noise and Vibration**

Noise from all plant equipment including roof top mechanical plant rooms/equipment, mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and must not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

Reason: To ensure no ongoing negative impacts on persons living within the complex and surrounding premises.

97. **Consistency with Plan of Management**

The development is to be maintained in accordance with the Plan of Management required by this consent.

Reason: To ensure that the site is maintained in accordance with the standards required by this consent.

98. **Parking**

The development is to maintain the following parking allocation for the life of the development:

- 10 x residential parking spaces, with 2 spaces per unit,
- 1 x disabled visitor space
- 3 x retail parking spaces

All spaces must be line-marked and identified accordingly.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site.

99. **Capacity of Ground Floor Cafe or Restaurant**

The capacity of the Ground Floor cafe/restaurant premises is limited to 44 indoor patrons, 20 outdoor patrons and 6 staff members.

Reason: To ensure residential amenity is protected and maintained.

100. **Plant Equipment**

With the exception of flush-mounted solar panels, and the plant equipment shown within the portion of the upper floor roof bound in copper sheeting, no plant equipment is permitted on the roof or in a location that is visible from the public domain.

The plant equipment shown on the upper roof must not protrude above the height of the copper roof depicted on the Approved Plans.

The solar panels must not be elevated/angled more than 250mm above the height of the membrane roof depicted on the Approved Plans.

Reason: To minimise visual clutter.

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

101. **Subdivision Certificate Application**

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

Reason: Statutory requirement of the Conveyancing Act 1919.

102. **Strata Subdivision Plans**

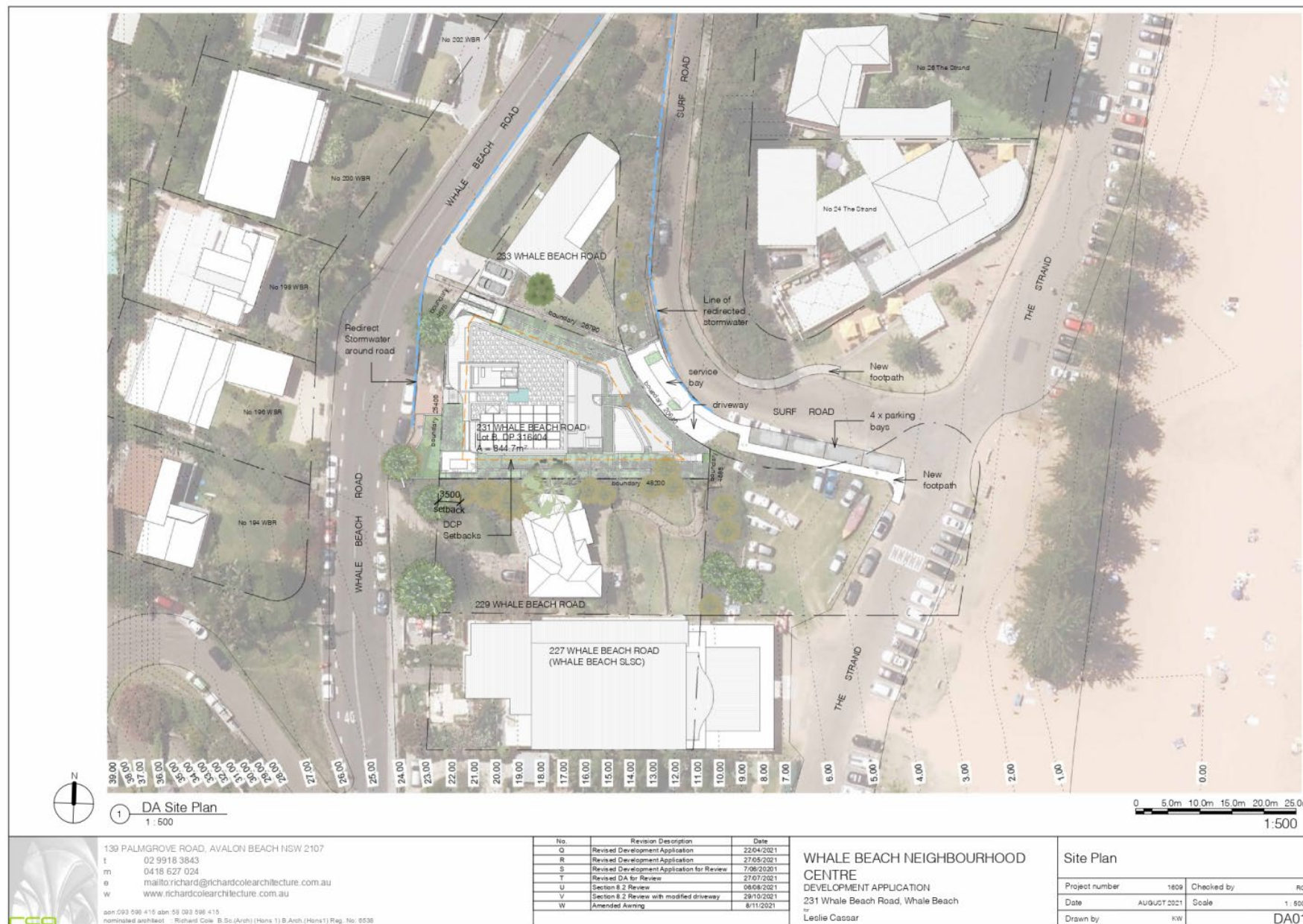
Strata Subdivision Plans are to be prepared, consistent with the Approved Plans.

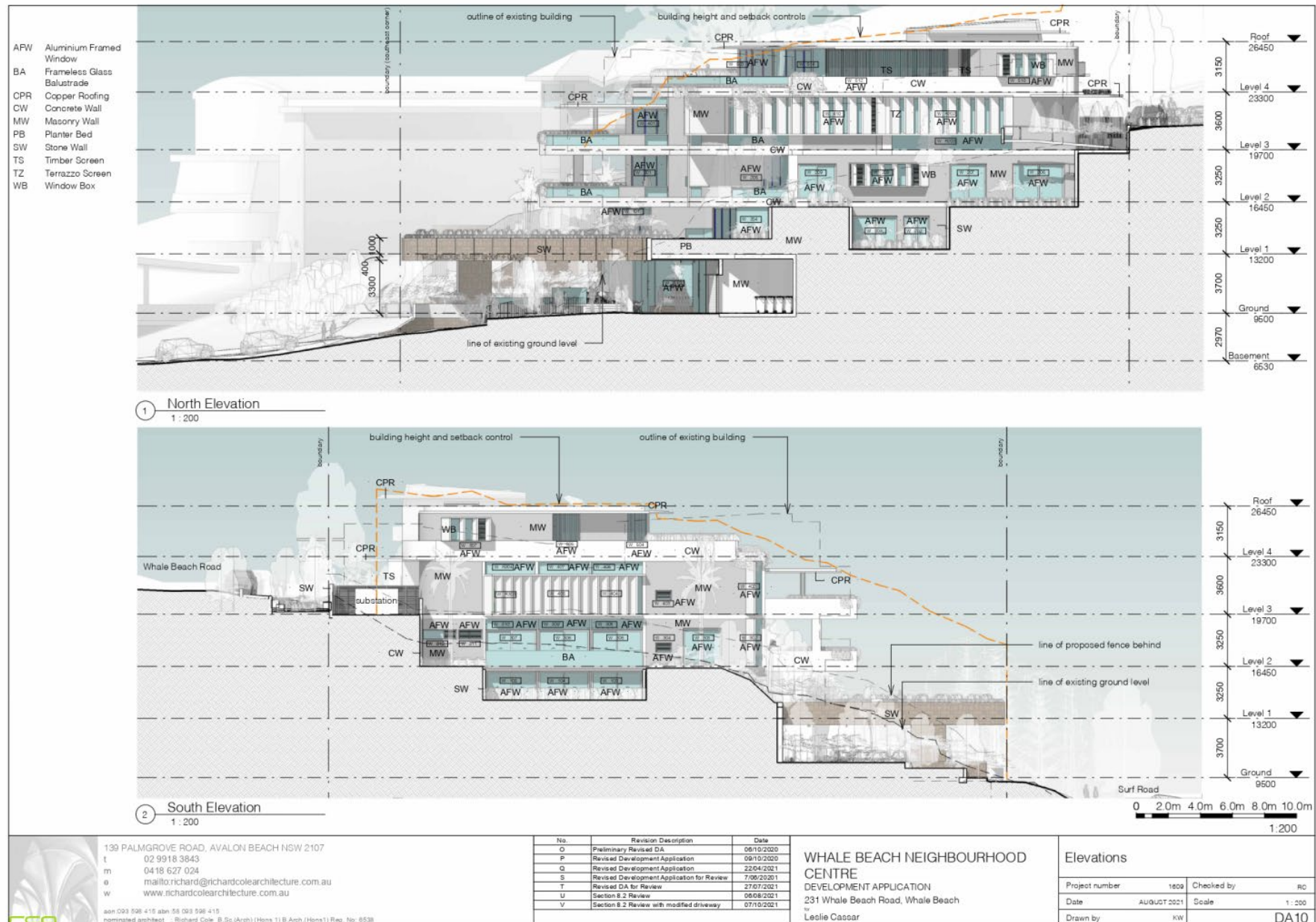
The Strata Subdivision Plans are to specifically nominate:

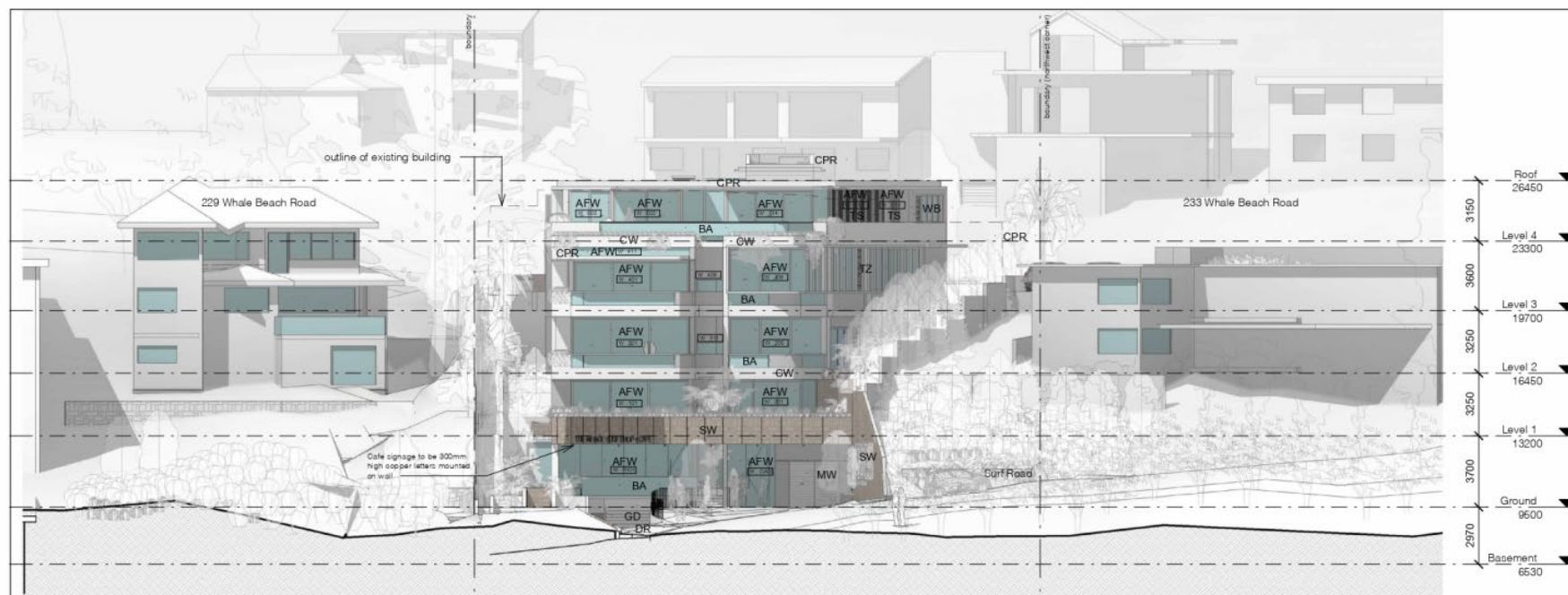
- a. two parking spaces for each residential unit
- b. one parking space for each retail tenancy
- c. one visitor/disabled parking space as common property
- d. the landscaped terrace adjacent to Apartment 1 as common property
- e. gardens/landscaping around the perimeter of the building as common property

Details demonstrating compliance with these requirements are to be submitted to the Principal Certifying Authority prior to the release of the Strata Subdivision Plan.

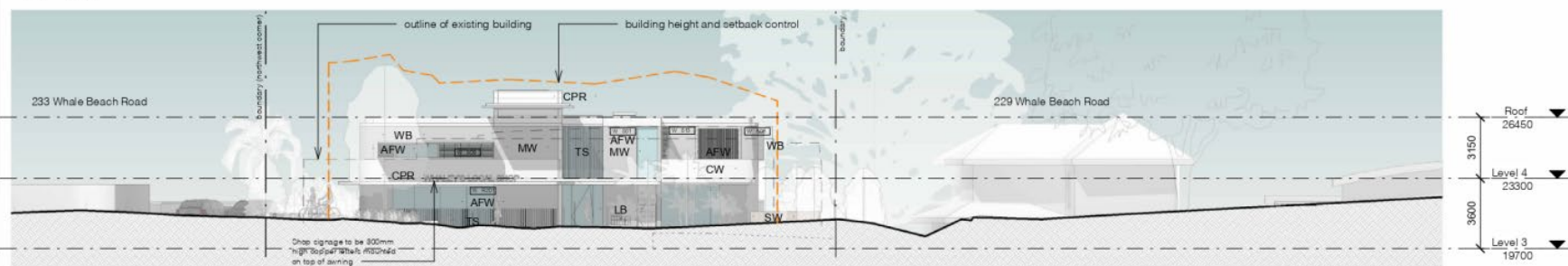
Reason: To ensure the appropriate allocation and maintenance of space.







1 East Elevation
1 : 200



2 West Elevation
1 : 200

AFW	Aluminium Framed Window	CW	Concrete Wall	MW	Masonry Wall
BA	Frameless Glass Balustrade	DR	Driveway	SW	Stone Wall
BS	Steel Balustrade	GD	Garage Door	TS	Timber Screen
CPR	Copper Roofing	LB	Letterbox	TZ	Terrazzo Screen
				WB	Window Box

0 2.0m 4.0m 6.0m 8.0m 10.0m
1:200

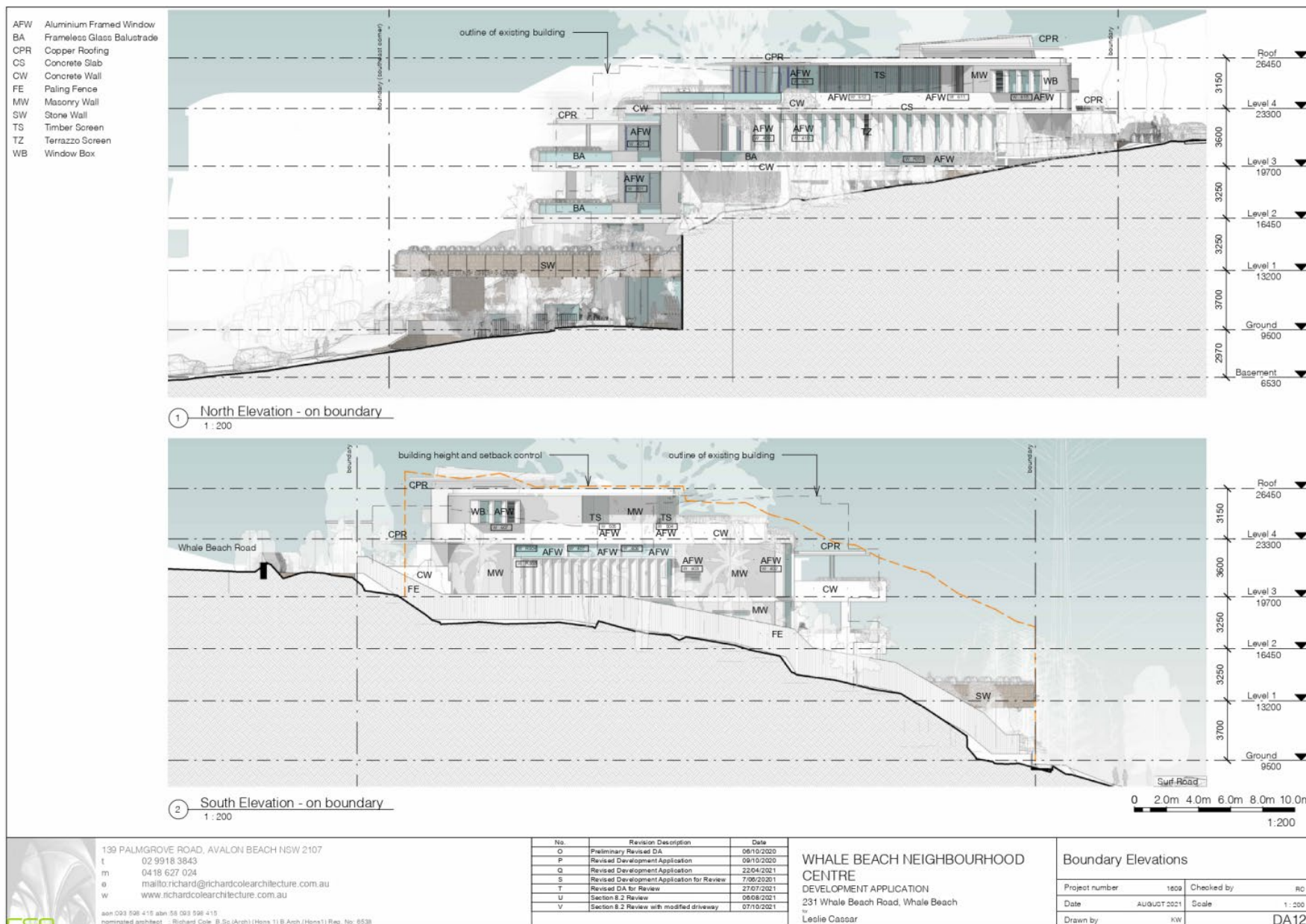
139 PALMGROVE ROAD, AVALON BEACH NSW 2107
t 02 9918 3843
m 0418 627 024
e mailto:richard@richardcolearchitecture.com.au
w www.richardcolearchitecture.com.au
asn 003 596 415 abn 58 003 596 415
nominated architect - Richard Cole B.Sc (Arch) (Hons 1) B.Arch (Hons 1) Reg. No: 6538

No.	Revision Description	Date
P	Revised Development Application	09/10/2020
Q	Revised Development Application	22/04/2021
S	Revised Development Application for Review	7/06/2021
T	Revised DA for Review	27/07/2021
U	Section 8.2 Review	06/08/2021
V	Section 8.2 Review with modified driveway	29/10/2021
W	Amended Drawing	8/11/2021

**WHALE BEACH NEIGHBOURHOOD
CENTRE**
DEVELOPMENT APPLICATION
231 Whale Beach Road, Whale Beach
to
Leslie Cassar

Elevations

Project number	1609	Checked by	RC
Date	AUGUST 2021	Scale	1 : 200
Drawn by	KW		DA11



ITEM 4.2 **DA2021/0744 - 50 LAWRENCE STREET, FRESHWATER -
DEMOLITION WORKS AND CONSTRUCTION OF SHOP TOP
HOUSING**

AUTHORISING MANAGER Rodney Piggott

TRIM FILE REF 2021/815821

ATTACHMENTS

- 1** Assessment Report
- 2** Site Plan & Elevations
- 3** Clause 4.6
- 4** Design & Sustainability Advisory Panel Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
 - B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0744 for demolition works and construction of shop top housing at Lot 1 DP 571975, 50 Lawrence Street, Freshwater subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0744
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 571975, 50 Lawrence Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of shop top housing
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:	Lawrence Street Nominees Pty Ltd
Applicant:	Lawrence Street Nominees Pty Ltd

Application Lodged:	07/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	18/06/2021 to 09/07/2021
Advertised:	18/06/2021
Submissions Received:	50
Clause 4.6 Variation:	4.3 Height of buildings: 2.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,348,000.00
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EXECUTIVE SUMMARY

The application seeks consent for the construction of a shop top housing development, comprising 11 apartments and 2 retail/business tenancies, at the western end of the Freshwater Village. The site is narrow and irregularly shaped, with three street frontages and a cross-fall of approximately 11%, which present unique challenges for the redevelopment of the B2 Local Centre zoned site.

Whilst the proposal involves minor variations and departures from applicable standards and controls, the development is a well resolved scheme that is an appropriate response to the context, character and individual circumstances of the site. The proposal has been skilfully designed to minimise impacts upon adjoining properties and the public domain, whilst providing a high level of internal amenity for future occupants of the development. The proposal is supported by all relevant referral bodies, specifically Council's Design and Sustainability Advisory Panel (**DSAP**), who "commend the overall

design approach" presented.

Whilst 50 submissions were received in objection to the development, no matters were raised that warrant the refusal of the application or that cannot be addressed via the imposition of conditions.

Given the level of public interest, the proposal is referred to the Northern Beaches Planning Panel (**NBLPP**) for determination, with a recommendation of approval subject to the draft conditions attached.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the the construction of a shop top housing development at the subject site. Specifically, the application proposes:

- demolition of all existing site improvements,
- the construction of a three-four storey shop top housing development comprising:
 - 11 residential apartments (2 x studio, 4 x 1 bedroom and 5 x 2 bedroom)
 - Two retail/business tenancies with a total GFA of 77.82m²
 - Off-street parking for 18 cars, inclusive of 1 service vehicle space
- landscaping, and
- associated infrastructure.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D2 Private Open Space

Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - 4. Street facades and shopfront design
Warringah Development Control Plan - 10. Front setback
Warringah Development Control Plan - 11. Side and rear setbacks

SITE DESCRIPTION

Property Description:	Lot 1 DP 571975 , 50 Lawrence Street FRESHWATER NSW 2096
Detailed Site Description:	The site is an irregular shape, with a 10.365m wide frontage to Lawrence Street (north), a 43.285m wide frontage to Oliver Street (west), a 45.75m wide frontage to Dowling Street (east) and a total area of 590m². The northern half of the site currently contains a two storey commercial building, with the southern portion of the site containing an informal parking area accessed via Oliver Street and a single storey garage accessed from Dowling Street. The site does not feature any significant landscaping or natural features. The site experience a fall of approximately 5.13m from the south-western corner of the site (RL32.82m AHD) down towards the north-eastern corner of the site (RL 27.69m AHD), with a maximum gradient of approximately 11%. Lawrence Street is a two-four lane local road. The portion of the public road reserve immediately adjoining the site is paved with no overhead infrastructure or street trees. Oliver Street is four lane regional road. The portion of the public road reserve immediately adjoining the site contains a footpath and street trees. A portion of the public road reserve immediately adjacent to the existing building has been excavated and is supported by a retaining wall. Dowling Street is a two lane local road. The portion of the public road reserve immediately adjacent to the site is partially paved, with a footpath extending half way along the length of the site, overhead infrastructure and street trees. A bus stop/bus zone is located in front of the existing building. The site is zoned B2 Local Centre and is located at the western end of the Freshwater Village. Whilst the B2 zoning extends to the east and north-east, the site is predominately surrounding by land zoned R2 Low Density Residential (to the north-west, west, south and south-east) The land to the opposite side of Lawrence Street is zoned RE1 Public Recreation and contains community facilities. Despite the low density zoning of surrounding and nearby land, the site is surrounded by development of varied density and scale, with three storey residential flat buildings

to the west, a two storey church building to the north-west and two-storey dwellings to the south and south-east.

The site is located in the vicinity of two items of local heritage significance, being the Harbord Literacy Institute (directly opposite to the north) and the Harbord Early Childhood Health Centre (to the north-east).

Map:



SITE HISTORY

On 11 June 2019, a pre-lodgement meeting was held in relation to a four storey shop top housing development at the subject site. The development included 14 residential apartments, with a maximum height of approximately 12.4m and numerous other areas of built form non-compliance. Whilst the concept of a shop top housing development at the site was supported, the height, scale and intensity of the development was not.

On 26 May 2020, development application DA2020/0543 was lodged with Council, seeking consent for a shop top housing development at the subject site.

On 7 September 2020, Council requested the withdrawal of DA2020/0543 due to concerns relating to:

- bulk and scale, with a need for a finer grain approach along Oliver and Dowling Streets,
- number of storeys,
- street activation,
- front setbacks,
- sustainability,
- landscaping,
- building height,
- communal open space, and
- deep soil zones.

On 16 October 2020, DA2020/0543 was withdrawn.

On 7 June 2021, the subject development application was lodged with Council.

On 11 August 2021, Council wrote to the applicant advising of concerns with regard to the following:

- vehicular access,
- encroachments within the road reserve,
- works within the road reserve,
- solar access, and
- waste management.

The correspondence also advised of potential issues relating to view sharing, however noted that due to the COVID 19 restrictions, inspections to confirm the potential impacts were unable to be undertaken.

On 26 August 2021, Council wrote to the application to advise of additional concerns raised in relation to heritage.

On 8 September 2021, amended plans and supporting documentation were presented to Council.

On 22 October 2021, TfNSW raised concerns in relation to the proposed driveway access to Oliver Street.

On 29 October 2021, further amended plans were presented to Council to clarify driveway levels/details. Further view analysis was also presented.

On 8 November 2021, concurrence was obtained from TfNSW.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for business/retail purposes for an extended period of time, with no history of any previous uses that may have resulted in contamination of the site.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested over the course of the assessment process and was subsequently presented. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may 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 suitable for the proposed development.
Section 4.15 (1) (d) – any	See discussion on "Notification & Submissions Received" in this

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/06/2021 to 09/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 50 submission/s from:

Name:	Address:
Mrs Denise Faith Keeping	36 Oceanview Road FRESHWATER NSW 2096
Mr Phillip Malcolm Curry	406 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Charl Justus Potgieter	4 Hill Street QUEENSCLIFF NSW 2096
Mrs Carolyn Susan Mcpherson-Smith	30 Dowling Street QUEENSCLIFF NSW 2096
Mr John Oliver	47 Evans Street FRESHWATER NSW 2096
Chloe Elisabeth Jenkins	4 / 28 Cavill Street FRESHWATER NSW 2096
Mrs Kristy Kerry Warneford	18 Oliver Street FRESHWATER NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096
Mr Benjamin John Cohen	36 / 33 Palomar Parade FRESHWATER NSW 2096
Ms Sonya Michelle Watson	5 / 16 Soldiers Avenue FRESHWATER NSW 2096
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Emma Staniland	11 Evans Street FRESHWATER NSW 2096
Jeff Hudson	13 / 7 Rowe Street FRESHWATER NSW 2096
Mrs Simone Baker	4 Martin Street FRESHWATER NSW 2096
Mr Michael Robert Scheel	105 / 11 Lawrence Street FRESHWATER NSW 2096
Mrs Victoria Ramsbottom-Isherwood	108 Crown Road QUEENSCLIFF NSW 2096
Kevin William Tuckey	15 Undercliff Road FRESHWATER NSW 2096
Mrs Camilla Margareta Rundqvist	9 / 6 Hill Street QUEENSCLIFF NSW 2096
Lisa Rahem	9 / 61 Wyndora Avenue FRESHWATER NSW 2096

Name:	Address:
Damian Paul McNamara	24 Cavill Street QUEENSCLIFF NSW 2096
Ms Geraldine Mary Grace	3 / 64 Harbord Road FRESHWATER NSW 2096
Mrs Sharyne Therese Mullens	4 / 69 Evans Street FRESHWATER NSW 2096
Mr Geoffrey Donald Stewart	34 Curban Street BALGOWLAH HEIGHTS NSW 2093
Amanda Jane Kivovitch	3 / 68 Crown Road QUEENSCLIFF NSW 2096
Ms Karen Suzanne Conlon	14 / 33 Cavill Street FRESHWATER NSW 2096
Mr Ian Hall Henderson	15 Marlborough Avenue FRESHWATER NSW 2096
Mae Madikian	Address Unknown
Ainslie Williams	16 / 102 - 108 Lawrence Street FRESHWATER NSW 2096
Ms Jennifer Lesly Brooker	7 / 52 Lawrence Street FRESHWATER NSW 2096
Mr Michael Philip Mol	18 / 102 - 108 Lawrence Street FRESHWATER NSW 2096
Oliver Michael Hitchcock	13 / 128 Lawrence Street FRESHWATER NSW 2096
Mr Ian Horswill	10 Wilson Street FRESHWATER NSW 2096
Mrs Natalie Jayne Gray	14 Palomar Parade FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Bronwyn O'Brien	Address Unknown
Mrs Geraldine Catherine Mol	18 / 102 - 108 Lawrence Street FRESHWATER NSW 2096
Ms Diane Jayne Dromgold	221 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Diana Margaret Ryall	50 Undercliff Road FRESHWATER NSW 2096
Mrs Sandra Elizabeth Young	29 Aranda Drive DAVIDSON NSW 2085
Mr Geoffrey Charles Young	29 Aranda Drive DAVIDSON NSW 2085
Deirdre Hatton	29 Aranda Drive DAVIDSON NSW 2085
Lesley Anne McQuade	126 A Lawrence Street FRESHWATER NSW 2096
Withheld Ms Wendy Ann Machon	FRESHWATER NSW 2096
Withheld Ms Wendy Ann Machon	1 / 24 Soldiers Avenue FRESHWATER NSW 2096
Ms Jacqueline Rita Summerhayes	11 / 33 Cavill Street FRESHWATER NSW 2096
Mr Gary John Wearne	6 Undercliff Road FRESHWATER NSW 2096
Ms Catherine Jessica Sturrock	127 McIntosh Road NARRAWEENA NSW 2099
Stacey Berkman	16 / 35 - 43 Dalley Street QUEENSCLIFF NSW 2096
Ms Daini Louise Phillips	145 Crown Road QUEENSCLIFF NSW 2096
Mr Luke Benjamin Elliott Phillips	145 Crown Road QUEENSCLIFF NSW 2096
Joshua Kennedy Wall	16 / 18 Albert Street FRESHWATER NSW 2096

The concerns raised in the submissions are addressed, as follows:

- **Building height**

Submissions have been received in objection to the height of the development, which exceeds the 11m height plane by a maximum of 300mm. As discussed with regard to clauses 4.3 and 4.6 of WLEP 2011, the area of non-compliance is limited to a minor portion of the upper roof form, with the majority of the development maintained well below the height plane. The height non-compliance is reasonably attributable to the fall of the land, and does not result in any unreasonable impacts or excessive built form.

- **Number of storeys**

Submissions have been received in objection to the height of the development as measured in storeys, with submissions suggesting that the four storey nature of the development is inconsistent with the three storey height limit prescribed by WDCP 2011. Whilst the proposed development comprises four levels, the proposed development does not exceed three storeys in any one place, noting that the basement does not extend more than 1m above ground below the footprint of the upper most level. The development has been carefully and skilfully designed to step up the slope of the land with no more than three storeys in any one place.

- **Bulk and scale**

Submissions have been received in objection to the bulk and scale of the proposed development, specifically in relation to the length of the Oliver Street facade. The western facade has a two and three storey presentation to Oliver Street, and comprises a high level of articulation to break down the length of the facade. The bulk and scale of the proposal is well resolved and appropriate in light of the B2 Local Centre zoning and with respect to the applicable controls.

- **Landscaped area**

Submissions have been received that suggest that the proposal is inconsistent with the provisions of WDCP 2011 that require a minimum landscaped area of 25%. However, the landscaped area controls of WDCP 2011 do not apply to the site. The same submissions also cite non-compliance with the minimum deep soil requirements, however with a deep soil zone of 43.62m² or 7.4% of the total site, the proposal complies with the 7% minimum deep soil zone prescribed by the ADG.

- **Landscaping**

In addition to concerns raised regarding the area of landscaping proposed, submissions have been received in objection to the location of the deep soil landscaping and the quality of the landscaping proposed. The quantum and quality of the landscaping proposed is appropriate with regard to the zoning of the site, and has been supported by Council's DSAP and Landscape Officers. The location of the proposed deep soil is also supported from a planning perspective, as it provides a necessary buffer to the adjoining low density residential zoned land.

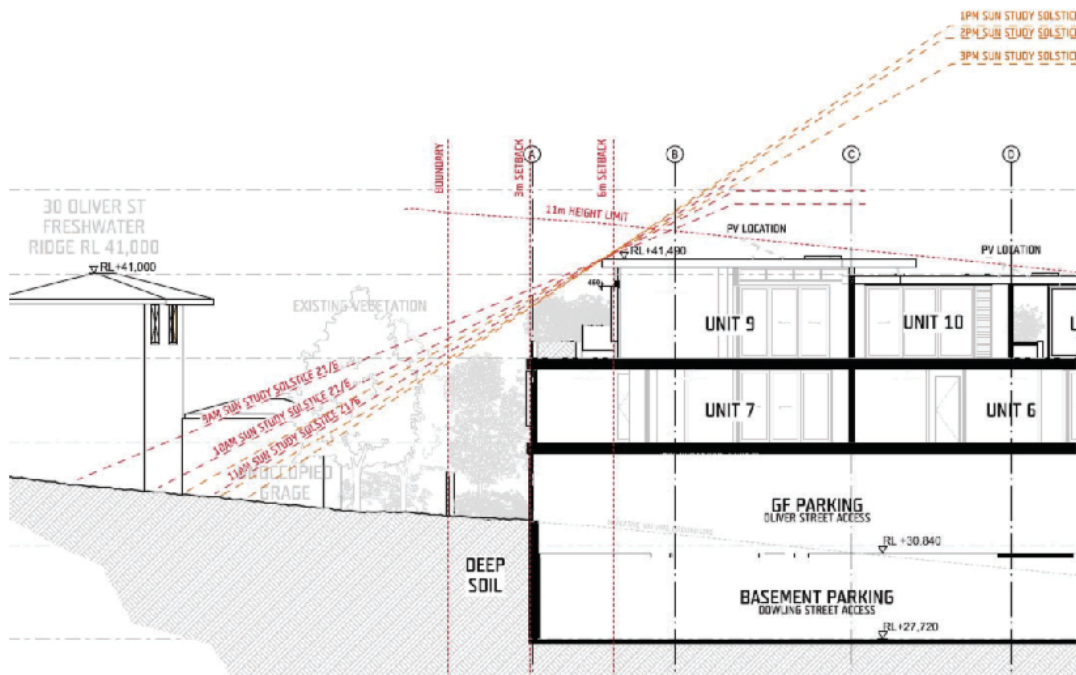
- **Southern setback**

Objection has been raised with respect to the proximity of the proposed development to the southern boundary and the adjoining dwelling at 30 Dowling Street. Whilst the proposal is inconsistent with the side setback requirements of the ADG, the proposal exceeds the 2m minimum setback prescribed by the Freshwater Village DCP and is consistent with the setbacks of other recent development throughout the local centre. The setbacks of the development do not attribute to any unreasonable impacts upon the amenity of the adjoining property or the surrounding environment. See further discussion with regard to the ADG and Part 11 of clause G5 of WDCP 2011.

- **Solar access**

A number of residents, including the relevant property owners, have raised objection to the degree in which the proposal will overshadow the adjoining property to the south at 30 Dowling

Street. As discussed with regard to clause D6 of WDCP 2011, whilst the proposal will result in additional overshadowing of the adjoining property, the overshadowing is limited to a portion of the garden and former garage, with solar access to all areas of private open space and windows associated with living rooms unaffected by the development. As shown in the Section A (extract below), the upper floor is setback 6m from the rear southern boundary and maintained below the height limit at that point to ensure that overshadowing is reasonably minimised.



The submissions also raise concerns with regard to the impact of overshadowing upon the established plantings at the northern end of 30 Dowling Street. The impact highlighted in the shadow diagrams represents mid-winter, when the impact of overshadowing will be at its worst. Additional sunlight will be received throughout the year. The landscaped area in question comprises a number of mature palms that are of a sufficient height that will ensure that sunlight to the canopy is still achieved, even in the middle of winter. Nonetheless, potential impacts to vegetation associated with overshadowing is not considered to warrant the refusal of the subject application.

- Visual privacy**
 Submissions have been received from the owners of 30 Dowling Street in objection to the extent of overlooking arising from the proposed development. As discussed with regard to the visual privacy provisions of the ADG and clause D8 of WDCP 2011, the proposed development has been designed to minimise overlooking between properties by virtue of fixed screens, opaque glazing, landscaping and spatial separation.
- View loss**
 Two submissions have been received in objection to potential impacts upon existing views. As discussed with regard to clause D7 of WDCP 2011, the proposed level of impact upon existing filtered views towards the ocean is minor and not unreasonable in the circumstances of this application.

- **Off-street parking**

Submissions have been received in objection to the amount of off-street parking proposed. The proposal provides 18 off-street parking spaces, one parking space short of the minimum requirements of clause C3 of WDCP 2011. The minor non-compliance is supported on merit with regard to the objectives of the parking control and Council's Traffic Engineer raises no concerns in this regard.

- **Size of retail tenancies**

Submissions have been received in objection to the size of the proposed retail tenancies, questioning whether the proposal is consistent with the shop top housing definition. Whilst the proportion of retail space is low when compared to the residential floor space, WLEP 2011 does not contain any minimum requirements in relation to retail floor space within a shop top housing development. The size and location of retail floor space is considered to be appropriate with regard to the location and constraints of the subject site.

Submissions were also received in objection to the height of the retail tenancies. The western retail tenancy has a ceiling height of 3.14m, which is inconsistent with the 3.3m minimum ceiling height prescribed by clause F11 of WDCP 2011 and the ADG. Despite the minor area of non-compliance, the ceiling height of the western retail tenancy is acceptable in light of size of the space and the amount of glazing to both the Oliver St and Lawrence Street facades.

A number of submissions also object to the size of the retail spaces and the inability to accommodate an IGA supermarket. With a width of less than 13m, the dimensions of the site do not facilitate the incorporation of a supermarket. Furthermore, an IGA Supermart is scheduled to open further along Lawrence Street in the near future.

- **Pedestrian safety**

Pedestrian safety has been raised as a concern in the submissions received, specifically in relation to the new driveway to Dowling Street and its proximity to the intersection and bus stop. A number of submissions suggest that all vehicular access should be achieved via Oliver Street.

In this respect, it is noted that Oliver Street is a regional road, and TfNSW do not support sole reliance upon Oliver Street for vehicular access. The amount of parking required for the development cannot be achieved on one level, and the depth and cross fall of the site prohibit the incorporation of an driveway ramp to join two levels internally. As such, the proposal has been designed with access to both Oliver Street and Dowling Street.

The proposed development achieves appropriate sight lines and incorporates other measures (speed hump, flashing lights and pedestrian alarms) to ensure that pedestrian safety is maximised. Council's Traffic Engineer has reviewed the proposal and raises no concerns in this regard.

- **Traffic**

The impact upon traffic conditions both during construction and long term has also been raised in the submissions received. Should the application be approved, a condition of consent can be imposed to ensure that construction traffic is appropriately managed during construction. In regards to long term impacts, it is noted that the proposed development does not generate significant volumes of traffic and Council's Traffic Engineer is satisfied that the proposal will not have an unreasonable impact upon traffic flows throughout the locality. This is somewhat assisted by the dual driveway approach, with the traffic generated by the development divided across two streets rather than one.

- **Acoustics**

A submission has been received from a resident of the apartment building at 33 Cavil Street in objection to the acoustic impacts associated with construction of the development and ongoing noise levels associated with the location of windows and balconies. Should the application be approved, conditions of consent can be imposed to ensure that noise levels associated with construction are appropriately minimised. Noise associated with the use of residential apartments is not unreasonable within the B2 Local Centre zone and will not be dissimilar to noise levels associated with other nearby or surrounding medium density residential development.

- **Shop top housing development**

Submissions have been received in objection to the concept of shop top housing development in general, with claims that Freshwater is already overdeveloped and requests for any further medium development in the town centre to be rejected. Shop top housing development is permitted and anticipated on the site under the provisions of WLEP 2011 and there has been no information presented to suggest that the density of the proposal is inappropriate within the Freshwater Village.
- **Non-compliance with DCP**

Submissions have been received which call upon Council to reject the development due to any area of non-compliance with WDCP 2011. It is acknowledged that the proposed development is non-compliant with provisions of WDCP 2011, specifically with regard to front setbacks, car parking and the need for emphasised vertical articulation. However, these aspects of the development have been considered on merit, and have been found to be acceptable as the intent of the control, or the objectives of the control, are otherwise achieved. This is consistent with the requirements of clause 4.15(3A) of the EP&A Act, which prescribes that the consent authority is to be flexible in applying the provisions of a DCP and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.
- **Removal of Dowling Street bus stop**

Submissions have been received in objection to the removal of the bus stop on Dowling Street. The proposed development does not propose the removal of the bus stop, but rather the relocation of the bus stop further to the south, away from the intersection. Should the application be approved, conditions of consent are to be imposed in relation to the construction of the bus stop and necessary signage.
- **Public upgrade works**

Objection has been raised with regard to the perceived lack of public domain works proposed in the application. Should the application be approved, conditions of consent are to be imposed to require specific upgrades to the public domain, including new paving, street trees and footpaths, in accordance with the *Northern Beaches Public Spaces Vision & Design Guidelines*.
- **Clause 4.6 submission**

A submission was received that questions the validity of the clause 4.6 submission, which includes reference to Manly Local Environmental Plan. The reference is limited to one subheading, and appears to have been included in error. The content of the clause 4.6 submission is otherwise well-founded and satisfactorily addressed the relevant provisions of clause 4.6 of WLEP 2011.
- **Loss of ocean breeze**

A submission has been received from a property owner of a top floor unit on the opposite side of Oliver Street, objecting to the impacts of the proposal upon currently enjoyed ocean breezes. The proposed development is located down slope and more than 40m from the property in

question. Noting that a direct line of sight is to be maintained to the ocean, it is assumed that any existing breezes will also remain unaffected.

- **Accessibility**

Submissions have been received raising objection to the location of the communal accessible toilet, suggesting that it is located too far from the retail tenancies, resulting in an unacceptable length of travel for future customers of the retail premises. The application proposes one retail and one business tenancy, neither of which require the provision of a publicly accessible bathroom. Nonetheless, should the owners of the premises choose to make the facilities publicly accessible, the distance is not unreasonably excessive, and an accessible path of travel is available (as confirmed by the Access Report provided to support the application).

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	No objection, with conditions. <i>Environmental Health have undertaken a review of the acoustic's of the proposal of shop top housing with 11 residential units and 2 commercial tenancies including the potential future use of the commercial tenancies.</i> <i>As part of the submissions an acoustic report has been provided that addresses how the acoustic amenity of the residential units will be maintained through RW ratings for walls and windows. The assessment focuses on existing background levels and modelling for future traffic noise to propose suitable minimum acoustic treatments to units. The acoustic report fails to undertake a detailed assessment of plant noise due to a current lack of information.</i> <i>Based on the submitted plans and design of the commercial units it is likely that they may be utilised as fixed food businesses. Based on there being no information provided for the use or fit out of the commercial units, a condition is to be applied requiring any fixed food premise fit out in these locations to be determined through a development application that addresses compliance with AS 4674 (Design, construction and fit-out of food premises) and AS 1668 (The use of mechanical ventilation).</i> <i>Future use of commercial tenancies may require mechanical ventilation which has the potential to alter findings of the acoustic report. At this initial stage there should be inbuilt provisions in the development to accommodate ducting of any future mechanical ventilation to prevent retrofitting ventilation on the outside of the building. Condition to be applied for details of any internal ducting that may service commercial tenancies.</i>
Landscape Officer	No objection, with conditions. <i>The application seeks consent for the demolition of existing site structures and the construction of a shop top housing development</i>

Internal Referral Body	Comments
	<i>with provided over 2 levels with access provided from both the Dowling and Oliver Street frontages.</i> <i>Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan 2011 Zone B2 Local Centre , and the following Warringah DCP 2011 controls: D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation G5 Freshwater Village</i> <i>The plans indicate deep soil planting at the rear of the site, adjoining R2 Zoned land. The species selected are capable of growing to maturity and once mature, are considered to be able to provide adequate separation to the adjoining R2 Land.</i> <i>Amended architectural and landscape plans are noted.</i> <i>The plans indicate additional planting to the Oliver Street frontage and further clarity of the vertical planting proposal for building walls.</i> <i>The plans show some additional planting within the road reserve to provide for more soft landscape around the building.</i> <i>No objections are raised form a landscape perspective to the proposed landscape treatments in the road reserve, however comment from Roads Assets should be sought regarding this aspect of the proposal.</i> <i>If the proposal is to be approved, recommended conditions have been provided.</i>
NECC (Coast and Catchments)	No objection, no conditions. <i>The subject land has been included on the 'Coastal Environment Area' but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA.</i> <i>On internal assessment, the DA satisfies the requirements under clauses 13 and 15 of the CM SEPP.</i> <i>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i>
NECC (Development Engineering)	No objection, with conditions.

Internal Referral Body	Comments
	<i>The submitted stormwater design including OSD has been reviewed and is satisfactory.</i> <i>The revised plans have addressed the previous issues with respect to the driveway grade and services conflicts. The proposal has been supported by Council's Traffic and Road Asset Engineers and has received concurrence from TfNSW.</i> <i>Development Engineering support the proposal, subject to conditions as recommended.</i>
NECC (Water Management)	No objection, with conditions. <i>Due to the significant intensification of development on this lot and the inclusion of 18 car spaces all of which will increase pollution of runoff and the volume of runoff entering the stormwater system, the applicant is required to incorporate filter cartridges into the OSD basin to remove pollutants from the stormwater prior to discharge from the land. This requirement has been conditioned. The applicant is also encouraged to connect the rainwater tank to toilets and laundries in the apartments to reduce the amount of stormwater discharged from the land.</i> <i>No groundwater was identified during geotechnical investigations. If any water collects in an excavation, the applicant should contact Council for advice on disposal as per the dewatering management condition.</i> <i>The applicant has provided a suitable sediment and erosion control plan.</i>
Road Reserve	No objection, with conditions. <i>The proposed development has limited impact on existing road infrastructure assets.</i> <i>The proposal to have bifold windows opening into the footpath space is not supported due to obstruction of the public road reserve, especially if the properties are not used for cafe/restaurant.</i> <i>The relocation of the bus stop on Dowling Street will require the consent of <u>Transport Network Team</u> to be addressed as part of S138 Road Act application together with relocation of street furniture (Council bus seat) against the building frontage at the bus stop. Pedestrian footpath access to be provided as part of Road Act Consent on the Dowling Street frontage.</i> <i>A Road Act consent for the retaining wall on the Oliver Street frontage will be required to formalise responsibility for ongoing maintenance of the structure by the property owner/strata. It is clearly an existing private structure given the use of the same type of brick as the building. No objection to proposed changes to extent of wall.</i>

Internal Referral Body	Comments
	<i>The use of the area for outdoor dining adjacent to the retaining wall shall be dependent upon Council approval. Such approval shall be subject to receiving concurrence from Transport for NSW in relation to the Oliver Street frontage which is a classified regional road, as required by s125 Roads Act 1993. Given the lack of activation on this frontage and that it does not provide access to the building, the requirement to keep the retaining wall is questionable.</i> <i>Development Engineering to require extension of the footpath network on the Dowling Street property frontage and reconstruction of full width paving on the Oliver Street frontage (including the removal of "gravel") as determined as part of Road Act Application in materials sympathetic to the Freshwater Village Landscape Masterplan.</i> <i>Development Engineering to require submission of Road Act Application for all works on the public road reserve in relation to retaining walls, footpaths, landscaping and any other works.</i>
Strategic and Place Planning (Heritage Officer)	No objection, with conditions. <i>The proposal has been referred to Heritage as the subject site is within proximity to two heritage items, listed in Schedule 5 of Warringah LEP 2011:</i> Item I71 - Building known as 'Harbord Literary Institute' - Corner Lawrence and Oliver Street <u>Statement of significance:</u> <i>"Harbord Literary Institute" has great social & historical significance for the community, having been part of community life since early 1900's. Historically the buildings indicate the growing need for facilities for the increasing permanent community.</i> <u>Physical description:</u> <i>Essentially two buildings with original building at rear which is a single storey brick building with 2 stringcourses of darker brick in line with top & bottom of windows. Gabled corrugated iron roof. Brick flat roofed addition on eastern side. Building on corner-single storey brick with hipped tiled roof. Brick gable located over entrance with arched opening & semi-circular plain leadlight. Timber weatherboards under eaves. Flag poles.</i> Item I72 - Building known as 'Early Childhood Health Centre' - 29 Lawrence Street <u>Statement of significance:</u> <i>A representative example of inter-war fire station architecture displaying high integrity of fabric. Strong social significance as the 1st permanent fire station building in Freshwater & in its continual use for the provision of community services.</i> <u>Physical description:</u> <i>Single storey brick building with multi-gabled roof and detailed</i>

Internal Referral Body	Comments
	<i>parapet on front facade. Roof of slate with terracotta capping & finials. Timber louvres to small gable ends. Facade partly rendered. Changes to entrance when changed to baby health centre. Canopy over entrance door. Brick course around door. Public toilets have been added to rear of building. Tree still exists to east of building adjacent to public pathway. Timber flag pole on top.</i> <u>Original Plans:</u> <i>The proposal seeks consent for the demolition of the existing site structures and the construction of a shop top housing development, which represents a four-storey development in parts of the proposal.</i> <i>A previous application (DA2020/0543) for this proposal had been withdrawn for a number of concerns raised by Council, including the fine grain detailing of the façades, building height, street activation, setbacks, building bulk/ massing and facade articulation.</i> <i>Heritage raised concerns regarding the heritage items, located to the north of the site across Lawrence Street as the subject site is mapped under DCP Maps 2 and 3 Freshwater, meaning that means that clause 18 in G5 Freshwater Village under the Warringah DCP 2011 applies to the site. The objectives of this clause is as follows: "To ensure that any proposed development within the vicinity of a heritage listed item does not have an adverse impact on and complements the heritage significance of the item(s)" Requirements R1-R3 detail what the HIS must address and it is noted that the brief HIS provided with this application has not addressed the requirements of clause 18, that would assist with assessing the impact of the proposal on the heritage items.</i> <i>Although, the current proposal demonstrates improvements to the proposed development previously assessed, the overall bulk and scale is still overwhelming, and it is dominating the low scale heritage items opposite Lawrence Street, when viewed from a number of view points, as the subject site is in a high prominent location, forming a key gateway entrance to Freshwater Village. Providing more articulation to the facades - not only the materiality but adding some recessed sections to the western and eastern facades - or dividing the mass into sections should be explored to minimise the visual impact on the heritage items and to respond better to its context and the low scale, coastal character of the Freshwater Village. Designing in context does not mean imitation or following inflexible design rules. A wide range of design solutions may emerge after careful analysis of surrounding buildings.</i> <i>Therefore, Heritage considers that the proposal should be further revised to minimise the bulk and scale and requires a more detailed heritage response.</i> <u>Amended Plans:</u>

Internal Referral Body	Comments
	<i>The bulk and scale of the proposal including the unarticulated façade treatment is still a concern from a heritage perspective. It is believed that the requirement of Warringah DCP 2011 – G5 Freshwater Village – Clause 4. Street facades and shopfront design has not been achieved:</i> <i>R1 The design and proportions of the façade elements are to continue and respect the narrow lot frontages</i> <i>R2 The maximum length of a shopfront is to be between 5 – 10m. Frontages greater than 10m must be broken into smaller vertical sections</i> <i>R3 Facades are to have a predominantly vertical emphasis</i> <i>However, if the proposal to be approved by the Development Assessment Team, no objections are raised to the proposal on heritage grounds, subject to one condition.</i> <i>Planner comment: Council's Heritage Officer has recommended the imposition of the following condition of consent:</i> <i>The glazed stairwells should be 500mm recessed from the western boundary to provide vertical articulation to the western façade.</i> <i>Reason: To minimise the impact on the heritage items and the streetscape.</i> <i>It is noted that the glazed stairwells referred to in the recommended condition are already setback 300mm from the western boundary, and as such, only an additional 200mm setback is required.</i>
Traffic Engineer	No objection, with conditions <u><i>Traffic Generation</i></u> <i>Traffic generation from the site will not be excessive with the traffic report indicating that the development will generate 10 trips in both the am and pm peak periods however given that existing uses on the site would generate traffic the overall increase in traffic flow would be less. These volumes are unlikely to impact to a significant extent upon traffic conditions in the surrounding road network.</i> <u><i>Car Parking</i></u> <i>The Warringah DCP requires parking at a rate of 1 space per dwelling for 1 bedroom apartments, 1.2 spaces for 2 bedroom apartments and 1 space per 5 dwellings for visitors. For retail uses 1 space per 16.4 sqm is required and 1 space per 40 sqm for business uses. This equates to a parking requirement of 17.7 spaces.</i> <i>The amended plans have widened the driveway to Dowling Street to 5.5m however this has resulted in the loss of one off-street parking space. There are now 8 parking spaces accessed off Dowling Street and 9 spaces accessed off Oliver Street, a total of 17 spaces. This is</i>

Internal Referral Body	Comments
	one less than the DCP requirement however is considered acceptable on this occasion given the proximity of the development to the Freshwater town centre, to bus services and to proposed bicycle routes along Dowling St all of which would act to reduce the demand for parking generated by the development. <u>Bicycle Parking</u> The Warringah DCP bicycle parking requirement is for 1 bicycle space per dwelling and 1 per 12 dwellings for visitors. For retail and business uses a space per 200 sqm is required. This would equate to approximately 13 bicycle parking spaces. The developer proposes secure bicycle parking areas for 13 bicycles spread over the two carparking levels. This is adequate <u>Servicing</u> Section C3 of the DCP requires that adequate provision for staff, customer and courier parking should be provided. Given the retail uses on the site it is considered appropriate to provide a parking bay for courier and service vehicles. This would be in addition to the carparking requirements of the development. The developer has provided a single service vehicle bay capable of accommodating a small rigid vehicle. This bay could also be used for removalist vans and the like to meet the needs of residential premises. It appears that the level 1 carpark may have a clearance of 3.5m which would be sufficient for access by Small Rigid Vehicles however this should be confirmed on the plans <u>Driveways</u> The amended plans including plan No. DA1102 level 01 dated 5/11/21 showing the proposed left in/left out driveway detail have been reviewed. It is noted that TfNSW have confirmed in their correspondence dated 9/11/21 that they are satisfied with this means of preventing right turns to and from the Oliver Street driveway, and as such the amended plans have addressed all of the concerns previously raised and the development is now supported in terms of traffic matters subject to conditions <u>Bus stop</u> The amended plans have also proposed relocation of the bus stop to the south of the Dowling Street driveway which eases potential congestion issues at the driveway and the intersection with Lawrence Street.
Waste Officer	No objection, with conditions.

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 business/commercial purposes for a significant period of time with no prior land uses. Upon review of the history of the site and noting the current state of the site, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the shop top housing development proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for 3/4 storey shop top housing development, comprising 11 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 22 July 2021 for review, the notes from which are attached to this report. The DSAP was highly supportive of the proposal and provided a series of recommendations to ensure design excellence, which are addressed as follows:

1. *Provide view from sun analysis demonstrating adequate solar access to southern neighbour*

Comment: The applicant has provided solar access diagrams which confirm that the proposed development does not result in any unreasonable impacts upon the adjoining dwelling with regard to solar access. The amended proposal has adequately responded to this recommendation.

2. *Provide confirmation of terrace drainage and constructional tolerances demonstrating adequacy of stated building heights or else, amend building heights to accommodate adequate tolerances.*

Comment: The applicant has provided additional sectional detail to confirm that the proposed development can achieve appropriate clearances and ceiling heights. The amended proposal has adequately responded to this recommendation.

3. *Ensure planter volumes are adequate to contain growing medium, tolerances and drainage infrastructure required to support extent of climbing plants illustrated*

Comment: The applicant has provided additional sectional detail to ensure that the proposed planters can adequately accommodate the plantings proposed. This has been confirmed by Council's Landscape Officer. The amended proposal has adequately responded to this recommendation.

4. *Consider including a condition for establishment and initial maintenance for architectural plantings.*

Comment: A condition of consent is recommended in this regard.

5. *Provide greater detail of planters on the Dowling Street frontage*

Comment: Additional detail has been provided and is supported by Council's Landscape Officer. The amended proposal has adequately responded to this recommendation.

6. *In consultation with Council investigate the possibility of small planting beds at ground level in the public domain to 'soften/green' the building /footpath interface.*

Comment: The application has been amended to include additional small planting beds at the ground level presenting to both Oliver Street and Dowling Street. The proposed landscape solution is supported by Council's Landscape Officer. The amended proposal has adequately responded to this recommendation.

7. *Investigate enhanced privacy to south-west apartment on Level 02.*

Comment: The application has been amended to include fixed louvres along the southern elevation and landscaping to the western elevation of the balcony of Unit 8 to enhance privacy. The amended proposal has adequately responded to this recommendation.

8. *Concrete slab edge profile, integrated facade planting, screens and sandstone base to be retained and refined.*

Comment: Whilst the application has been amended to provide additional integrated planting, the proposal maintains the exposed concrete slab, vertical screening and sandstone base, consistent with this recommendation.

9. *Consider full electrification of apartments in lieu of gas.*

Comment: The applicant has considered the full electrification of apartments in lieu of gas. However, noting that the proposal exceeds the minimum BASIX requirements, has opted to retain gas facilities within the proposed apartments.

10. *Consider design aspects of the car parking spaces that may enhance and allow for post-vehicle adaptation of the garage spaces.*

Comment: The proposed car park has been arranged to meet the requirements of WDCP 2011. Nonetheless, should Council's car parking requirements change in the future or if there is a notable drop in demand for parking within the development, the ceiling heights and structural detail of the car park provide for future adaptation.

Overall, the amended proposal has 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 at the western end of the Freshwater Village B2 Local Centre zone. Whilst primarily surrounded by land zoned R2 Low Density Residential, the scale, massing and density of surrounding development is highly varied, with no distinct character or architectural style. Nonetheless, the proposal is considered to appropriately respond to the site's unique and constrained context, as supported by the DSAP, who provided the following comment:

The site is located at the highest point and western extremity of the 'Freshwater Village' Local Centre. It is bound by three streets and as such the proposal is able to be read 'in the round'. Each of the bounding streets has distinctly varied character; vehicle dominated to the west, civic and cosmopolitan along the north and residential along the east. Furthermore, a significant grade change exists about the site, amounting to a complex array of challenges for development.

The panel is supportive of high-quality shop top housing in this location as it will serve to support, enhance, and provide greater access to the outstanding local character of Freshwater. The proposal consolidates ground floor retail at the northern end of the site where it serves as an appropriate continuation of the prevailing strip retail condition of Lawrence Street and where it is least encumbered by topography. The housing component is comprised of considered single and double level apartments which respond well to environmental conditions of the site.

The proposal mediates sensitively to its surroundings through form, articulation and materiality and makes use of the topography to efficiently consolidate parking and services on the lower levels of the building. A zone interface about the southern boundary is addressed with setbacks to create a clear delineation between zones and to allow for seemingly acceptable solar access to the southern neighbour.

- **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 massing of the proposed development is skilfully resolved, with a high degree of articulation achieved through varied materiality, feature glazed elements, landscaping and the exposed horizontal slabs. The architectural expression of the development is supported by the DSAP, who provided the following comment:

The proposal is set over four (4) storeys, however is articulated into a series of horizontal planes which set back incrementally in response to the site's topography to create a broadly three (3) storey form. There is a commendable cohesiveness between the form and the quality outdoor spaces it creates including the integration of the street awning into the 'language' of the building as well as private open space in the form of terraces open to the sky.

The proposal exhibits a minor exceedance of the height limit. The panel agrees that there are negligible environmental effects to the public domain as a result of this exceedance.

- **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. The proposed development provides a high level of amenity for each of the units proposed, without unreasonably impacting upon surrounding properties or the natural environment. The proposed massing is consistent with that anticipated under the provisions of WLEP 2011 and WDCP 11, and overall, the density of the proposed development is considered to be appropriate for 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 exceeds minimum industry standards.

- **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 medium density local centre that has no landscaped area requirements prescribed by WDCP 2011. The proposed development is considered to achieve an appropriate landscaped solution in light of the zoning of the site.

- **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 performs well against the relevant design criteria, guidance and amenity controls. The proposal will achieve a high level of amenity for future occupants of the development, without unreasonably impacting upon the amenity of adjoining and nearby residences.

- **Principle 7: Safety**

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

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

Comment: The proposed development achieves a high degree of causal surveillance to each of the three street frontages, and has been designed to optimise safety of future residents moving to/from the development and the general public moving around the development within the public road reserve.

- **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: The application provides a reasonable mix of apartment sizes, with the appropriate level of liveable and 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 appropriately respond to the context and unique challenges of the site. As above, the treatment of the facade is well resolved and is highly supported by the DSAP.

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.	-	Y	Y
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.	Y	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	Y	Y
	3F-2	Building design elements increase privacy without compromising access to light and air and balance	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
		outlook from habitable rooms and private open space.			
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.	-	Y	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 parking are minimised.	-	-	-
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	Y	Y
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.	Y	Y	Y
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y
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	Y	Y
	4C-2	Ceiling height increases the sense of space in	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O																
4D Apartment size and layout	4C-3	apartments and provides for well proportioned rooms.																			
		Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y																
	4D-1	Apartments are required to have the following minimum internal areas:	Y	Y	Y																
		<table><tr><th>Apartment Type</th><th>Min. internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table>		Apartment Type	Min. internal area	Studio	35m ²	1 Bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²								
		Apartment Type	Min. internal area																		
		Studio	35m ²																		
		1 Bedroom	50m ²																		
		2 Bedroom	70m ²																		
		3 Bedroom	90m ²																		
		The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.																			
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		Y	Y	Y																	
4D-2		Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y																
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y	Y	Y																	
4D-3	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobes).	N	Y	Y																	
	Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y																	
	Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	N	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:	N	Y	Y																
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m²</td><td>2.4m</td></tr></table>		Apartment Type	Min. area	Min. depth	Studio	4m ²	-	1 Bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom	12m ²	2.4m			
		Apartment Type	Min. area	Min. depth																	
		Studio	4m ²	-																	
		1 Bedroom	8m ²	2m																	
		2 Bedroom	10m ²	2m																	
		3 Bedroom	12m ²	2.4m																	
		For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m ² .		-	-	-															
		4E-2	Primary private open space and balconies are appropriately located to enhance liveability for	-	Y	Y															

ADG reference	Subclause	Design Criteria	DC	DG	O						
		residents.									
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	Y	Y						
	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:	Y	Y	Y						
		<table><tr><th>Apartment Type</th><th>Min. area</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 Bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3 Bedroom</td><td>10m³</td></tr></table>				Apartment Type	Min. area	Studio	4m³	1 Bedroom	6m³
	Apartment Type	Min. area									
Studio	4m³										
1 Bedroom	6m³										
2 Bedroom	8m³										
3 Bedroom	10m³										
	4G-2	At least 50% is to be located within the apartment.	-	Y	Y						
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y						
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	N	Y						
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y						
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y						
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.	-	Y	Y						
	4M-2	Building functions are expressed by the facade.	-	Y	Y						
4N Roof design	4N-1	Roof treatments are integrated into the building	-	Y	Y						

ADG reference	Subclause	Design Criteria	DC	DG	O
4O Landscape design		design and positively respond to the street.			
	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-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.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	Y	Y
	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	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
4X Building maintenance		convenient source separation and recycling.			
	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

- **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 147.5m², 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 each of the proposed units comprise functional and appropriately sized areas of private open space, the lack of communal open space is not considered to be detrimental to the proposed development

- **Visual privacy (3F-1)**

Objective 3F-1 of the ADG prescribes a 6m minimum setback between habitable rooms/balconies and the side boundary, with recommendations for increased setbacks where the site adjoins a different zone that permits lower density residential development. With this in mind, a 9m setback is required between Levels 2/3 and the southern boundary. With a 3m setback to Level 2 and a 4.5m - 6.0m setback to Level 3, the proposal is inconsistent with this requirement.

The specified intent of the setback requirement is to ensure that adequate separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. On Level 2, the development has been designed with only minimal openings orientated towards the common southern boundary. On Level 3, a 6.0m setback is achieved to the external facade of the development, with landscaping proposed within the setback to offset any impacts associated with the proposed development, including those associated with the narrow balcony located 4.5m from the setback.

The arrangement of the adjoining residential property to the south is also considered to be relevant in this instance, with the habitable area of the dwelling located approximately 11m from the common boundary, with established landscaping in the setback area. Overall, the combined spatial separation combined with the existing and proposed landscaping will ensure appropriate privacy between properties is achieved.

It is also relevant to note that the minimum requirements of the ADG significantly differ from the requirements of the Freshwater Village DCP, which prescribes a 2m setback between shop top housing development and adjoining residential land. In this instance, the site specific requirements of the Freshwater Village DCP, that were developed in consultation with the Freshwater community, are considered to hold greater determinative weight.

Overall, the 3.0m - 6.0m setbacks proposed are considered to be a contextually appropriate response for the site.

- **Ceiling heights (4C-1)**

Unit 3, a studio unit on the eastern side of Level 1, is a split level apartment where the bedroom

space is elevated 690mm above the remainder of the unit. This is to accommodate appropriate clearance for the residential lobby below. As a result, the ceiling height in the bedroom space is 2.5m, slightly less than the 2.7m ceiling height prescribed by Objective 4C-1 of the ADG. However, this is not considered to result in unacceptable amenity for this unit, noting that the reduced ceiling height is limited to the bedroom, and as remainder of the studio has ceiling heights of 3.2m, in excess of the 2.7m minimum prescribed.

The ceiling height of the western retail space is 3.16m, just shy of the 3.3m minimum requirement of Objective 4C-1 of the ADG. The slight non-compliance is considered acceptable in light of the limited depth of the retail premises and noting the extent of glazing that wraps around the facade of the development. Furthermore, the ceiling height is consistent with the 3m minimum ceiling height prescribed by clause F1 of WDCP 2011 for retail premises within the B2 Local Centre zone.

- **Apartment size and layout (4D-3)**

The size of master bedroom of Unit 4 (9.7m²) and Unit 8 (9.5m²) is slightly less than the 10m² minimum prescribed by Objective 4D-3 of the ADG. The function, use and amenity of the bedrooms are not compromised by the minor areas of non-compliance proposed, and consistency with the intent of the clause is nonetheless achieved.

The living areas of Unit 6 and Unit 7 have been designed to wrap around the adjacent balcony. Whilst a portion of the living areas have a minimum depth of 3m-3.5m, being slightly less than the 3.6m prescribed, the L-shaped configuration and connectivity of the living space to the balcony ensures that the use and function of the space is not compromised.

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

At 8.0m², the primary balcony for Unit 9 is non-compliant with the 10.0m² minimum prescribed by Objective 4E-1 of the ADG. Nonetheless, the balcony has been designed with two sides opening to the adjacent living areas to maximise the use of the available space. Furthermore, the minor non-compliance is offset by a secondary balcony (9.6m²) along the southern side of the unit. As such, despite minor non-compliance, the amenity of the unit is not unreasonably compromised.

- **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.

Whilst minor elements of the proposal are inconsistent with the minimum requirements of the ADG, the proposal is considered to be a skilful design solution for the constrained site. In accordance with clause 30 of SEPP 65, the consent authority can be satisfied that the proposal has had adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

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.

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 (Oliver Street). These matters are addressed, as follows:

- *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

Comment: The proposal relies upon access to both Oliver Street and Dowling Street. Given the constraints of the site, this is considered to be both the most practical and safe access arrangement for the development.

- *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

- (i) *the design of the vehicular access to the land, or*
- (ii) *the emission of smoke or dust from the development, or*
- (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment: The proposed development will not have an adverse impact upon the safety, efficiency or ongoing operation of Oliver Street. The traffic generation associated with the development is not excessive or unreasonable, and the amount of vehicles entering and existing the site from Oliver Street is not dissimilar to current arrangements at the site.

- *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: The application was supported by an Acoustic Report (Koikas Acoustics, dated 19 March 2021) which includes specific construction details to ensure that noise levels associated with the ongoing use of Oliver Street is appropriately mitigated within the proposed apartments.

As such, the consent authority can be satisfied that the proposed development is consistent with the relevant provisions of SEPP Infrastructure.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Environment Area under the provisions of *State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP)*, and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposal development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13 and 15 of this policy.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	11.3m	0.3m or 2.7%	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	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone B2 Local Centre

The proposed shop top housing development is permissible on the land and is consistent with the objectives of the B2 Local Centre zone, as follows:

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

Comment: The proposal will provide retail and business premises in the northern end of the Ground Floor presenting to Lawrence Street, consistent with the alignment of other retail and business premises within the Freshwater Village.

- *To encourage employment opportunities in accessible locations.*

Comment: The proposed development provides both retail and business floor area, contributing to the range of employment opportunities within the Freshwater Village.

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

Comment: The site has convenient access to public transport, and is sited in close proximity to a range of retail premises, services, restaurants, parks and Freshwater Beach, which actively encourages future residents to walk and cycle. The proposal also provide ample bike storage, in addition to designated residential parking spaces.

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

Comment: The proposed development includes upgrades to the road reserve to improve public safety and amenity along each of the three street frontages. The proposal also significantly enhances casual surveillance of the public domain.

- *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 development has been designed to follow the slope of the land and is well articulated to ensure that the massing of the development is commensurate and/or compatible with surrounding built form. The proposal provides appropriate landscaped setbacks to the southern boundary, where the development adjoins low density residential zoned land.

- *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 proposal has been designed to focus the retail/commercial portion of the development to the north (away from the low density residential development to the south) to minimise conflict with adjoining properties.

4.3 Height of buildings

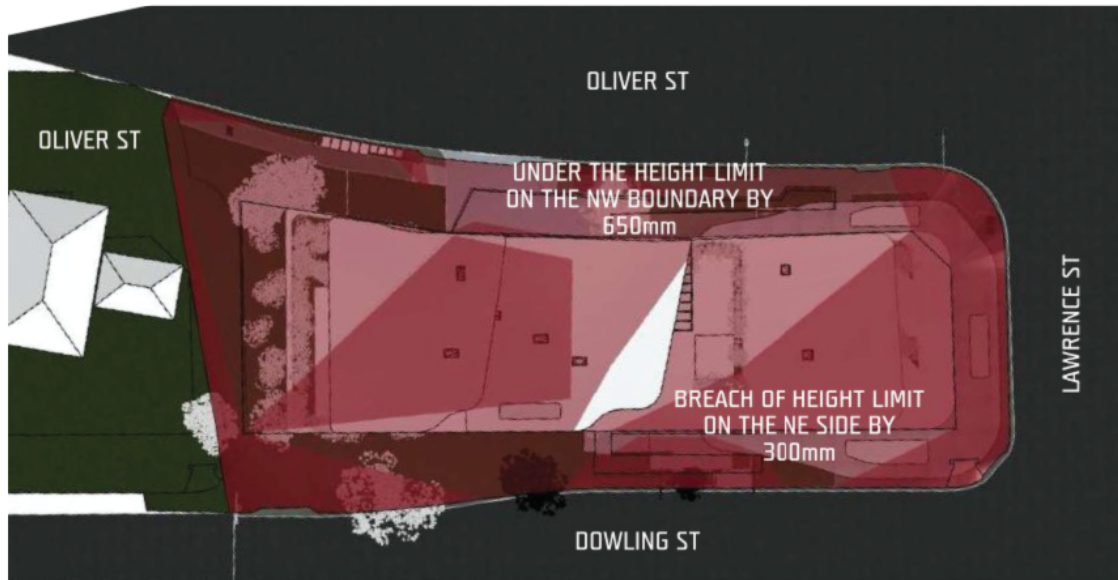
and clause 4.6 Exceptions to development standards

With a maximum building height of 11.3m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the 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 11.3m, representative of a 0.3m or 2.7% variation to the 11m maximum building height development standard. The maximum height occurs in the north-eastern corner of the upper floor roof, as demonstrated in the diagram below (the portion of the roof shown in white).



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 satisfactorily demonstrate that the proposed development will achieve consistency with the objectives of the building height development standard.

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

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

- The proposal promotes the orderly and economic use and development of the land (Object 1.3 (c)), in so far that the minor non-compliance arises as a result of the irregular geometry and topography of the land. Further, the extent of the non-compliance, that is appropriately described as both quantitatively and qualitatively as minor, is offset by the balance of the building that is maintained below the height plane.

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (Object 1.3(h)),
- The development represents good design (Object 1.3(g)), in so far that the building is of exceptional design quality, with minimal excavation to achieve a development that responds appropriately to the constraints of the site.

The applicant's submission has established sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matter required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

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

The proposal is 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 proposed development has been sensitively designed to ensure that the built form responds to the cross fall of the land, with no element that exceeds three storeys in height in any one place. This, combined with a high degree of articulation, has ensured that the proposal is compatible with the height and scale of surrounding and nearby development. It is noted that the proposal does not need to be the same height or scale as surrounding built form to be compatible. Nonetheless, the proposal is considered to appropriately respond to that of surrounding development, whilst also appreciating the zoning, constraints and challenges of the site.

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

Comment: The visual impact of the proposed development has been appropriately minimised to a degree that is commensurate with development anticipated within the B2 Local Centre zone. The proposed development demonstrates consideration of the amenity of neighbouring and nearby development, and does not result in any unreasonable impacts upon views, privacy or solar access.

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

Comment: The proposed development presents a high quality architectural response that is consistent with the desired character and coastal environment of the Freshwater Village.

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

Comment: The proposed development features a range of materials and finishes that are appropriate for the Freshwater Village. The variation in materials, the strategic use of

landscaping and the composition of the facades actively ensures that the visual impact is appropriately minimised as viewed from the public domain.

Furthermore, as discussed separately above, the proposal is consistent with the relevant objectives of the B2 Local Centre Zone.

Therefore, the consent authority can 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 can be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposed building height variation can be supported.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
G5.2 Number of storeys	3	3	-	Yes
G5.4 Street facades and shopfront design	10m (max)	7.8m (max)	-	Yes
G5.10 Front Setback	Ground - Nil	Nil	-	Yes
	Level 1: Nil	Nil	-	Yes
	Level 2: Nil - 5m	Nil - 5.2m	5m (max)	No
	Level 3: 5m	Nil - 19m	5m (max)	No
G5.11 Side and rear setbacks	2m	3m - 6m	-	Yes
C3 Parking facilities	17.8 spaces	18 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	No	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
9. Awnings	Yes	Yes
10. Front setback	No	Yes
11. Side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes
18. Development in the vicinity of heritage items	Yes	Yes

Detailed Assessment

C3 Parking Facilities

The number of parking spaces proposed is inconsistent with the minimum requirements of this clause, as follows:

Type	Required	Proposed	+/-
Residential	12	12	0
Visitor	2.2	1	-1
Retail	3.5	4	0

Service	1	1	0
Total	19	18	-1

The proposed parking shortfall is supportable on merit, as the proposal is consistent with the objectives of this clause, as follows:

- *To provide adequate off street car parking.*

Comment: The proposed development comprises 18 off-street parking spaces, one shy of the minimum prescribed by this clause. The non-compliance is considered acceptable in this instance, as the demand for visitor parking can be off-set by the proposed retail parking spaces and on-street parking in the vicinity of the site. Despite the minor shortage of visitor parking spaces, the supply of off-street parking is considered to be adequate in light of the site's location within the Freshwater Village, where time restricted parking is provided.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment: The partially above ground design of the parking areas is attributable to the fall of the land and the narrow nature of the site, which prevents the incorporation of internal driveway ramps. The design is appropriately softened by landscaping and varied materials to ensure that an appropriate presentation to the public domain.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment: The proposed parking areas are to design to be perceived as a podium for the residential floor area above. The proposal is well articulated with appropriate landscaping to ensure that the parking structures do not dominate the streetscape.

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 shop top housing development. However, these requirements are inconsistent with the minimum requirements of the ADG, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the ADG 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 ADG, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the ADG in relation to solar access have no effect.

Adjoining development

Clause D6 of WDCP 2011 also requires at least 50% of the required area of private open space for each adjoining dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. The ADG does not prescribe any minimum requirements in relation to impacts upon neighbours, and as

such, these provisions of clause D6 of WDCP 2011 are relevant to the proposal.

The proposal will overshadow the lower northern part of the adjoining property at 30 Dowling St throughout the day in midwinter. The portion of the adjoining property affected by the proposal comprises a storage area (a former garage) and densely vegetated gardens. Whilst it is acknowledged that the garden spaces are used for outdoor recreation, these areas are not the "required area of private open space" where sunlight is to be maintained and protected. In relation to the adjoining property at 30 Dowling Street, such areas would be the elevated balconies/decks on both the eastern and western sides of the dwelling, immediately adjacent to the upper level living areas, which are unaffected by the proposal.

Despite additional overshadowing arising from the proposed development, the proposed development is consistent with the provisions of this control.

D7 Views

Ocean and district views are currently enjoyed over the subject site by nearby properties. In response to the notification of the application, two submissions were received raising concerns with regard to the potential impact of the development upon such views from the owners of two specific properties, being 7/52 Lawrence Street and 14/33 Cavil Street, Freshwater.

In response to these concerns, the applicant has undertaken a detailed view analysis, including a number of photomontages (prepared in accordance with the NSW LEC Photomontage Policy) demonstrating the potential impact upon views from multiple vantage points within each of these properties. The impacts depicted in these photomontages are considered with regard to the four step View Sharing Planning Principle, as follows:

7/52 Lawrence Street, Freshwater

1. Apartment 7 is located in the north-east corner of the top floor of 52 Lawrence Street, which is located upslope and to the west of the subject site, on the opposite side of Oliver Street. The occupants of Apartment 7 currently enjoy district views in both a northerly and easterly direction, with distant water views also available to the east.
2. Northerly district views are available from a bedroom and balcony at the northern end of the apartment. Easterly views are available from windows on the eastern elevation associated with the main bedroom, the dining area and the living room. All views in question are gained over front boundaries and are generally available from a seated and standing position, however the height of the window sill acts to obstruct the extent of the views available in a seated position.
3. The potential impact of the development is limited to the views available in an easterly direction from the main bedroom and the dining/living area. From the living area, where the impact is at its worst, the proposed development will obstruct a secondary view of the ocean, that is heavily filtered by immediate and distant vegetation, however the primary view corridor will remain unobstructed over the roof of the proposed development. The existing view from a seated position in the living room is shown in Image 1 (below), with the impact of the development shown in Image 2 (below).



Image 1 - Existing view seated in living room.



Image 2 - Resultant view impact from seated position in living room.

From a seated position in the main bedroom, the proposal will impact upon a portion of the

secondary ocean view, with the primary view maintained over the roof of the development. The existing view from a seated position in the bedroom is shown in Image 3 (below), with the impact of the development shown in Image 4 (below).



Image 3 - Existing view seated in main bedroom.



Image 4 - Resultant view impact from seated position in main bedroom.

Noting that the district views to the north remain entirely unaffected by the proposal, and that the primary ocean view is maintained from each available vantage point, the impact associated with the proposal is considered to be minor.

4. The northern end of the proposed development is maintained well below the height limit, which actively ensures the preservation of the primary views from Apartment 7. Whilst a minor portion of the building exceeds the height limits, this part of the building does not attribute to the impact upon views. In consideration of both the level of impact and the way in which the building responds to the relevant controls, the impact upon views from Apartment 7 at 52 Lawrence Street is considered acceptable and reasonable.

14/33 Cavil Street, Freshwater

1. Apartment 14 is located in the north-east corner of the top floor of 33 Cavil Street, which is located up slope and to the south-west of the subject site, on the opposite side of Oliver Street. The occupants of Apartment 14 currently enjoy district views in both a northerly and easterly direction, with distant water views also available to the east.
2. Northerly and easterly district views are available from the primary living area and balcony at the northern-east corner of the apartment. Easterly views are available from a window on the eastern elevation associated with the main bedroom. Views to the east include distant ocean views to Freshwater Beach. The northerly views are gained over the properties side boundary, with the eastern views gained over the secondary frontage to Oliver Street. All views in question are generally available from a seated and standing position, however the height of the window sill or balustrade act to obstruct the extent of the views available in a seated position.
3. From the living room in a seated position, where the potential impact is at its worst, the proposed

development will remove a portion of the district views of Freshwater Village, with all ocean views to be retained. The existing view from a seated position in the living room is shown in Image 5 (below), with the impact of the development shown in Image 6 (below).



Image 5 - Existing view seated in living room.



Image 6 - Resultant view impact from seated position in living room.

The full suite of photomontages presented by the Applicant (DA-8001 - DA8004 by CKDS Architecture) also confirms that the proposal will not impact upon the water views available from a seated or standing position in the main bedroom.

Noting that the district views to the north remain entirely unaffected by the proposal, and that all oceans view are maintained from each available vantage point, the impact associated with the proposal is considered to be negligible.

4. The southern end of the building, being that part of the building that is closest to the building at 33 Cavil Street, is maintained well below the height limit and is setback 6m from the southern boundary, 4m greater than that anticipated by WDCP 2011. In consideration of the negligible impact upon views, the impact upon views from Apartment 14 at 33 Cavil Street is considered acceptable and reasonable.

Overall, the proposed development does not result in any unreasonable impacts upon existing views and the proposal is consistent with the requirements of this control.

D8 Privacy

The development comprises balconies and openings on the southern elevation that are located within 9m of the adjoining dwelling to the south. These areas are considered individually, as follows:

- Balcony of Unit 8 (south-western corner of Level 2)

The balcony in the south-western corner of Unit 8 has a primary orientation towards Oliver Street to the west, with fixed louvres proposed along the southern elevation to prevent overlooking of the adjoining dwelling to the south.

- Master bedroom of Unit 9 (south-western corner of Level 3)

The primary orientation of the master bedroom of Unit 9 is to Oliver Street to the west, with one narrow window proposed on the southern elevation. The window is to comprise opaque glass to prevent overlooking of the adjoining dwelling to the south. Impacts associated with this window are also mitigated by the 6m setback to the southern boundary and the landscaping proposed at both the ground floor and within the elevated planter immediately adjacent to the window.

- Bedroom 1 of Unit 9 (southern end of Level 3)

Bedroom 1 of Unit 9 features two narrow windows on the southern elevation. The windows are to comprise opaque glass to prevent overlooking of the adjoining dwelling to the south. Impacts associated with these windows are also mitigated by the 6m setback to the southern boundary and the landscaping proposed at both the ground floor and within the adjacent terrace.

- Living Room of Unit 9 (south-eastern corner of Level 3)

The primary orientation of the living room of Unit 9 is to the east and north-east. The windows proposed along the southern elevation comprise fixed louvres that enable views in a south-easterly direction, whilst restricting views in a southerly direction towards the adjacent dwelling to the south. A glass door, comprising opaque glazing, is also proposed on the southern elevation to facilitate access to the balcony. Visual privacy impacts associated with this door are also mitigated by the 6m setback to the southern boundary and the landscaping proposed at the ground floor and within the adjacent terrace.

- Southern balcony associated with Unit 9 (south-eastern corner of Level 3)

Unit 9 comprises a narrow balcony that runs part way along the southern elevation. The balcony is designed to enable access for maintenance of the elevated planters along the southern elevation and is not the primary area of open space associated with Unit 9 (which is separately located in the north-eastern corner of the apartment). The resultant spatial separation between the proposed development and the adjacent dwelling, in addition to proposed and existing landscaping, is considered to provide an appropriate level of privacy between properties in consideration of the intended limited use and function of the balcony.

The current outlook from 30 Dowling Street is shown in Image 7 (below). The existing palms located at 30 Dowling Street will provide a high degree of screening in their own right and will be complemented by plantings proposed at the subject site.



Image 7 - Northerly outlook from 30 Dowling Street

All other windows proposed along the southern elevation are highlight windows, which prevent overlooking of the adjoining property. Occupants of the adjoining property may be able to look down into these spaces, however this is acceptable noting that it can be managed with internal blinds, and noting the generous separation (approximately 14m) and the high level of vegetation between properties. Overall, the proposed development has been appropriately designed to ensure optimal privacy for occupants of the proposed development and adjoining properties, consistent with the requirements of this control.

4. Street facades and shopfront design

Part 4 of the Freshwater Village DCP prescribes that the design and proportions of facade elements are to continue and respect the narrow lot frontages. Specifically, the maximum length of a shop front is to be between 5 - 10m, with any frontages greater than 10m broken into smaller vertical sections. The northern-most portion of Ground Level comprises two retail/business tenancies, that have been designed to wrap around the corners of the development, with no frontage greater than 10m in width. Both the size/scale of the tenancies, and the way that the spaces have been designed to interact with the public domain, ensure a fine grain design solution that appropriately responds to the character of Freshwater Village.

The street facade and shopfront design requirements of the Freshwater Village DCP also prescribe that facades are to have a predominantly vertical emphasis, in order to reduce apparent bulk and scale. Whilst the proposed development, which features exposed concrete slabs that emphasise the horizontal form of the development, is inconsistent with this requirement, the objective to reduce the apparent bulk and scale of the development is nonetheless achieved. As identified by the DSAP, the *"considered*

facade expression and a well-considered hierarchy of materials and facade devices that relate well to the context. The panel recognises that details such as the deeply articulated concrete slab edge profile, integrated facade planting and sandstone base are integral to the scheme's success". Furthermore, whilst the design features strong horizontal elements, the desire for vertical emphasis has not been ignored, with vertical timber-look screening elements aligned in a vertical plane to actively break down the length of both the Oliver Street and Dowling Street facades.

Overall, despite the constraints and challenges of the site, the proposal provides a high quality design solution that appropriately responds to the character of the Freshwater Village and the scale of surrounding built form.

10. Front setback

Part 10 of the Freshwater Village DCP prescribes that new buildings may be built to the boundary at the ground and second storey, with a 5m minimum setback at the third storey. The control is silent with respect to setbacks for secondary street frontages and does not include any expressed variations.

With a nil setback to the northern boundary at the Ground Floor and Level 1, and a 5m setback on Level 2, the proposal is consistent with the minimum setbacks prescribed in relation to Lawrence Street. However, in consideration of the limited depth of the site, 5m setbacks at the upper levels to both Oliver Street and Dowling Street cannot be reasonably achieved. The 5m setback requirement is further complicated by slope of the site, resulting in differing setback requirements along the two upper floors, dependant upon the point at which the lowest level protrudes far enough above ground to be considered a "storey".

The third storey setbacks range between Nil and 0.8m along the Oliver Street facade and 0.2m to 2.4m on the Dowling Street facade. Despite non-compliance with the 5m minimum setback requirement for the upper levels of these secondary street facades, the proposal is consistent with the objectives of the upper level setback control, as follows:

- *To create a sense of openness*

Comment: The proposal comprises setbacks of up to 2.4m from the Dowling Street front boundary. Whilst short of the 5m requirement, the setback ensures that the upper level of the proposal is recessive and that the massing of the development appropriately responds to the natural fall of the land (which is at its lowest on the Dowling Street facade).

Whilst the setbacks to the Oliver Street front boundary are lesser than those to Dowling Street, the setbacks are appropriate with regard to the character and nature of Dowling Street, being a regional road with higher traffic levels. Furthermore, the scale and massing of the proposal is consistent with that of existing development on the western side of the street. The lack of the necessary setbacks at the upper level is offset by the high degree of articulation along the western facade, particularly the screening that sits forward of the glass line to give a sense of depth, despite the limited setbacks proposed.

The sense of openness achieved in the proposed development is appropriate in light of the B2 zoning of the site and the scale of development anticipated on the site.

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

Comment: The proposed development is a high quality architectural solution that will be a positive contribution to the Freshwater Village. Further, the proposal includes upgrades to the public domain to improve the streetscape and enhance the visual quality of the public domain.

As noted by the DSAP:

"There is a commendable cohesiveness between the form and the quality outdoor spaces it creates including the integration of the street awning into the 'language' of the building as well as private open space in the form of terraces open to the sky".

11. Side and rear setbacks

Part 11 of the Freshwater Village DCP prescribes that where a side or rear boundary of the proposed development site adjoins land zoned for residential purposes, excluding roads, a minimum setback of 2m is required. This setback area is to be landscaped and densely planted. The proposed development provides a 3m (minimum) setback to the adjoining residential property to the south, increasing to 6m at the upper floor. and as such, the proposal is compliant with this requirement. The 3m setback area is entirely deep soil and is to incorporate landscaping to screen/soften the proposal as viewed from the south. The proposal exceeds the minimum side/rear setback prescribed by this control.

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 \$43,480 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,348,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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 consent authority can be 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 proposed development is a high-quality architectural design solution for a challenging and irregular site. Whilst objection has been raised by the community, the proposal is in keeping with the character of the area and the development outcome anticipated by WLEP 2011 and the Freshwater Village DCP. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest as 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.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0744 for Demolition works and construction of shop top housing on land at Lot 1 DP 571975, 50 Lawrence Street, FRESHWATER, 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
DA-0001 Legends, Issue D	25 October 2021	CKDS Architecture
DA-0101 Demolition Plan, Issue D	25 October 2021	CKDS Architecture
DA-1002 Site Plan, Issue D	25 October 2021	CKDS Architecture
DA-1101 Ground Floor Plan, Issue E	25 October 2021	CKDS Architecture
DA-1102 Level 01 Plan, Issue E	5 November 2021	CKDS Architecture
DA-1103 Level 02 Plan, Issue E	25 October 2021	CKDS Architecture
DA-1104 Level 03 Plan, Issue D	25 October 2021	CKDS Architecture
DA-2001 North/South Elevation, Issue D	25 October 2021	CKDS Architecture
DA-2002 East/West Elevation, Issue D	25 October 2021	CKDS Architecture
DA-3001 Section A, Issue D	25 October 2021	CKDS Architecture
DA-3002 Section B+C, Issue D	25 October 2021	CKDS Architecture
DA-7001 External Material Schedule 1, Issue D	25 October 2021	CKDS Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
SW.01 Cover Sheet, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.02 Stormwater Drainage Concept Plan - Ground Level, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.03 Stormwater Drainage Concept Plan - Level One, Revision A	24 March 2021	KYSU Structural & Civil Engineers

SW.04 OSD Tank Details, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.05 Stormwater Details, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.06 Erosion Soil & Sediment Control Plan, Revision A	24 March 2021	KYSU Structural & Civil Engineers
SW.07 Erosion Soil & Sediment Controls Details, Revision A	24 March 2021	KYSU Structural & Civil Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Site Investigation 2020-050, Issue 1	22 March 2021	Crozier Geotechnical Consultants
BASIX Certificate 1096224M_02	23 March 2021	Chapman Environmental Services Pty Ltd
Acoustic Report, Version 3	19 March 2021	Koikas Acoustics Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LPDA 20-190/1 Site Plan - Public Domain, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/2 Landscape Plan - Level 1, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/3 Landscape Plan - Level 2, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/4 Landscape Plan - Level 4, Revision D	25 August 2021	Conzept Landscape Architects
LPDA 20-190/5 Landscape Plan, Revision B	25 August 2021	Conzept Landscape Architects
LPDA 20-190/6 Sections, Revision B	25 August 2021	Conzept Landscape Architects
LPDA 20-190/7 Specifications, Revision A	26 February 2020	Conzept Landscape Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	[undated]	BBF Planners - Greg Boston

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.

In the event of any inconsistency between the Approved Plans and the Approved Landscape Plans, the Approved Plan will prevail.

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	2 October 2021
TfNSW	TfNSW Referral Response Their reference: SYD21/01192/05	9 November 2021

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

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

3. **Approved Land Use**

This consent authorises a shop top housing development at the subject site. Shop top housing is defined, as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

This consent authorises the first use of the retail and business premises on the Ground Floor.

business premises means a building or place at or on which—

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,

- (h) markets,
 - (i) plant nurseries,
 - (j) roadside stalls,
 - (k) rural supplies,
 - (l) shops,
 - (la) specialised retail premises,
 - (m) timber yards,
 - (n) vehicle sales or hire premises,
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Any variation to the use of the development for the purpose of shop top housing, or the Ground Floor tenancies beyond the scope of the above definitions will require separate development consent.

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

4. Prescribed Conditions

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

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

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

updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer

management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$43,480.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$4,348,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

7. **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.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$5,000 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$75,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

10. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

11. **Public Road Reserve Landscaping and Infrastructure**

An Amended Public Domain Plan is required. The Amended Public Domain Plan is to be generally based on the Landscape Plans referenced in Condition 1 of this consent and in compliance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines* and shall be submitted as part of a Infrastructure Works on Council Roadway application under Section 138 of the Roads Act. The plan is to provide sufficient detail design information including the following development requirements:

- a. all existing street trees along the development frontage to Oliver Street and Dowling Street, and associated timber planters, shall be removed,
- b. full width pavement from the existing Urbanstone paving alignment at the corner of Oliver Street and Lawrence Street in a southward direction to the proposed driveway along Oliver Street (excluding the proposed garden bed), and the paving material shall match the existing paver along the Lawrence Street road reserve verge,
- c. four (4) street trees shall be indicated along the development frontage of Oliver Street, with two (2) street trees within the pavement area referred above in item ii) in accordance with Northern Beaches Council's Standard Drawing 1300 - Tree Pit Details, and the tree species shall be *Buckinghamiana celsissima* at a pre-ordered 200 litre container,
- d. full width pavement from the existing Urbanstone paving alignment at the corner of Dowling Street and Lawrence Street in a southward direction to align with the hydrant booster location and to incorporate the relocated bus stop facilities, and the paving material shall match the existing paver along the Lawrence Street road reserve verge,
- e. three (3) street trees shall be indicated along the development frontage of Dowling Street within the grass verge, and the tree species shall be *Tristaniopsis laurina* 'Luscious' at a pre-ordered 200 litre container,
- f. documentation of alignment levels showing existing and proposed levels for altered driveway crossovers, and kerbs and gutters,
- g. existing and proposed pavement levels, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties,
- h. details of any utility alignment and level changes,
- i. tactile ground surface indicators at kerb ramps crossings and crossovers in accordance with Australian Standard 1428.4.1-2009 - Design for Access and Mobility,

- j. existing utility pit lids are to be altered to paver infill types to accommodate the proposed pavement type,
- k. relocation of the bus stop and associated facilities shall be subject to the terms and conditions required by the relevant transport authority, and the applicant shall provide details to Council,
- l. the nominated groundcover planting in the Dowling Street public road reserve to the south of the proposed driveway shall be deleted and replaced with shrub planting capable of attaining at least 1.5 metres in height at maturity, and shall be shade tolerant specie(s).

The following works shall also be documented:

- m. any public seating in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- n. bicycle racks in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- o. kerb ramps in accordance with Council's *Northern Beaches Public Spaces Vision & Design Guidelines*,
- p. any other additional works shall be as documented on drawing number LPDA 20 -190/1 prepared by Conzept Landscape Architecture.

Note: the proposed outdoor dining seating shown on drawing number LPDA 20 -190/1 prepared by Conzept Landscape Architecture, is not approved under this development application, and is subject to a separate outdoor dining application.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council and utility authorities in place prior to commencement to conduct such works.

Reason: compliance with Council standards for works on public land.

12. **Stormwater Management**

The applicant must update the Approved Stormwater Management Plans referenced in Condition 1 of the consent (KYSU Structural and Civil Engineers) to incorporate filtration cartridges from either SPEL or Ocean Protect to remove pollutants from the stormwater prior to discharge of stormwater from the land. The cartridges must meet the stormwater quality targets of removing 85% of TSS, 65% of Total Phosphorus and 45% of Total Nitrogen, and may be located in the On-Site Detention Tank surrounded by a weir wall. All stormwater management measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

13. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the approved plans, Council's Water Management for Development Policy, and any conditions of consent shall be submitted to the Certifying Authority prior to the release of the construction certificate.

Reason: Protection of the receiving environment.

14. Vehicular Swept Paths

Vehicular swept paths must be provided to demonstrate all vehicles (including service vehicles) can enter and depart the site via its Oliver Street driveway in a forward direction via the proposed left in/left out arrangement as detailed in the Approved Plans referenced in Condition 1 of this consent without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

15. 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 Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

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 routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- 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 prior
- 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 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.

16. Removal of Redundant Driveways

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

17. Geotechnical Report Recommendations

The recommendations of the Geotechnical Site Investigation referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

19. **On-site Stormwater Detention Details**

The Applicant is to provide certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy and generally in accordance with the Stormwater Management Plans referenced in Condition 1 of this consent. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The surface levels of the OSD tank are to be amended to suit the revised architectural plans.
2. All sub-soil drainage is to be connected to the piped drainage system in Lawrence Street.
3. Step irons are to be provided in OSD tank where the depth exceeds 1.2 metres.
4. The orifice plate is to be sized to ensure the PSD is not exceeded. The size of the orifice plate is to be shown on the plans.
5. Where the base of the OSD tank is on rock, the silt trap is to be deleted.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate.

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

20. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the civil works along the frontage of the site which are to be generally in accordance with Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. The provision of two new driveway crossings. One 5.5 metres wide off Dowling Street and one 7.1 metres wide off Oliver St. The Oliver St driveway is to include a splitter island and separation at the kerb alignment to ensure left in and left out. Each driveway crossing is to be in accordance with Council's standard drawing A4/3330/1 Normal.
2. Details of the reconstruction of the existing kerb and gutter along the Dowling St

- frontage. The kerb is to be 150mm high in accordance with Council standard drawing A4/2276/A. The existing asphalt is to be adjusted to suit.
3. The provision of a new 1.5 metre wide concrete footpath in accordance with Council standard drawing A4/10536 (typ.), along the Dowling St frontage up to the proposed Hydrant Booster Box. Turf is to be provided on either side of the new path between the site boundary and the kerb to suit the levels.
 4. The provision of full width paving (matching the existing paving), along the Dowling St frontage between the proposed Hydrant Booster box and the existing full width paving.
 5. The provision of a new 1.5 metre wide concrete footpath along the Oliver St frontage between the driveway and the southern boundary of the site. Turf is to be provided on either side of the new path between the site boundary and the kerb to suit the levels.
 6. The provision of full width paving (matching the existing paving) along the Oliver St frontage between the existing full width paving and the driveway (excluding the proposed garden bed).
 7. Details of the reinstatement of all existing driveway crossings to kerb, footpath and turf.
 8. Details of the surface finish to the existing retaining wall along the Oliver St frontage.
 9. Details of the relocation of the existing power pole along Dowling St with written approval from the relevant service authority.
 10. Details of any other service pit relocation required for the construction of the driveways with written approval from the relevant service authority.
 11. Sign posting plan as required from Council's Traffic Committee.
 12. Details of the proposed street tree planting.
 13. Details of the relocation of the bus stop signs and seat.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

21. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are in accordance with the requirements of AS/NZS 2890.1:2004. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

22. **Utilities Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the Construction Certificate.

Reason: To ensure that services have been provided as required by this Consent.

23. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

24. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

25. **Articulation to western facade**

The glazed stairwells should be 500mm recessed from the western boundary to provide vertical articulation to the western façade.

Reason: To minimise the impact on the heritage items and the streetscape.

26. **Internalised Services**

Service ducts, drainage, plumbing, pipes, cables and conduits are to be internalised and must not be visible from the public domain. All service, communication and electricity connections must be provided underground.

Provision must also be made for any future ventilation or exhaust system required for the retail and business premises tenancies on the Ground Level.

Details demonstrating compliance with this requirement must be provided to the certifying authority prior to the issuance of the construction certificate.

Reason: To remove visual clutter and ensure a high-quality finish to the development.

27. **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.

28. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

29. **Acoustic Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the Acoustic Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure appropriate amenity.

30. **Access Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the Access Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure the development is accessible.

31. **Waste and Recycling Requirements**

Details demonstrating compliance with *Northern Beaches Waste Management Guidelines* are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

32. **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 pavement for the parking of vehicles associated with a construction site.

Reason: To ensure Work zones and associated permits are assessed, monitored and installed correctly.

33. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from the Transport Management Centre of TfNSW for any works that may impact on traffic flows on Oliver St.

Reason: Requirement of TMC for any works that impact on traffic flow.

34. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for

the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

35. Pre-Construction Dilapidation Report

A dilapidation reports, including photographic surveys, for 30 Dowling Street, Freshwater must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The report must detail the physical condition of the property, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

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 property prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

36. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council’s road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

37. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining private properties,
 - iii) all road reserve trees and vegetation not approved for removal.

- 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 the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

38. **Road Reserve**

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

Reason: Public safety.

39. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by KYSU Structural and Civil Engineers prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

40. **Dewatering Management**

If water collects in your excavation during works and you need to pump it out to continue work, please comply with the following advice.

Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements if you need to pump water out of an excavation on your property. If you are likely to pump water out of an excavation more than once, Council may require a dewatering permit application. The permit process can be quite simple and is often completed quickly. It may only require you to identify the rate at which your pump will discharge water.

If water is soaking or trickling into your excavation from the ground, you must contact council at catchment@northernbeaches.nsw.gov.au. This is groundwater, and you may require Council's permit and may also need to make an application for interference with an aquifer to the Natural Resources Access Regulator.

The water to be discharged must be compliant with the General Terms of Approval/Controlled

Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources and to ensure discharges remain within the capacity of the local stormwater system or waterway.

41. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the required Demolition Traffic Management Plan (DTMP). All controls in the DTMP 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 DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

42. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the required 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.

43. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

44. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

45. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

46. **Geotechnical Report Recommendations During Works**

The works are to be undertaken in accordance with the recommendations of the Geotechnical Investigation report referenced in Condition 1 of this consent.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

47. **Progress Certification (Road & Subdivision)**

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Roads Authority for the following stages of works:

(a) Silt and sediment control facilities

(b) Laying of stormwater pipes and construction of pits

- (c) Proof Roll
 - (d) Sub-grade trimmed and compacted **
 - (e) Base-course laid and compacted **
 - (f) Kerb and gutter construction
 - (g) Pavement
 - (h) Landscaping and vegetation
 - (i) Clean-up of site, and of adjoining Council roadway and drainage system.
- (**To be tested by a recognised N.A.T.A. approved laboratory).

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

Reason: To ensure compliance of civil works with Council's specification for engineering works.

48. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

49. **Footpath Construction**

The applicant shall reconstruct the footpath along the Oliver St and Dowling St frontages of the site. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with the Section 138 Road Act approval.
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with the Section 138 Road Act approval for footpath.

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

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

50. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, footpath
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

51. **Vehicle Crossings**

The Applicant is to construct two vehicle crossings, 5.5 metres wide off Dowling St and 7.1 metres wide (including a splitter island) off Oliver St in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the Section 138 Roads Act application approval and approved consent plans. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

52. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

53. **Relocation of Dowling Street Bus Stop**

The location of the existing bus stop on Dowling Street along frontage of the site is to be relocated to a new location on property frontage south of the proposed driveway. Plans for the relocation of bus stop and Bus Zone signage together with construction of a DDA compliant paved waiting bay and tactile tiles to be submitted for approval by Council's Traffic Committee and all required works must be implemented at no cost to Council. A bus stop must remain in operation at the frontage of the site at all times.

Reason: To maintain suitable waiting and stopping facilities for bus services.

54. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

55. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

56. **Street Tree Planting**

a) Street trees shall be planted in accordance with the following:

- i) 2 x *Banksia integrifolia* located within the Oliver St road reserve generally as indicated on the Landscape Plan (to replace the indicated *Gleditsia tricanthos*); minimum pot size 75 litre

b) All street trees shall meet the requirements of Natspec - Specifying Trees.

c) All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained including a four post and top and mid rail timber tree guard and watered until established.

d) Details demonstrating compliance from a qualified horticulturalist, landscape architect or landscape designer are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

57. **Landscape Completion**

a) Landscaping and planting are to be implemented in accordance with the approved Landscape Plans referenced in Condition 1 of this consent, as amended by any conditions of this consent.

b) Public Domain Works are to be completed in accordance with the Amended Public Domain Plan submitted as part of the Infrastructure Works on Council Roadway application under Section 138 of the Roads Act, and as approved by Council.

c) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

58. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

59. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures,

restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

60. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- a) Work as executed drawings
- b) Intent of the stormwater treatment measures including modelled pollutant removal rates
- c) Site detail showing catchment for each device
- d) Vegetation species list associated with each type of vegetated stormwater treatment measure
- e) Impervious area restrictions to maintain the water balance for the site
- f) Funding arrangements for the maintenance of all stormwater treatment measures
- g) Identification of maintenance and management responsibilities
- h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits
- Additionally for vegetated devices:
- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

- a) Activity description, and duration and frequency of visits
- b) Routine maintenance requirements
- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

61. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

62. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

63. **Traffic Islands, Signage and Linemarking – External**

A plan demonstrating the proposed signage, line marking and traffic islands within Council's Public Domain including:

- engineering details of the proposed traffic islands on the Oliver Street driveway
 - signage and markings to control left in and left in movements to and from the Oliver Street driveway
 - signage adjustments to facilitate relocation of the Dowling Street Bus Zone
- shall be prepared by a suitably qualified person and submitted to and approved by the Local Traffic Committee and installed in accordance with the approved plans prior to the issue of any Occupation Certificate.

Note: The applicant is advised that the plan will require approval by the local Traffic Committee if the proposal requires change in existing parking conditions or prohibition of traffic movements and hence, adequate time (min 2 months) should be allowed for this process

Reason: To ensure consistent parking amenity and traffic safety.

64. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

65. **Post-Construction Dilapidation Report**

A Post-Construction Dilapidation Report, 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,
- 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.

66. Geotechnical Certification Prior to Occupation Certificate

A suitably qualified Geotechnical Engineer is to confirm that the development was constructed in accordance with the recommendations of the Geotechnical Investigation Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

67. Access Certification Prior to Occupation Certificate

A suitably qualified Access Consultant is to confirm that the development has been constructed in accordance with the recommendations of the Access Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate accessibility.

68. Plan of Management

A Plan of Management is to be produced for the management of the site and adjacent road reserves identifying:

- a. Consistency with all 'on-going' conditions of consent over the life of the development
- b. Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- c. Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.

The Plan of Management is to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

The Plan of Management is to be adopted in the by-laws of any future Strata subdivision of the development.

Reason: To ensure the on-going management of the site over the life of the development.

69. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plans (details overdrawn on a copy of the approved drainage plan) and Hydraulic Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

70. **Retaining Wall in Road Reserve**

The retaining wall works within the Oliver Street public road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: Public and private safety

71. **Maintenance contract for stormwater filtration cartridges**

A minimum of a five-year contract with a suitably qualified provider is required for the maintenance of the stormwater filtration cartridges.

A copy of the maintenance contract must be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: To ensure maintenance of the stormwater treatment measures.

72. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

73. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines

(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

74. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

75. **Acoustic Certification Prior to Occupation Certificate**

A suitably qualified Acoustic Consultant is to confirm that the development was constructed in accordance with the recommendations of the Acoustic Report reference in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issuance of any occupation certificate.

Reason: To ensure appropriate amenity.

76. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

77. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

78. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

79. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

80. **Landscape Maintenance**

Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

81. **Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Where replacement cartridges or other necessary components for the system become

unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

82. **Sight Lines**

The required sight lines to pedestrians and other vehicles in and around the car park(s) and entrance(s) are not to be obstructed by landscaping or signage. Proposed landscaping and planter beds adjacent to the Dowling Street driveway shall be ground cover only

Reason: To maintain unobstructed sight distance to pedestrians.

83. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to Council for acceptance and Council's acceptance is to be issued to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

84. **Hours of Operation**

The hours of operation of the Ground Floor retail and business premises are to be restricted to:

- Monday to Friday – 7:00am to 7:00pm
- Saturday – 7:00am to 7:00pm
- Sunday and Public Holidays – 8:00am to 4:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Deliveries of goods and waste collection associated with the Ground Floor retail and business premises must not occur outside of the hours of operation prescribed above.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

85. **Parking**

The development is to maintain the following parking allocation for the life of the development:

- 12 x residential parking spaces marked with the number of the respective unit,
- 1 x residential visitor space marked "visitor",
- 4 x retail parking spaces marked "retail",
- 1 x service bay marked "service vehicles only".

All spaces must be line-marked and identified accordingly.

Where a stacked parking arrangement is proposed, both spaces must be allocated to the same residential unit.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site.

86. Consistency with Plan of Management

The development is to be maintained in accordance with the Plan of Management required by this consent.

Should separate development consent be obtained for the strata subdivision of the development, the Strata Management Statement must specifically require on-going consistency with the Plan of Management.

Reason: To ensure that the site is maintained in accordance with the standards required by this consent.

87. Plant Equipment - Noise and Vibration

Noise from all plant equipment including mechanical ventilation for car parks or commercial premises, extraction units and exhaust fans, air conditioning units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and must not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.

Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

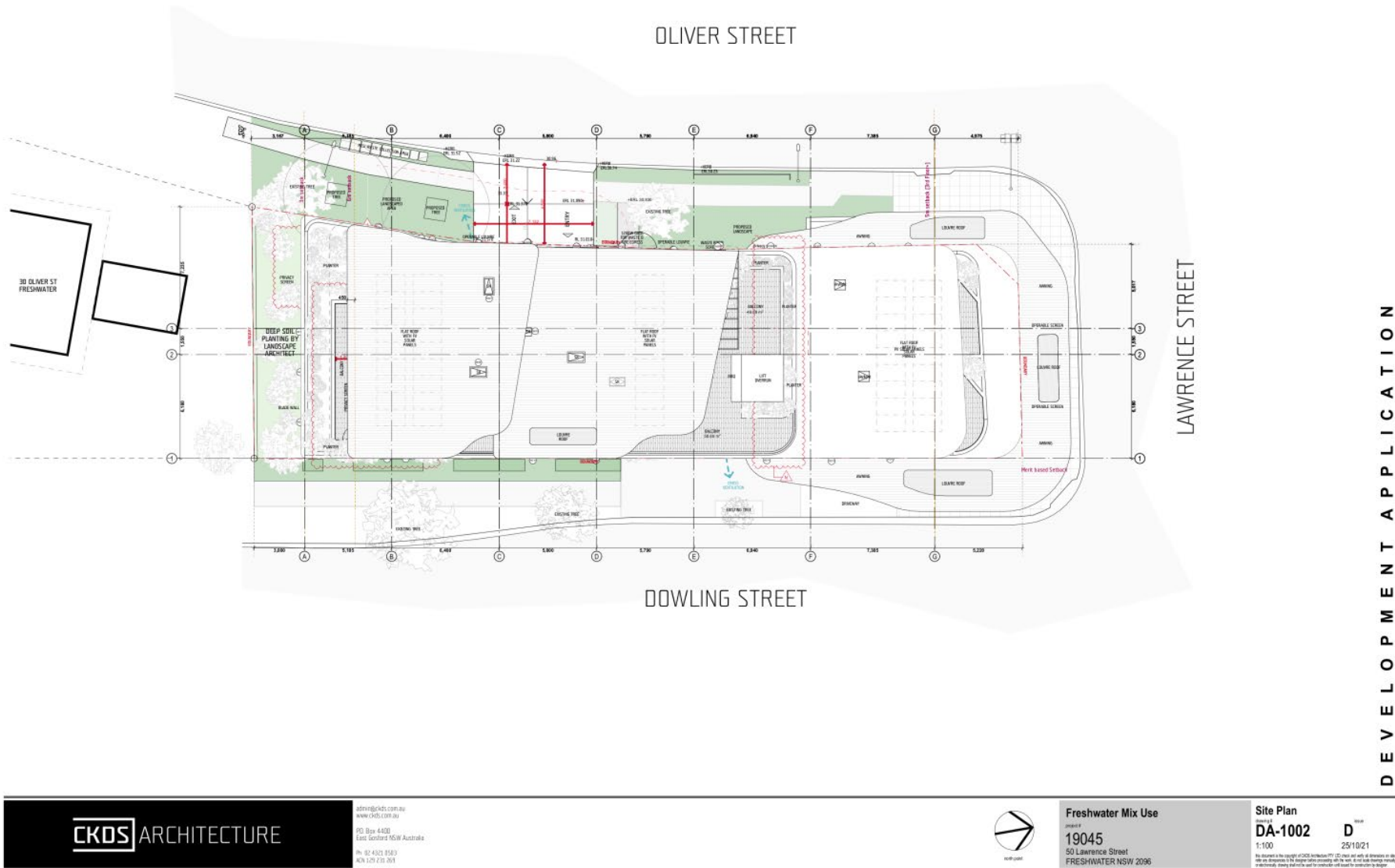
Reason: To ensure no ongoing negative impacts on persons living within the complex and surrounding premises.

88. Plant Equipment

With the exception of flush-mounted solar panels, no plant equipment is permitted on the roof or in a location that is visible from the public domain.

The solar panels must not be elevated/angled more than 250mm above the height of the membrane roof depicted on the Approved Plans.

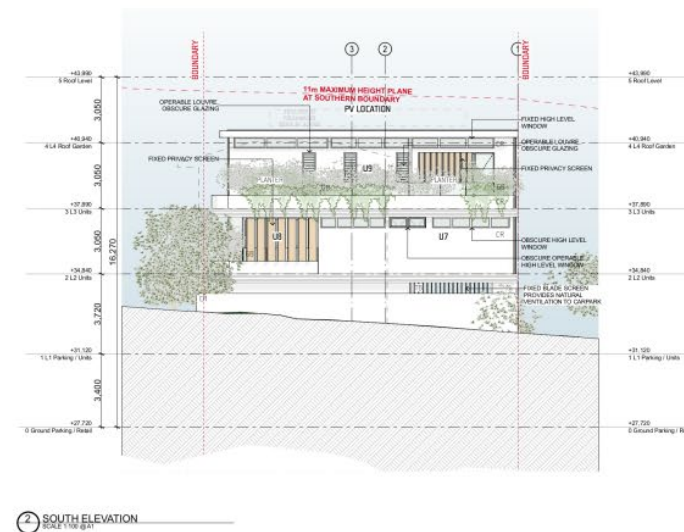
Reason: To minimise visual clutter.



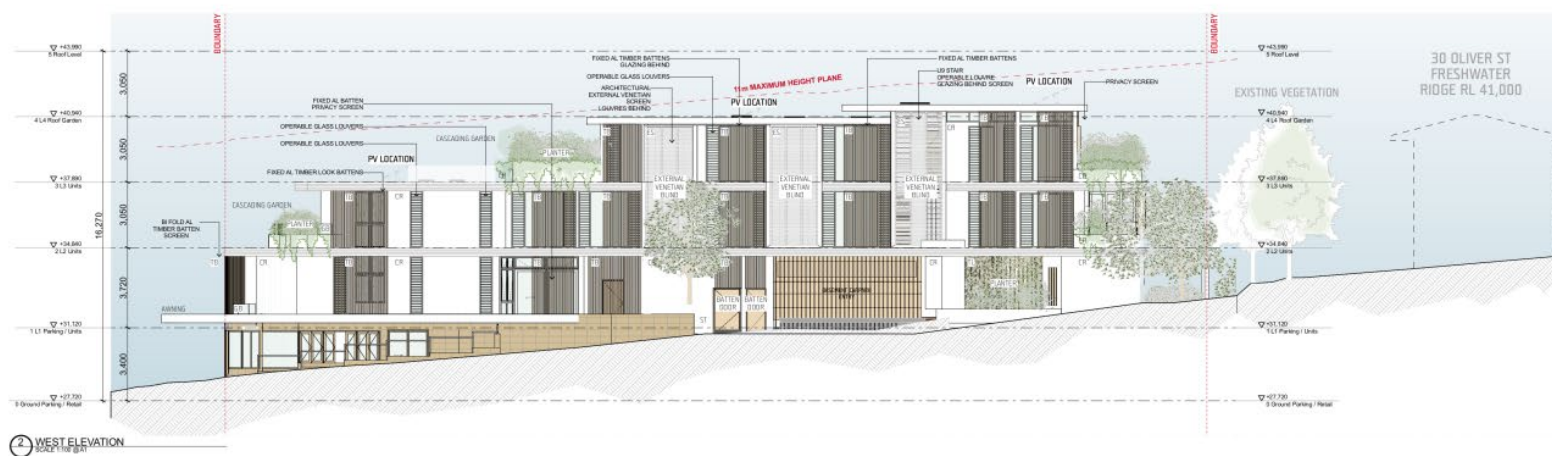


NOTES:

- FOR EXTERNAL FINISHES PLEASE REFER DA-7001



DEVELOPMENT APPLICATION



NOTES:

- FOR EXTERNAL FINISHES PLEASE REFER DA-7001

DEVELOPMENT APPLICATION

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BostonBlythFleming
Town Planners

7th September 2021

The General Manager
Northern Beaches Council
Po Box 882
MONA VALE NSW 1660

Attention: Rebecca Englund – Acting Manager

Dear Ms Englund,

Development Application No. DA2021/0744
Updated Heritage Impact Statement and updated clause 4.6 variation
request - Height of buildings
Demolition and construction of shop top housing
50 Lawrence Street, Freshwater

1.0 Introduction

This clause 4.6 variation request has been prepared having regard to the following Architectural plans:

- DA-0001(D) to DA-0003(D), DA-0101(D), DA-1001(D), DA-1002(D), DA-1102(E), DA-1103(E), DA-1104(D), DA-1106(D), DA-2001(D), DA2002(D), DA-3001(D), DA-3002(D), DA3003(A), DA-4001(D), DA-4002(E), DA-4003(E), DA-4004(A), DA-4005(D), DA-4006(A), DA-4007(A), DA-4008(A), DA-7001(D), DA-7101(D), DA-7102(D), SK-0003(B), SK-0004(A), SK-0006(A) and DA-4013(B) prepared by CKDS Architecture,

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

2.0 Manly Local Environmental Plan 2013 (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 provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

The proposed development has a maximum building height of 11.3 metres measured to the north eastern edge of the roof form over apartment 11 as depicted in Figures 1 and 2 below. This represents a non-compliance of 300mm or 3.5%. The balance of the development sits comfortably below the prescribed height standard.



Figure 1 - Plan extract showing extent of 11 metre building height breach in the north eastern corner of the roof form

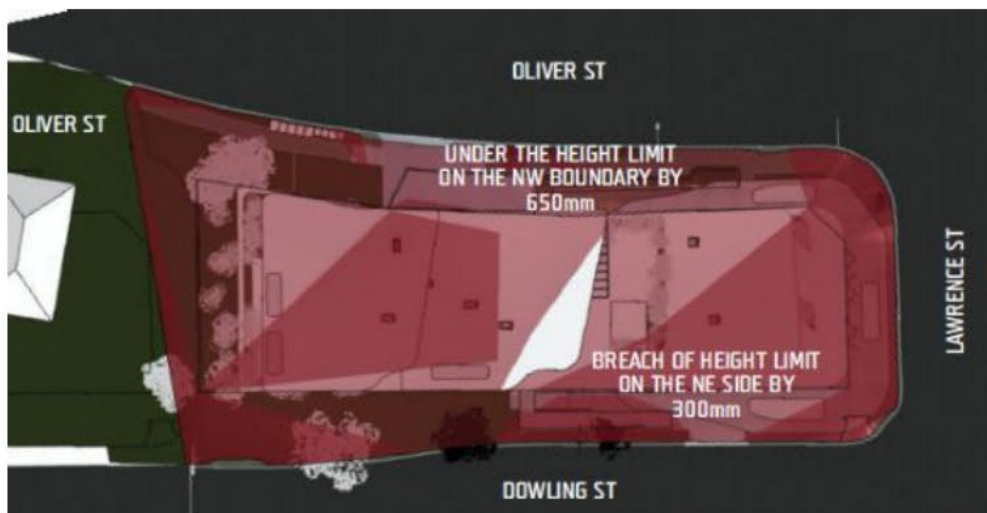


Figure 2 - Plan extract showing area of maximum 300mm building height breach

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 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 clause 1.4 of the EP&A Act includes:

- (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 relates to certain development. Accordingly, clause 4.3 WLEP is a development standard.

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

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

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

Consistency with objectives of the height of buildings standard

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

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

Comment: The proposed development provides for a compliant 3 storey building height presentation to each street frontage with the building stepping down the site in response to topography. The area of non-compliance is limited to a small area of roof form and is appropriately described both quantitatively and qualitatively as minor. The surrounding area is in transition with older 1 and 2 storey commercial buildings being replaced with more contemporary 3 storey shop top housing building forms consistent with the adopted medium density planning regime applicable to the Freshwater Village precinct.

In this regard, I have formed the opinion that the minor building height breaching element will not result in a building displaying a height and scale which will be perceived as inappropriate or jarring have regard to the height and scale of existing development within the Freshwater Village precinct or that anticipated on the subject site. 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 building height breaching roof element, offensive, jarring or unsympathetic in a streetscape and urban context.

In this regard, it can be reasonably concluded that notwithstanding the building height breaching element that the height and scale of the proposal is compatible with the height and scale of surrounding and nearby development and development anticipated within the Freshwater Village precinct. This objective is achieved notwithstanding the building height breaching element proposed.

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

Comment: As previously indicated, the area of building height non-compliance is limited to a small area of roof form and is appropriately described both quantitatively and qualitatively as minor.

For the reasons outlined in response to objective (a), I have formed the opinion that the minor building height breaching element will not give rise to unacceptable visual impacts with visual impacts minimised through the stepped building design adopted which responds appropriately to topography.

In relation to an assessment of view impact, I rely on the view analysis plan DA-8001 prepared by CKDS Architecture at Attachment 1. This analysis identifies potential view impact associated with the development as viewed from Unit 7/ 52 Lawrence Street and Unit 14/ 33 Cavill Street, Freshwater. These diagrams indicate that the ocean and horizon views available in an easterly direction across the subject property from both of these properties will be maintained with no view impact arising from the minor building height breaching roof element at the upper level of the development. We have formed the opinion that a view sharing outcome is maintained with disruption of views minimised.

Further, I am satisfied that the non-compliant building height element will not give rise to loss of privacy to either the public or private domains.

Finally, in relation to loss of solar access associated with the minor building height breaching element I rely on the accompanying shadow diagrams at Attachment 2. The shadow diagrams demonstrate that the non-compliant building height breaching element will not cast shadow onto any adjoining property at any time between 9am and 3pm on 21st June and to that extent loss of solar access has been minimised.

Accordingly, I am satisfied that notwithstanding the minor building height breaching element proposed that visual impacts, disruption of views, loss of privacy and loss of solar access has been minimised and to that extent this objective is achieved.

- (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 readily discernible as viewed from the coastal foreshore area or from any bushland area and to the extent that it may be visible will not give rise to adverse visual or physical impacts on the scenic quality of Warringah's coastal and bush environments.

The proposal achieves this objective notwithstanding the minor building height breaching element proposed.

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

Comment: The non-compliant building height elements will not compromise the amenity of any public places due to inappropriate or jarring visual impacts.

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 site is located within the B2 Local Centre zone. Shop top housing is permissible in the zone with consent. 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 shop top housing provides both retail and business tenancies that are capable of accommodating uses that serve the needs of people who live in, work in and visit the local area. This objective is achieved notwithstanding the building height breaching element proposed.

- *To encourage employment opportunities in accessible locations.*

Response: The proposed shop top housing provides both retail and business tenancies that are capable of accommodating uses that serve the needs of people who live in, work in and visit the local area. This objective is achieved notwithstanding the building height breaching element proposed.

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

Response: The development activates all 3 site frontages, incorporates a wraparound awning and affords a safe, comfortable and interesting environment for pedestrians. This objective is achieved notwithstanding the building height breaching element proposed.

- *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 form, scale and massing of the development are complimentary and compatible with the existing and desired future character of the B2 Local Centre zone and the Freshwater Village generally and appropriately addresses the zone boundary interface to the south. The proposal reflects an urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. This objective is achieved notwithstanding the building height breaching element proposed.

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

Response: the proposal, through its design and setback to the southern zone boundary interface, minimises conflict between land uses in the zone and adjoining zones and ensures the maintenance of appropriate amenity of adjoining and residential land uses in terms of privacy, solar access and views. This objective is achieved notwithstanding the building height breaching element proposed.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the B2 Local Centre 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.

4.2B 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 environment planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the sites area, irregular geometry and irregular topography which makes strict compliance difficult to achieve whilst providing a building of exceptional design quality which appropriately responds to its visually prominent location and immediate built form context.

The area of non-compliance is limited to a small area of roof form and is appropriately described both quantitatively and qualitatively as minor. The balance of the development, including all habitable floor space, is located below the prescribed building height standard.

Strict compliance could be achieved by either pulling the upper level of the development back further to the south or lowering the building by 300mm however both options would require either additional excavation or a loss of floor space. Such outcome would compromise the amenity and feasibility of the development without any measurable benefit in terms of the developments ability to satisfy the objectives of the standard.

I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes. Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

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

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

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

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

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

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

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

As demonstrated in this request, the proposed development 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.

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.

4.4 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 non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1 View analysis plan

Attachment 2 Shadow diagrams

Attachment 1 View analysis plan



100% Agreement DA Current



100% Agreement DA Current



100% Agreement DA Proposed



100% Agreement DA Proposed



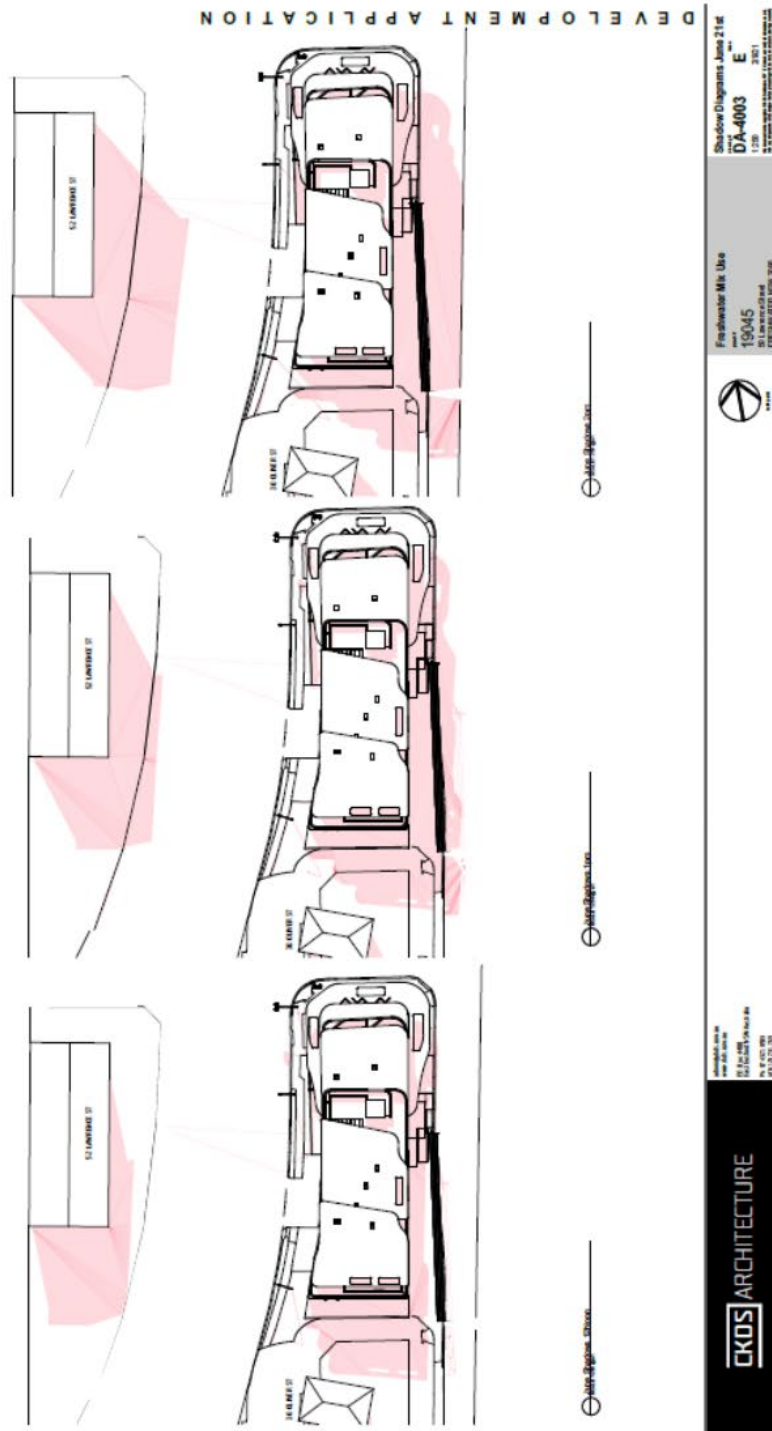
View Analysis
DA-3001

Freshwater Mix Use
19045
NO Development
FRESHWATER MIX USE

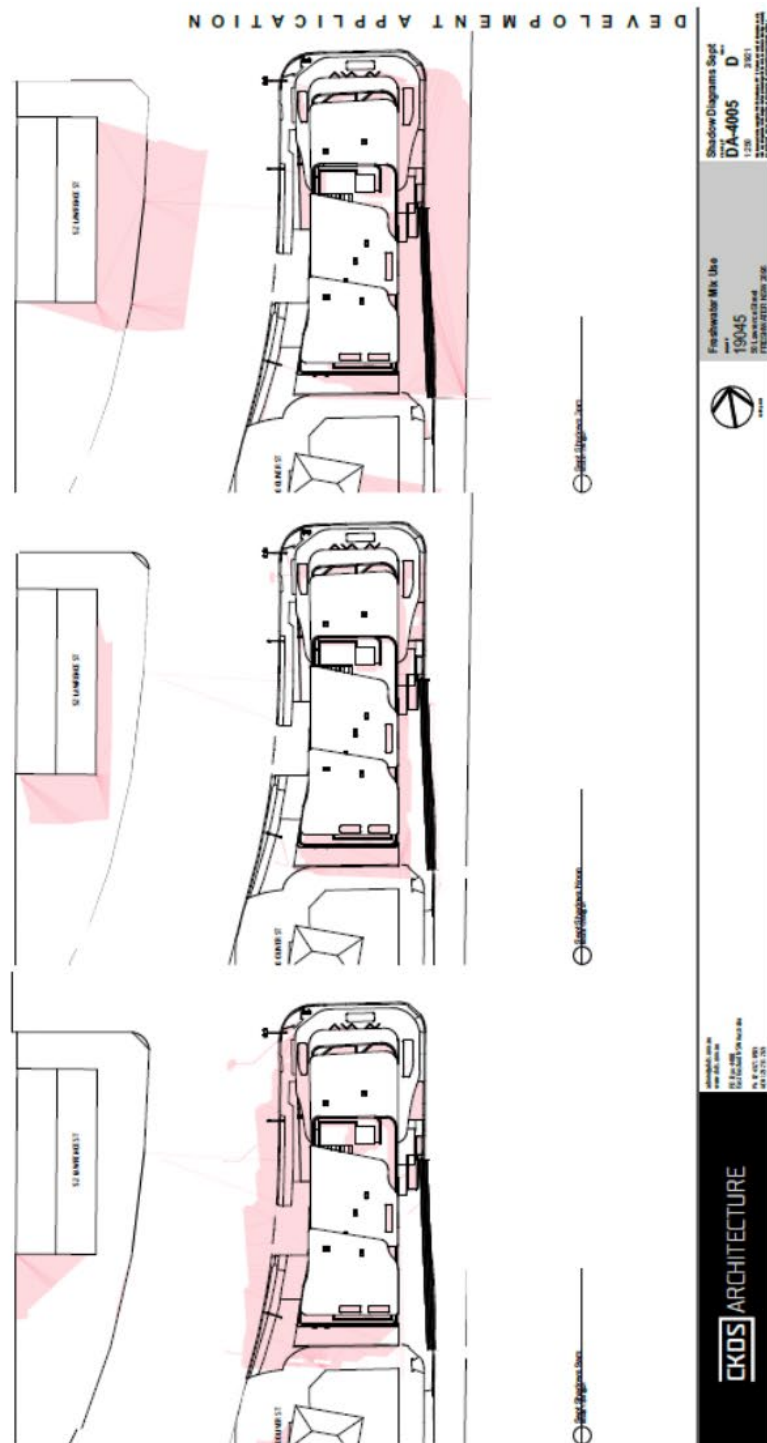
View Analysis
DA-3001

View Analysis
DA-3001

Attachment 2 Shadow diagrams









Design + Sustainability Advisory Panel Meeting Report – Date 22 July 2021

2 DA2021-0744 – 50 Lawrence St FRESHWATER

PANEL COMMENT AND RECOMMENDATIONS

General; Strategic context, urban context: surrounding area character

The site is located at the highest point and western extremity of the 'Freshwater Village' Local Centre. It is bound by three streets and as such the proposal is able to be read 'in the round'. Each of the bounding streets has distinctly varied character; vehicle dominated to the west, civic and cosmopolitan along the north and residential along the east. Furthermore, a significant grade change exists about the site, amounting to a complex array of challenges for development.

The panel is supportive of high-quality shop top housing in this location as it will serve to support, enhance, and provide greater access to the outstanding local character of Freshwater.

The proposal consolidates ground floor retail at the northern end of the site where it serves as an appropriate continuation of the prevailing strip retail condition of Lawrence Street and where it is least encumbered by topography.

The housing component is comprised of considered single and double level apartments which respond well to environmental conditions of the site.

The proposal mediates sensitively to its surroundings through form, articulation and materiality and makes use of the topography to efficiently consolidate parking and services on the lower levels of the building.

A zone interface about the southern boundary is addressed with setbacks to create a clear delineation between zones and to allow for seemingly acceptable solar access to the southern neighbour.

Recommendation

1. Provide view from sun analysis demonstrating adequate solar access to southern neighbour

Scale, built form and articulation

The proposal is set over four (4) storeys, however is articulated into a series of horizontal planes which set back incrementally in response to the site's topography to create a broadly three (3) storey form. There is a commendable cohesiveness between the form and the quality outdoor spaces it creates including the integration of the street awning into the 'language' of the building as well as private open space in the form of terraces open to the sky.

The proposal exhibits a minor exceedance of the height limit. The panel agrees that there are negligible environmental effects to the public domain as a result of this exceedance.

Floor to floor heights throughout the proposal are minimal such that careful coordination will be required to achieve ADG compliant ceiling heights, in particular where terraces are located above habitable rooms. Flush door thresholds are indicated in sections, but not enough information is provided to satisfy the panel that drainage falls and construction tolerances are adequate to achieve compliant ceiling heights within the building heights stated.

Recommendation

2. Provide confirmation of terrace drainage and constructional tolerances demonstrating adequacy of stated building heights or else, amend building heights to accommodate adequate tolerances.



Access, vehicular movement and car parking

The proposal utilises site falls to consolidate lobby, servicing, garage entries and parking on site in a most discreet and efficient configuration, considering the constraints.

The panel has suggested that this configuration avoids expensive excavation and vertical circulation infrastructure and may one day lend itself to effective non-vehicular usage, should the demand arise.

Landscape

Whilst communal open space has not been accommodated on site, opportunities for communal outdoor recreation exist in abundance in close proximity to the site. The panel feels it is appropriate that landscape space on site have been effectively utilised as deep soil buffer planting and private rooftop terraces in lieu of communal open space.

Species selection of mostly natives is appropriate.

The architectural facade strategy and visual amenity relies upon architectural plantings, thus the success and maintenance of the plantings is imperative.

Recommendations.

3. Ensure planter volumes are adequate to contain growing medium, tolerances and drainage infrastructure required to support extent of climbing plants illustrated
4. Consider including a condition for establishment and initial maintenance for architectural plantings.
5. Provide greater detail of planters on the Dowling Street frontage
6. In consultation with Council investigate the possibility of small planting beds at ground level in the public domain to 'soften/green' the building /footpath interface.

Amenity

Dwellings have been carefully considered to allow for high levels of amenity including exemplary access to daylight, including to kitchens and some bathrooms. Of particular note are the two storey 'cross over' apartments which are configured to bring light and sky view to the point of entry via the stairwells.

As the south-west apartment on level 02 faces south and west, there is the potential for uncomfortable privacy interface with the southern neighbour and perhaps the elevated public footpath. The panel feel that privacy to this apartment could be improved by allowing the view to be shuttered.

Recommendation.

7. Investigate enhanced privacy to south-west apartment on Level 02

Façade treatment/Aesthetics

The proposal contributes to its surroundings through considered facade expression and a well-considered hierarchy of materials and facade devices that relate well to the context. The panel recognises that details such as the deeply articulated concrete slab edge profile, integrated facade planting and sandstone base are integral to the scheme's success.

The panel feel that the scheme may benefit further from refinement of the sandstone cladding and screening.

Recommendation.

8. Concrete slab edge profile, integrated facade planting, screens and sandstone base to be retained and refined.



Sustainability

The panel recognises many sustainability initiatives inherent in the design including; excellent daylight access to kitchen and bathroom spaces within apartments, external venetian shading to west facing windows and natural ventilation to common areas.

Spaces currently provisioned for parking offer an opportunity for future adaptation to non-vehicular space, especially due to the availability of level access.

Recommendations

10. Consider full electrification of apartments in lieu of gas.
11. Consider design aspects of the car parking spaces that may enhance and allow for post-vehicle adaptation of the garage spaces.

PANEL CONCLUSION

The Panel commends the design approach overall and supports the proposal in its current form with the minor modifications and amendments recommended above.

ITEM 4.3**DA2021/1311 - 1031 BARRENJOEY ROAD, PALM BEACH -
USE OF PREMISES AS A CAFE INCLUDING A CHANGE OF
HOURS**

AUTHORISING MANAGER Rodney Piggott
TRIM FILE REF 2021/815844
ATTACHMENTS
1 Assessment Report
2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1311 for use of premises as a cafe including a change of hours at Lot A DP 404349, 1031 Barrenjoey Road, Palm Beach subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1311
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot A DP 404349, 1031 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Use of premises as a cafe including a change of hours
Zoning:	R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Carolyn Ann Robertson
Applicant:	Turnbull Planning International Pty Ltd

Application Lodged:	04/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	12/08/2021 to 26/08/2021
Advertised:	Not Advertised
Submissions Received:	32
Clause 4.6 Variation:	Nil
Recommendation:	Approval subject to conditions

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

The proposal is for the use of the ground floor of the existing building and associated structures for the purpose of a restaurant or cafe with new hours of operation. The application is referred to the Northern Beaches Local Planning Panel for determination due to the receipt of more than ten (10) unique objections to the proposal.

The proposed development does not include the construction of any new building or structure but does include seeking development consent for the use of an unauthorised extension to the deck and pergola on the southeastern side of the building. The unauthorised extension has a nil setback to the southeastern side boundary.

The proposed development relies on existing use rights as the use of a restaurant or cafe is a prohibited

land use in the R2 zone under Pittwater LEP 2014.

The application was placed on public notification for 14 days and Council has received 32 submissions, including 27 objection letters and five (5) in support.

The critical assessment issues for the proposal relate to concerns raised by objectors relating to the residential amenity impacts caused by the proposal. Concerns relate to the late evening acoustic amenity impacts that may be caused by the proposed 9:30pm closure time on Friday and Saturday nights. Concerns are also raised that the unauthorised deck extension will cause further detrimental impacts to the residential amenity of the locality due to the increase in patrons at the site. These matters are addressed in detail in the report.

It is considered that the proposed development is generally acceptable and consistent with past approvals for similar uses on the site. However, the use of the unauthorised deck and pergola extension is not supported due to the expected unreasonable amenity impacts to surrounding residential dwellings. A condition is included to prohibit the use of the extended deck and pergola area. A condition limiting the capacity of the existing deck to twelve (12) patrons is also included to help manage amenity impacts.

When assessed on its merits, the proposal (as recommended to be conditioned) is found to be acceptable and suitable in the context of the site. Therefore, it is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the use of the ground floor of the existing building and the attached deck for the purpose of a restaurant or cafe, including the use of an unauthorised extension to the existing deck area and pergola on the southeastern side of the building.

The proposed hours of operation of the tenancy are:

- Monday to Thursday – 6:30am to 5:00pm
- Friday – 6:30am to 9:30pm
- Saturday – 7:00am to 9:30pm
- Sunday – 7:00am to 6:00pm

The cafe is proposed to cater for a total of twenty (20) patrons at any one time, including four (4) inside the building and sixteen (16) on the outdoor deck, plans indicate that 4 seats are proposed on the unauthorised deck. The café currently has a license for 10 seats on the footpath and seeks to increase this to 16. This is subject to a separate application to increase the license numbers for outdoor dining.

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 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity

SITE DESCRIPTION

Property Description:	Lot A DP 404349, 1031 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the southwestern side of Barrenjoey Road. The site is irregular in shape with a frontage of 12.19m along Barrenjoey Road and a depth of 31.73m. The site has a surveyed area of 284.5m². The site is located within the R2 Low Density Residential zone and accommodates a two-storey building containing a cafe premises at the ground floor and residential occupancy on the upper floor. The site is generally flat and is free of any significant vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:



SITE HISTORY

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

On 27 April 1998, the former Pittwater Environment and Planning Committee resolved to approve a Development Application (Consent No. **98/56**), for the legalisation for an unauthorised refreshment room (restaurant) at the subject premises. The consent contained a number of conditions including;

"1. This consent is for a period of 12 months from the date of Consent, to allow Council and the community to monitor its operation. Within this period details of patronage and effect on parking in the locality and the amenity of the locality are to be evaluated by Council. This condition is to be the subject of a modification of consent application if it is proposed to operate beyond the 12 month period."

"5. The trading hours of the restaurant are to be confined to 12 noon to 7pm Monday to Thursday, 12 noon to 9.30pm Friday and Saturday with takeaway to operate until 10pm and 12 noon to 8pm on Sundays."

"6. The seating capacity of the restaurant is not to exceed a total of 20 seats. Such seating is to be confined to the area inside the building and the outside area adjacent the southern side of the building (no more than 12 seats outside)."

On 01 November 1999, the former Pittwater Environment and Planning Committee resolved to approve an application to modify Development Consent 98/56 to delete condition 1 as above and to increase the hours of operation to 12 noon to 9:30pm Monday to Sunday.

On 22 February 2001, the former Pittwater Development Unit resolved to approve Development Application **N1255/00** for the change of use of the existing premises from a refreshment room (restaurant) to a refreshment room (cafe and takeaway food). The consent contained a number of conditions including;

"D216. This consent is to operate for a period of 12 months from the date of occupation to allow Council and the community to monitor its operation. Within this period the effect on parking in the locality and the amenity of the locality with regards to hours of operation are to be evaluated by Council. In this respect, a diary is to be kept by the operator indicating any complaints received regarding the operation of the premises."

"D219. The trading hours of the refreshment room are to be confined to 7am to 8pm, 7 days a week with no use of the outside area to occur before 8 am or later than 8pm on any day."

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

Council records indicate that multiple development and land use consents have been granted for the use of the premises for the purpose of a restaurant, cafe and takeaway food business, including Consent No. **98/56**, granted for use of shop as refreshment room use of existing shop as a refreshment room (restaurant) on 27/04/1998 and development consent **N1255/00**, granted for change of use from refreshment room (restaurant) to refreshment room (café & takeaway) on 02/03/2001.

Consent N1255/00 included a condition limiting its operation period to 12 months. No subsequent modification was submitted requesting deletion of this condition. As such, the operation period of this consent is considered to have lapsed.

On the lapsing date of the operational period of consent N1255/00, the operation of the premises reverted back to consent 98/56 granted for use of the premises as a restaurant. As such, it is considered the use of the building commenced as a lawful purpose on 27/04/1998, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30/05/2014.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by Council on 27 April 1998, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 30 May 2014.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

A site inspection reveals that the land is used for the purpose of a restaurant or cafe which was granted consent on 27 April 1998. The applicant advises that the use has been ongoing since the original development consent was issued.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed development relates to the use of the tenancy. No change to the built form of the existing building is proposed. Consent for the use of an unauthorised extension to the existing deck and pergola is proposed. Further discussion regarding this is provided in point 3 below and under an assessment of part C2.12 of P21DCP.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing building is to remain unchanged and is generally consistent with the bulk and scale of other buildings in the locality.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposal includes the seeking of consent for the use of an unauthorised extension to the deck and pergola on the southeast side of the building. It is considered the extension of the deck will result in additional amenity impact to adjacent and surrounding residential properties. As the site is located within a residential area, it is considered the residential amenity impact of the deck extension is unreasonable.

To ensure that the impact of the proposed restaurant and cafe on adjacent and surrounding residential properties, a condition is included to exclude the unauthorised portion of the deck and pergola from this development consent with the requirement to revert the area to soft landscaping and vegetation. An additional condition is included to limit the capacity of the deck to 12 patrons. This is consistent with condition no. 6 of Consent No. 98/56.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

No change to the existing built form of the internal area of the building is proposed. It is considered the existing building provides acceptable internal amenity for the continues use of the site for a restaurant or cafe.

Conclusion

The use has been approved under a previous environmental planning instrument (Pittwater Local Environmental Plan 1993) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

As the proposed development relates only to the use of the premises, there are no building works that require compliance with the requirements with Planning for Bush Fire Protection.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/08/2021 to 26/08/2021 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 32 submission/s from:

Name:	Address:
Ms Sandra Parsonage	1 A Iluka Road PALM BEACH NSW 2108
Jo Horgan	911 Barrenjoey Road PALM BEACH NSW 2108
Mr Andrew Darroch	6/20 Wylde Street POTTS POINT NSW 2011
Mr Michael Allan Blackwell	915 Barrenjoey Road PALM BEACH NSW 2108
Ms Joanne Elizabeth Flew	10 Nabilla Road PALM BEACH NSW 2108
Ms Simone Louise Keogh	915 Barrenjoey Road PALM BEACH NSW 2108
Ms Francoise Catherine Marie Porter	884 Barrenjoey Road PALM BEACH NSW 2108
Ms Dawn Frances Ford	943 Barrenjoey Road PALM BEACH NSW 2108
Nicholas Connelly	Address Unknown
Leanne Tate	Address Unknown
Anna Wynn	Address Unknown
Simon Wynn	Address Unknown
Nicole Hulme	Address Unknown
Sandra Isaac	Address Unknown
James Nelson	317 Hudson Parade CLAREVILLE NSW 2107
Ms Jacqueline Tate	2 / 1026 Barrenjoey Road PALM BEACH NSW 2108
Withheld	PALM BEACH NSW 2108
Mr Danny Barnes	1 / 9 Avalon Parade AVALON BEACH NSW 2107
David Garcia	317 Hudson Parade CLAREVILLE NSW 2107
Hamish Turner	1024 Barrenjoey Road PALM BEACH NSW 2108
Mr Marcello Giacomazzi	1 Iluka Road PALM BEACH NSW 2108
Mr Geoffrey William Grist	3 Iluka Road PALM BEACH NSW 2108
Mr Rodger Alan Morton	1041 Barrenjoey Road PALM BEACH NSW 2108
Mr Francis Charles Curtin	1018 Barrenjoey Road PALM BEACH NSW 2108
Mr Michael Georgouras	1040 Barrenjoey Road PALM BEACH NSW 2108
Mr Philip Georgouras	10 Lorne Avenue KENSINGTON NSW 2033
Ross George Arblaster	1119 Barrenjoey Road PALM BEACH NSW 2108
Leti Smith	12 North Avalon Road AVALON BEACH NSW 2107
Jane Gill	69 Old Barrenjoey Road AVALON BEACH NSW 2107
Sian Gilchrist	1 / 8 Lagoon Street NARRABEEN NSW 2101
Mrs Sharon Helena Lois	1028 Barrenjoey Road PALM BEACH NSW 2108

Name:	Address:
Magrin	
Timothy John Woodforde	9A Nelson Road LINDFIELD NSW 2070

Of the 32 submissions received, 27 object to the proposal partially for in full and five (5) support the proposal.

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

- Acoustic and amenity impacts
- Footway dining
- Existing use rights
- Parking impacts

The matters raised within the submissions are addressed as follows:

- *Concerns are raised that the proposed hours of operation extension will unreasonably impact upon the acoustic amenity of surrounding residential dwellings in the late evening.*

Comment:

The proposed hours of operation are generally consistent with the existing approved hours of operation under Consent No. 98/56. The restaurant is currently approved to operate between the following hours:

12 noon to 7pm Monday to Thursday
12 noon to 9:30pm Friday and Saturday
12 noon to 8pm Sunday

The proposed hours of operation are:

6:30am to 5pm Monday to Thursday
6:30am to 9:30pm Friday
7am to 9:30pm Saturday
7am to 6pm Sunday

It is considered the proposed hours of operation will not cause any additional late evening acoustic amenity impact to the surrounding residences and will reduce the existing impact due to the reduction of late hours from Sunday and Thursday evenings (subject to the unauthorised deck not being used). Additional acoustic impact is expected during the morning hours due to the earlier proposed operating times, but this impact is not expected to cause unreasonable impact due to the less intensive use of the business during morning trade.

To ensure that all patrons depart the venue no later than 9:30pm on Friday and Saturday evenings, the hours of operation condition limits food and drink service to 9:00pm with an additional 30 minutes permitted to allow patrons to leave the venue.

The submitted acoustic report has been reviewed by Council's Environmental Health team who do not raise any objection to the proposed hours of operation, subject to compliance with the recommendations of the acoustic report.

- *Concerns are raised that the outdoor deck enlargement will cause unreasonable additional amenity impact to the adjacent property and surrounding properties.*

Comment:

Due to the proximity of the unauthorised deck to the southeast boundary and the ability to seat more patrons in this area, the amenity impact to the adjacent property is considered to be unreasonable. As such, a condition is included to exclude approval for the use of the unauthorised deck structure from the consent. A condition is also included to limit capacity of the existing approved deck to 12 patrons.

- *Concerns are raised that the proposed footway dining will cause unreasonable impact to pedestrian traffic around the business.*

Comment:

Approval for footway dining is not included as part of this development consent and a condition is included to expressly exclude footway dining from the consent. Approval under a separate outdoor dining application must be sought.

- *Concern is raised that the applicant has not provided sufficient details in the submitted documents that prove existing use rights apply to the site.*

Comment:

During assessment, Council requested additional information from the applicant to demonstrate that existing use rights apply to the site. The applicant has provided information to satisfy this request. As such, it is determined that existing use rights apply to the site and that Clause 41 of EPA Regulation is satisfied.

- *Concern is raised that the proposal will cause additional parking demand and impact on the availability of on-street parking spaces.*

Comment:

Detailed assessment of the parking impact of the proposed development is included in this report below under part B6.3 of P21DCP.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	Environmental Health has reviewed the proposal for extended hours of the restaurant/cafe, including acoustic report, capacity of WC and capacity for patrons. We find the proposal satisfactory as it is presented -a total of 36 patrons and indoor speakers to 75 dB(A). Thus, we recommend conditions to comply with the acoustic report, both in the construction of an acoustic barrier, and the operational

Internal Referral Body	Comments
	plan of management. Please note that if at any point in time in the future, regulatory action on noise is required via a complaint process, the owner of the building and operator/s of the business can expect that noise and impacts on amenity are reasonable only limited to the bounds of the acoustic report. Beyond 36 patrons and 'light' background music from internal speakers, noise is more likely to be considered excessive or offensive, and a nuisance to residential amenity. Recommendation Supported- subject to conditions Comments: Whilst the proposal includes an increase from 10 to 16 seats, this is the subject of a separate approval process. The acoustic report addresses the increased numbers and the likely cumulative impact of the increased outdoor dining on council's footpath which is satisfactory to Council's Environmental Health Team. Given the proposed condition to reduce the total number of patrons within the site, the net increase of seated patrons is reduced from 10 to 6, this will further reduce any likely impact on surrounding properties.

NECC (Coast and Catchments)	The DA seeks approval to use the ground floor of the premises as a cafe. 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. 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 this DA. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under 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 Statement of Environmental Effects prepared by Turnbull Planning International Pty Ltd (July 2021), the proposal satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the proposed development does comply with the requirements of State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk 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 B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. The ground floor level of the existing building is shown on the survey as RL 2.59m AHD and is above the applicable EPL (RL 2.2m AHD) adopted by Council for the site. The proposed development is
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Internal Referral Body	Comments
	therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.
Property Management and Commercial	The proposal is for an extension to an existing cafe, and plans submitted with the DA (DA03 Proposed Seating Plan dated June 2021 drawn by o2 architecture) appear to propose an extension to the approved outdoor dining associated with the cafe. Under their current Outdoor Dining Approval, dated 6 May 2021, the cafe has approval to place 3 tables and 10 seats on the public road way. Any proposal to increase the amount of outdoor dining furniture on the public roadway must be applied for under the Outdoor Dining Application on Council's website and cannot be approved under this DA.

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)

Nil

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
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	Change of use only	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A

Clause	Compliance with Requirements
5.21 Flood planning	N/A
7.1 Acid sulfate soils	N/A
7.2 Earthworks	N/A
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

As this proposal is reliant upon existing use rights, the strict application of the controls of P21DCP does not apply to the development. Notwithstanding, this assessment considers the requirements of P21DCP as a guide to determine whether the merits of the proposal are acceptable.

This application relates only to the use of the premises for the purpose of a restaurant or cafe. As such, the built form controls do not apply to the proposal.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
C2.2 Safety and Security	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	N/A	N/A
C2.12 Protection of Residential Amenity	No	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Description of non-compliance

The control requires an off street parking rate of one (1) space per 30m² of gross lettable area (GLA).

Based on a GLA of approx. 86m² (excluding unauthorised deck extension), the proposed development requires three (3) off street parking spaces. No off-street parking spaces for the cafe are proposed.

Merit consideration

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

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

Comment:

While the proposed is deficient of off street parking spaces, it is noted that the existing business operation at the site does not rely upon any off street parking spaces. The proposed development is not expected to increase demand for parking above that of the existing business. It is considered that due to the small scale of the proposed development and the spatial limitations of the site, the need to provide off street parking is unreasonable. The site is well connected being within easy walking catchment of many dwellings. The nearest bus stop is located approximately 20m to the south of the site which has regular connections to most of the Northern Beaches.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*

Comment:

Not applicable, no parking provided.

- *Safe and convenient parking.*

Comment:

Not applicable, no parking provided.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, this particular circumstance and given the proposed reduction in patron numbers by condition of consent the potential impacts on street parking is lessened.

C2.12 Protection of Residential Amenity

The proposed development includes seeking consent for the use of the unauthorised extension of the existing deck and pergola on the southeastern side of the building. The deck and pergola have a nil setback to the southeast side boundary. The floor level of the deck is approx. 300mm above the

existing ground level. It is expected that this height at the side boundary and additional patron capacity of the deck will cause unreasonable visual and acoustic amenity impacts to the adjacent property.

Prior to the extension of the deck, a large Norfolk Pine tree and 2m wide landscaped area was located in this area. The tree was approved to be removed on 07/10/2020. While the removal of the tree was approved, the 2m setback of the original deck from the boundary limited the potential for visual privacy impacts to the adjacent property and created an acoustic buffer between the properties.

To ensure that the impact of the proposed restaurant and cafe on adjacent and surrounding residential properties, a condition is included to exclude the unauthorised portion of the deck and pergola from this development consent. An additional condition is included to limit the capacity of the deck to 12 patrons. This is consistent with condition no. 6 of Consent No. 98/56.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 involves seeking consent for the use of the ground floor of the existing building and associated structures as a restaurant or cafe with proposed new hours of operation. The proposal includes seeking consent for the use of an unauthorised extension of the existing deck and pergola on the southeastern side of the building.

Several submissions have raised concerns that the proposed development will cause unreasonable amenity impact to the surrounding residential dwellings.

It is considered that the proposal is generally consistent with the existing use of the building and past approvals on the site. However, the unauthorised deck and pergola extension is considered to cause unreasonable additional amenity impact to the surrounding residential dwellings and consent for the use of this structure is not supported. The unauthorised deck and pergola extension is not supported and excluded from use by the café with the existing deck limited to a capacity of 12 patrons . The unauthorized works will be subject to separate action.

Accordingly, it is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1311 for Use of premises as a cafe including a change of hours on land at Lot A DP 404349, 1031 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2136 DA00 Rev A	15/07/2021	O2 Architecture
2136 DA01 Rev A	15/07/2021	O2 Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Noise Emission Assessment (Ref: 51261R001.MW.210622)	21/07/2021	Acoustic Dynamics

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

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

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

2. Approved Land Use

Nothing in this consent shall authorise the use of the tenancy and associated structures as detailed on the approved plans for any land use of the site beyond the definition of a *restaurant or cafe*.

A *restaurant or cafe* is defined as:

"a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided."

(as defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the

above definition will require the submission to Council of a new development application.

Notwithstanding the above, the consent for the use of the unauthorised deck and pergola highlighted in yellow on the stamped plans is not granted and must be removed from the site. Soft surface landscaping and vegetation must be established in this area.

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

3. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that

occurs on Council's property.

- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. **Operational Noise Controls**

Operations must be in accordance with the recommendations within Section 5 of the Acoustic Report prepared by Acoustic Dynamics dated 21 July 2021 (Reference 51261R001.MW.210622).

Any design recommendations and plan of management made by the consultant must be implemented in order to achieve compliance with noted conditions of this consent.

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

Reason: To maintain amenity of the surrounding area.

6. **No approval for use of unauthorised deck and pergola**

The use of the unauthorised deck and pergola highlighted in yellow on the stamped plans is not granted by this consent Patrons to be excluded from using this area.

Reason: To ensure compliance with the terms of this consent and mitigate amenity impact on surrounding dwellings.

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

7. **Compliance with acoustic report**

An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments are in accordance with the recommendations within Section 5 of the Acoustic Report prepared by Acoustic Dynamics dated 21 July 2021 (Reference 51261R001.MW.210622).

Any design recommendations made by the consultant must be implemented prior to issuing the Occupational Certificate in order to achieve compliance with noted conditions of this consent.

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

Reason: To maintain amenity of the surrounding area.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**8. Outdoor Dining**

Outdoor footpath dining is not approved under this consent.

Applications for outdoor dining and modifications to existing outdoor dining areas must be made to Council's Property Team on the Outdoor Dining Application form available on Council's website.

Reason: To ensure outdoor dining complies with the requirements of the Roads Act 1993.

9. Hours of Operation

The hours of operation are to be restricted to:

- i Monday to Thursday – 6:30am to 5:00pm
- i Friday – 6:30am to 9:00pm
- i Saturday – 7:00am to 9:00pm
- i Sunday and Public Holidays – 7:00am to 6:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

10. Patron Capacity

The maximum capacity of the tenancy is limited to twenty (20) patrons, including no more than twelve (12) patrons on the outdoor deck on the southeastern side of the building at any one time.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

11. Commercial Waste Collection

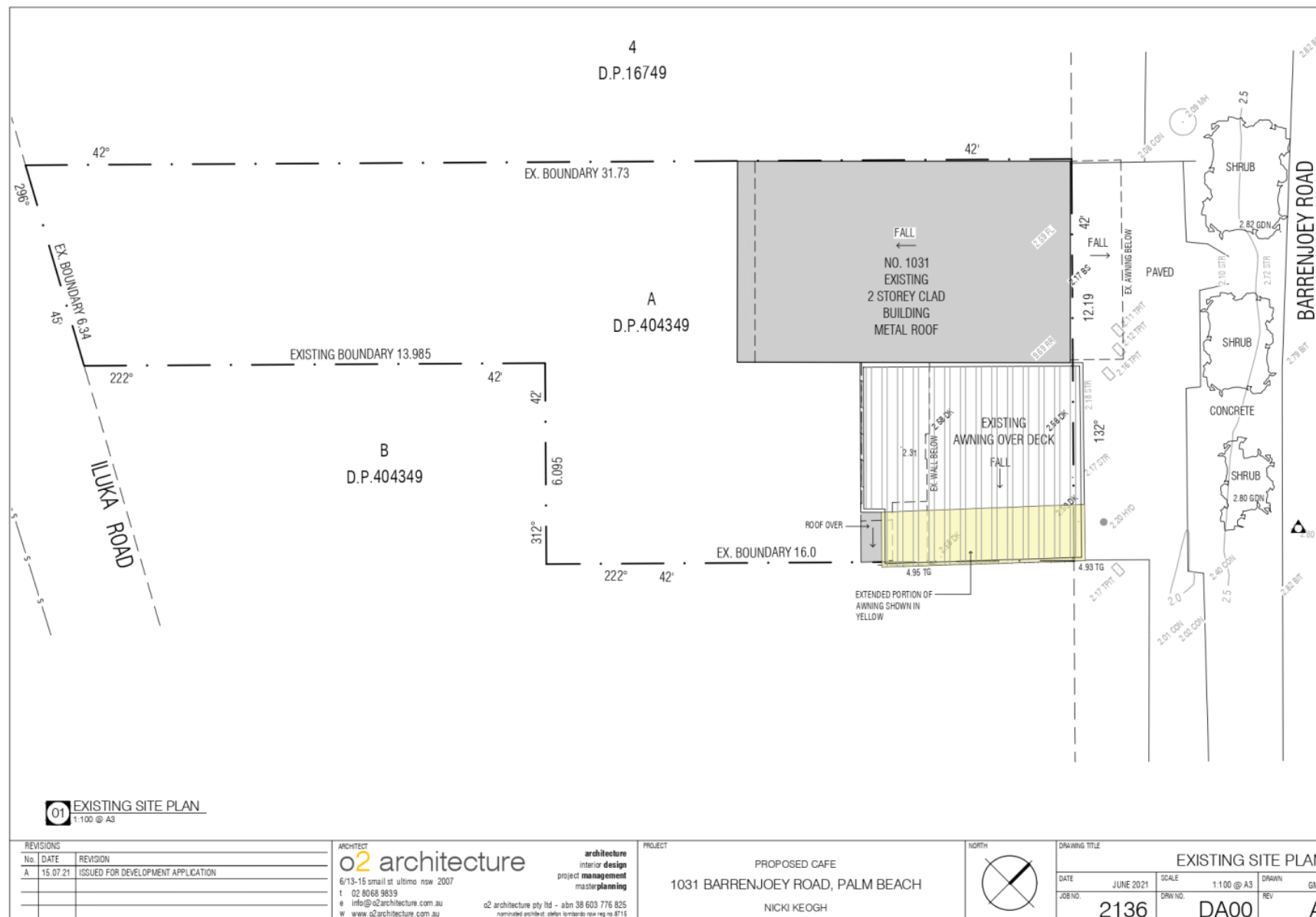
Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

12. Deliveries

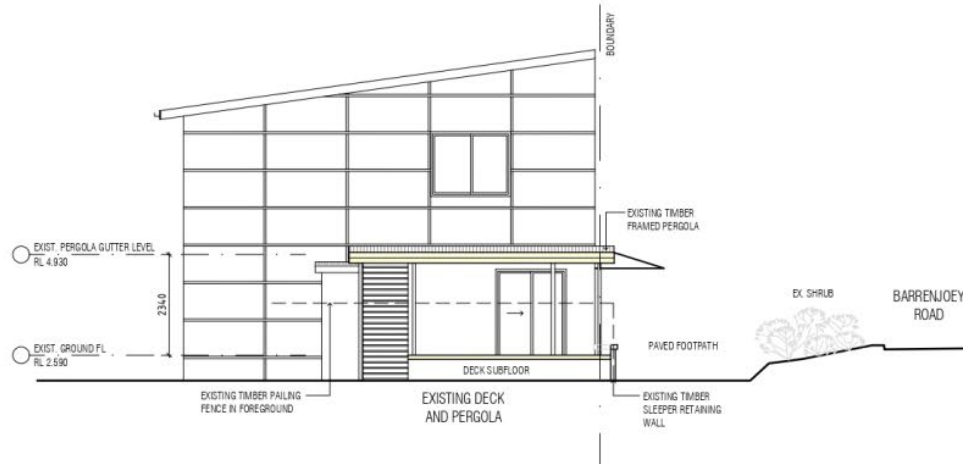
No deliveries, loading or unloading associated with the premises are to take place between the hours of 9pm and 6am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.





01 EXISTING FRONT ELEVATION
1:100 @ A3



02 EXISTING SOUTHEAST ELEVATION
1:100 @ A3



STREET VIEW OF CAFE



STREET VIEW OF DECK & PERGOLA

REVISIONS			ARCHITECT	PROJECT	NORTH	DRAWING TITLE			
No.	DATE	REVISION				EXISTING ELEVATION & STREET VIEW			
A	15.07.21	ISSUED FOR DEVELOPMENT APPLICATION	o2 architecture 6/13-15 small st ultimate nsw 2007 t 02 8068 9839 e info@o2architecture.com.au w www.o2architecture.com.au	PROPOSED CAFE 1031 BARRENJOEY ROAD, PALM BEACH NICKI KEOGH		DATE	JUNE 2021	SCALE	AS INDICATED
						JOB NO.	2136	DRW NO.	DA02
						REV			
						GM			A

ITEM 4.4	DA2021/0521 - 111 BOWER STREET, MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
AUTHORISING MANAGER	Rebecca Englund
TRIM FILE REF	2021/815856
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0521 for alterations and additions to a semi-detached dwelling at Lot B DP 441361, 111 Bower Street, Manly subject to the conditions set out in the Assessment Report.
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DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0521
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot B DP 441361, 111 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Alexander Charles Macpherson Kate Anne Mansour
Applicant:	Alexander Charles Macpherson

Application Lodged:	06/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/05/2021 to 26/05/2021
Advertised:	Not Advertised
Submissions Received:	13
Clause 4.6 Variation:	4.3 Height of buildings: 11.76%
Recommendation:	Approval

Estimated Cost of Works:	\$ 558,250.00
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EXECUTIVE SUMMARY

The proposed development seeks consent for alterations and additions to the existing semi-detached dwelling, including minor internal reconfigurations, new additions at the first floor and roof terrace levels, external works to the rear courtyard and new plant and store areas below the existing garage.

The proposed roof terrace addition results in a variation of 11.76% to the height of buildings development standard. Despite this proposed breach, the development maintains the roof ridge level of the existing development (RL30.57) and will not result in unreasonable building bulk or amenity impacts. An assessment of the proposed development standard breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

The proposal was amended following lodgement of the application to reduce the building bulk

associated with the new roof form and maintain compliance with the floor space ratio development standard.

Thirteen submissions were received in response to the notification of the application, and have been addressed within the assessment. As the proposal attracted more than 10 submissions, the application is referred to the Northern Beaches Local Planning Panel for determination.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing semi-detached dwelling as follows:

Ground floor

- Reconfigured Kitchen, living, dining & stair
- Existing Bedrooms 1 & 2
- Existing bathroom
- Existing front porch
- Reconfigured courtyard including minor changes to retaining walls and new roof over BBQ
- Store and Plant rooms below existing garage

First floor

- Reconfigured Master Bed with ensuite & robe
- New roof, balustrade and privacy screen to Master Bed balcony
- New WC, linen & storage
- New Bedroom addition

Proposed Roof level

- New Studio addition
- Reconfigured terrace

Amendments to proposal

Following lodgement of the application, amendments to the proposal were made as follows:

- Deletion of studio dormer window
- Provision of a planter box to the south-eastern edge of the roof terrace
- Reduced eave overhang and parapet height of the first floor bedroom addition
- Reduced floor area of storage area below garage

Revised shadow diagrams have also been provided to demonstrate the resulting shadow impacts to the private open spaces and windows of 109 Bower Street.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot B DP 441361 , 111 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the western side of Bower Street. The site is regular in shape with a frontage of 6.685m along Bower Street, a depth of 45.655m and a secondary western frontage of 7.53m to Reddall Street. The site has a surveyed area of 346.1m². The site is located within the R1 General Residential zone and accommodates an existing semi-detached dwelling with a detached double garage.

	The site approximately 7.7m from rear (west) to front (east). The site does not contain any significant trees or natural features. Vegetation on the site is generally limited to palms, planted gardens and lawn areas. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached and semi-detached dwellings and residential flat buildings.
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Map:



SITE HISTORY

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

- DA2020/0950 for Alterations and additions to a semi-detached dwelling. The development application was withdrawn due to issues raised by Council in relation to building height, FSR, views, solar access, privacy and heritage impacts.
- DA2021/0521 (subject application) for Alterations and additions to a semi-detached dwelling. The assessment of the application was put on hold as Covid-19 restrictions delayed the completion of the required internal site inspections of the subject site and adjoining properties. The inspections were completed on 2 November 2021 and the assessment was completed and reported to the Northern Beaches Local Planning Panel for determination on 24 November 2021

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
	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 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 suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/05/2021 to 26/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Harry Azoulay	4 / 11 Reddall Street MANLY NSW 2095
Mr Gregory William Hall Mrs Robyn Kaye Hall	109 Bower Street MANLY NSW 2095
Maw Technology Pty Ltd	3 / 22 Cliff Street MANLY NSW 2095

Name:	Address:
Mrs Robin Noelle James	13 / 62 - 64 Lynwood Avenue CROMER NSW 2099
Mr Philip Huff	9 / 22 Cliff Street MANLY NSW 2095
Mr Arron William Hall	Po Box 282 NARRABEEN NSW 2101
Mr Peter David Walmsley	5 / 20 Reddall Street MANLY NSW 2095
Mr Cameron Middleton	113 Bower Street MANLY NSW 2095
Mr Andrei John Newton	19A Lone Pine Avenue CHATSWOOD NSW 2067
Ms Ann Cameron	48 Bower Street MANLY NSW 2095
Ms Michelle Patricia Sparkes	1 / 104 Bower Street MANLY NSW 2095
Alexandra Kent	4 / 34 Ashburner Street MANLY NSW 2095
Ms Judith Sally Freeman	93 Bower Street MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

- Building height & built form control breaches, overdevelopment of site

Comment:
The proposal exceeds the building height control, but will not increase the ridge height of the existing roof. The proposed height variation is not considered to result in any unreasonable visual or amenity impacts to adjoining properties or the streetscape, as assessed in detail under Clause 4.6 of this report. The built form non-compliances associated with the proposed works are limited to the wall height (party wall & first floor bedroom) and number of storeys controls, and will not unreasonably impact adjoining properties. The remaining non-compliances identified in this assessment relate to the existing dwelling and remain unchanged by the development. The proposed additions to the existing dwelling are relatively modest in scale, maintain compliance with the floor space ratio control and do not indicate an overdevelopment of the site.
- Calculation of FSR and compliant with control

Comment:
Calculation of the proposed floor space ratio by Council in accordance with the MLEP definition and relevant case law has determined that the proposal complies with the control.
- Bulk, streetscape & heritage impacts

Comment:
The proposed additions will result in minimal perceivable bulk as viewed from the Bower and Reddall Street frontages, and the proposal is not considered to result in any adverse visual bulk or streetscape impacts. Council's Heritage Officer is supportive of the proposal from a heritage perspective.
- Visual and acoustic privacy impacts

Comment:
The proposal is appropriately designed to maintain privacy to surrounding properties, subject to the recommended conditions of consent. The existing roof terrace is not increased in dimension and remains consistent with that of the adjoining semi (113 Bower Street). A detailed assessment of the privacy impacts of the development is completed under 3.4.2 in this report.
- Overshadowing impacts

Comment:
The proposal includes a minor non-compliance in relation to the overshadowing impacts to the

living room windows of 109 Bower Street. However, the non-compliant shadowing results from the first floor bedroom that is set back in excess of 4m from the side boundary. To minimise overshadowing of the private open spaces of the adjoining property, conditions are imposed to reduce the height of the proposed roof over the master bedroom balcony and to ensure that all vegetation planting is appropriately located. The overshadowing impacts of the development are considered to be acceptable on merit, as assessed against the objectives of MDCP Clause 3.4.1 in this report.

- View loss impacts

Comment:

The view assessment completed under 3.4.3 of this report finds that the proposal will result in minimal view loss impacts from 113 Bower Street and 5/20 Reddall Street. The minor level of view loss is supportable in this case.

- Demolition & construction impacts

Comment:

Conditions are imposed to require the preparation of pre and post-construction dilapidation reports to identify any damage result from the proposed works. Council does not have the authority to require that an applicant provide alternate accommodation for occupants of adjoining properties during demolition and construction works.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported with conditions. 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.
Landscape Officer	Supported with conditions. The development application is for alterations and additions to an existing semi-detached dwelling. Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly DCP 2013 (but not limited to): • section 3: General Principles of Development, including but not limited to clauses 3.2 Heritage Considerations, 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping. The existing site does not contain any significant trees, vegetation nor landscape features, with the landscape areas consisting of gardens with palms and other ornamental planting, lawns, retaining walls and

Internal Referral Body	Comments			
	pavements. A Landscape Plan is provided indicating existing landscape features and vegetation to be retained, as well as additional landscape treatment. Landscape Referral raise no objections to the proposal.			
NECC (Bushland and Biodiversity)	Supported with conditions. Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions: • Biodiversity Conservation Act 2016 (BC Act) • Manly LEP cl. 6.5 Terrestrial Biodiversity • Manly DCP cl. 5.4.2 Threatened Species and Critical Habitat Lands • Manly DCP cl. 3.3.1.iv) (Landscaping in Bandicoot Habitat) The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, assessment of potential impacts is required to be undertaken in accordance with Section 7.3 of the NSW Biodiversity Conservation Act (i.e. the threatened species “test of significance”). This assessment has been undertaken and has concluded that the proposal is unlikely to result in significant impact to the endangered bandicoot population. Conditions of consent will be applied to ensure compliance with relevant DCP controls.			
Strategic and Place Planning (Heritage Officer)	<u>Planning Comments</u> Council's Heritage Officer recommended a condition requiring that "The proposed roof form to the top level should match the adjacent semi for at least 500mm from the party wall." This condition is considered to be unreasonable in the circumstance where it will compromise the design and function of the upper level. Specifically, the maintenance of a pitched roof impacts upon the stair access to the upper level, reduces the ceiling height above the landing and creates a problematic roof design with regard to stormwater and runoff. The condition would likely require a considerable redesign of the proposal and is not recommended to be imposed. <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td>The proposal has been referred to Heritage as the subject site is within the vicinity of heritage items, listed in Schedule 5 of Manly</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site is within the vicinity of heritage items, listed in Schedule 5 of Manly
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Internal Referral Body	Comments												
	Local Environmental Plan 2013: Item I88 - House - 105 Bower Street Item I90 - Street trees (<i>Acaucaria heterophylla</i>) - Bower Street (from Cliff Street to College Street) Item I2 - All stone kerbs - Manly municipal area												
	Details of heritage items affected Details of the heritage items as contained within the Northern Beaches Heritage Inventory are: Item I88 - House <u>Statement of significance:</u> Fine and unusual example of Federation Arts & Crafts style house, featuring spectacular gabled roof and elaborate timber shingling. <u>Physical description:</u> Two storey Federation Arts & Crafts style house, face brick, with gabled unglazed terracotta tile roof featuring huge timber shingled gable ends to three sides, the front one including a recessed balcony. Features 6-paned sashes to timber framed double hung windows, and plain, rectangular brick chimneys. Item I90 - Street trees (<i>Acaucaria heterophylla</i>) <u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape. Continuity with the earlier street tree plants of Manly 'Village' area. <u>Physical description:</u> Norfolk Island pines (<i>Araucaria Heterophylla</i>). Appear to have been planted in the early 1900's. Item I2 - All stone kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.												
	Other relevant heritage listings <table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust	No	
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Internal Referral Body	Comments						
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(NSW) Register							
RAIA Register of 20th Century Buildings of Significance	No						
Other	No						
	Consideration of Application This application seeks consent for alterations and additions to one of 4 remaining identical and intact semi detached dwellings in Bower Street. These dwellings present a consistent streetscape, having maintained their original roof forms and street facade of original appearance when viewed from the street. The proposed works retain the front section of the existing dwelling, including the external walls and the first two rooms of the ground floor and the front facade. Given the proposed works are mainly confined to the rear and not visible from Bower Street. No modifications have been proposed to the existing driveway crossover by this application. It is considered that the proposal will have a manageable impact upon the significance of the heritage items and the existing streetscape which, mainly influenced by the Federation era, when viewed from Bower Street. Therefore, no objections are raised to the proposal on heritage grounds subject to the imposition of two conditions. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? The impact of the proposal has been addressed in the SEE. Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 01 July 2021						

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and

Council Policies have been considered in the merit assessment of this application.

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A342673_06 dated 31 March 2021).

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this

plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed works are largely within the existing building footprint and will not result in any substantial reduction to the landscaped area of the site. The development is appropriately designed and sited to avoid adverse impacts in relation to the above matters.

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

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

Comment:

The proposal is unlikely to result in increased risk of coastal hazards on the site and surrounding land.

As such, it is considered that the application does comply with the requirements of the State

Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.76%	No
Floor Space Ratio	0.6:1 207.66m ²	0.6:1 207.6m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.5m
Percentage variation to requirement:	11.76%

Assessment of request to vary a development standard:

The following assessment of the variation to 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019]

NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land and semi-detached nature of the dwelling which limits the ability to distribute a compliant quantum of floor space across the site in a contextually appropriate manner whilst complying with the height of buildings standard.*
- *In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario. Such outcome is achieved*

whilst realising the reasonable development potential of the land.

- *The height and pitched roof form proposed are consistent with that established by the adjoining dwelling house in the pair and the prevailing height of residential development generally within the site's visual catchment.*
- *The building presents a compliant 1 and 2 storey building height to both street frontages with the upper level enabling the distribution of an appropriate quantum of floor space whilst maintaining a view corridor down the eastern boundary of the site. The 1 and 2 storey built form presentation to both streets is consistent with the desired streetscape character."*

Comment:

The proposed building height breach results from the utilisation of the existing terrace/roof level to provide an additional habitable room within the allowable GFA for the site. The proposed studio addition maintains the existing roof ridge height and will not add significant perceivable bulk beyond that of the existing wall and non-habitable roof structure. The proposal is considered to maintain a reasonable level of amenity to the adjoining properties and an appropriate visual presentation to the surrounding streetscape, despite the resulting height variation.

Further to the above environmental planning grounds provided by the applicant, consideration is also given to Clause 4.1.7.2 of MDCP, which provides concessions in the case of alterations and additions to buildings which existed prior to 2007 for the provision of habitable rooms within an existing roof structure that is above the maximum wall and roof height subject to:

- the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape, and
- the overall height of the building not being increased.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided

below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed building height and roof form is compatible with the topography, prevailing building height and desired streetscape character of the locality. In this regard, it is noted that the surrounding visual catchment includes numerous examples of residential flat building developments that significantly exceed the height control and contribute a greater level of bulk than that of the proposed development. Further, the proposed studio addition is located centrally within the site and will be minimally visible within the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The design and positioning of the proposed studio addition above the existing first floor wall are such that minimal additional building bulk will be visible from adjoining properties and public places.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposal will not result in unreasonable view impacts to, from or between nearby residential development and public spaces. A detailed assessment of view loss is completed in this report.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal will maintain an adequate level of solar access to the adjoining property despite the additions above the height control. It is noted that the minor breach of the solar access control relates to the proposed first floor bedroom addition that complies with the building height. A detailed assessment of solar access impacts is completed in this report.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other

aspect that might conflict with bushland and surrounding land uses.

Comment:

N/A

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal retains the existing residential use of the site.

It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal retains the existing residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. The Local Planning Panels Directions issued by the Minister in June 2020 provides the NBLPP with the authority to assume the Minister's concurrence and determine matters involving a variation to a numerical development standard of more than 10%

6.5 Terrestrial biodiversity

Council's Biodiversity Officer commented that the proposal is unlikely to result in significant biodiversity

impacts and raised no objection to the development, subject to the recommended conditions of consent.

6.9 Foreshore scenic protection area

The proposal is for alterations and additions to the existing dwelling and will not result in adverse impacts in relation to visual aesthetic amenity or views to and from the Manly Foreshore or Pacific Ocean.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 346.1m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North (Party wall): 7.5m (gradient 1:6)	8.8m-9.4m	25.3%	No
	South (Studio): 7.5m (gradient 1:6)	Wall: 6.7m-7.4m	N/A	Yes (existing)
	South (Bedroom): 7.3m (gradient 1:7.5)	7.2m-7.7m	2.7%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	2m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Bower St: 1.75m (existing)	N/A	Yes (streetscape)
		Reddall St: 0m (existing)	N/A	No (existing)
4.1.4.2 Side Setbacks and Secondary Street Frontages	N (Party wall): 2.93m-3.13m	0m	N/A	Yes (semi-detached)
	S (Studio wall): 2.23m-2.47m	1.157m	53.2%	No (existing)
	S (Bedroom): 2.4m-2.57m	4.16m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	0m	100%	No (existing)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 190.36m ²	46.1% 159.4m ²	16.3%	No (existing)
	Open space above ground 25% of total open space	16.1%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 55.79m ²	40% 63.63m ²	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m 3.8m	6.2m	63.2%	No (existing)

Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes
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***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed works will not be visually apparent from the street frontages of the site, and will not adversely impact the appearance of the development from the streetscape or public domain.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

Private open space:

The control requires that development not eliminate more than one third of the existing sunlight access to private open space areas.

109 Bower Street currently receives sunlight access to a total area of 154.8m² of the rear private open space area between 9am and 3pm. The proposal will result in additional overshadowing of 26.94m² throughout the day, equivalent to 17.4% of the total existing area of sunlight access. As the overall loss of sunlight is less than one third of the existing, the proposal complies with this part of the control.

Living room windows:

The control requires that the level of solar access presently received by living room windows be maintained for at least 2 hours.

The north-western elevation of 109 Bower Street includes three kitchen and living room windows at the rear of the ground floor and two sitting room windows at the front of the first floor. The proposal will cause additional overshadowing of one ground floor living room window of No. 109 at 10:45am, meaning that the present level of solar access to living room windows will be maintained for only 1 hour and 45 minutes (9am to 10:45am). As such, the proposal is non-compliant with this part of the control. A merit assessment of the overshadowing impacts of the development is completed below.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The non-compliance occurs due to the additional overshadowing of a 1.2m² ground floor living room window over a 15 minute period between 10:45am and 11am. The impact to this window is limited to 0.11m² at 10:45am and 0.36m² at 11am and results from the proposed first floor bedroom addition, which while partially non-compliant with the wall height control, provides a 4.16m side setback that significantly exceeds the 2.4m requirement. Noting the vulnerability of the most-affected windows due to their ground floor location and 1m side setback, the proposal is considered to provide equitable sunlight access despite the minor breach.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposal maintains a compliant level of sunlight to the private open space of 109 Bower Street and allows adequate sunlight penetration to the living spaces and habitable rooms of the dwelling. Specifically, the resulting additional overshadowing of windows throughout the day is limited to the ground floor living room windows between 10:45am and 1pm, the partially glazed ground floor door between 1pm and 2pm and the first floor sitting room window at 3pm.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*

- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed first floor bedroom addition is sufficiently modulated with a 4.16m setback that minimises overshadowing of the adjoining dwelling. Similarly, the envelope of the upper level studio addition is designed to limit the overall bulk and associated shadow impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

3.4.2 Privacy and Security

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed first floor window W04 is set back 4.16m and provides frosted glazing up to 1.5m above FFL. Window W01 is conditioned to match the appearance of the Bedroom 2 window but is offset from the windows of the adjoining dwelling, and W02 replaces an existing window over the kitchen bench. The proposed skylight windows S01 and S03 will not cause any adverse privacy impacts. The existing Master Bed balcony allows for substantial overlooking of 109 Bower Street and the proposed new roof will increase the usability of this space. As such, a condition is imposed requiring that the south-eastern balustrade be constructed of frosted glazing and a privacy screen be provided up to 1.5m above FFL to minimise downward overlooking to the adjoining property. The roof terrace is generally maintained as existing, with a new planter box to increase separation to the trafficable area.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed and conditioned privacy measures are considered to ensure a reasonable level of privacy without adversely impacting access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing opportunities for passive surveillance are maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Note: The height poles erected on the site have not been certified by a registered surveyor and may not depict the envelope of the proposed studio addition with complete accuracy. However, given that the proposed addition extends a maximum of 900mm forward (north-west) from the existing roof ridge, any discrepancy between the pole location and the proposed envelope is likely to be minimal, and the minor extent to which the proposed addition may extend beyond the pole location would not result in a level of impact that would be unacceptable.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) step planning principle outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140* is applied to the proposal.

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

Comment:

113 Bower Street

The affected views from 113 Bower Street include views to St Patrick's Seminary over the subject site. The affected views are generally whole views, but are somewhat obscured by existing vegetation to the south-east of the subject site. It is noted that No. 113 also obtains water views of the Pacific Ocean and Shelly Beach to the north-east.

5/20 Reddall Street

The affected views from 5/20 Reddall Street include filtered water views over the subject site that are significantly obscured by existing vegetation to the south-west and north-east of the existing dwelling at 111 Bower Street. As such, the affected views are partial views.

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

Comment:

113 Bower Street

The affected views are obtained from the upper level roof terrace across a side boundary, generally from a standing position.



Photo 1. Extent of view impact from the south-western side of 113 Bower Street roof terrace. The timber frame above the existing roof represents the proposed building works (uncertified).



Photo 2. Extent of view impact from the centre of 113 Bower Street roof terrace. The timber frame above the existing roof represents the proposed building works (uncertified).



Photo 3. Views to be retained from north-eastern side of 113 Bower Street roof terrace. The timber frame above the existing roof represents the proposed building works (uncertified).



Photo 4. Unaffected water views from 113 Bower Street roof terrace.



Photo 5. Unaffected water views from 113 Bower Street roof terrace.

5/20 Reddall Street

The affected views are obtained from the living room and bedroom windows across a front boundary, from a standing and sitting position.



Photo 6. Available views from 5/20 Reddall Street (provided by Applicant).

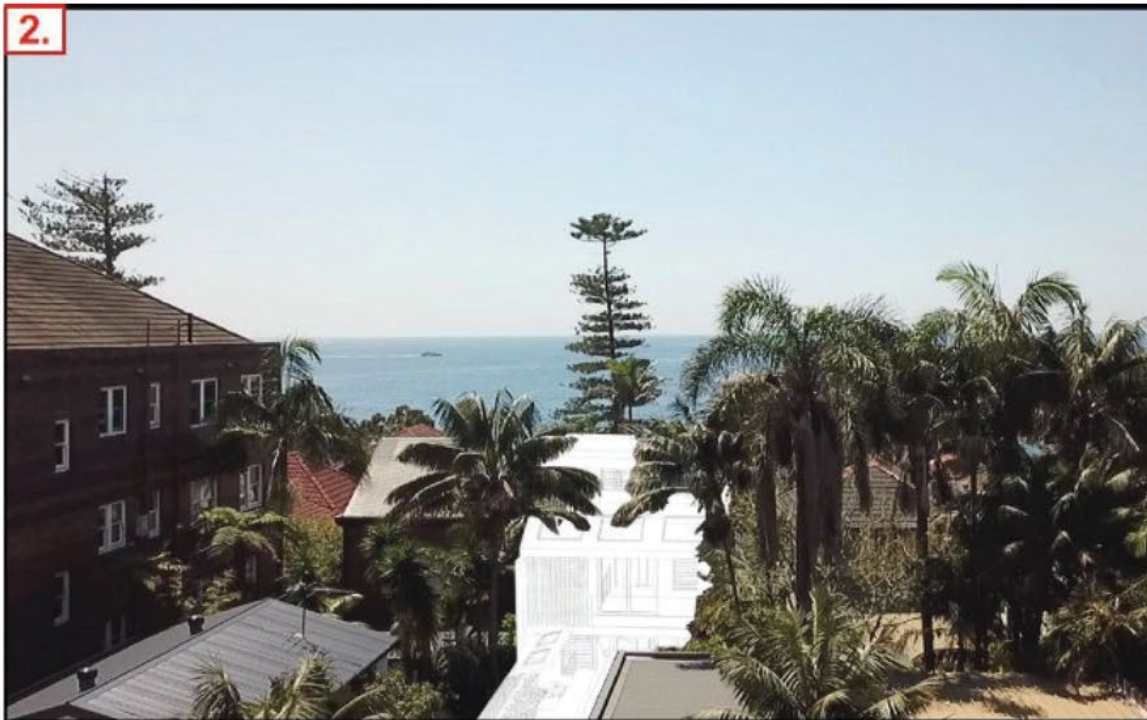


Photo 7. Resulting view impact from 5/20 Reddall Street (provided by Applicant).

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

Comment:

113 Bower Street

It is noted that the height poles have not been certified by a registered surveyor and may not depict the actual resulting view loss with complete accuracy. However, given the relatively minor 900mm extension beyond the existing roof ridge, it is likely that the resulting impact will be limited to approximately half of the St Patrick's Seminary building when standing on the south-western side of the roof terrace. However, the views from the centre and north-eastern side of the terrace are not anticipated to be impacted, and the available water views remain unaffected. As such, the extent of the impact is considered to be minor.

5/20 Reddall Street

Given the minimal proportion and limited value of the obscured views that are likely to be affected, the extent of the impact is considered to be negligible.

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

Comment:

The offending element in relation to views is the proposed upper level roof form, which is non-compliant with the 8.5m building height control. Based on the minor level of impact resulting from the building height non-compliance, the proposal is assessed as acceptable in relation to views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

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

Description of non-compliance

The proposed studio addition results in a maximum wall height of 9.4m, which is non-compliant with the 7.5m control. The proposed third level also exceeds the maximum two-storey control.

Merit consideration

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed wall and building heights remain compatible with the topography, prevailing building height and desired streetscape character.

b) to control the bulk and scale of buildings,

Comment:

The proposed additions will not result in an unreasonable or excessive level of visual bulk as viewed from the streetscape or surrounding properties.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposal will not result in any unreasonable view impacts to, from or between residential development and public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal will maintain adequate solar access to adjoining properties in the context of the R1 zone.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

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

The existing development includes breaches of the south-eastern side setback and front setback to Reddall Street. The proposed studio addition does not result in any change to the existing south-eastern wall height or setback, and the existing garage setback also remains unchanged.

4.1.5 Open Space and Landscaping

Merit consideration

The existing total open space area of 46.1% is non-compliant with the 55% control and remains unchanged as a result of the development.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The non-compliant garage width is existing and remains unchanged as a result of the proposed development.

4.1.8 Development on Sloping Sites

The subject site is mapped as Landslip Hazard Area G4 and a preliminary Geotechnical Assessment has been submitted.

4.4.5 Earthworks (Excavation and Filling)

The proposal includes minor earthworks and changes to existing retaining walls. The proposed works will not adversely impact the natural environment or adjoining properties.

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 \$5,583 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$558,250.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 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 application seeks consent for alterations and additions to the existing semi-detached dwelling.

The key planning issues considered within the assessment are the proposed variations to the height of buildings development standard built form controls, visual bulk, view loss and solar access impacts.

Notwithstanding the proposed building height variation of 11.76%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

Thirteen (13) submissions were received in response to the notification of the application, generally relating to the proposed building height breach, visual bulk and associated amenity impacts of the development, and are addressed within the report. As the proposal attracted more than 10 submissions, the application is referred to the Northern Beaches Local Planning Panel for determination.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0521 for Alterations and additions to a semi-detached dwelling on land at Lot B DP 441361, 111 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 Site / Roof Plan	Rev. F, 12 November 2021	Action Plans
DA07 Proposed Ground Floor Plan	Rev. F, 12 November 2021	Action Plans
DA08 Proposed Storage Plan	Rev. F, 12 November 2021	Action Plans
DA09 Proposed First Floor Plan	Rev. F, 12 November 2021	Action Plans
DA10 Proposed Terrace Roof Plan	Rev. F, 12 November 2021	Action Plans
DA11 North Elevation	Rev. F, 12 November 2021	Action Plans
DA12 East Elevation	Rev. F, 12 November 2021	Action Plans
DA13 South Elevation	Rev. F, 12 November 2021	Action Plans
DA14 West Elevation	Rev. F, 12 November 2021	Action Plans
DA15 Long Section	Rev. F, 12 November 2021	Action Plans
DA16 Cross Section	Rev. F, 12 November 2021	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A342673_06	7 October 2021	Action Plans
Preliminary Geotechnical Assessment	19 August 2020	Ascent Geotechnical Consulting

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L/01 Proposed Landscape Plan	22 November 2019	A Total Concept

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 \$5,582.50 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 \$558,250.00.

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 \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

7. **Access Spaces – Bandicoot Habitat**

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

8. **Pool Exclusion Fencing – Bandicoot Habitat**

Long-nosed Bandicoots are to be excluded from swimming pools and spas while maintaining access to any surrounding soft landscaping. Pool fencing must have no gaps large enough to allow bandicoots access.

Plans are to be amended and provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent Long-nosed Bandicoots from drowning in swimming pools and spas.

9. **Stormwater Drainage Disposal**

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

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

10. **Amendments to the approved plans**

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

- The proposed roof over the master bedroom balcony shall be a flat roof with a maximum height of RL27.581. The design and location of skylights S04, S05 and S06 may be amended to suit the altered roof form.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

11. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. **Window W01 to match existing window**

The proposed window W01 (bedroom 1) should match the existing window in bedroom 2. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To preserve the integrity of the existing semi and the presentation to the streetscape.

13. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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.

15. **Structural Support**

i. The proposed additions shall not rely on the existing party wall for support without the consent of the adjoining property owner. If consent is not provided for the use of the party wall, the additions and necessary structural support must be contained wholly within the subject property.

ii. A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that the existing building is capable of supporting the additions.

16. **Geotechnical Recommendations**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**17. Site Induction Required – Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

18. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties:

- 109 Bower Street, Manly
- 113 Bower Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**19. 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,

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) 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,

vi) should v) 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,

vii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

viii) 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,

ix) 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.

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.

20. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

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

Prior to any works commencing on site, including demolition, sediment and erosion controls

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

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

22. Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. A record of each inspection is to be made in the daily inspection register log-book.

The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

23. Report Dead or Injured Bandicoots – Bandicoot Habitat

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

24. Implementation of Geotechnical Recommendations

All recommendations included in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

25. Landscape Completion

- i) Landscaping is to be implemented in accordance with the approved Landscape Plan.
- ii) All tree planting generally shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space or solar collectors.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

26. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an

Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

27. 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,
- 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.

28. Certification of Geotechnical Recommendations

Certification from a suitably qualified and practicing Geotechnical Engineer that all recommendations included in the Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the development shall be provided to the Principal Certifying Authority prior to the issue of a Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

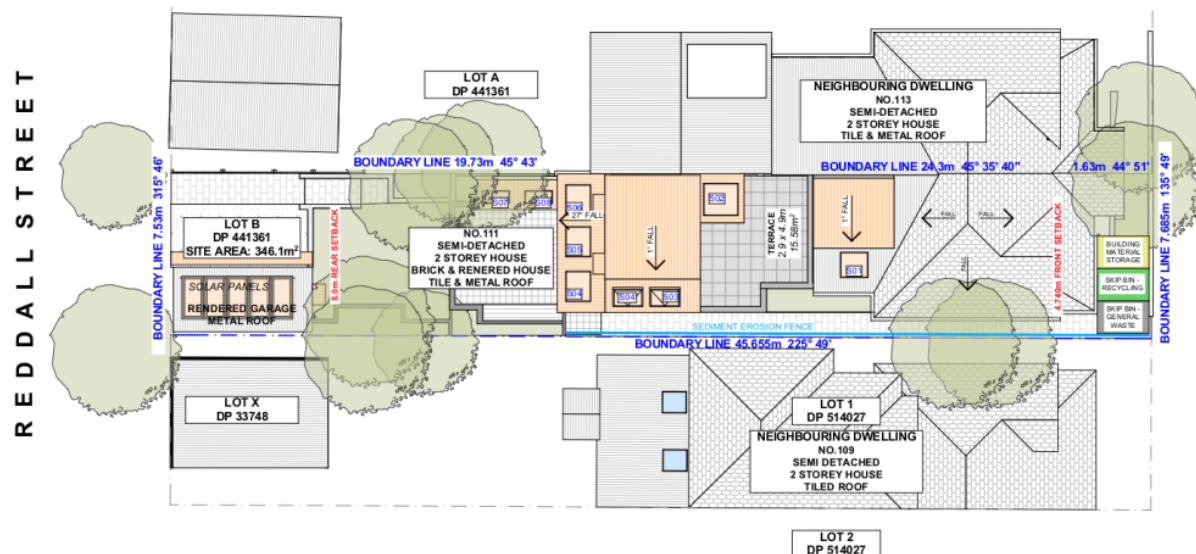
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

29. Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5

All fauna access/movement and landscaping provisions specified in these conditions of consent

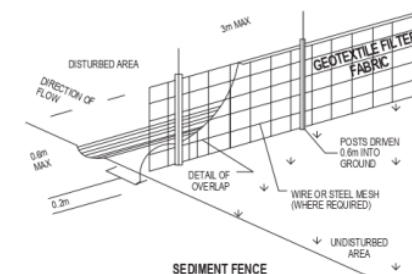
are to be implemented and maintained for the life of the development.

Reason: To maintain fauna access to existing and proposed habitat within and surrounding the site.



REDDALL STREET

BOWER STREET



DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREAS AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEPED DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN 1:200



ACTION PLANS

m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
F	07/10/2021	DA ISSUE REV F	DLR
B	25/11/2020	DA SUBMISSION	DLR
C	04/02/2021	DA REVISION	DLR
D	23/02/2021	DA REVISION	DLR

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LEGEND

EXISTING
PROPOSED
DEMOLISHED

CLIENT

ALEX MACPHERSON &
KATE MANSOUR

PROJECT ADDRESS
111 BOWER ST, MANLY
2095

DRAWING NO.

DA03

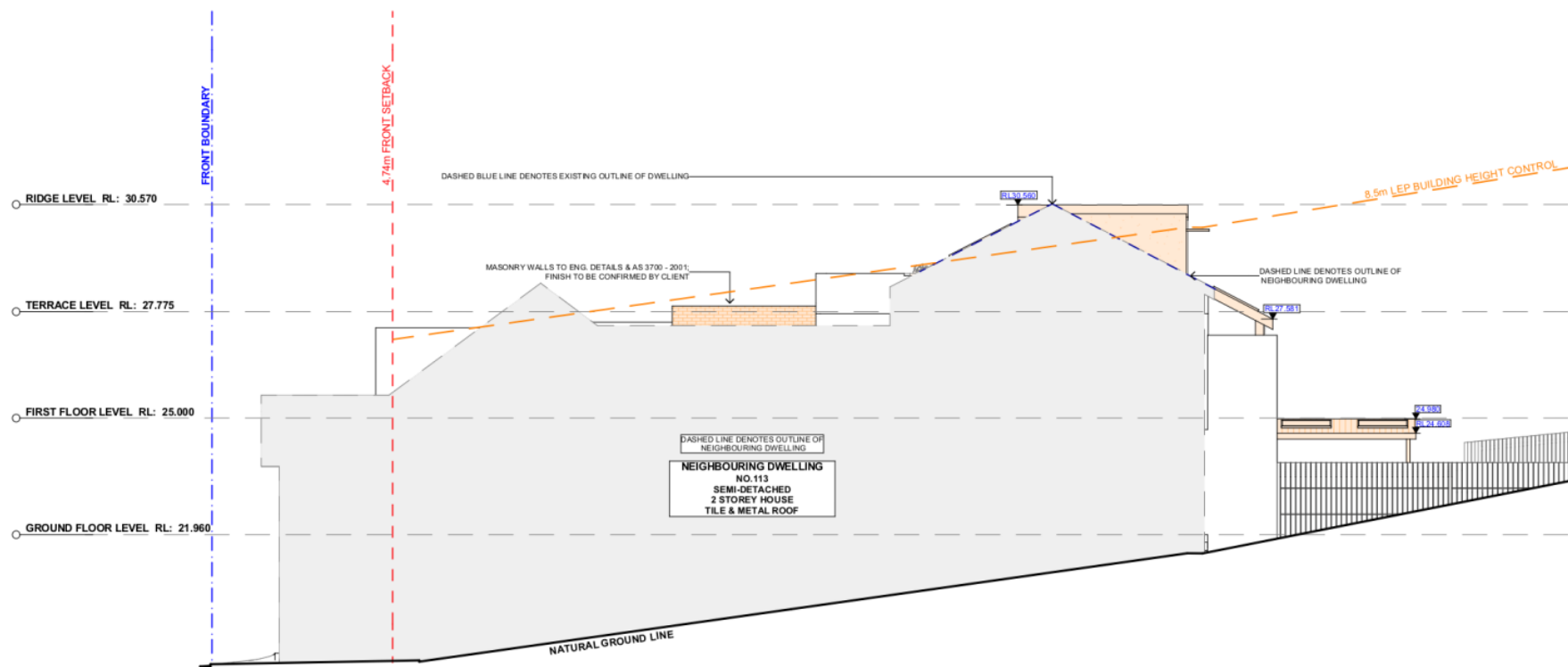
DATE
Friday, 12 November
2021

DRAWING NAME

SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN

SCALE
1:200 @A3





1

NORTH ELEVATION

1:100



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REV.	DATE	COMMENTS	DRWN
F	07/10/2021	DA ISSUE REV F	DLR
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D	22/02/2021	DA REVISION	DLR

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LEGEND

	TIMBER		METAL ROOFING
	WEATHERBOARD		TILED ROOFING
	FACE BRICKWORK		GLAZING
	CONCRETE		EXISTING

CLIENT

ALEX MACPHERSON &
KATE MANSOUR

PROJECT ADDRESS

PROJECT ADDRESS
111 BOWER ST, MANLY
2095

DRAWING NO.

DA11

DATE _____

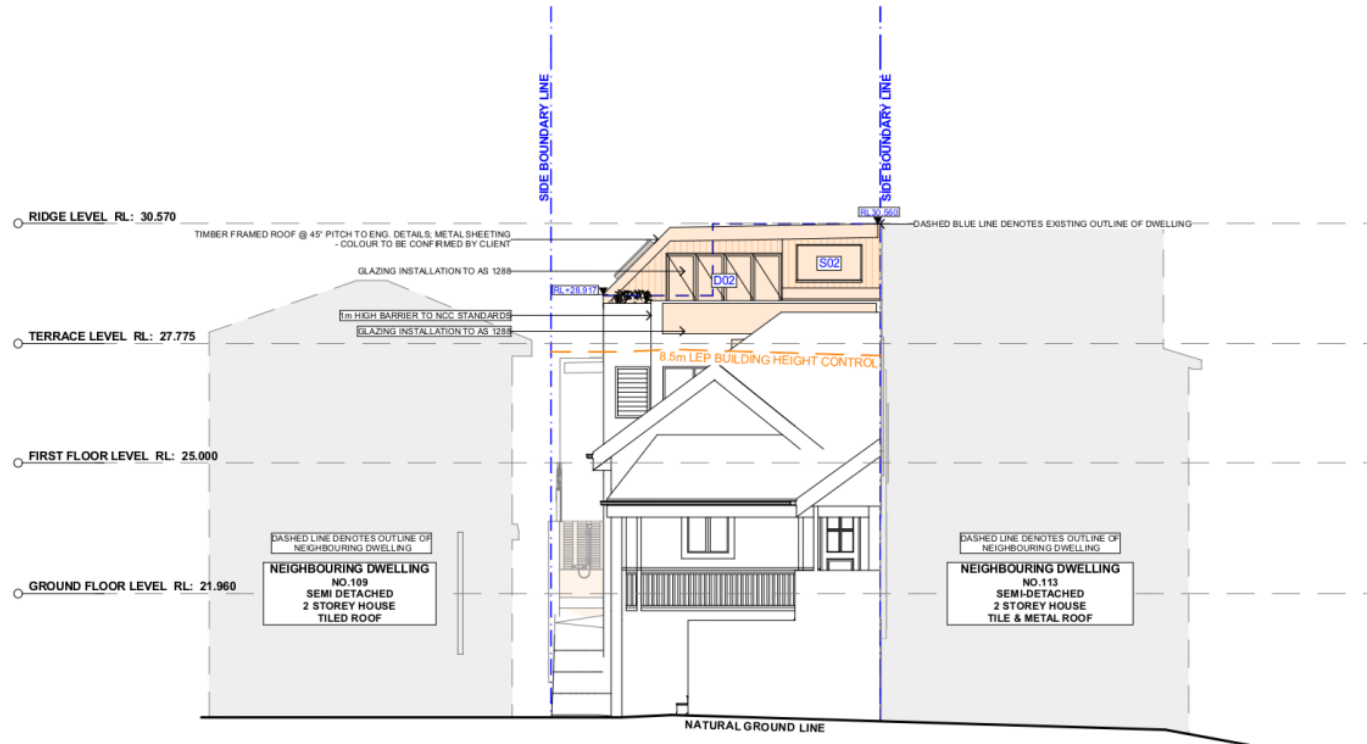
Friday, 12 November
2021

DRAWING NAME

NORTH ELEVATION

SCALE

1:100 @A3



1 EAST ELEVATION 1:100



ACTION PLANS

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C	04/02/2021	DA REVISION	DLR
D	23/02/2021	DA REVISION	DLR

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LEGEND

TIMBER	METAL ROOFING
WEATHERBOARD	TILED ROOFING
FACE BRICKWORK	GLAZING
CONCRETE	EXISTING

CLIENT
ALEX MACPHERSON &
KATE MANSOUR

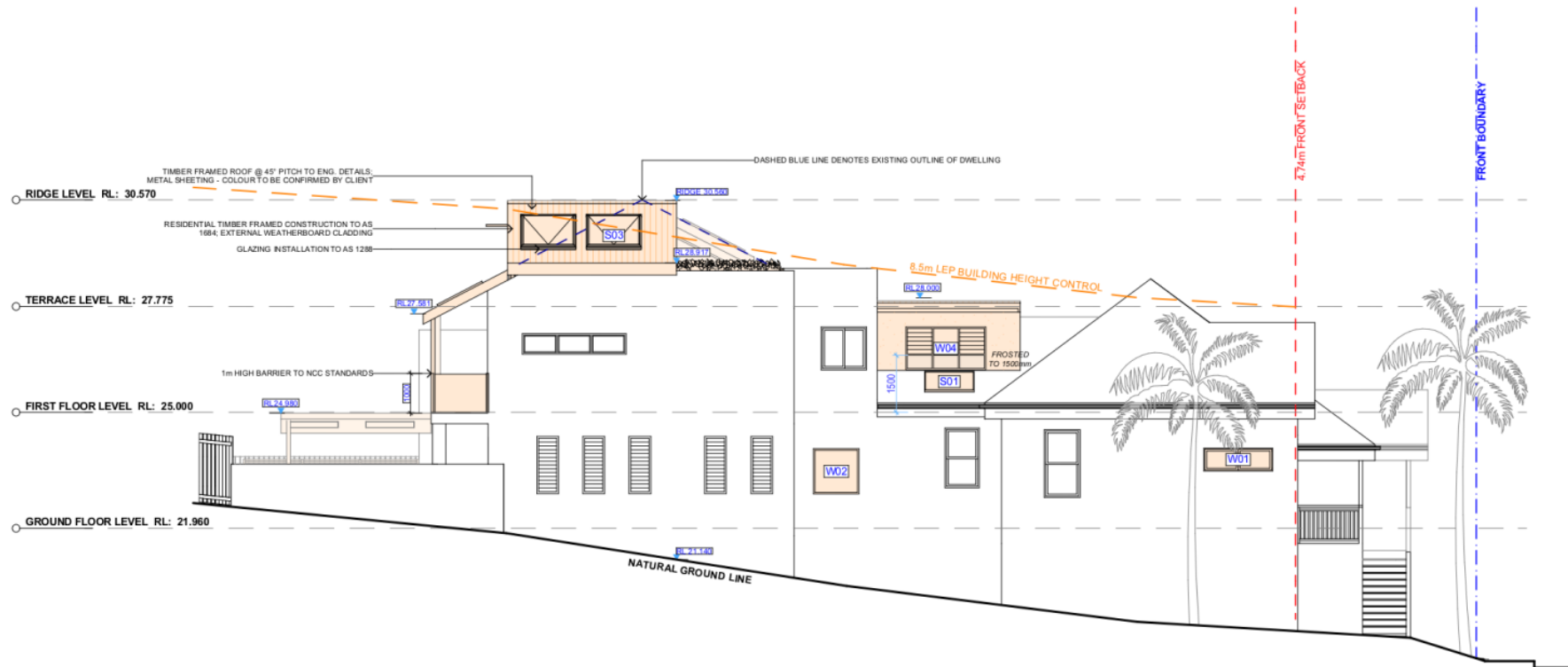
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2095

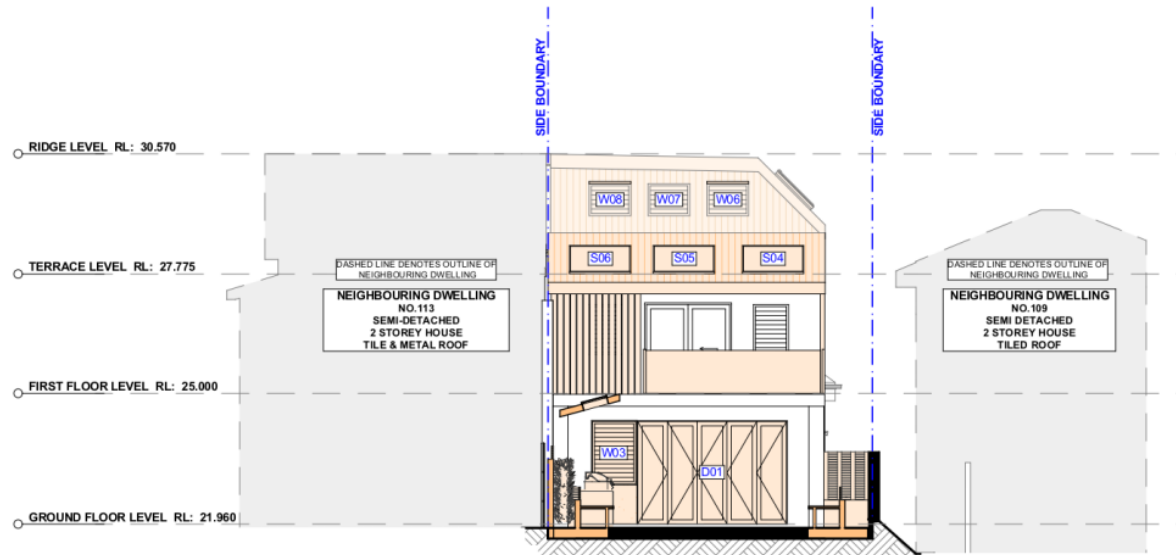
DRAWING NO.
DA12

DATE
Friday, 12 November
2021

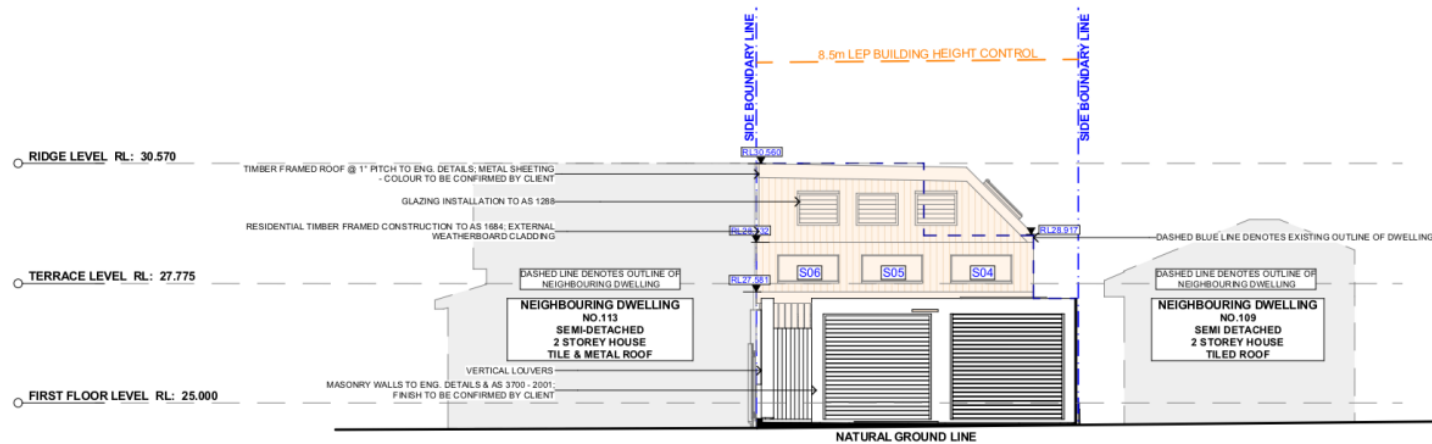
DRAWING NAME
EAST ELEVATION

SCALE
1:100 @A3





2 WEST ELEVATION 1:100



1 WEST ELEVATION 1:100



ACTION PLANS

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e: operations@actionplans.com.au
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REV.	DATE	COMMENTS	DRWN
F	07/10/2021	DA ISSUE REV F	DLR
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LEGEND

TIMBER	METAL ROOFING
WEATHERBOARD	TILED ROOFING
FACE BRICKWORK	GLAZING
CONCRETE	EXISTING

CLIENT
ALEX MACPHERSON &
KATE MANSOUR

PROJECT ADDRESS
111 BOWER ST, MANLY
2095

DRAWING NO.
DA14

DATE
Friday, 12 November
2021

DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3

4.0 Request for variation

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

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

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

Consistency with objectives of the height of buildings standard

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Response: The height and pitched roof form proposed are consistent with that established by the adjoining dwelling house in the pair and the prevailing height of residential development generally within the site's visual catchment.

The building presents a compliant 1 and 2 storey building height to both street frontages with the upper level enabling the distribution of an appropriate quantum of floor space whilst maintaining a view corridor down the eastern boundary of the site. The 1 and 2 storey built form presentation to both streets is consistent with the desired streetscape character.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with this objective notwithstanding the non-compliant building height elements proposed.

(b) *to control the bulk and scale of buildings,*

Response: For the reasons outlined in relation to objective (a) above, I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the compliant floor space (FSR) appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes. The proposal is consistent with this objective notwithstanding the non-compliant building height elements proposed.

(c) *to minimise disruption to the following:*

(i) *views to nearby residential development from public spaces (including the harbour and foreshores),*

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views to nearby residential development from surrounding public spaces. The proposal is consistent with this objective notwithstanding the non-compliant building height elements proposed.

(ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*

Response: Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, the accompanying view analysis at Annexure 1 demonstrates that the proposed additions will not give rise to any unacceptable public or private view affectionation with the ocean and horizon views maintained from all properties located on the southern side of Reddall Street. We also note that a view corridor has been maintained down the eastern boundary of the site through the adoption of an upper level hipped roof form. Whilst the proposal seeks a variation to the building height standard, we note that the development is fully compliant with the FSR standard which is used to establish an appropriate bulk and scale relative to site area.

We also note that the proposal maintains the view towards St Patrick's Cathedral from the upper-level roof terrace at No. 113 Bower Street the immediately adjoining semi-detached dwelling in the pair. The view impacts have been minimised and a view sharing outcome achieved notwithstanding the non-compliant building height elements proposed.

The proposal is consistent with this objective notwithstanding the non-compliant building height elements proposed.

- (iii) *views between public spaces (including the harbour and foreshores),*

Response: The building form and height has been appropriately distributed across the site such that the elements breaching the building height element will have no impact on views between public spaces.

The proposal is consistent with this objective notwithstanding the non-compliant building height elements proposed.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Response: The application is accompanied by shadow diagrams DA21 to DA36 which depict the impact of shadowing on the neighbouring properties. We note that these adjoining dwellings have south facing living areas opening onto rear or centrally located open space with the location of the proposed additions ensuring that the additional shadowing impact does not further reduce the existing levels of solar access received to the adjoining properties.

The proposal is consistent with this objective notwithstanding the non-compliant building height elements proposed.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Response: This objective is not applicable.

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

Consistency with zone objectives

The subject site is zoned R1 General Residential pursuant to MLEP 2013 with semi-detached dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

- *To provide for the housing needs of the community.*

Response: The proposal maintains the established single dwelling residential use on the site consistent with this objective.

- *To provide for a variety of housing types and densities.*

Response: The proposal maintains the established single dwelling residential use on the site consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R1 General Residential zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2 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

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land and semi-detached nature of the dwelling which limits the ability to distribute a compliant quantum of floor space across the site in a contextually appropriate manner whilst complying with the height of buildings standard.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario. Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

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

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

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

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

4.3 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 R1 General Residential zone

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

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

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development 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.

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.

4.4 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 non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

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

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

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

Annexure 1	View analysis
Annexure 2	Shadow analysis

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2021/1533 - 13 MORGAN ROAD, BELROSE - DEMOLITION WORKS AND CONSTRUCTION OF NEW DWELLING
AUTHORISING MANAGER	Tony Collier
TRIM FILE REF	2021/819509
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That Council as the consent authority, vary the Building Height development standard pursuant to Clause 20(1) of the Warringah LEP 2000 as the proposed development will be in the public interest and is consistent with the Desired Future Character of the B2 Oxford Falls Valley Locality.
 - B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1533 for demolition works and construction of new dwelling at Lot 170 DP 752038, 13 Morgan Road, Belrose subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT ASSESSMENT REPORT

Application Number:	DA2021/1533
Responsible Officer:	Anne-Marie Young – Principal Planner
Land to be developed (Address):	Lot 170 in DP 752038, No. 13 Morgan Road, Belrose
Proposed Development:	Demolition works and construction of new dwelling, pool and garage.
Locality:	B2 Oxford Falls Valley under Warringah Local Environmental Plan 2000
Category:	Category 2 "Housing"
Referred to DDP:	Yes (24 November 2021)
Referral to IPHP:	No
Land and Environment Court Action:	No
Owner:	• D R Austin • J L Austin
Applicant:	Boston Blyth Fleming Pty Ltd
Application Lodged:	30 August 2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential
Notified:	6 September 2021 to 23 September 2021
Advertised:	No
Submissions Received:	One (1)
Recommendation:	Approval
Estimated Cost of Works:	\$4,430,250

EXECUTIVE SUMMARY

The proposal seeks consent for the demolition of the existing dwelling and pool and the construction of a new dwelling, pool and garage. The new dwelling is located within a similar location to the existing dwelling within the rear north-western corner of the site.

The site is located in an area identified as the "Deferred Lands / Deferred matter" under Clause 1.3 (1A) of the Warringah Local Environmental Plan 2011 (WLEP 2000) and therefore the WLEP 2000 is the prevailing LEP.

The property is located within the B2 Oxford Falls Valley Locality pursuant to the Warringah Local Environmental Plan 2000 and the use of that land for the purpose of 'housing' is classified as a 'Category 2' land use.

The proposal will result in a 30.6% (2.6m) breach of the 8.5m height limit and an 18.1% (1.3m) breach of the wall height. The proposal requires to be determined by the Development Determination Panel as the breach in the height exceeds 10%.

The area to where the height breach relates is to the central pavilion which is setback within the rear of site approximately 160m from Morgan Road. The existing structures, namely the large stables, sit forward of the dwelling effectively screening the proposed dwelling from the public street. Given the siting of the dwelling, the typography and the existing built form it is considered that the proposal will not result in any unreasonable visual impact to the Desired Future Character of the B2 Oxford Falls Valley Locality.

Further, the dwelling will not result in unreasonable amenity impacts on neighbouring properties in terms of view loss, overshadowing or privacy given the considerable distance due to the large lot sizes in the area.

A small section of the swimming pool, the associated pool deck and stairs breach the 10m rear setback. The minor encroachment of the rear setback with ancillary structures will have no unreasonable amenity or visual impacts.

The proposal complies with all other built form controls and no objections have been raised in the referrals.

One (1) submission was received which raises an issue regarding the on-site Wastewater Management Report. Council's Water Management Officer has confirmed that the Report is sufficient and conditions are subsequently recommended to address any issues in respect to the management of waste water.

There is no change to the approved stables and associated structures and a condition will ensure that they will not be used for commercial purposes.

The application is recommended for approval.

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 from the public domain (due to the COVID-19 pandemic) 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;
- No submissions were received in response to the exhibition of 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.

LOCALITY PLAN (not to scale)



Figure 1 - Aerial photo of the subject site.

SITE DESCRIPTION

The subject property is legally described as Lot 170 in DP 752038, No. 13 Morgan Road, Belrose. The site has splayed frontage and address to Morgan Road of 103.38 metres, variable depth of between 185.83 metres and 201.43 metres, rear boundary dimension of 100.665 metres and an area of 1.994ha. The site rises approximately 8 metres in elevation from its front boundary before levelling off along its south-eastern boundary and rising again towards the northern corner of the property.

The property is currently occupied by a single storey residence and swimming pool located in the northern corner of the site (towards the rear of the site) with integrated garage accommodation accessed via a sealed driveway from Morgan Road. A roofed dressage arena, stables, eight (8) paddocks are located to the front of the site and informal landscaped gardens occupy the remainder of the site. It is noted that the site has been cleared of any significant vegetation.

The subject property is currently mapped as being bushfire prone as currently shown by the Northern Beaches Council LGA Bushfire Prone Land Map (s10.3 EP&A Act 1979).

The development is constrained by vegetation within the adjacent reserves to the North East, and rural residential properties to the South East – South West.

SITE HISTORY

DA2013/0892

On 19 November 2013, DA2013/0892 approved demolition works, the construction of a new dwelling house, secondary dwelling, riding stables and arena, tennis court and swimming pool.

Condition 3 of the consent restricted the stables to private use stating:

"No approval is granted under this Development Consent for any commercial use of the riding arena or stables (for example, riding school or animal boarding or training establishment)."

Subsequently a series of applications approved modifications to this consent as detailed below:

Mod2013/0263

Mod2013/0263 approved internal changes to dwelling, front fence, removal of coach's box, reconfiguration of stables, relocation of tennis court.

Mod2014/0098

Mod2014/0098 approved the relocation of the tennis court.

Mod2014/0147

Mod2014/0147 approved the relocation of the tennis court, revised stable, relocation of coach's box and minor changes to the riding arena.

Mod2015/050

Mod2015/050 approved the deletion of the modifications to design of dwelling house and secondary dwelling, changes to the pool, deletion of the tennis court to be replaced with a paddock, changes to the stables, extension of the driveway, and changes to the rainwater tanks.

*Note: The footprint of the stables, dressage arena and paddocks referenced in the subject application are generally consistent with most recent modification. There is no intensification of this use which remains to be a private non-commercial stable.

PLM2021/055

Pre-lodgement meeting PLM2021/055 was held with the applicant and Council Officers on 23 March 2021. The PLM confirmed that the proposal breaches the 8.5m Building height Development Standard by 2.6m and the wall height by 1.3m. Given the context of the site and no significant issues related to the breach, the applicant was advised to submit a request to vary the control via Clause 20 of the *Warringah Local Environmental Plan 2000* with any further Development Application.

*Note: The pre-lodgement plans are the same as those lodged with the subject application.

PROPOSED DEVELOPMENT

The proposal seeks development consent for the demolition of the existing dwelling and construction of a new dwelling designed as three interconnecting pavilions. A pool and landscape works are also proposed. The existing stables, roofed dressage arena, stables and 8 paddocks will be retained. In detail, the proposal includes:

Ground Floor Plan - Central Pavilion

- Formal entry leading to an open plan kitchen living and dining room;
- Laundry;
- Guest bedroom;
- Study; and
- Powder room.

Ground Floor Plan - Northern Pavilion

- Games room with wet bar which opens onto a veranda with pool;
- Storage; and
- Internally and externally accessed bathroom.

Ground Floor Plan - Southern Pavilion

- Secondary living space;
- Bedroom and ensuite;
- Mudroom;
- Storage;
- Three (3) car garage; and
- External access to a home office above.

Note: Internalised glazed links are provided to the proposed north and south pavilions.

First Floor Plan - Central Pavilion

- Three (3) bedrooms all with ensuite;
- Library; and
- Study.

First Floor Plan - Southern Pavilion

- Home office and associated amenities; and
- Utility room with wet bar and opens onto a roof garden terrace.

External (other) work

- Landscaping, including “wet zones”;
- Pool; and
- New entrance gate.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979);
- b) Environmental Planning and Assessment Regulations 2000;
- c) State Environmental Planning Policy No 55 - Remediation of Land;
- d) State Environmental Planning Policy (Infrastructure) 2007;
- e) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- f) Warringah Local Environmental Plan 2000.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000 and the Northern Beaches Community Participation Plan between 6 September 2021 and 23 September 2021. Furthermore, a notice was placed upon the site.

As a result of the public exhibition process one (1) submission. The matter raised within the submission is as follows:

- **On-site Wastewater Management Report**

The submission claims that the ‘On-Site Wastewater Management Report’ which was submitted with the application was not in accordance with provisions of the *Local Government (General) Regulation (2005)*. The submission states:

“The application is supported with an “On-site Wastewater Management Report” that does not comply with Section 26 of the Local Government (General) Regulation (2005).

Section 26 of the Regulations require an application for approval to install or construct a sewage management facility to be accompanied by details of climate, geology, hydrogeology, topography, soil composition and vegetation of any related effluent application areas together with an assessment of the site in the light of those details.

Section 19 of the Environmental and Health Protection Matters' – "re-use of nutrients". The Regulation requires Council takes into consideration the matters specified including the re-use of resources (including nutrients, organic matter and water). Non-compliance with the above sections poses a significant environmental risk.

The application needs to be accompanied with an amended "On site Wastewater Management" report including hydrologic modelling and nutrient modelling".

Comment

The application was referred to Council's Environmental Health Unit, Water Management Unit and Riparian Lands and Creeks Unit who raised no objection to the development in terms of its impact of wastewater on the environment subject to conditions.

The submission has been reviewed by the relevant Council Officers who confirm that the information as submitted in the 'On-Site Wastewater Management Report' is sufficient. Please refer to the discussion below under the referral section of this report.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the *Environmental Planning and Assessment Act 1979* requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 9 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

The Report identifies the bush fire attack level (BAL) of the following components:

- Main Residence – BAL 19
- Garage/Guest Accommodation – BAL 12.5; and
- Games Room – BAL Flame Zone and BAL 12.5.

The application was referred to the NSW Rural Fire Service who have subsequently provided conditions.

The recommendations of the Bush Fire Report have been included as conditions of consent in addition to the conditions imposed by the NSW Rural Fire Service.

REFERRALS

External Referrals

External Referral Body	Comments
Rural Fire Services (NSW)	Supported subject to conditions
Ausgrid	No objection raised and no conditions imposed

Aboriginal Heritage Office (AHO)	Supported subject to condition <i>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.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>
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Internal Referrals

Internal Referral Body	Comments
Bushland and Biodiversity	Supported subject to conditions Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Warringah DCP cl. E2 Prescribed Vegetation. • Warringah DCP cl. E6 Retaining Unique Environmental Features. The Development Application seeks approval for demolition of the existing dwelling house and the construction of a new dwelling house with integrated garage accommodation and swimming pool. The Subject Site contains little native vegetation as a result of historical clearing and development under previous approvals. An Arborist Letter has been provided with the application which confirms that there are no trees found on the site within 15 meters of any proposed works area. As such, no prescribed trees or native vegetation is proposed for removal as a result of the proposed development. An approved APZ (DA2013/0892) already exists over the entire site, and therefore does not require additional biodiversity consideration. Subject to conditions of consent, Council's Biodiversity referrals team are satisfied that the proposed development complies with the applicable controls listed above.
Landscape Officer	Supported subject to conditions The application is assessed by Landscape Referral against Warringah LEP 2000 including Clause 63 'Landscaped Open Space', and the B2 Oxford Falls Valley Locality Statement. Key landscape characteristics are to be achieved by the development proposal, including:

Internal Referral Body	Comments
	<i>"to be provided by the application including: enable the establishment of appropriate plantings to maintain and enhance the streetscape and the desired future character of the locality; and enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale; and enable the establishment of indigenous vegetation and habitat for native fauna. The B2 Oxford Falls Valley Locality statement includes the requirements for the following landscape objective: the natural landscape including landforms and vegetation will be protected and, where possible, enhanced".</i> A Landscape Plan is provided and is generally acceptable subject to conditions to include indigenous vegetation and remove any potential self-seeding species into adjoining bushland areas. An Arboricultural Statement is provided to confirm that no trees were found on the site within 15 meters of any proposed works area, and as such no specific arboricultural issues are raised subject to general tree and vegetation protection measures.
Riparian Land and Creeks Unit	Supported subject to conditions The additional information is showing an improved stormwater runoff management of the outdoor horse area. The proposed vegetated swale will catch and convey the runoff to the pipe system and infiltration zone. The system is expected to reduce the sediment and nutrient loading entering the riparian corridor. The development application is acceptable subject to conditions.
Water Management Unit	Supported subject to conditions The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The relevant Water Management Policy principles are: • Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland. • Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events. • Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources.

Internal Referral Body	Comments
	The ecological sensitivity of the catchment is described in the Riparian Referral. The site is fully developed and the development application is proposing the demolition and construction of a new dwelling, swimming pool, sewer and stormwater runoff management. Under Council's <i>Water Management for Development Policy</i> the General Stormwater Quality Requirements are applicable. Council notes that the water quality management relies solely on the stormwater harvesting system. The system is satisfactory considering the site-specific arrangement. Stormwater run-off from stables, yards and other areas has the potential to carry a high load of nutrients, pathogens and sediment. As a result, stormwater treatment and management measures are needed to avoid any impacts on water quality. The nutrient and sediment loading from the paddocks needs to be captured and treated prior the runoff is discharged from the property. Run-off from horse yards, enclosures, outdoor arenas, and access areas should be captured and treated on site. For example, a treatment chain could include, swales, which then may drain into an off-line farm dam, sediment basin, water quality treatment pond, or grass buffers and infiltration beds. All stormwater management systems must be protected from impacts by horses and vehicles by using fencing. Treatment and management measures will vary depending on the volume, source and path of the runoff generated by rainfall events and should be incorporated into the design for the development. We recommend the following guideline: https://www.watemsy.com.au/_data/assets/pdf_file/0005/56480/Horse-Property-Developments-in-the-Sydney-Drinking-Water-Catchment.pdf The additional information is showing an improved stormwater runoff management of the outdoor horse area. The proposed vegetated swale will catch and convey the runoff to the pipe system and infiltration zone. The system is expected to reduce the sediment and nutrient loading entering the riparian corridor. The development application is acceptable subject to conditions.
Environmental Health (unsewered lands)	Supported subject to conditions The applicant's consultant advises as follows which is quoted for the readers convenience:

Internal Referral Body	Comments
	An application to build a proposed dwelling at Lot 170 DP 752038 No. 13 Morgan Road, Belrose. At the time of assessment there was an existing five-bedroom dwelling onsite which was scheduled for demolition. At the time of inspection there was a horse stable and arena also located onsite. At the time of inspection wastewater generated in the existing dwelling was being secondary treated in an Ultraclear™ ST-10 Aerated Wastewater Treatment System (AWTS) (confirmed by a Highlands Tanks representative) and disposed via absorption beds. Wastewater generated in the existing stables appeared to be directed to an existing 7,800 L septic pump-out tank, although this could not be confirmed. Therefore, this assessment is required to show how treated wastewater generated from the existing dwelling, after additions and alterations, the office and toilet in the stables (domestic wastewater) and wastewater from the stable (agricultural wastewater) can continue to be sustainably managed separately onsite. The Wastewater report by Strategic Environmental and Engineering Consulting Project Reference: 18000327-P02-WW-02.docx Date of Assessment: 26/07/2021 describes site conditions existing systems and proposed prescriptive solutions to manage water. <u>Domestic Wastewater</u> It is proposed to secondary-treat all wastewater generated by the proposed dwelling, the office and toilet in the stable in the existing Ultraclear™ ST-10 AWTS. Secondary-treated effluent will then be pressure-dosed into an EMA made up of new raised absorption beds. The design loading rate for the raised absorption beds has been based on the weakly pedal Category 4 subsoil encountered in Test Pits 1 and 2. The required bed area is calculated as $1,749/20 = 87.5 \text{ m}^2$. This will be rounded up to 90 m² and provided as two 3.22 m x 14 m beds built end to end, along the contour and to the requirements of AS/NZS1547:2012 (in the area shown in Figure 1 and following the typical details in Figures 2 and 3). The absorptions beds must be raised slightly to ensure they are 200 mm proud of the existing ground surface (Figure 3). Care should be taken to ensure the base of the beds are absolutely level. A two-way zone sequencing valve must be installed to alternately dose each bed, if one is not already installed. <u>Agricultural Wastewater</u> The stable has seven stalls, a feed room, a tack room, two tie-up stalls and two wash bays. 'Agricultural' wastewater will be generated in the stables. The stable has sealed floors which will be covered with wood shavings or similar organic cover. Equine

Internal Referral Body	Comments
	manure will be removed from the floors and stored in a dedicated area for re-use on the surrounding farmland. Most equine urine will be absorbed by the floor covering and then composted as part of the solid waste train. The storage area for the manure and floor coverings must have a sealed floor to prevent any seepage of excrement in the surrounding soils and be covered at all times to prevent rain ingress. SEEC have been informed by the property owners that twice per year the floor coverings will be removed and the stalls will be washed down with a "Gerni" or similar (i.e. they will not be hosed). Assuming it takes one hour to clean the stalls this is approximately 600 L/wash. This water will be filtered by a solids trap before it drains to the existing 7,800 L septic tank (confirmed by a Highlands Tanks representative), but there will be a small amount of organic matter that flows through. We estimate that would be about 1 kg/stall or say 7 kg/wash or equivalent to 40 g/day. Each horse will be washed for about 2 minutes 5 days per week using a hose with a trigger nozzle and so each wash is expected to use about 20 L of water. Assuming a maximum of 8 horses are washed, the peak daily horse-wash volume is expected to be approximately $8 \times 20 \text{ L} = 160 \text{ L/day}$. Additionally, special conditions of use and limitations are documented. <u>Important</u> Sufficient for this referral only; Environmental Health is not approving the wastewater system; as that is subject to a separate Section 68 application to Council, site inspection and will be a condition of any development approval. However, to allow the application to proceed we are satisfied that a suitable wastewater system can be provided for the proposed development on this site. Recommendation approval - subject to conditions

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	A Development Control Plan does not apply to the site.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	- The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been addressed via a condition of consent. - Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. - Clause 54 and 109 of the EPA Regulations 2000, Council have not requested any additional information.
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) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be 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 “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen that would justify the refusal of the application in the public interest.

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979.

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 any conditions contained within the Recommendation.

ENVIRONMENTAL PLANNING INSTRUMENTS:

State Environmental Planning Policies (SEPPs)**State Environmental Planning Policy No. 55 – Remediation of Land**

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

State Environmental Planning Policy - BASIX

A BASIX certificate has been submitted with the application (refer to Certificate 1221537S-02 dated 9 August 2021).

A condition of consent has been imposed requiring compliance with the requirements of the applicable BASIX certificate.

State Environmental Planning Policy - Infrastructure

Clause 45 of SEPP Infrastructure 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 5m 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 5m of an overhead electricity power line

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out as a result the application was referred to Ausgrid who offered no objections to the application.

Warringah Local Environmental Plan 2011 ("Deferred Matter")

The subject site falls within the area designated as a 'deferred matter' which is subject to future zoning considerations by the NSW Department of Planning. Previous advice from the Department applies and Council has not been informed of any zoning change that has become recently "imminent or certain".

Therefore, for the purposes of this assessment, no further consideration of the provisions of WLEP 2011 is required.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Land Use

Appendix B – Narrabeen Lagoon Catchment Locality Statements	
Definition of proposed development: (ref. WLEP 2000 Dictionary)	Housing means development involving the creation of one or more dwellings whether or not used as a group home. Dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.
Locality:	B2 Oxford Falls Valley
Category of Development:	Category 2

The proposed development is defined as “**housing**” and “**other buildings, works, places or land uses that are not prohibited or in Category 1 or 3**” under the WLEP 2000 dictionary.

The development is identified as **Category 2** development in this locality.

“**Animal boarding or training establishments**” are identified as Category 3 development, however, to fall under this definition the stables and riding arena would need to be used for commercial use. The applicant has confirmed that the continued use of the stables will be for the private use of the owners of the site, and as such do not fall under the definition of ‘**animal boarding or training establishments**’

The footprint of the stables, dressage arena and paddocks referenced in the subject application are generally consistent with most recent approval, namely MOD2015/0055. There is no intensification of this use which remains to be a private non-commercial stable. A condition is included to prohibit the future use of the stables as a commercial business in accordance with the WLEP 2000 land use controls.

Desired Future Character

The subject site is located in the B2 Oxford Falls Locality under WLEP 2000.

The Desired Future Character Statement for this locality is as follows:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Desired Future Character statement under the relevant locality statement.

Accordingly, an assessment of consistency of the proposed development against the Locality's Desired Future Character is provided below:

Comment

The proposal involves a new detached replacement dwelling, as permitted by the housing density standard in the locality.

The construction of the dwelling will not change the present character of the Oxford Falls Valley locality.

The continued use of the approved private riding arena and stables will be "low intensity, low impact" is not defined in WLEP 2000.

The stables and associated arena and paddocks have been approved under a separate application and the proposal does not seek to intensify this private use. As such, a detailed assessment of the stables is not required under this discussion. Notwithstanding, a condition is included to ensure that the stables are not used for commercial purposes and Council's Health have also recommended conditions to ensure that there impacts on the environment.

Although the proposed dwelling is large the bulk and scale is minimised through a pavilion design which breaks up the built form. Furthermore, the dwelling is setback a minimum 133m from the street frontage within the rear (north-east) corner of the site and will generally be screened behind the existing stables and associated structures. As such, it is considered that the dwelling will not result in adverse visual impacts from Morgan Road or negatively impact the present or future character of the Locality which includes other large dwellings set back from the road frontage.

A vegetation buffer will be retained and enhanced between the proposed dwelling and Morgan Road. The landscaping will help reduce any perceived visual impact on the bulk and massing of the development.

The proposal does not result in an increased housing density on the site.

No significant vegetation is proposed for removal as part of this application and the proposal complies with Landscaped Open Space.

In summary, the proposed development is considered to be consistent the Desired Future Character for the B2 Oxford Falls Valley Locality.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built Form Controls of the above locality statement.

Built Form Controls			
Control	Required	Proposed	Compliance
Housing Density	1 dwelling/20ha	1 dwelling/4.6ha	Existing
Building Height			
Building Height	8.5m	11.1m	No (30.6%)
Wall Height	7.2m	6.8m to 8.5m	No (18.1%)
Front Building Setback	20m	133m	Complies
Rear & Side Building Setback	10m	Side East: 12m to 15m West: 59m to 67m Rear Dwelling: 10m Pool: 8.4m Pool Deck: 6.6m Stairs: 40m	Complies Complies Complies No No Complies
Landscaped Open Space	30% (13,874m ²)	32% (14,656m ²)	Complies
Car Parking	2 spaces	3 spaces	Complies

The proposed development is inconsistent with the Height and Rear Setback Built Form Controls, accordingly, further assessment is provided against the provisions of Clause 20(1) below.

Clause 20(1) stipulates:

“Notwithstanding clause 12(2)(b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is generally consistent with Clause 20(1) of the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Description of variations sought and reasons provided:**Built Form Control**Building Height

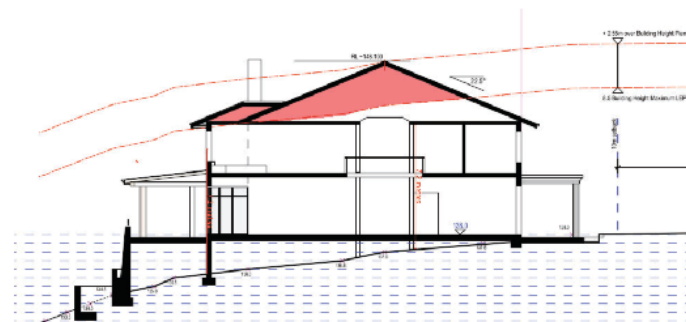
The B2 Oxford Falls Valley Locality Statement requires:

Buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building (not being a vent or chimney or the like) and the natural ground level below.

Buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas located wholly within a roof space), but this standard may be relaxed on sites with slopes greater than 20 per cent within the building platform (measured at the base of the walls of the building), provided the building does not exceed the 8.5 metre

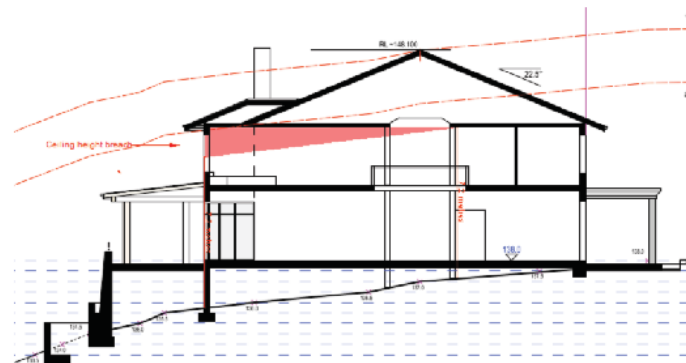
height standard, is designed and located to minimise the bulk of the building and has minimal visual impact when viewed from the downslope sides of the land.

The proposal has a maximum building height of 11.1m (RL 148.1) measured to the apex of the hipped roof, refer to image below. The proposal breaches the height limit by 2.5m which represents a 30% variation.



Building height breach

The wall height varies between 6.9m to 8.5m and is calculated as breaching the control by 1.3m which equates to a variation of 18%, see image below.



Ceiling height breach

Comment

The applicant has lodged a request to vary Clause 20 of the WLEP 2000 which presents the following arguments to justify the departure with the height control:

- *The non-compliant building height elements are located approximately 84 metres from the nearest residential dwelling being the property to the west at Lot 169 Morgan Road. Given such spatial separation the non-compliant building height elements will not give rise to unacceptably amenity impacts on surrounding development in relation to privacy and solar access as detailed on the accompanying shadow diagrams.*

- *The non-compliant building height elements will not give rise to unacceptable visual impacts or view loss as demonstrated on the view analysis diagram (See image below).*



View analysis taken from Lot 169 Morgan Road to the west.

- *A complying area of landscaped open space is provided on the site and accordingly a sense of openness is maintained despite the non-compliance.*
- *The non-compliant roof and wall elements are located approximately 160 metres from Morgan Road and due to the topography of the site will not be discernible in a streetscape context.*
- *The non-compliant roof and wall elements will not give rise to any adverse amenity or streetscape consequences and do not contravene any general principles of development control.*

The applicant's justification is supported. It is agreed that the height breach occurs at the pitched roof form which minimises in bulk and degree of non-compliance towards the apex and at the western side of the dwelling. The breach is also partially a result of the topography which has a 3.2m change in level below the footprint of the proposed dwelling.

It is also noted that the proposed height at the apex is equivalent to the ground floor of the neighbouring dwelling at Lot 169 Morgan Road (to the west) and which is separated from the proposed dwelling by approximately 107m. Similarly, the non-compliant elements are setback from the street by approximately 160m and are elevated and partly concealed by existing structures on the site which are to be retained. The overall effect is considered to minimise the visual impact of the pitched roof form (and non-compliance) and wall height from neighbouring properties and the street.

Rear Building Setback

The B2 Oxford Falls Valley Locality Statement requires development to maintain minimum rear building setbacks of 10.0m. The northern wall of the proposed dwelling is set back a compliant 10m from the rear boundary, however, the pool is setback 8.4m, the pool deck 6.6m and stairs 4m to the rear.

The applicant has lodged a request to vary Clause 20 of the WLEP 2000 which presents the following arguments to justify the departure with rear set back control:

- *The non-compliant swimming pool and access stair structures are located approximately 190 metres from the front boundary of the property and to that extent will not be discernible in a streetscape context.*
- *The non-compliant swimming pool and access stair structures are located approximately 107 metres from the nearest residential receiver being the property to the west Lot 169 Morgan Road. Given the height of these structures relative to existing ground level, and the spatial separation maintained to surrounding development, the non-compliant swimming pool and access stair structures will not give rise to any adverse residential amenity impacts.*
- *The balance of the rear setback area is available for landscaping as detailed on the accompanying landscape plan.*
- *The non-compliant rear boundary setback structures do not require the removal of any trees, significant vegetation or natural features.*
- *A complying area of landscaped open space is provided on the site and accordingly a sense of openness is maintained despite the non-compliance.*
- *The non-compliant rear boundary setback structures will not give rise to any adverse amenity or streetscape consequences and do not contravene any general principles of development control.*
- *The non-compliant swimming pool and access stair structures will not contravene any state planning policies.*

Comment

The applicant's justification to the rear setback control is supported. The minor encroachment of the rear setback with ancillary structures will have no unreasonable amenity or visual impacts.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is consistent with the underlying objectives of the Building height and rear setback Built Form Control.

It is for these reasons that the variation to the Building Height and Rear Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of WLEP 2000 are applicable to the proposed development:

Principle	Applies	Comments	Compliance
CL38 Glare & reflections	Yes	A standard condition of consent will ensure new roofs are of dark, non-reflective materials.	Yes
CL42 Construction Sites	Yes	Standard conditions apply	Yes

Principle	Applies	Comments	Compliance
CL43 Noise	Yes	The development is not likely to cause any unreasonable or unusual noise in the rural area.	Yes
CL44 Pollutants	Yes	The development is not likely to cause any unreasonable pollutants, conditions apply.	Yes
CL50 Safety & Security	Yes	The proposal will not detract from safety and security in the area.	Yes
CL51 Front Fences and Walls	Yes	The landscape plan references a curved front fence at the entrance to the site. The plans do not note the height of the front fence, although all other fencing is noted as 1.4m high. Subject to a condition to limit the height of the entrance fence to 1.4m the proposal is acceptable.	Yes
CL54 Provision and Location of Utility Services	Yes	The development will utilise the existing connections.	Yes
CL56 Retaining Unique Environmental Features on Site	Yes	There are a number of rock platforms across the site, some of which will be removed or built over in the region of the riding arena and stable. However, a significant number of rock platforms and outcrops will be retained by the development, which generally avoids the majority of the rocky areas on site.	Yes
CL57 Development on Sloping Land	Yes	The control states that development should minimise excavation and limit fill to 1m in depth. The proposed pool will sit on piers and the excavation is limited to that relating to the construction of foundation and underground stormwater tanks. The minor non-compliance is therefore considered acceptable	Yes
CL58 Protection of Existing Flora	Yes	The proposed works are generally in areas which do not contain existing significant vegetation and will not result in the removal of large numbers of trees. Council's Natural Environment Unit has assessed the proposal and has not raised any concerns.	Yes
CL60 Watercourses & Aquatic Habitats	Yes	Council's Natural Environment Unit have no objection subject to conditions.	Yes
CL61 Views	Yes	No objections were received from neighbours to the proposal, and the site inspection conducted did not reveal any likely unreasonable view loss as a result of the proposed works	Yes
CL62 Access to sunlight	Yes	The works will not create any unreasonable overshadowing of neighbours given the size of the site and the proposed setbacks	Yes

Principle	Applies	Comments	Compliance
CL63 Landscaped Open Space	Yes	32% of the site will remain landscaped	Yes
CL63A Rear Building Setback	Yes	The request to vary Clause 20 of the WLEP 2000 is supported, refer to discussion above.	No
CL64 Private open space	Yes	Ample private open space will be available on site.	Yes
CL65 Privacy	Yes	The proposal is not in close proximity to neighbours and will not overlook any neighbour's private open spaces or primary living areas, and will not create any unreasonable privacy impacts	Yes
CL66 Building bulk	Yes	It is acknowledged that the proposed replacement dwelling is large. However, the dwelling is set back over 130m from the street and the existing built structure on site that sit forward of the dwelling and screen it. As such, the bulk will not result in unreasonable impacts on visual amenity of the character of the area. Refer to discussion above.	Yes
CL67 Roofs	Yes	The hipped roofing will not have any unreasonable impacts or be out of character in the area, despite part of the roof breaching the height limit, refer to discussion above.	Yes
CL68 Conservation of Energy and Water	Yes	A BASIX Certificate was provided with the application. A condition of consent will ensure that the BASIX requirements are carried out.	Yes
CL70 Site facilities	Yes	There is ample room on site for site facilities.	Yes
CL71 Parking facilities (visual impact)	Yes	The development will utilise the existing driveway access.	Yes
CL72 Traffic access & safety	Yes	The proposed double garage meets the minimum requirements.	Yes
CL74 Provision of Car parking	Yes	Three spaces are proposed.	Yes
CL75 Design of Car parking Areas	Yes	The proposed double garage meets the minimum requirements.	Yes
CL76 Management of Stormwater	Yes	Council's Development Engineers have assessed the proposal and raised no	Yes

Principle	Applies	Comments	Compliance
		concerns. Conditions of consent have been provided	
CL78 Erosion & Sedimentation	Yes	Standard conditions of consent will ensure erosion and sedimentation is contained during construction.	Yes
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	The application was referred to the Aboriginal Heritage Office (AHO) and has confirmed that no Aboriginal heritage sites have been recorded. A condition is recommended to protect any items that may be discovered during earthworks.	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	The application was referred to the Aboriginal Heritage Office (AHO) who confirmed that there are no aboriginal heritage sites. A condition is recommended to protect any items that may be discovered during earthworks.	Yes

Other Relevant WLEP 2000 Clauses

Schedule 8 - Site analysis

Site Analysis	A site analysis has been provided
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POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019.

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

A monetary contribution of **\$44,302.50** is required for the provision of new and augmented public infrastructure. The contribution is calculated at 1% of the total development cost of \$4,430,250.

This has been included as a condition of consent.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979.

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 any conditions contained within the Recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, and the relevant codes and policies of Council.

- The new dwelling is located within a similar location to the existing dwelling within the rear north-western corner of the site, utilising the existing services.
- The proposal will result in a 30% (2.6m) breach of the 8.5m height limit and an 18% (1.3m) breach of the wall height which relate to the central pavilion of the dwelling which is setback 160m from Morgan Road.
- The breach in height partially relates to the topography of the land which slopes below the area of the central pavilion.
- The large stables, sitting forward of the dwelling effectively screening the proposed dwelling from the public street.
- Existing and proposed landscaping along the street frontage and western boundary will help soften the bulk of the dwelling.
- Given the siting of the dwelling, the typography of the site and the existing built form it is concluded that the proposal will not result in any unreasonable visual impact to the Desired Future Character of the Oxford Falls Valley area.
- The elements that breach the height limit will not give rise to unreasonable amenity impacts on neighbours by way of overshadowing, view loss or loss of privacy.
- The minor encroachment of ancillary structures within the 10m rear setback will not give rise to any unreasonable visual impacts or amenity impacts on neighbours.

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

RECOMMENDATION

APPROVAL

THAT Council as the consent authority grant Development Consent to DA2021/1533 for demolition works and construction of new dwelling, pool and garage on land at Lot 170 in DP 752038, No. 13 Morgan Road, Belrose 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
DA01 Rev A Site Plan	09/07/2021	Prestonpeterson
DA02.1 Rev A Ground Floor Plan and Garden	09/07/2021	Prestonpeterson
DA02.2 Rev A Ground Floor Plan	09/07/2021	Prestonpeterson
DA03 First Floor Plan	09/07/2021	Prestonpeterson
DA04 Rev A Roof Plan	09/07/2021	Prestonpeterson
DA05 Rev A Elevation Sheet 1	09/07/2021	Prestonpeterson
DA06 Rev A Elevation Sheet 2	09/07/2021	Prestonpeterson
DA07 Rev A Sections	09/07/2021	Prestonpeterson
DEM01 Rev A Demolition Plan	09/07/2021	Prestonpeterson
DRV01 Rev A Driveway Plan	09/07/2021	Prestonpeterson
EXF01 Rev A Excavation and Fill Plan	09/07/2021	Prestonpeterson

Engineering Plans		
Drawing No.	Dated	Prepared By
SEC01 Rev A Sediment and Erosion Control Plan	09/07/2021	Prestonpeterson

Reports / Documentation – All recommendations and requirements contained within:		
Report	Dated	Prepared By
Waterways Impact Statement Issue A	08/07/2021	NB Consulting Engineers
Wastewater Management Ref 18000327-P02-WW-02	26/07/2021	Strategic Environmental and Engineering Consulting
Waste Management Plan	No date	No signature
Geotechnical Report	07/05/2021	White Geotechnical Group
Arboricultural Report	18/05/2021	Koala Arbor
Bushfire Report Ref 79BA-2002	09/07/2021	Sydney Bushfire Consultants
Bushfire Risk Assessment Certificate	09/07/2021	Sydney Bushfire Consultants
BASIX Certificate No. 1221157S-02	09/08/2021	Certified Energy 1

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Rev DD-2 (Drawings 1-3)	05/07/2021	Paul Bangay

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department/Authority/Service	EDMS Reference	Dated
NSW Rural Fire Service	NSW Rural Fire Service Referral	21 September 2021

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of

whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - 1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - 2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - 3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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

5) Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of **\$44,302.50** 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 **\$4,430,250.00**.

The monetary contribution is to be paid prior to the issue of the Construction Certificate. 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 Road, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6) **Security Bond**

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

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

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

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

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

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

7) **Stormwater Disposal**

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

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

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

8) **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9) **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

10) **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

11) **Detailed Design of Stormwater Treatment Measures**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the NB Consulting Eng. 210575 rev B and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

12) **Amendments to the approved plans**

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

- a) The curved front fence at the entrance to the site referenced on the Landscape Plan shall be limited to 1.4m in height.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

13) **Vehicle Driveway Gradients**

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

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

Reason: To ensure suitable vehicular access to private property.

14) **Structural Adequacy and Excavation Work**

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

the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

- 15) **Approval to Install an On-Site Sewage Management System**
This Development approval does not approve the proposed Waste Water Management System.

Prior to the release of the Construction Certificate, the applicant must receive an 'Approval to Install an On-Site Sewage Management System' from Council.

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

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

- 16) **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

- 17) **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.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**18) Tree and Vegetation Protection – General**

- 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.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Statement prepared by Koala Arbor Consulting Arborists, including:
 - (i) 1.8m chain link fence to be position five meters off the northern property boundary with a sign saying TPZ.

The Certifying Authority must ensure that:

- d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of

scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection.

19) **Road Reserve**

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

Reason: Public safety.

20) **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

21) **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

22) **Demolition Works – Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23) **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

24) **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Hardscape Landscape Plan, Soft Landscape Plan and Details, inclusive of the following conditions:

- (i) at least five (5) locally native trees are to be incorporated into the landscape scheme, as either additional planting, or in place of the nominated tree planting, to satisfy WLEP 2000 clause 63, and species shall be installed as a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- (ii) all trees shall be planted into a prepared minimum planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established,
- (iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, at 4 plants per metre square for groundcovers of a minimum

140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,

- (iv) the nominated *Rhapiolepis indica* species shall be deleted and replaced with a non self-seeding shrub of similar size and form.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative
<https://5milliontrees.nsw.gov.au/>

25) **Protection of Aboriginal Cultural Heritage items**

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Protection of Aboriginal heritage.

26) **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

27) **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) 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.

28) **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- a) Waterways Impact Statement Issue A dated 08/07/2021 prepared by NB Consulting Engineers;
- b) Wastewater Management Site & Soil Evaluation & Disposal System Design Ref 18000327-P02-WW-02 dated 26/07/2021 prepared by Strategic Environmental and Engineering Consulting;
- c) Waste Management Plan;
- d) Geotechnical Report dated 07/05/2021 prepared by White Geotechnical Group;
- e) Arboricultural Report dated 18/05/2021 prepared by Koala Arbor;
- f) Bushfire Report Ref 79BA-2002 dated 09/07/2021 prepared by Sydney Bushfire Consultants;
- g) Bushfire Risk Assessment Certificate dated 09/07/2021 prepared by Sydney Bushfire Consultants, and
- h) BASIX Certificate No. 1221157S_02 dated 09/08/2021 prepared by Certified Energy 1.

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

Reason: To ensure compliance with standards.

29) **House Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

CONDITIONS WHICH MUST BE COMPLIED WITH AT ALL TIMES

30) **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

31) **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

32) **No approval of commercial Stables**

No approval is granted under this Development Consent for any commercial use of the riding arena or stables (for example, riding school or animal boarding or training establishment).

Reason: To ensure that the development is consistent with the WLEP 2000 controls.

Site Analysis

1. Where to locate the New Dwelling?

The decision to locate the new dwelling in the area of the existing dwelling (proposed for demolition) was not taken lightly or without due thought. By locating the new dwelling where proposed, the existing and substantial mature infrastructure can remain and continue throughout the construction works and into the future. Additionally, the existing building services can be re-used and supplemented as required. The views enjoyed by the existing dwelling will remain.

2. Solar access

The proposed dwelling has located its primary living spaces to the North-East which coincides with the primary views over the paddocks below and the bushland beyond. These spaces will enjoy wonderful solar gain through the morning even in winter. The provision of covered external areas, and trellised areas will provide shielding from the summer sun.

3. Prevailing winds

The proposed dwelling has been located to capture the predominant Northern Beaches north-easterlies. These will be enjoyed by occupants both on the external terrace spaces as well as within the dwelling. The proposed garage building is located to the south of the proposed building works and will provide a buffer to the harsh southerlies.

4. Bushfire

The Bushfire Report captures the recommendations for the site. We have set the northern facade of the Games Room 10m back from the boundary and also located the pool to this boundary to aid potential bushfire threat.

5. Site Area untouched

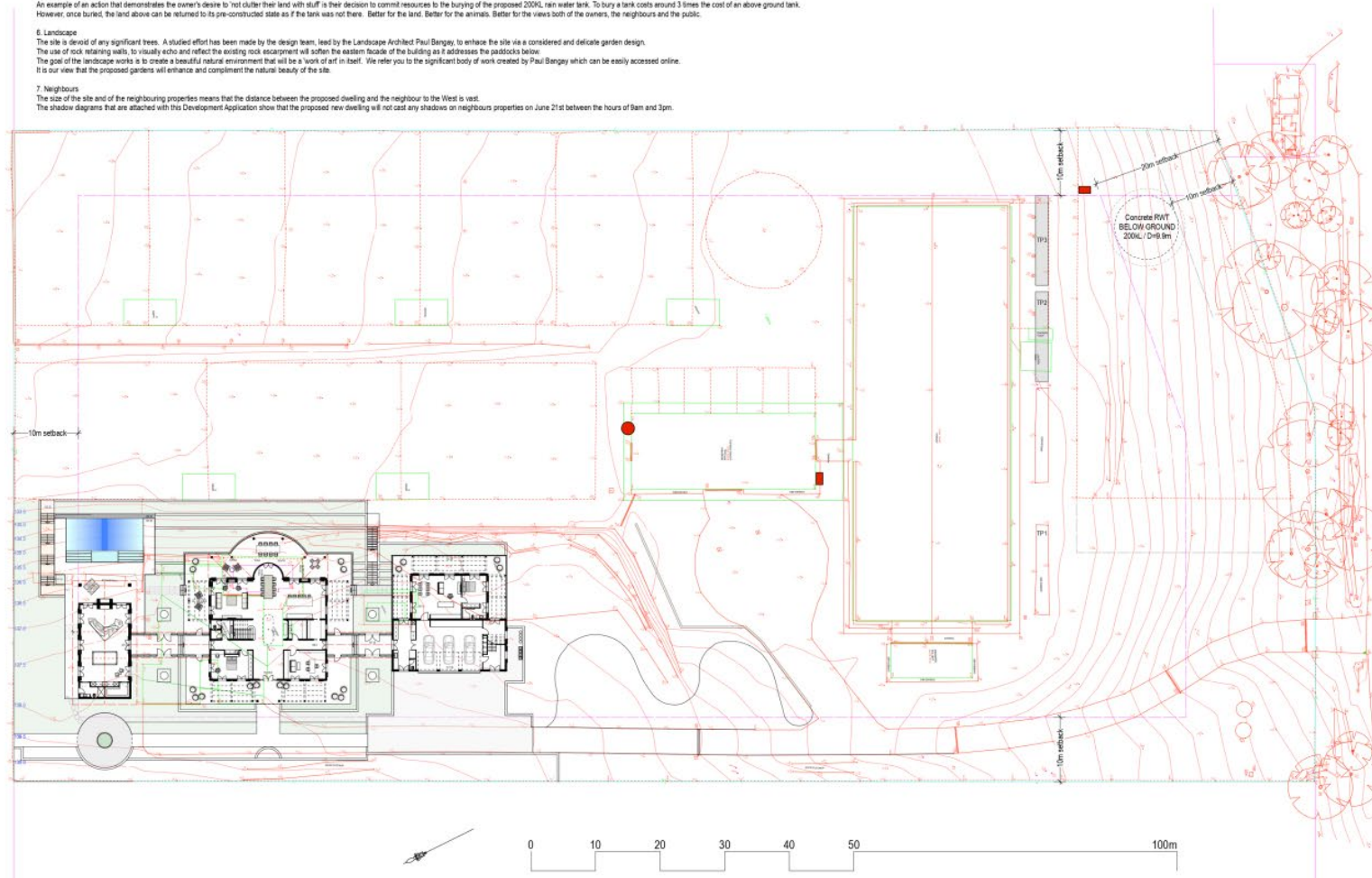
The proposed works effect approximately 20% of the site area. The vast majority of the site will remain untouched and operational. This is an intentional decision based on the owner's request to respect the natural beauty of the existing landscape. An example of an action that demonstrates the owner's desire to not clutter their land with stuff is their decision to commit resources to the buying of the proposed 2000L rain water tank. To buy a tank costs around 3 times the cost of an above ground tank. However, once buried, the land above can be returned to its pre-constructed state as if the tank was not there. Better for the land. Better for the animals. Better for the views both of the owners, the neighbours and the public.

6. Landscape

The site is devoid of any significant trees. A studied effort has been made by the design team, led by the Landscape Architect Paul Bengay, to enhance the site via a considered and delicate garden design. The use of rock retaining walls, to visually echo and reflect the existing rock escarpment will soften the eastern facade of the building as it addresses the paddocks below. The goal of the landscape works is to create a beautiful natural environment that will be a work of art in itself. We refer you to the significant body of work created by Paul Bengay which can be easily accessed online. It is our view that the proposed gardens will enhance and complement the natural beauty of the site.

7. Neighbours

The size of the site and of the neighbouring properties means that the distance between the proposed dwelling and the neighbour to the West is vast. The shadow diagrams that are attached with this Development Application show that the proposed new dwelling will not cast any shadows on neighbours properties on June 21st between the hours of 9am and 3pm.



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Nominated Architect
Jonathan Peterson NSW ARB 5776

Client

Jenny and David
Austin

Project

Austin Residence

13 Morgan Road Belrose
2085

Project Code

AUST01

Development
Application

A 9/7/21 DA Issue

Drawing

Site Plan

Drawing Number

DA01

Revision

A

Scale

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Rev Date

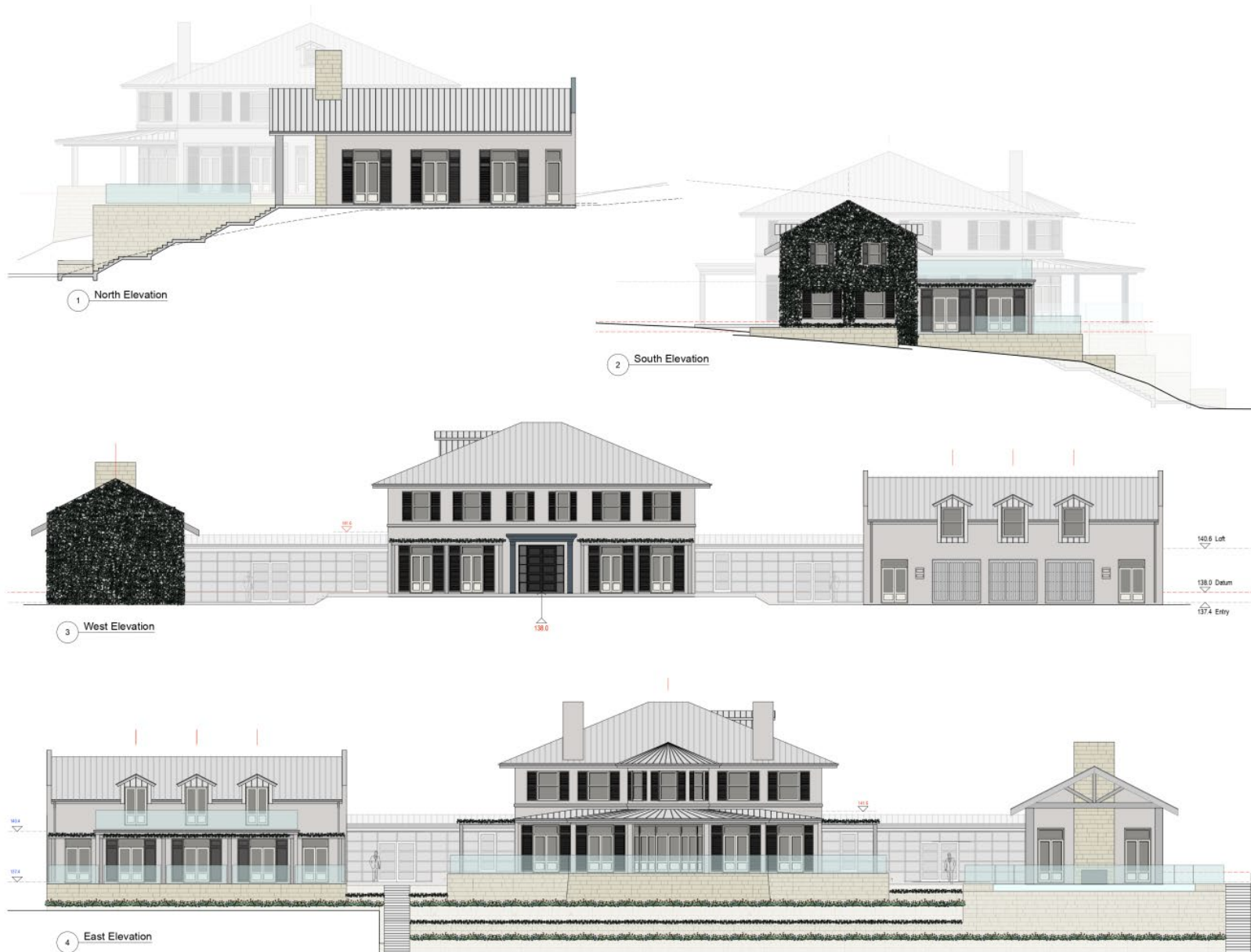
9/7/21

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4. 9/7/21 DA05

Drawing

**Elevation
Sheet 1**

Drawing Number

DA05

Revision

A

Scale
1:100 @ A1

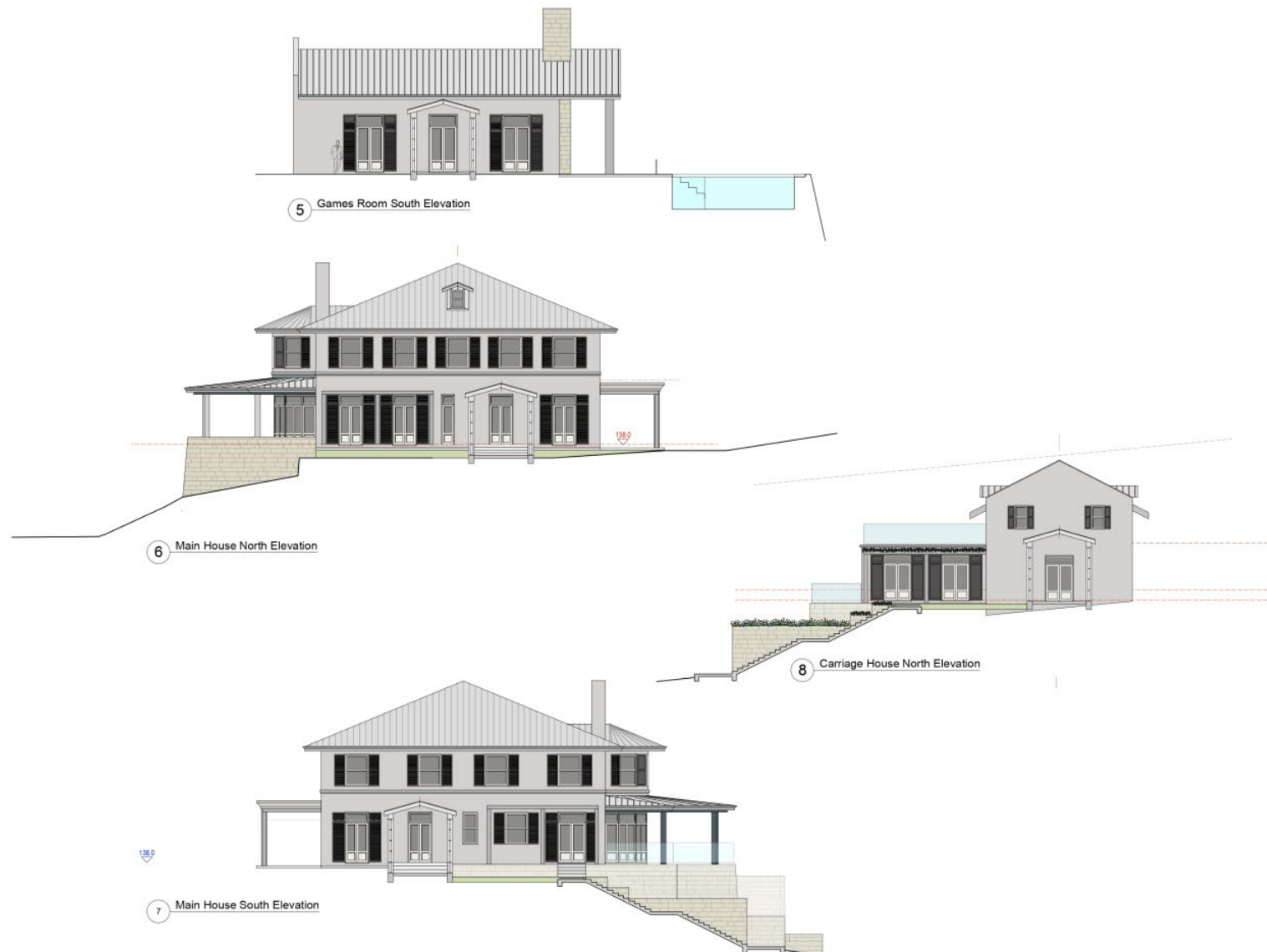
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Development
Application

4 9/7/21 DA06

Drawing

Elevation
Sheet 2

Drawing Number

DA06

Revision

A

Scale

1:100 @ A1

Rev Date

9/7/21

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JLP

4.3.2 Development Standards / General Principles of Development Control

4.3.2.1 Development Standards

Housing Density

The maximum housing density is 1 dwelling per 20 ha of site area, except:

- a) where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha

The development satisfies this clause and is on a parcel of land greater than 2 ha. Only 1 replacement dwelling is proposed on the site.

Building Height – Clause 20 Variation

Pursuant to this development standard buildings are not to exceed 8.5 metres in height measured to the topmost point of the building or 7.2 metres in height to the underside of the ceiling on the upper most floor.

The proposed dwelling is part 1 - 2 storeys in height with a maximum building height at the ridge of the central pavilion of 11.05 metres representing a non-compliance of 2.55 metres or 30%. The extent of overall building height variation is depicted in Figures 5 and 6 over page. The balance of the development, including the northern and southern pavilions, sit comfortably below the 8.5 metre height standard.

It is important to note that the extent of non-compliance is limited to the non-habitable central pavilion roof form.

Similarly, the eastern edge of the central pavilion exceeds the 7.2 metre wall height standard by a maximum of 1.5 metres with the balance of the development, including the northern and southern pavilions, comply with the 7.2 metre maximum wall height standard.

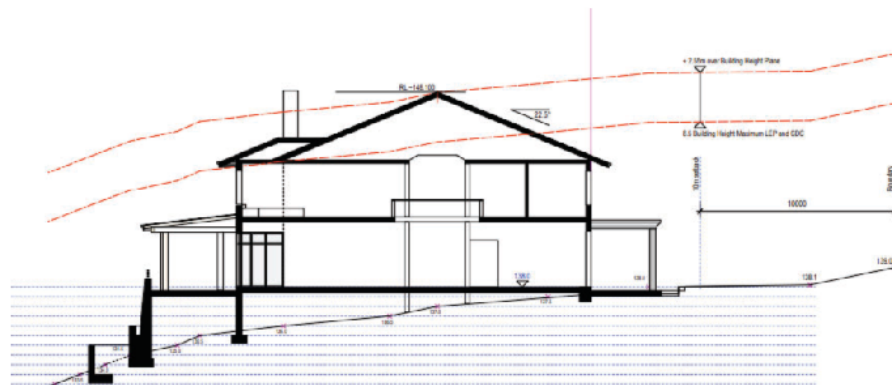


Figure 5 - Section extract showing extent of 8.5 metre building height breach

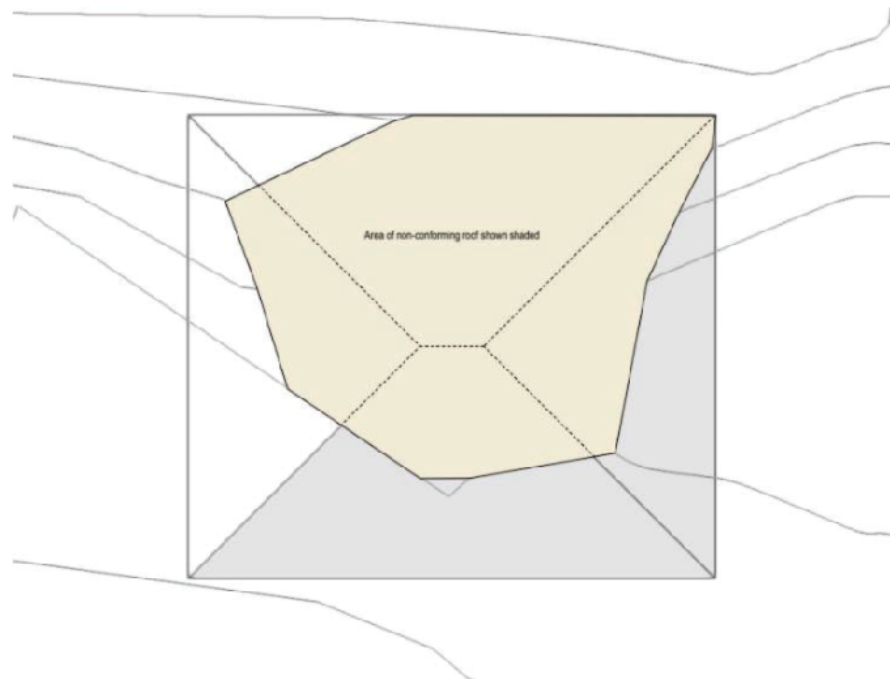


Figure 6 - plan extract showing area of 8.5 metre height building breach

Clause 20 of WLEP 2000 provides for consent to be granted to the proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the desired future character of the locality, the general principles of development control and any relevant State environmental planning policy.

The variation proposed to the 8.5 metre overall building height and 7.2 metre wall height standards are considered acceptable for the following reasons:

- The non-compliant building height elements are located approximately 84 metres from the nearest residential receiver being the property to the west Lot 169 Morgan Road. Given such spatial separation the non-compliant building height elements will not give rise to unacceptably amenity impacts on surrounding development in relation to privacy and solar access as detailed on the accompanying shadow diagrams.
- The non-compliant building height elements will not give rise to unacceptable visual impacts or view loss as demonstrated on the view analysis diagram at Figure 7 below.



Figure 7 - Montage showing view sharing outcome maintained from the upper balcony of the western neighbour

- A complying area of landscaped open space is provided on the site and accordingly a sense of openness is maintained despite the non-compliance.
- The non-compliant roof and wall elements are located approximately 160 metres from Morgan Road and due to the topography of the site will not be discernible in a streetscape context.
- The non-compliant roof and wall elements will not give rise to any adverse amenity or streetscape consequences and do not contravene any general principles of development control.

- The non-compliant building height elements will not contravene any state planning policies.

The resulting development, notwithstanding the building height breaching elements, is consistent with the desired future character of the locality, the general principles of development control and any relevant State environmental planning policy. As such strict compliance is both unreasonable and unnecessary under such circumstances.