AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 15 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

Annelise Tuor	Chair
Lisa Bella Esposito	Town Planner
Graham Brown	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 15 December 2021

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 1 December 2021

3.0 CATEGORY 3 APPLICATIONS

4.0 PUBLIC MEETING ITEMS 5

4.1 DA2021/1620 - 29-31 Moore Road, Freshwater - Alterations and additions to an existing pub (Harbord Hotel) 5

4.2 DA2020/1756 - 351-353 Barrenjoey Road, Newport - Demolition works and construction of a mixed use development (Shop Top Housing) 82

4.3 DA2021/1164 - 521 Barrenjoey Road, Bilgola Beach - Construction of a Dwelling House including a swimming pool 230

4.4 DA2021/0669 - 1191-1193 Barrenjoey Road, Palm Beach - Demolition works and construction of a new restaurant, carparking and associated uses, including a Voluntary Planning Agreement 312

4.5 DA2021/0735 - 137A Seaforth Crescent, Seaforth - Alterations and additions to a dwelling house 405

4.6 DA2021/1166 - 142 Ocean Street, Narrabeen - Demolition works and construction of a Residential Flat Building 457

4.7 DA2021/1032 - 8 Delecta Avenue, Clareville - Alterations and additions to a dwelling house 542

4.8 DA2021/0960 - 27 Oliver Street, Freshwater - Demolition works and construction of a Boarding House 592

5.0 NON PUBLIC MEETING ITEMS 662

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 DA2021/1329 - 89 Stuart Street, Manly - Demolition works including the retention of a portion of the existing building and the construction of a new dwelling house including a swimming pool 662

5.2 Mod2021/0747 - 1 Surfview Road, Mona Vale - Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building including a cafe, restaurant and function space 706

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 1 DECEMBER 2021

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

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	**DA2021/1620 - 29-31 MOORE ROAD, FRESHWATER - ALTERATIONS AND ADDITIONS TO AN EXISTING PUB (HARBORD HOTEL)**
AUTHORISING MANAGER	**Rebecca Englund**
TRIM FILE REF	**2021/849564**
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 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. DA2021/1620 for alterations and additions to an existing pub (Harbord Hotel) at Lot 1, 2, 3, 4, 5 & 13 2 Sec 1 DP 7022, 29-31 Moore Road, Freshwater subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1620

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 13 DP 7022, 31 Moore Road FRESHWATER NSW 2096 Lot 1 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 2 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 3 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 4 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 5 DP 7022, 29 Moore Road FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to an existing pub (Harbord Hotel)
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Harbord Hotel Holdings Pty Ltd
Applicant:	Harbord Hotel Holdings Pty Ltd

Application Lodged:	21/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	28/09/2021 to 12/10/2021
Advertised:	Not Advertised
Submissions Received:	131
Clause 4.6 Variation:	4.3 Height of buildings: 25.9%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,836,472.76

EXECTUTIVE SUMMARY

The application seeks consent for alterations and additions to the existing hotel (pub), including the change of use of the first floor area to accommodate a bar/function area and a new recording studio at the attic level.

The key planning issues addressed in this report are the compatibility of the development with the surrounding area; the resulting traffic, parking and noise impacts; and the visual impact of the proposed additions that breach the building height control. Further concerns in relation to privacy and view impacts are also considered.

130 submissions were received in response to the notification of the application, with 101 in objection to the development and 29 in support. The primary concerns raised in the submissions objecting to the development relate to intensification of the use of the existing pub, the suitability of the development within the R2 zone, noise, traffic and parking impacts, and the potential anti-social behaviour of patrons. The concerns raised in the submissions are addressed within the assessment.

Based on the number of submissions received, 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 hotel (pub) to accommodate bar/function and ancillary recording studio space at the first floor and attic levels, as follows:

First floor

- Change of use from back of house facilities to bar and function area.
- Demolish internal walls and ceiling.
- New floor plan to comprise bar, kitchen, office, storage and sanitary facilities.
- New rear external storage addition.
- Replace existing aluminium windows with timber framed windows.
- Reconfigure stair and lift access at south-eastern corner.
- New reflected ceiling plan to interpret former layout.
- New sound insulation to ceiling.
- New acoustic airlock access to existing balcony.
- New fixed acoustic glass panels to existing balcony - 1.7m to 2m high.

Attic

- Alter southern wing roof form with dormer window to accommodate new attic addition.
- New recording studio, lounge area, bar, storage and sanitary facilities.

Ground floor

- Remove existing acoustic glazing and replace with new fixed acoustic glass panels - 2.1m high (200mm higher than existing).
- New glazing above existing entry stair walls.

Patron Numbers
The application proposes a total of 870 patrons, representing an increase of 50 patrons (6%) beyond the current operational capacity of the existing premises.

Car Parking
The application proposed an additional eight car parking spaces, resulting in a total of 31 spaces on the site. The provision of a shuttle bus service operated by the premises is also proposed.

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

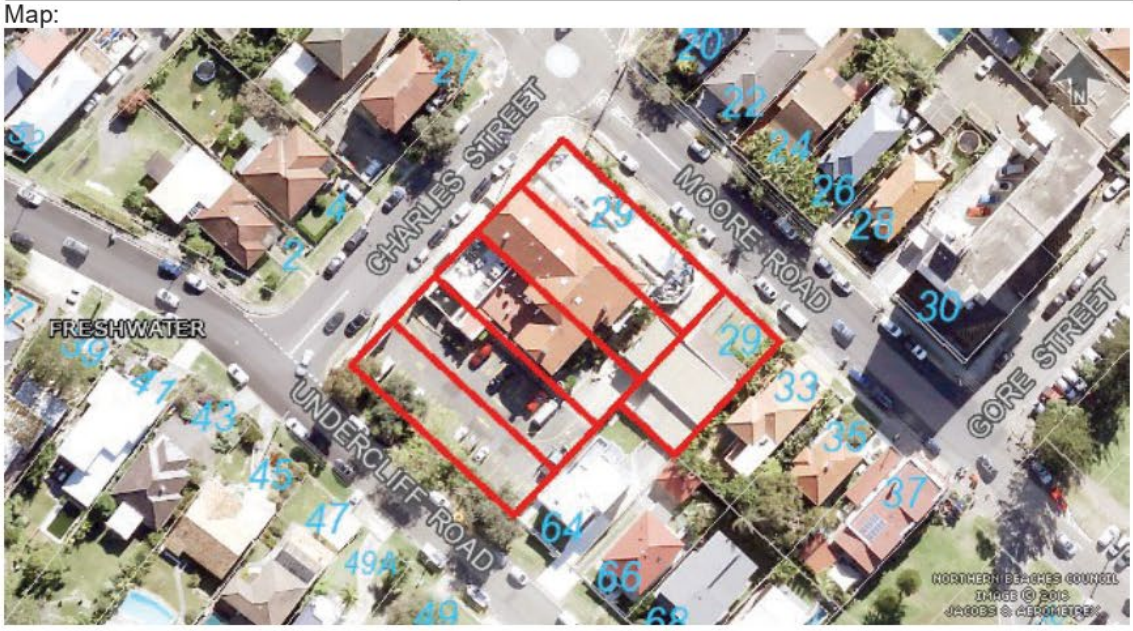
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 5.10 Heritage conservation
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 13 DP 7022 , 31 Moore Road FRESHWATER NSW 2096 Lot 1 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 2 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 3 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 4 DP 7022 , 29 Moore Road FRESHWATER NSW 2096 Lot 5 DP 7022 , 29 Moore Road FRESHWATER NSW 2096

Detailed Site Description:	The subject site consists of six (6) allotments located on the south-eastern corner of Moore Road and Charles Street. The site is irregular in shape with a primary frontage of 53.945m along Moore Road, a secondary frontage of 56.225m to Charles Street. The site has a southern frontage of 40.235m adjacent to the existing car park. The site has a surveyed area of 2644.5m². The site is located within the R2 Low Density Residential zone and accommodates an existing pub/hotel. The site 5.7m from rear (south-west) to front (north-east). **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development including detached and semi-detached dwellings, dual occupancies and residential flat buildings.

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:

- **DA1986/209** - Alterations to the Harbord Beach Hotel involving tiling of front entrance, additional driveway, games area, new bar and counter space - Approved 29 July 1986.
- **DA1997/286** - Alterations and additions to the hotel - Approved 21 October 1997. The proposal involved the relocation of the existing manager's residence from the first floor of the hotel to accommodate a restaurant, kitchen, function rooms and offices across the expanded first floor,

among other works to the existing development.

- **NSW LEC Case No. 10746 of 1997 [Mr John Brisby vs Warringah Council and Leffler Simes Pty Ltd]** - A subsequent appeal of the Council's approval of DA1997/286 was lodged to the NSW Land and Environment Court by an adjoining property owner and was upheld on the basis of insufficient car parking provision, despite the inclusion of an additional 8 spaces. While there are similarities between this development and the subject proposal, it is noted that the 1997 development proposed a maximum capacity of 150 people within the first floor restaurant and function rooms (in addition to ground floor patronage), whereas the subject proposal seeks an overall increase of only 50 patrons.
- **DA2001/0614** - Retractable awnings to garden area - Approved 16 October 2001.
- **DA2005/912** - Enclosed vergola over courtyard - Approved 26 July 2006.
- **DA2006/1130** - Addition of a Terrace - Approved 19 July 2007.
- **DA2015/0061** - Alterations and additions to existing commercial building (hotel) - Approved 6 May 2015.
- **DA2020/0468** - Alterations and additions to the hotel - Approved 24 June 2020.
- **MOD2020/0426** - Modification of Development Consent DA2020/0468 granted for alterations and additions to a Hotel - Approved 22 October 2020.
- **DA2020/1322** - Construction of signage - Approved 26 November 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 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 28/09/2021 to 12/10/2021 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 131 submission/s from:

Name:	Address:
Withheld	FRESHWATER NSW 2096
Mr John Matthew Brisby	2 / 10 Moore Road FRESHWATER NSW 2096
Ms Liz Xuereb	11 Moore Road FRESHWATER NSW 2096
Ms Merran Catriona Gillies	51 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Andrew Dodenhoff	29 Oceanview Road FRESHWATER NSW 2096
Mr Joseph Farrugia	8 / 32 Undercliff Road FRESHWATER NSW 2096
Emily Katherine Andrews	37 Surfers Parade FRESHWATER NSW 2096
Alan Trevis Landon Margareth Christine Landon	12 A Charles Street FRESHWATER NSW 2096
Mr Michael Bowden Mead	61 Undercliff Road FRESHWATER NSW 2096
Mr Paul Robert Brisby	32 A Playfair Road NORTH CURL CURL NSW 2099
Katherine Anne McKenzie	PO Box 358 FRESHWATER NSW 2096
Mrs Janet Margaret Power	15 / 163 - 165 Pacific Parade DEE WHY NSW 2099
Mr Michael Desmond Avery	25 Oceanview Road FRESHWATER NSW 2096
Lynne Gordevich	2 / 69 Evans Street FRESHWATER NSW 2096
Carole Lorraine Cooper	4 / 21 Moore Road FRESHWATER NSW 2096
Angela Argueta	42 / 30 Moore Road FRESHWATER NSW 2096
Miss Maree Portanger	22 Undercliff Road FRESHWATER NSW 2096
Mr Glen Bernard Kelly	43 Wyuna Avenue FRESHWATER NSW 2096
Mr Lindsay Graeme Fietz	3 / 25 Moore Road FRESHWATER NSW 2096
Mrs Jennifer Mary Lawson	PO Box 676 FRESHWATER NSW 2096
Ms Viviene Pearl Stewart	51 / 30 Moore Road FRESHWATER NSW 2096
Mrs Leonie Janice Phillips	11 / 32 Undercliff Road FRESHWATER NSW 2096
Cathy Bennett	33 / 30 Moore Road FRESHWATER NSW 2096
Abby Lois Bloom	3 Ryries Parade CREMORNE NSW 2090
Miss Sophie Rachel Watson	7 / 68 Albert Street FRESHWATER NSW 2096
Mr Ted Talbot	35 / 30 Moore Road FRESHWATER NSW 2096
Ms Diane Don	32 Oceanview Road FRESHWATER NSW 2096

Name:	Address:
Mrs Janice Elizabeth Pawlak	15 Evans Street FRESHWATER NSW 2096
Mrs Lauren Mary Richardson	29 Albert Street FRESHWATER NSW 2096
Mr Gary Bruce Munro	49 A Undercliff Road FRESHWATER NSW 2096
Barry Young Mrs Pamela Young	Address Unknown
Mr Paul Douglas Howison	1 / 13 Moore Road FRESHWATER NSW 2096
Dr Ian Munro Alexander Ms Louise Alexander	6 A Charles Street FRESHWATER NSW 2096
Paul Andrew Graham	PO Box 94 FRESHWATER NSW 2096
Mr Derek John Hanson	13 Charles Street FRESHWATER NSW 2096
Mr Kenny Jackman	6 Murray Road FRESHWATER NSW 2096
Mrs Tracey Elizabeth Oates	3 Highview Avenue QUEENSCLIFF NSW 2096
Withheld	MANLY NSW 2095
Louise Marie Bowman	6 / 6 Hill Street QUEENSCLIFF NSW 2096
Ms Glenda Rae Dunn	PO Box 655 FRESHWATER NSW 2096
Mr Talofa Ki Pangai Pouli	Owners Corporation Sp210 Lamb & Walters Po Box 95 GORDON NSW 2072
Kevin Macmillan	C/- T & M Pools T/As Narellan Pools Pty Ltd Po Box 667 ROUND CORNER NSW 2158
Amy Roche	Address Unknown
Erin Rolla	Address Unknown
James Anthony Walker-Powell Mrs Alison Walker-Powell	51 Griffin Road NORTH CURL CURL NSW 2099
Sean O'Dwyer	19 Moore Road FRESHWATER NSW 2096
Mr Thomas Ruane Baxter	20 Kooloora Avenue FRESHWATER NSW 2096
Mrs Helen Walton	8 Charles Street FRESHWATER NSW 2096
Kate Ivanoff	3/64 Undercliff Road FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Kevin William Tuckey	15 Undercliff Road FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Kris Krueger	Address Unknown
Chris Smyth	19 Moore Road FRESHWATER NSW 2096
Ms Gabrielle Maree Davidson	47 Undercliff Road FRESHWATER NSW 2096
Mrs Vivienne Ann Kissane	6 / 32 Undercliff Road FRESHWATER NSW 2096
Mia Gard	Address Unknown
Mr Daniel Thomas Allman	9 / 3 Evans Street FRESHWATER NSW 2096
Mr Kenneth Ernest Nichol	1 / 17 Kooloora Avenue FRESHWATER NSW 2096
Jude Mccrann	Address Unknown
Mr Angus Tommie Pragnell	90 Lawrence Street FRESHWATER NSW 2096
Mr Owen Brackenridge Hughes	18 / 3 Greenwood Place FRESHWATER NSW 2096

Name:	Address:
Dr Kristina Svensdotter Vikman Mr Mattias Friberg	120 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Jason Zsolt Hatvany	36 A Kooloora Avenue FRESHWATER NSW 2096
Mrs Julia Marti Jackson	43 / 25 Marshall Street MANLY NSW 2095
Mr Nicholas James Barth	8 / 20 Dowling Street QUEENSCLIFF NSW 2096
Mr David Gregory Lucas	1 / 38 Charles Street FRESHWATER NSW 2096
Mr Harry Kahla	55 Albert Street FRESHWATER NSW 2096
Margaret Carr	Invalid Address NSW
Allan Steven King	2 / 33 Moore Road FRESHWATER NSW 2096
Matt Hayes	1 / 20 Dowling Street QUEENSCLIFF NSW 2096
Ms Daini Louise Phillips	145 Crown Road QUEENSCLIFF NSW 2096
Mr Marcus Alexander Rosenberg Ms Charlotte Jane Ralph	2 / 25 Charles Street FRESHWATER NSW 2096
Tuan Van Luu	37 Undercliff Road FRESHWATER NSW 2096
Ms Judith Helene Therese Orr	2 / 46 Undercliff Road FRESHWATER NSW 2096
Ms Christina Dawn Knight	C/- Bradley Yates 3 Highgate Circuit KELLYVILLE NSW 2155
Mrs Gabrielle Peta Timbs	22 Moore Road FRESHWATER NSW 2096
Corona Projects Pty Ltd	PO Box 1749 BONDI JUNCTION NSW 1355
W J & J A Jeremiasse Holdings Pty Ltd	1 / 67 Undercliff Road FRESHWATER NSW 2096
Mark John Brisby	2 / 33 Moore Road FRESHWATER NSW 2096
Prof Christopher John Griffiths	2 / 67 Undercliff Road FRESHWATER NSW 2096
Mr Adam McLennan	17 / 94 Lawrence Street FRESHWATER NSW 2096
Mr Marc Ivan Carroll	17 B Smith Street MANLY NSW 2095
Mrs Ann Marie Skarratt	12 / 32 Undercliff Road FRESHWATER NSW 2096
Mrs Katherine Cameron Mr Angus Cameron	75 Undercliff Road FRESHWATER NSW 2096
Mr David John Hill Ms Gloria Sunnie Isabel Wright	20 Moore Road FRESHWATER NSW 2096
Mr Peter Robert De Monchaux	16 Highview Avenue QUEENSCLIFF NSW 2096
Mr Xingwei Wang	43 Undercliff Road FRESHWATER NSW 2096
Warwick Hutton	Address Unknown
Mr Richard Alfred Roberts	7 Undercliff Road FRESHWATER NSW 2096
Ms Ann Marie Duggan	19 Carrington Parade FRESHWATER NSW 2096
Mrs Ulrike Martina Brisby	32 A Playfair Road NORTH CURL CURL NSW 2099
Mr Ashwin David Field	53 Undercliff Road FRESHWATER NSW 2096
Rachel Ezzy	Address Unknown

Name:	Address:
Mr Warren Langley	13 / 63 Crown Road QUEENSCLIFF NSW 2096
Mrs Julie Margaret Sheer	70 Undercliff Road FRESHWATER NSW 2096
Sarah Davis	43 B Albert Street FRESHWATER NSW 2096
Mrs Delwyn Ann Bishop	1/2 Spruson Street NEUTRAL BAY NSW 2089
Mrs Karen Jennene Horlyck	40 Kooloora Avenue FRESHWATER NSW 2096
Mr Sean Douglas King	2 / 3 Evans Street FRESHWATER NSW 2096
Duncan Armour	15 Winbourne Street WEST RYDE NSW 2114
Andrew Jacovides	61 / 30 Moore Road FRESHWATER NSW 2096
John Aiello Mrs Carina Lizeet Aiello	35 Undercliff Road FRESHWATER NSW 2096
Katrina Helene	20 / 16 Moore Road FRESHWATER NSW 2096
Mrs Deborah Louisa Ashman	PO Box 369 FRESHWATER NSW 2096
James Horner	52 / 30 Moore Road FRESHWATER NSW 2096
Ms Lisa Maree Reizes	39 Undercliff Road FRESHWATER NSW 2096
Alison Joy Firth	42 Kooloora Avenue FRESHWATER NSW 2096
Janet Marie Taylor	30 Moore Road FRESHWATER NSW 2096
Myles Lowe	69 Lane Cove Road INGLESIDE NSW 2101
Anna Supierz	Address Unknown
Joaquin Ferreira	7 / 30 Charles Street FRESHWATER NSW 2096
Mrs Caroline Wendy Barnett	45 Undercliff Road FRESHWATER NSW 2096
Mr Michael Cooper	PO Box 4073 NORTH CURL CURL NSW 2099
Mrs Elizabeth Anne Larner	9 / 41 Oceanview Road FRESHWATER NSW 2096
Taru Tuohiniemi	Address Unknown
Yolanda Grana	3 / 19 Moore Road FRESHWATER NSW 2096
Mrs Elva Adeline Gilmore	29 Kooloora Avenue FRESHWATER NSW 2096
Mr Robert Brian Howard	10 Charles Street FRESHWATER NSW 2096
Mr Geoffrey Charles Lowe	49 Undercliff Road FRESHWATER NSW 2096
Mr Julian Michel Callebaut	9 Charles Street FRESHWATER NSW 2096
Mr Timothy Neale Trumper	77 Undercliff Road FRESHWATER NSW 2096
Mrs Joanna Theresia Maria Kapp-Cales	63 Undercliff Road FRESHWATER NSW 2096
Mr David Malcolm Oliver	12 Loch Street FRESHWATER NSW 2096
Joanne Torta	203 / 11 Lawrence Street FRESHWATER NSW 2096
Mr William Rhodes Kugler Jr	14 / 69 Evans Street FRESHWATER NSW 2096
Ms Suzanne Claire Cooper	31 Oceanview Road FRESHWATER NSW 2096
Mr Robert John Garner	34 Oceanview Road FRESHWATER NSW 2096
Mr Anthony Peter Yeates	5 Kooloora Avenue FRESHWATER NSW 2096
Mrs Evelyn Erna Adams	PO Box 33 AVALON BEACH NSW 2107
Ms Kerry Downes	3 / 43 Oceanview Road FRESHWATER NSW 2096

The submissions raised the following issues:

- **Use of the premises and patronage**
- **Permissibility and compatibility with the R2 Low Density Residential zone**
- **Traffic impact, car parking and drop off/pick-up**
- **Acoustic impact**
- **Bulk and scale, height non-compliance and heritage impact**
- **Patron behaviour**
- **Visual privacy**
- **View loss**
- **Comparison to NSW LEC case (No. 10746 of 1997)**

The matters raised within the submissions are addressed as follows:

- **Use of the premises and patronage**

  Concerns were raised regarding the change from a local pub to a larger commercial operation, the associated intensification of use and change in the demographic of patrons.

  Comment:
  The proposed inclusion of the first floor bar and ancillary attic space will not result in a significant change in the nature or intensification of the existing use of the premises. The proposal includes a minor overall increase in patron numbers from 820 to 870 and the intention of the additional internal areas is to provide a greater variety of facilities for use by patrons. The development also specifies a maximum number of patrons, which is currently not limited by the operational conditions of the premises, and will be enforceable by Council.

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

- **Permissibility and compatibility with the R2 Low Density Residential zone**

  Concerns were raised regarding the permissibility of the development and its incompatibility with the surrounding R2 zone.

  Comment:
  Clause 2.5 of the WLEP recognizes the historical use of the site and permits the ongoing use as a pub despite its R2 Low Density Residential zoning. The potential for conflict between the premises and surrounding residential properties is acknowledged, and consideration has been given to minimise and manage impacts resulting from this development through the imposition of conditions of consent. The proposed sound recording studio is considered to be ancillary to the primary use, taking up a relatively small proportion of the total GFA, and being available for hire through the hotel.

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

- **Traffic impact, car parking and drop off/pick-up**

  Concerns were raised regarding the impacts on the development on traffic, car parking and the lack of a suitable drop-off/pick-up location for taxis and ride share services.

  Comment:
  The proposal seeks consent for a total of 870 patrons, representing an increase of 50 patrons

beyond the existing operational capacity of the premises. The high demand for on-street car parking in the vicinity of the site is acknowledged, however this demand is also due to the proximity to Freshwater Village and Freshwater Beach. The 8 additional car parking spaces proposed will result in an overall improvement to the existing premises' patron to parking ratio, and the additional patron numbers are not considered to result in any unreasonable impacts to traffic and parking in the vicinity of the site.

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

- **Acoustic impact**

Concerns were raised regarding the noise impacts resulting from the development, specifically due to the increased number of patrons, additional outdoor area and speakers at the first floor level, the performance of live music at the venue and the inclusion of a sound recording studio at the attic level.

Comment:
The proposal includes a number of acoustic measures to minimise the additional noise generated by the premises as outlined in this report. No change to the existing hours of operation is proposed and the recommended conditions from the NSW Police require that all external entertainment shall cease at 9pm. Council's Environmental Health Officer has reviewed the Acoustic Report prepared in relation to the development and raised no objection to the application, subject to the recommended conditions of consent. The Acoustic Report includes consideration of appropriate patron numbers and 'ambient background music' on the first floor balcony at various times throughout the day and evening.

The acoustic upgrades to the first floor level will also ensure that the noise impacts of live music within the venue to not adversely impact surrounding properties. The nature of the sound recording studio within the attic requires suitable acoustic treatment and as such, this area is not anticipated to result in adverse noise impacts. A further discussion of this matter is completed in this report under D3 Noise.

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

- **Bulk and scale, height non-compliance and heritage impact**

Concerns were raised regarding the visual bulk, height non-compliance and heritage impact resulting from the proposed additions (including acoustic screening).

Comment:
The proposed building height breach occurs centrally within the site at the rear of the existing building. The assessment of the applicant's Clause 4.6 variation request finds that the proposal is supportable despite the height non-compliance, as discussed under Clause 4.6 of this report. Council's Heritage Officer has also assessed the application and raised no objection to the proposed development, subject to the recommended conditions of consent.

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

- **Patron behaviour**

Concerns were raised regarding the potential for an increase in anti-social behaviour and littering as a result of the development.

Comment:
The proposal, as conditioned, is not anticipated to give rise to increased anti-social behaviour or littering based on the 6% increase in patron numbers. The premises is subject to various security measures as part of the existing liquor license conditions and existing and recommended conditions of consent, including the ongoing provision of security patrols in the vicinity from 8pm Thursday to Sunday.

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

- **Visual privacy**

Concerns were raised regarding the potential privacy impacts resulting from the proposed use of the first floor balcony.

Comment:
The first floor balcony remains unchanged as a result of the development, and despite the resulting increase in the intensity of use of this area, sufficient spatial separation to surrounding properties (a minimum of 20m to the nearest residential property) is maintained to mitigate any potential overlooking impacts.

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

- **View loss**

Concerns were raised regarding the potential view loss impacts resulting from the development.

Comment:
An assessment of the view loss impacts of the proposal is completed in this report under D7 Views. The impact to views is considered to be negligible.

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

- **Comparison to NSW LEC case (No. 10746 of 1997 - Mr John Brisby vs Warringah Council and Leffler Simes Pty Ltd)**

Comment:
Whilst there are similarities between the subject proposal and the development under NSW LEC case No. 10745 of 1997, there are also fundamental differences between the two developments.

Specifically, the 1997 development proposed the use of the first floor as a restaurant, kitchen and function rooms, with the addition of a new manager's residence above the adjoining bottle shop. The 1997 development also proposed an increase of 150 patrons within the first floor restaurant/function rooms and terrace, whereas the subject proposal seeks consent for an additional 50 patrons, with the balance of patrons accommodated within the first floor and attic being offset by a reduction in patrons at the ground floor level. Further, significant works have been carried out in the intervening period to improve the acoustic performance of the premises and reduce noise disturbance to surrounding properties.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**Supported subject to condition** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	**Supported** The proposal to increase capacity, operation and function of an existing hotel is supported. The Acoustic Report provides appropriate measures to use as conditions and prevent noise nuisance.
Environmental Health (Food Premises, Skin Pen.)	**Supported subject to condition** Modification and addition to kitchen facilities are supported. Standard conditions apply for food premises construction.
NECC (Coast and Catchments)	**Supported subject to condition** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported subject to conditions: • Stockpiling materials (during works).
Strategic and Place Planning (Heritage Officer)	**Supported subject to condition** This application has been referred as relates to a listed heritage item, being Item I74 - Harbord Beach Hotel, 29 Moore Street, Freshwater,

Internal Referral Body	Comments
	which is listed in Schedule 5 of *Warringah Local Environmental Plan 2011*. Details of this heritage item, as contained within the Warringah Heritage Inventory, are: • Item I74 - Harbord Beach Hotel, 29 Moore Street, Freshwater. Statement of Significance A rare example of an inter-war hotel building which shows influences of the Californian bungalow style. Historically provides evidence of the early development of social & recreational facilities to serve the growing population. Local landmark. Physical Description Two storey building with rendered masonry walls. Tiled hipped, jerkin headed & gabled roof. Terrace on first floor supported by arcaded verandah. A number of modifications include surrounding wall, beer garden, bottle shop extension & window modifications. This application is for alterations and additions to the heritage item, being the Harbord Hotel. A change of use is also proposed. The proposed works include: • Internal demolition and re-build of level 1 for use as a bar/kitchen/office and amenities. • New paving on 1st floor balcony and the introduction of an acoustic glass barrier, behind the existing 1st floor open balcony (1700mm and 2000mm high); • Replacement of aluminium windows on Moore Road (eastern facade) with timber windows (acoustic glass) matching original window detailing; • New doors onto 1st floor balcony facing north and east; • Fit out and creation of usable space in the existing roof, including raising of the roof of southern wing and addition of a dormer on the western side (to accommodate a lift overrun and stair); • Addition of acoustic glass on perimeter wall on Moore Road corner of Charles Street (200mm higher than existing). The application was accompanied by a Heritage Impact Statement by Weir Phillips Heritage and Planning (dated August 2021), which has been reviewed along with the submitted plans. Heritage raises no objection to the interior changes to the 1st floor and to the balcony. It is agreed that the interiors have been modified over the years and remaining fabric is not exceptional. The reflected ceiling proposal will go someway to ensuring the original hotel room layout is not forgotten, along with the wall nibs shown to be retained

Internal Referral Body	Comments
	on the submitted plans. Replacement of aluminium framed windows on the 1st floor with timber framed acoustic windows, to match original detail, is also supported. Changes to the original roof of the southern wing, to accommodate access to the new attic space is not an ideal outcome for the heritage item. However, an attempt has been made to ensure that the impact on the heritage significance of the building is minimised. It is agreed that keeping the roof pitch the same, retaining the chimney and tiling to match the original roof, all assist in integrating the raised roof with the heritage building and minimising the visual impact of this change. The introduction of a dormer on the western side of this raised roof (to provide height for lift overrun and access) is not ideal, but is a better solution than raising the roof even higher to accommodate these needs. While this introduces an additional, non-original element into the roofscape, it will not be visible as part of the view of the principal elevation of the hotel from Moore Road. The dormer will be visible from Charles Street and from the non-primary public viewpoints (part of the rear view, along with services and plant). Given its location as part of the rear service elevation of the hotel, it is considered that this introduced element into the roofscape will have an acceptable minor impact upon the heritage significance of the building. Another proposed change is the introduction of an acoustic glass barrier on the inside of the 1st floor balcony and also along the length of the perimeter fence on Moore Road and turning the corner to Charles Street. The barrier on the 1st floor balcony is a new addition, however is considered acceptable from a heritage viewpoint as it will be non-reflective, will not obscure the view of the architectural features of the building and is something which can be removed in the future without any damage to original fabric. The acoustic frameless glass barrier on the perimeter fence is replacing an existing, framed barrier, but 200mm taller. From a heritage point of view, a frameless glass barrier would be preferable to the existing framed barrier, as it allows greater visibility of the architecture of the building, when viewed from the public domain. Therefore, heritage has no objections to the acoustic glass barriers proposed for the 1st floor balcony or the perimeter fence, on the basis that they are non-reflective and removable in the future without damaging original building fabric. No objections are raised to the change in use of the 1st floor from hotel accommodation/hotelier residence. It is agreed that these uses are redundant in current times and the most important historical use of this building is its continued use as a hotel, as it has been used since originally built in 1928. The introduction of new, but ancillary uses to the hotel offering, should ensure that the upkeep and maintenance of this heritage item, and its continued use as a hotel can continue into the future. It is considered that an Interpretation Plan should be prepared for this space and implemented to indicate previous uses. The submitted Material Palette has been reviewed and is considered acceptable.

Internal Referral Body	Comments
	In conclusion, no heritage objections are raised to this application, subject to a number of conditions (Photographic Archival Recording and Interpretation Strategy and Plan for 1st floor).
Traffic Engineer	**Supported subject to condition** The proposed additions have been reviewed along with the associated traffic report. The proposal includes internal changes to the attic space and first floor to provide a recording studio and private bar/lounge area with the conversion of the accommodation level into additional venue space for the operation of the hotel business. The proposal includes an additional provision of parking spaces to increase the numbers from 23 to 31 on site spaces, which based on a patron to space ratio is an improvement and given the nature of the business and location can be supported, with the provision of signage directing patrons to nearby public parking areas to the east of the property away from the adjoining residential properties. The proposed increase in the number of patrons is from 820 to 870 (traffic report proposes 900 total) and up to 62 staff on site in periods of peak trading. The proponent will provide a shuttle bus during peak periods, however the hours of operation are not defined. The operational management plan makes no mention of the shuttle service and needs to be updated to reflect that. The proposed development can be supported on traffic and transport grounds subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**Supported subject to condition** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Police – Licensing (Clubs, Hotels, Pubs)	**Supported subject to condition** The application was referred to the NSW Police Licensing Unit, with a number of conditions recommended in relation to the ongoing operation of the premises, should the proposal be approved.

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 (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- *(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- *(b) coastal environmental values and natural coastal processes,*
- *(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- *(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- *(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- *(f) Aboriginal cultural heritage, practices and places,*
- *(g) the use of the surf zone.*

Comment:
The proposed works are largely within the existing development footprint and are unlikely to cause adverse impacts to the natural environment, coastal processes, water quality, vegetation and headlands, public open space, aboriginal heritage or the surf zone.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- *(a)* the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- *(b)* if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- *(c)* if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal is appropriately designed and sited to avoid unreasonable impacts in relation to the above matters.

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

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

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

Comment:
The proposal is unlikely to result in increased risk of coastal hazards on the site or surrounding land.

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
4.3 - Height of Buildings	8.5m	10.7m	25.9%	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone R2 Low Density Residential

In accordance with the provisions of Clause 2.5 and Schedule 1 of the *Warringah Local Environmental Plan 2011* , development for the purposes of pubs is permitted with consent.

4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.7m
Percentage variation to requirement:	25.9%

Assessment of request to vary a development standard

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

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

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

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

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

Comment
In the matter of I*nitial 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 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 fact that the variation facilitates disabled lift access to the existing attic level of the heritage listed building being the most appropriate location for a lift structure given the heritage significance of the building and its associated fabric.*
- *Whilst the extent of non-compliance could be removed through the introduction of a flat roof form, the complementary and compatible pitched roof form responds appropriately to the heritage listing of the subject property.*
- *I consider the proposal to be of a skilful design which responds appropriately and effectively to the heritage constraints of the site. 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 proposal promotes the sustainable management of built and cultural heritage by facilitating disabled lift access to the existing attic level floor space within a characteristically pitched roof form (1.3(f)).*
    - *The development represents good contextually appropriate heritage sensitive 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))."*

Comment
The applicant has appropriately related these reasons/grounds to the relevant objects prescribed by clause 1.3 of the Act. As such, the applicant's submission is considered to establish sufficient environmental planning grounds to justify the proposed variation to the building height development standard.

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).

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

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

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

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

Comment
In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment
The proposed addition is below the overall ridge height of the existing building and remains compatible with the height and scale of surrounding development, noting the prevalence of dwellings and multiple occupancy developments that exceed the height control.

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

Comment
The proposed height breach occurs centrally within the site and behind the existing roof ridge as viewed from the primary (northern) street frontage. The separation provided to the western and southern site boundaries will mitigate the visual bulk of the addition and the proposal maintains a consistent roof form to the existing building. The proposed breach is not considered to result in any unreasonable impacts in relation to views, privacy or solar access.

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

Comment
The proposal will not adversely impact the scenic quality of Warringah's coastal and bush environments.

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

Comment
The proposed addition maintains an appropriate visual relationship to the existing building and will not result in adverse visual impact when viewed from nearby public places.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- ***To provide for the housing needs of the community within a low density residential environment.***

  Comment
  This objective is not applicable as the existing use of the site as a pub is permissible subject to Clause 2.5 of WLEP.

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

  Comment
  The proposed height variation enables disabled access to the attic level of the development,

which is available for use by residents.

It is considered that the development satisfies this objective.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

  Comment
  The proposed height variation occurs within the existing development footprint and will not alter the existing landscape setting of the site.

  It is considered that the development satisfies this objective.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

Council's Heritage Officer has assessed the proposal and raised no objection to the development, subject to conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.9m	N/A	**No**
B3 Side Boundary Envelope	5m	East: Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	East: 13m	N/A	Yes
		South: Nil (carpark)	N/A	**No** (existing)
B7 Front Boundary Setbacks	North: 6.5m	Nil (No change to existing)	N/A	**No** (existing)
	West: 3.5m	Nil (No change to existing)	N/A	**No** (existing)
D1 Landscaped Open Space (LOS)	40%	Nil (No change to	N/A	**No**

and Bushland Setting		existing)		(existing)

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
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

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed maximum wall height of 7.9m is non-compliant with the 7.2m control.

Merit consideration

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

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

  Comment:
  The proposed wall height breaches relate to the additions to the southern wing of the building. The extent of the non-compliance is relatively minor and adequate separation from the street frontages and adjoining properties is maintained to mitigate the associated visual impact.

- ***To ensure development is generally beneath the existing tree canopy level.***

  Comment:
  The development remains generally beneath the surrounding tree canopy level.

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

  Comment:
  The proposal will not result in any unreasonable view impacts.

- ***To minimise the impact of development on adjoining or nearby properties.***

  Comment:
  The non-compliant walls are located centrally within the development site and will not adversely impact surrounding properties.

- ***To ensure that development responds to site topography and to discourage excavation of the natural landform.***

  Comment:
  The proposal responds appropriately to the site topography.

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

  Comment:
  The proposed roof form is designed to be compatible with the existing roof of the heritage-listed building.

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 supported in this particular circumstance.

B5 Side Boundary Setbacks

The existing non-compliant southern setback remains unchanged.

B7 Front Boundary Setbacks

The existing non-compliant setbacks to the northern and western frontages remain unchanged.

C2 Traffic, Access and Safety

Council's Traffic Officer has assessed the proposal and raised no objections to the development, subject to the recommended conditions of consent.

C3 Parking Facilities

The *Warringah Development Control Plan 2011* does not include specific numerical car parking requirements in relation to pubs. As such, Council's Traffic Officer has based the assessment of the ratio of additional car parking provision to the proposed increase in patron numbers.

The proposal includes an increase in patron numbers from 820 to 870, and up to 62 staff during peak trading period and increased parking provision of 23 to 31 spaces, resulting in an improved patron to parking ratio in comparison to the existing situation. The proposal also includes the operation of a shuttle bus service during peak periods and conditions of consent are recommended in this regard.

Based on these considerations, Council's Traffic Officer raises no objection to the proposed, subject to conditions.

D1 Landscaped Open Space and Bushland Setting

The site does not contain any existing landscaped area.

D3 Noise

The proposal incorporates a number of new and upgraded acoustic measures as part of the development, as detailed in the plans and Acoustic Report. The acoustic works are summarised as follows:

- Replace and upgrade existing ground floor entry stair and balcony acoustic glazing
- New acoustic glazing to the first floor balcony
- New acoustic doors to the first floor internal entry and northern balcony door
- New air-lock door to the eastern side of the first floor balcony
- Replace existing first floor windows with acoustic glazing
- New acoustic panels to the underside of the first floor balcony eave
- New acoustic insulation to first floor and attic ceilings
- Installation of a noise limiter system at the first floor level to limit amplified equipment when windows are open

The Acoustic Report prepared also includes recommendations regarding the capacity and operating hours of the first floor balcony and use of an outdoor PA system.

Council's Environmental Health Officer has reviewed the proposal, including the Acoustic Report, and considers appropriate measures are included to prevent noise nuisance. As such, the proposal is supportable in relation to noise impacts, subject to the recommended conditions of consent.

D7 Views

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

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

  Comment:

  In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

  1. Nature of the views affected

  "*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*".

  Comment to Principle 1:

  Two submissions received from units at 32 Undercliff Road raised concerns in relation to view loss as a result of the proposed addition to the southern wing of the building. The affected views are filtered water views over the existing southern roof, being interrupted by vegetation to the east of the subject site. As such, the affected views are partial views.



Photo 1. Available views from 5/32 Undercliff Road. Source: realestate.com



Photo 2. Available views from 8/32 Undercliff Road. Source: realestate.com

2. What part of the affected property are the views obtained

"*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 to Principle 2:

The affected views are available from the lower levels of the building and are obtained across multiple side boundaries. The views are available from a standing or sitting position, depending on the elevation of the unit.

3. Extent of impact

"*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% 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 to Principle 3:

The proposal will block a small proportion of the available views that are already obscured by the existing roof and vegetation beyond the site to the east. Given the distance between the available views and the receiving property and the limited value of the affected views in comparison to the unobstructed water views that will be retained, the extent of the impact is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

"*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 to Principle 4:

The impact to views arises as a result of the non-compliant proposed roof height of the southern wing. However, based on the partial nature of the affected views, their vulnerability and limited value, the proposed impact is considered to be acceptable.

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

  Comment:

  The proposed works are appropriately designed to maintain the heritage value of the existing building.

- *To ensure existing canopy trees have priority over views.*

  Comment:

  The proposal will not adversely impact canopy trees.

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 supported in this particular circumstance.

D8 Privacy

The proposal will result in an increase in the intensity of use of the first floor balcony. The balcony area itself remains unchanged and adequate physical separation is maintained to surrounding properties to the north, west, east and south-east, mitigating any overlooking impacts associated with the use of the balcony.

D9 Building Bulk

The proposed 1.54m increase to the wall height of the southern wing is not anticipated to result in

unreasonable additional bulk, noting the separation to the adjoining properties and the public domain.

E10 Landslip Risk

The site is mapped as Landslip Risk Areas A & B. No geotechnical investigation is considered necessary based on the nature of the proposed works.

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 $28,365 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,836,473.

CONCLUSION

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

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

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

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

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

Council is / is not satisfied that:

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

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

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

The application seeks consent for alterations and additions to the existing pub, including the change of use of the first floor area to accommodate a bar/function area and a new recording studio at the attic level.

The key planning issues considered within the assessment are the compatibility of the development with the surrounding area, the resulting traffic, parking and noise impacts, and the visual impact of the proposed additions that breach the building height control.

130 submissions were received in relation to the development - 101 in objection and 29 in support. The concerns raised in the submissions are addressed within the report.

Assessment of the application against the Warringah 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 WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1620 for Alterations and additions to an existing pub (Harbord Hotel) on land at Lot 13 DP 7022, 31 Moore Road, FRESHWATER, Lot 1 DP 7022, 29 Moore Road, FRESHWATER, Lot 2 DP 7022, 29 Moore Road, FRESHWATER, Lot 3 DP 7022, 29 Moore Road, FRESHWATER, Lot 4 DP 7022, 29 Moore Road, FRESHWATER, Lot 5 DP 7022, 29 Moore Road, 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-D00-011 - Ground Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-A01-011 - First Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-A02-011 - Upper Floor - General Arrangement Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-DXX-011 - Site & Roof - Proposed Plan	Rev. B, 28 July 2021	Alexander & Co.
DA-EXX-011 - External Elevations 01	Rev. B, 28 July 2021	Alexander & Co.
DA-EXX-021 - External Elevations 02	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-011 - Section 01	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-021 - Section 02	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-031 - Section 03	Rev. B, 28 July 2021	Alexander & Co.
DA-FXX-041 - Section 04	Rev. B, 28 July 2021	Alexander & Co.
MXX-011 - Material Palette	Rev. A, 31 May 2021	Alexander & Co.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Acoustics Report	27 July 2021	AKA Acoustics

Accessibility Report	Issue 2, 30 May 2021	Trevor R Howse
Heritage Impact Statement	August 2021	Weir Phillips Heritage and Planning
Traffic and Parking Report	20 April 2021	Colston Budd Rogers & Kafes Ptf Ltd
Plan of Management	August 2021	Harbord Hotel
Operational Waste Management Plan	Revision B, 7 June 2021	Elephants Foot Recycling Solutions

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:

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	20 October 2021
NSW Police Licensing Unit	NSW Police Referral Response	22 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. **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.

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 $28,364.73 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $2,836,472.76.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Photographic Archival Record**
A photographic archival record is to made of all components of the building affected by the proposed works (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the Heritage NSW. This should include all areas of the 1st floor (internal and external) and the external appearance and setting of the building when viewed from Moore Road and Charles Street.

This record must be submitted to Council's Heritage Advisor for approval prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, and should include:
- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

8. **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.

9. **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.

10. **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 rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council 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 Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and

consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

11. **Waste and Service Vehicle Access (12.5 Heavy Rigid Vehicle)**
Access to the on-site loading bay area including ramp grades, transitions and height clearance shall be designed for safe forward in and forward out access of a12.5m HRV delivery truck, as a minimum requirement. The height clearance required is 4.5m, measured from the surface level to any overhead structures such as pipes. Swept path diagrams must include details of the road including, kerb line, line marking, signs, traffic devices, power poles, other structures and neighbouring driveways. Plans showing the ramp grades, transitions and height clearance and swept path diagrams of 12.5m delivery vehicle shall be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate.

Reason: to ensure adequate service vehicle access.

12. **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.

13. **Building Code of Australia Report (Class 2-9)**

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Registered Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the existing building (relevant affected parts) does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use.

*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.
The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety

14. **Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. The "Design Specification – Accessibility" report prepared by Trevor R Howse Pty Ltd dated 30/5/2021 is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

15. **Interpretation Strategy and Plan**
An Interpretation Strategy and Plan for the 1st floor of the hotel, is to be prepared by a suitably qualified heritage professional. The Plan should outline how this interpretation will be incorporated into the adaptive re-use of the 1st floor. This must be submitted to Council's Heritage Advisor for approval, prior to the commencement of any works on-site and implemented prior to completion of works.

Reason: To ensure that the historical use of the 1st floor of the hotel is interpreted as part of its adaptive re-use.

16. **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.

17. **Mechanical Ventilation Plans**

Where Mechanical ventilation is required to be installed in the food premises detailed plans must be submitted to and approved by the Certifying Authority that demonstrate compliance with the following:

- Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and

- Any external exhaust discharge must 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 installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

18. **Acoustic design incorporated into plans**

All design components detailed in Section 4, and actions listed in Section 5.2 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 27 July 2021 (Reference R-054HBH210717.4) respectively, must be, implemented into the plans, and conducted prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Details demonstrating these actions and design are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To prevent noise nuisance for the surrounding area.

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

(a) AS2601.2001 - Demolition of Structures**
(b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
(c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**

(d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
(e) AS 4970 - 2009 'Protection of trees on development sites'**
(f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
(g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
(h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
(i) AS 2890.5 - 1993 Parking facilities - On-street parking**
(j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
(k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
(l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
(m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website www.hreoc.gov.au/disability rights /buildings/good.htm. <www.hreoc.gov.au/disability% 20rights%20/buildings/good.htm.>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

20. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

21. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **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.

24. **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.

25. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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

26. **Plan of Management**
An amended Plan of Management (POM) is required to be submitted to, and approved by the Executive Manager Development Assessments, detailing the operation of the development. The POM shall be available on the pub's website, and shall include, but not be limited to the following:

- Vehicle access and egress.
- Through-site circulation of vehicle movements.
- Management of car parking areas.
- Operation of the Shuttle Bus between the premises, Manly CBD and other locations as

required, including timetable or frequency of service.
- The location and content of directional signage.
- Complaints management - A dedicated phone number for complaints must be provided, which must be separate to any other number for table bookings, enquiries etc. The phone must be operational/answered for at least 2 hours following closing times. A register must be kept of all complaints and actions, and proposed changes to the POM as a result, and must be available to Council upon request.
- Noise management.
- Truck delivery times and methods of control to manage the sequencing of the loading docks.
- Waste management.

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

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

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

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that 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.

28. **Mechanical Ventilation certification**

Where Mechanical ventilation is required to be installed in the food premises it 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.

29. **Acoustic Assessment**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with Section 4, and Section 5.2 of the acoustic report prepared by AKA Acoustics and AKA Music Pty. Ltd. dated 27 July 2021 (Reference R-054HBH210717.4).

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate, in order to achieve compliance with noted conditions of this consent. The updated acoustic assessment is to be submitted to the PCA for certification.

Reason: To protect the acoustic amenity of neighbouring properties (DACHPFPOC6)

30. **Fire Safety Matters**
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

31. **Vehicle Parking**
The car parking area shown on the approved drawings must be used for vehicle parking only. Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. Any loading or unloading of materials of potential environmental damage must be appropriately bunded with adequate spill response equipment in place to ensure nil runoff from the site.

Reason: To ensure the safety and amenity of the general public using public streets, and to ensure the protection of the environment from spillage of materials.

32. **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.

33. **Compliance with the Plan of Management**

The requirements of the Plan of Management must be followed in perpetuity.

Reason: To ensure operations of the premises are maintained in an appropriate manner in perpetuity. (DACHPGOG5)

34. **Audibility of Amplified Music**

Noise caused by the operation of amplified music must not be audible beyond the boundary of any residence between the hours of 10 pm to 8 am on any day.

Reason: to prevent noise nuisance to surrounding residents. (DACHPGOG5)

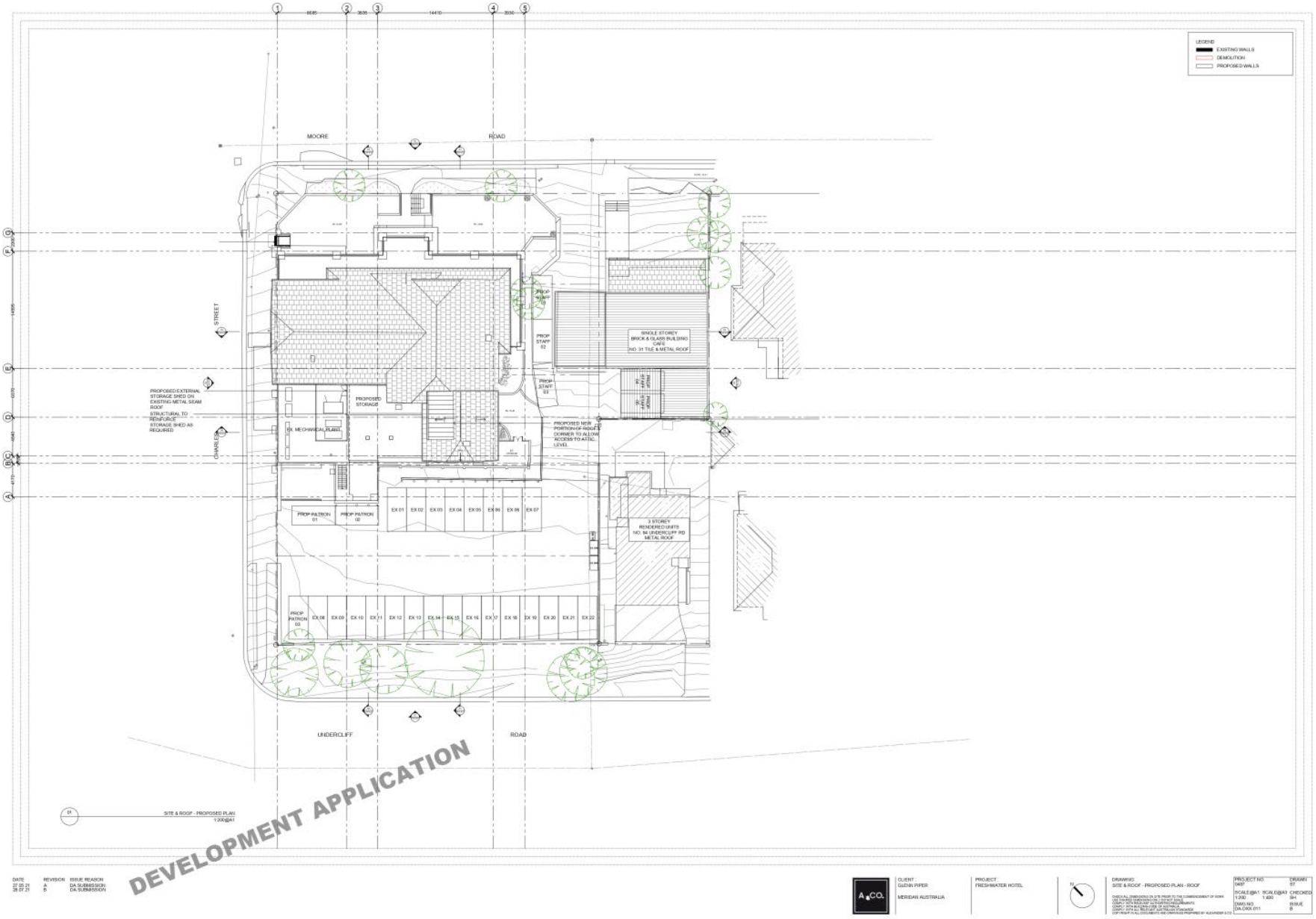
35. **Patron Numbers**
The number of patrons within the venue shall be limited to a maximum of 870 at any time.

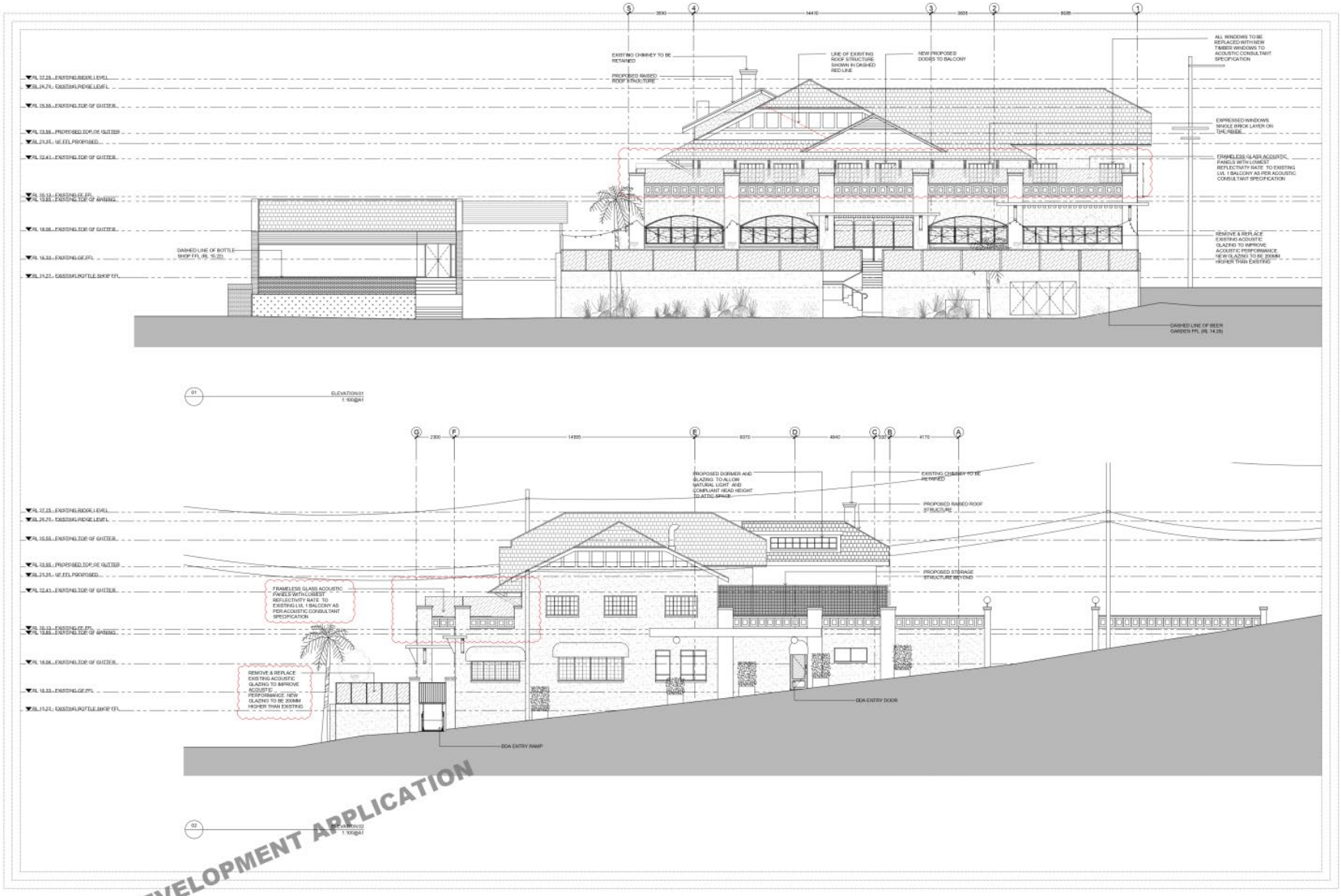
Reason: To ensure that the operation of the premises is consistent with the proposed development.

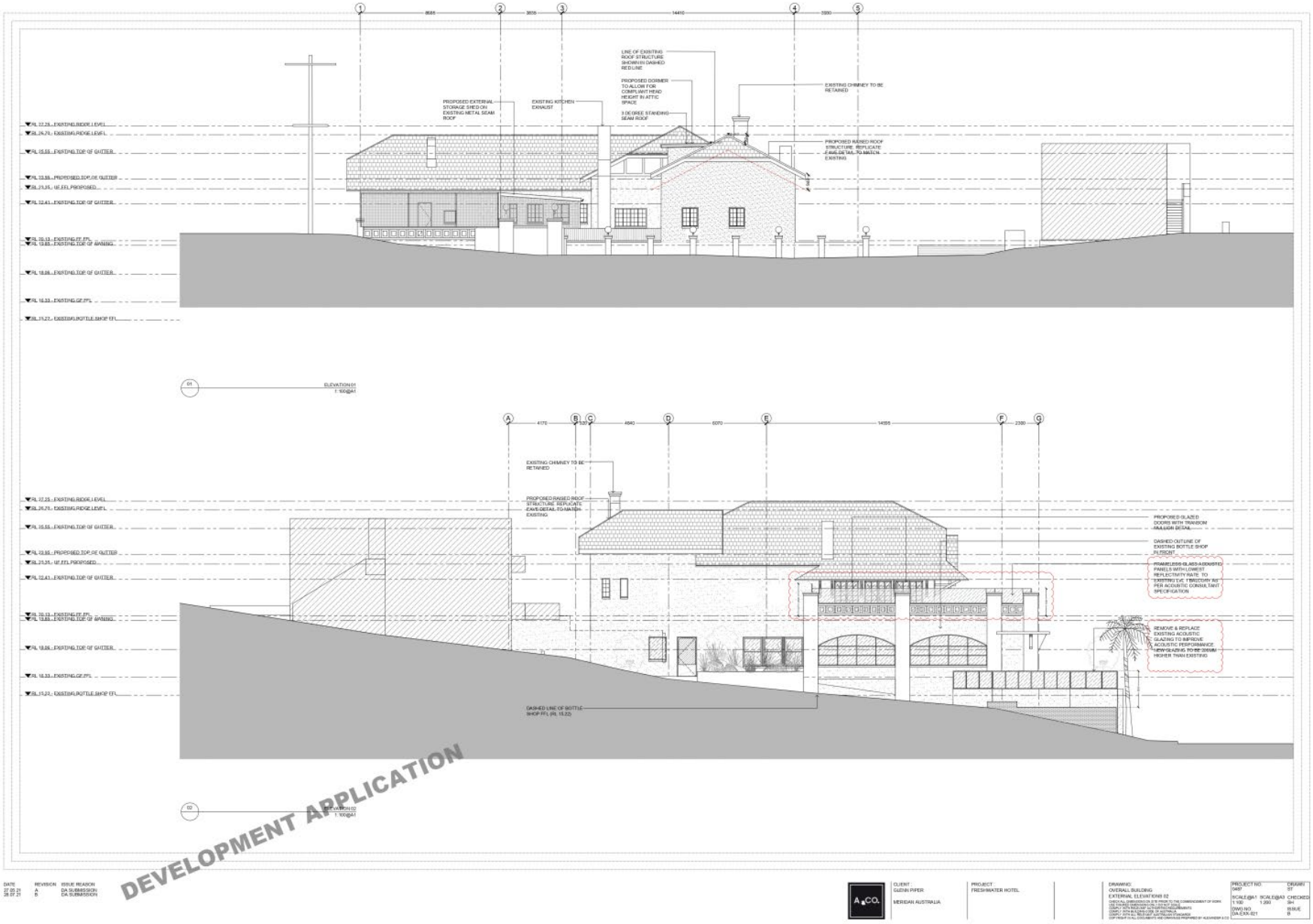
36. **Provision of Shuttle Bus for patrons**
The applicant/operator is to provide a shuttle bus service between the subject premises, Manly CBD and other locations as required, operating in line with the amended Plan of Management. The shuttle service is to operate during operating hours as follows:

- Monday to Friday - 4 pm to Close
- Saturday, Sunday and Public Holidays - 11 am to Close

Reason: To provide an additional transport option for patrons to offset the lack of on site parking.


MOORE
ROAD
STREET
CHARLES
UNDERCLIFF
ROAD
LEGEND
EXISTING WALLS
DEMOLITION
PROPOSED WALLS
SINGLE STOREY BRICK & GLASS BUILDING CAFE NO. 31 TILE & METAL ROOF
PROPOSED STORAGE
EX. MECHANICAL PLANT
PROPOSED EXTERNAL STORAGE SHED ON EXISTING METAL SEAM ROOF
STRUCTURAL TO REINFORCE STORAGE SHED AS REQUIRED
PROPOSED NEW PORTION OF ROOF TO CORNER TO ALLOW ACCESS TO ATTIC LEVEL
PROP STAFF 01
PROP STAFF 02
PROP STAFF 03
PROP PATRON 01
PROP PATRON 02
PROP PATRON 03
3 STOREY RENDERED UNITS NO. 84 UNDERCLIFF RD METAL ROOF
SITE & ROOF - PROPOSED PLAN
1:200@A1
DEVELOPMENT APPLICATION
DATE
27.05.21
28.07.21
REVISION
A
B
ISSUE REASON
DA SUBMISSION
DA SUBMISSION
CLIENT :
GLENN PIPER
MERIDIAN AUSTRALIA
PROJECT :
FRESHWATER HOTEL
DRAWING:
SITE & ROOF - PROPOSED PLAN - ROOF
PROJECT NO.
0497
DRAWN
ST
SCALE@A1
1:200
SCALE@A3
1:400
CHECKED
SH
DWG NO.
DA.D00.011
ISSUE
B


EXISTING CHIMNEY TO BE RETAINED
PROPOSED RAISED ROOF STRUCTURE
LINE OF EXISTING ROOF STRUCTURE SHOWN IN DASHED RED LINE
NEW PROPOSED DOORS TO BALCONY
ALL WINDOWS TO BE REPLACED WITH NEW TIMBER WINDOWS TO ACOUSTIC CONSULTANT SPECIFICATION
EXPRESSED WINDOWS SINGLE BRICK LAYER ON THE RIDGE
FRAMELESS GLASS ACOUSTIC PANELS WITH LOWEST REFLECTIVITY RATE TO EXISTING LVL 1 BALCONY AS PER ACOUSTIC CONSULTANT SPECIFICATION
REMOVE & REPLACE EXISTING ACOUSTIC GLAZING TO IMPROVE ACOUSTIC PERFORMANCE. NEW GLAZING TO BE 300MM HIGHER THAN EXISTING
DASHED LINE OF BOTTLE SHOP FFL (RL 15.22)
DASHED LINE OF BEER GARDEN FFL (RL 14.28)
ELEVATION 01
1:100@A1
PROPOSED DORMER AND GLAZING TO ALLOW NATURAL LIGHT AND COMPLIANT HEAD HEIGHT TO ATTIC SPACE
EXISTING CHIMNEY TO BE RETAINED
PROPOSED RAISED ROOF STRUCTURE
PROPOSED STORAGE STRUCTURE BEYOND
FRAMELESS GLASS ACOUSTIC PANELS WITH LOWEST REFLECTIVITY RATE TO EXISTING LVL 1 BALCONY AS PER ACOUSTIC CONSULTANT SPECIFICATION
REMOVE & REPLACE EXISTING ACOUSTIC GLAZING TO IMPROVE ACOUSTIC PERFORMANCE. NEW GLAZING TO BE 300MM HIGHER THAN EXISTING
DDA ENTRY DOOR
DDA ENTRY RAMP
ELEVATION 02
1:100@A1
DEVELOPMENT APPLICATION
DATE REVISION ISSUE REASON
27.05.21 A DA SUBMISSION
28.07.21 B DA SUBMISSION
CLIENT: GLENN PIPER
MERIDIAN AUSTRALIA
PROJECT: FRESHWATER HOTEL
DRAWING: OVERALL BUILDING EXTERNAL ELEVATIONS 01
PROJECT NO: 0497
DRAWN: ST
SCALE@A1: 1:100
SCALE@A3: 1:200
CHECKED: SH
DWG NO: DA-EXX-011
ISSUE: B


PROPOSED EXTERNAL STORAGE SHED ON EXISTING METAL SEAM ROOF
EXISTING KITCHEN EXHAUST
LINE OF EXISTING ROOF STRUCTURE SHOWN IN DASHED RED LINE
PROPOSED DORMER TO ALLOW FOR COMPLIANT HEAD HEIGHT IN ATTIC SPACE
3 DEGREE STANDING SEAM ROOF
EXISTING CHIMNEY TO BE RETAINED
PROPOSED RAISED ROOF STRUCTURE, REPLICATE EAVES DETAIL TO MATCH EXISTING
RL 22.25 - EXISTING RIDGE LEVEL
RL 24.70 - EXISTING RIDGE LEVEL
RL 15.55 - EXISTING TOP OF GUTTER
RL 13.86 - PROPOSED TOP OF GUTTER
RL 21.35 - UP FEL PROPOSED
RL 12.41 - EXISTING TOP OF GUTTER
RL 10.13 - EXISTING FF FFL
RL 13.83 - EXISTING TOP OF AWNING
RL 18.86 - EXISTING TOP OF GUTTER
RL 16.33 - EXISTING GF FFL
RL 11.22 - EXISTING BOTTLE SHOP FFL
01 ELEVATION 01 1:100@A1
EXISTING CHIMNEY TO BE RETAINED
PROPOSED RAISED ROOF STRUCTURE, REPLICATE EAVES DETAIL TO MATCH EXISTING
PROPOSED GLAZED DOORS WITH TRANSOM ABOVE IN DETAIL
DASHED OUTLINE OF EXISTING BOTTLE SHOP PLYSCRT
FRAMELESS GLASS BALUSTRADE PANELS WITH LOWEST REFLECTIVITY RATE TO EXISTING LVL 1 BALCONY AS PER ACOUSTIC CONSULTANT SPECIFICATION
REMOVE & REPLACE EXISTING ACOUSTIC GLAZING TO IMPROVE ACOUSTIC PERFORMANCE. NEW GLAZING TO BE 200MM HIGHER THAN EXISTING
DASHED LINE OF BOTTLE SHOP FFL (RL 15.22)
02 ELEVATION 02 1:100@A1
DEVELOPMENT APPLICATION
DATE REVISION ISSUE REASON
27.05.21 A DA SUBMISSION
28.07.21 B DA SUBMISSION
CLIENT: GLENN PIPER
MERIDIAN AUSTRALIA
PROJECT: FRESHWATER HOTEL
DRAWING: OVERALL BUILDING EXTERNAL ELEVATIONS 02
PROJECT NO. 0497
DRAWN ST
SCALE@A1 1:100
SCALE@A3 1:200
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DWG NO. DA-EXX-021
ISSUE B

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Boston Blyth Fleming
Town Planners

15th August 2021

Clause 4.6 variation request – Height of buildings
Alterations and additions to the existing first floor and attic levels to accommodate bar/function and recording studio floor space and associated amenities
29 – 31 Moore Road, Freshwater

1.0 Introduction

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

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

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

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

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

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

Building height is defined as follows:

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

Ground level (existing) is defined as follows:

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

It has been determined that the raise roof element in the south-eastern corner of the building will have a maximum height above ground level existing, measured at its ridgeline, of between 9.8 metres at its southern end and 10.7 metres at its northern end. This represents a non-compliance of between 2.2 metres (25%) and 1.3 metres (15%). The building height breaching elements are depicted in Figures 1, 2, 3 and 4 below and over page.

We note that the existing ridgeline in this location has been increased by 950mm to accommodate the lift shaft and associated overrun providing disabled access to the attic level of the development.

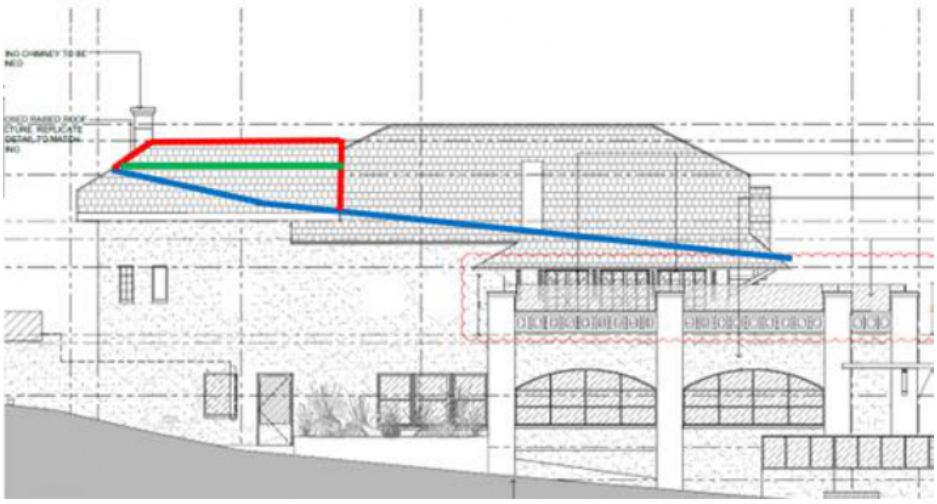


Figure 1 – Plan extract eastern elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge height in this location.

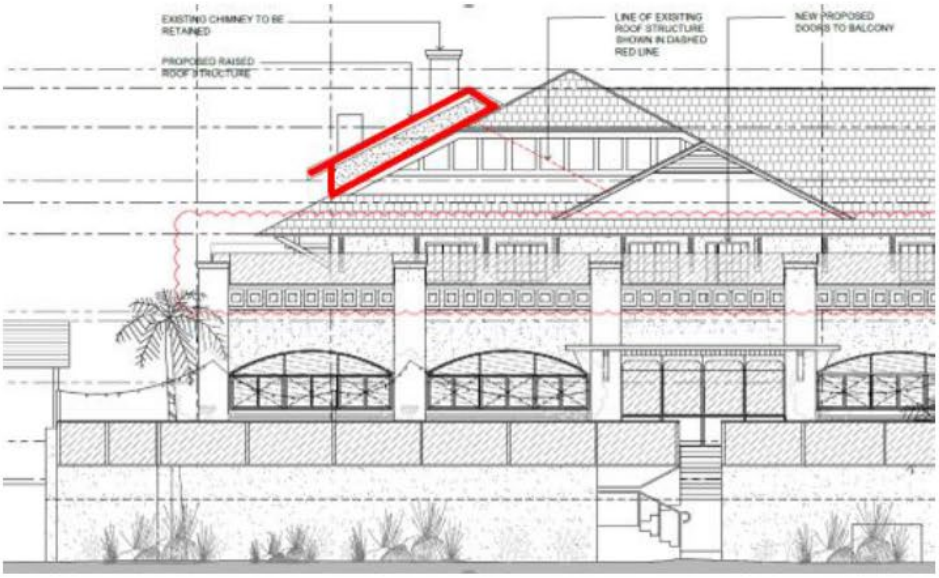


Figure 2 – Plan extract northern elevation showing the height non-compliance based on ground level (existing). The red line shows the extent of proposed new works located above the height standard as viewed form this elevation.



Figure 3 – Plan extract southern elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge line in this location.



Figure 4 – Plan extract western elevation showing the height non-compliance based on ground level (existing). The blue line shows the 8.5 metre height standard, the red line the extent of proposed new works located above the height standard and the green line the existing building ridge line in this location.

We note that the areas of non-compliance are limited to the relatively small portion of roof form with the non-compliant building elements continuing to sit well below the height established by the balance of the building roof form.

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:

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

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

Clause 4.6(3) of WLEP provides:

> *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:

> *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 Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]).

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

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

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

Clause 4.6(5) of 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 WLEP and the objectives for development for in the zone?

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

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

4.0 Request for variation

4.1 Is clause 4.3 of WLEP a development standard?

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

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

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

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

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

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

Consistency with objectives of the height of buildings standard

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

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

Comment: The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

> 22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

The question is whether the building height breaching elements contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development. That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

In terms of the established built form circumstance on the subject property we note that the existing hotel building presents as a two story building with variable pitched roof form sitting above the level of Moore Road. The property as viewed in the round is depicted in Figures 5 and 6 below and over page.



Figure 5 – Subject property as viewed from Moore Road



Figure 6 – Subject property as viewed from Undercliff Road

Immediately surrounding development is residential in nature comprising a mixture of detached dwelling houses interspersed by dual occupancy and residential flat development. Freshwater Local Centre and Freshwater beach are located within short walking distance of the site.



Figure 7 – Photograph depicting residential development located on the high side of Undercliff Road to the south of the subject site



Figure 8 – Photograph depicting residential development located on the western side of Charles Street to the west of the subject site



Figure 9 – Photograph depicting development located on the southern side of Moore Road to the east of the subject site

I note that the relatively minor increase in building height in the south-eastern corner of the building is not result in any significant increase in actual or perceived height, bulk or scale as depicted in the 3D render comparison at Figure 10 below and the 3D render at Figure 11 over page.



Figure 10 – Comparison images showing the increased roof level in the south-eastern corner of the existing hotel premises and relatively minor additional height and scale



Figure 11 – 3D render demonstrating that the south-eastern roof addition will not be readily discernible as viewed from Moore Road

These images demonstrate that notwithstanding the building height breaching elements that the overall height and scale the hotel building as viewed from the surrounding public and private domains is not significantly altered to the extent that it would be perceived as inappropriate or jarring in a streetscape and urban design context.

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 height and scale of the roof additions, notwithstanding the building height breaching elements, offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably be concluded that, notwithstanding the building height breaching elements, the development is capable of existing together in harmony with surrounding and nearby development.

Notwithstanding the building height breaching elements, the resultant development is compatible with the height and scale of surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: In relation to visual impact, I rely on the analysis detailed in response to objective (a) to confirm that the building height breaching roof form elements will not give rise to any unacceptable visual impact.

Visual impacts have been minimised through the adoption of a characteristically pitched roof form which has been designed in consultation with the project heritage consultant to ensure that it provides for a complimentary and compatible built form outcome having regard to the heritage significance of the existing building.

In relation to the disruption of views, having inspected the site and its surrounds to identify potential view corridors across the site, and noting that the building height breaching roof elements proposed sit below the ridge height established by the primary north-south running ridgeline associated with the existing hotel premises, I have formed the opinion that the non-compliant building height elements proposed will not give rise to unacceptable view impact.

In relation to the minimisation of privacy loss, I note that the non-compliant building height elements will not give rise to any adverse privacy impacts.

In relation to solar access, the shadow diagrams at Attachment 1 demonstrate that shadows from the building height breaching roof elements fall predominantly within the subject site throughout the day with no unacceptable non-compliant shadowing impacts arising from the building height non-compliant elements proposed. Solar access impacts have been minimised.

In this regard, I have formed the opinion that the design of the development has minimised visual impacts, disruption of views, loss of privacy and loss of solar access and accordingly this objective is achieved notwithstanding the building height breaching elements.

(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 any coastal or bushland environments.

In any event, notwithstanding the height building breaching elements, the height, bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the form of development located within the same visual catchment, with the building height breaching elements not giving rise to adverse impact on the scenic quality of Warringah's coastal and bush environments. This objective is achieved notwithstanding the building height breaching elements proposed.

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

Comment: To the extent that the non-compliant building height elements are visible from public places for the reasons previously outlined I am satisfied that the height, bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the height bulk and scale of surrounding development in the relatively minor nature of the building height breaching elements proposed which take the form of a complimentary and compatible pitched roof form.

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 elements proposed, offensive, jarring or unsympathetic in a streetscape context. The building height breaching elements will not give rise to unacceptable visual impacts when viewed from any public places.

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

Consistency with zone objectives

The subject property is zoned R2 Low Density Residential pursuant to WLEP 2011. The developments consistency with the stated objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: This objective is not relevant.

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

Response: The building height variation will facilitate the provision of disabled lift access to the ancillary recording space for local artists located within the existing pitched roof form. This ancillary recording space will be available for use by local residents and to that extent approval of the building height variation will facilitate the attainment of this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Response: the application does not propose any change the established landscape regime and accordingly this objective is satisfied.

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

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

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

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

> *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.*
>
> *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 fact that the variation facilitates disabled lift access to the existing attic level of the heritage listed building being the most appropriate location for a lift structure given the heritage significance of the building and its associated fabric.

Whilst the extent of non-compliance could be removed through the introduction of a flat roof form, the complementary and compatible pitched roof form responds appropriately to the heritage listing of the subject property.

I consider the proposal to be of a skilful design which responds appropriately and effectively to the heritage constraints of the site. 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 proposal promotes the sustainable management of built and cultural heritage by facilitating disabled lift access to the existing attic level floor space within a characteristically pitched roof form (1.3(f)).
- The development represents good contextually appropriate heritage sensitive 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.

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density 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 is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

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

4.5 Secretary's concurrence

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

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

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

5.0 Conclusion

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

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

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

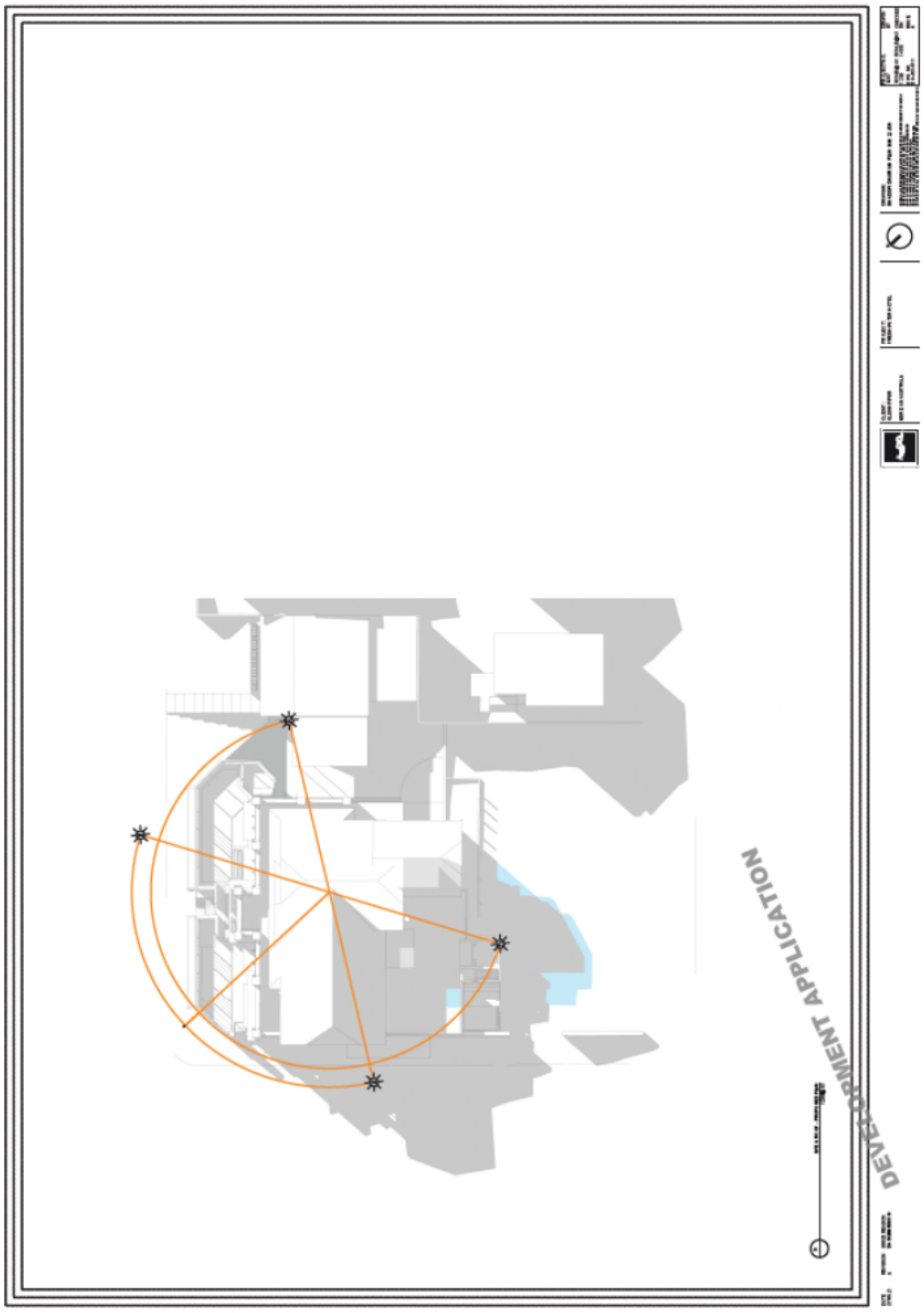
As such, I have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

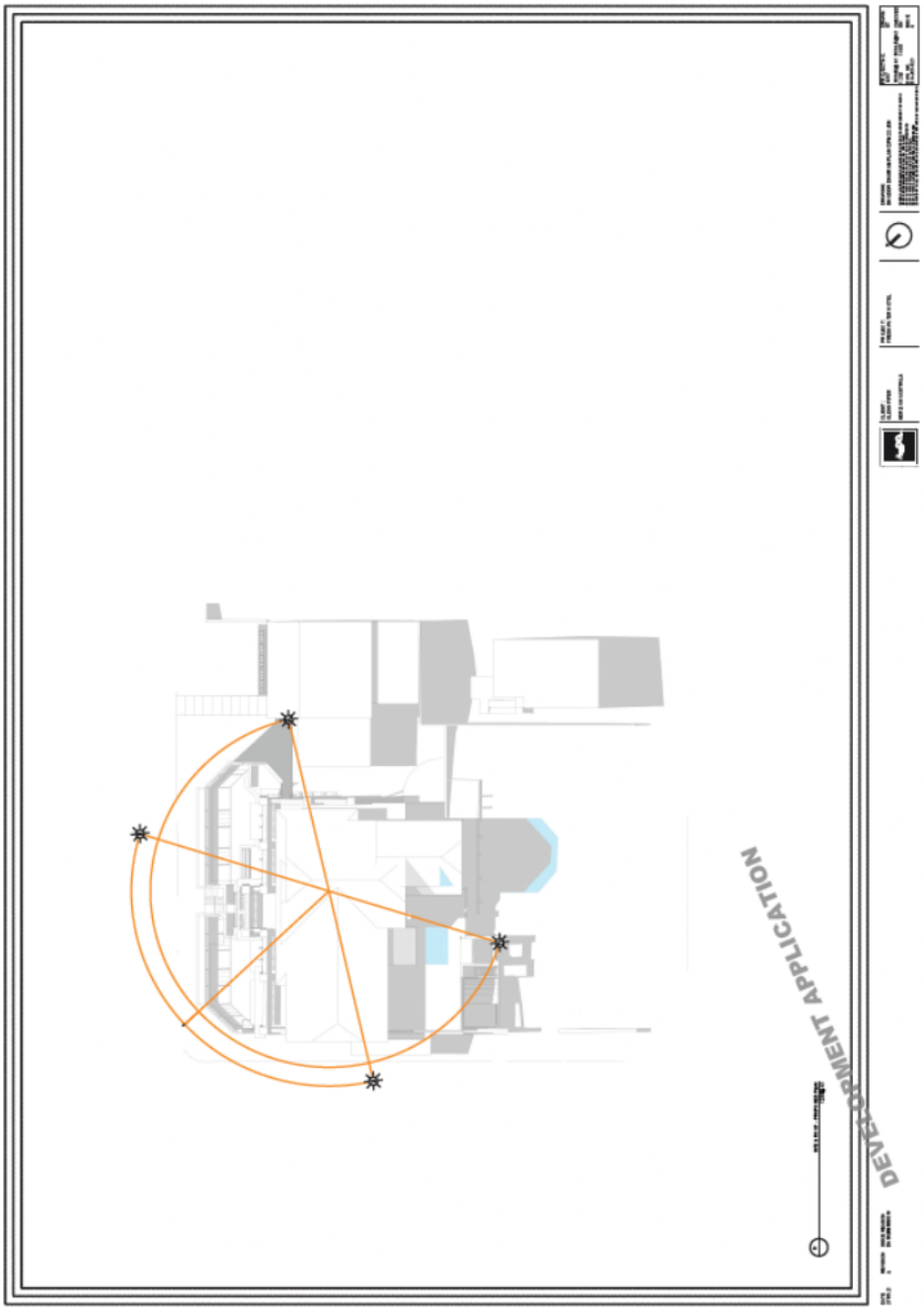
Boston Blyth Fleming Pty Limited

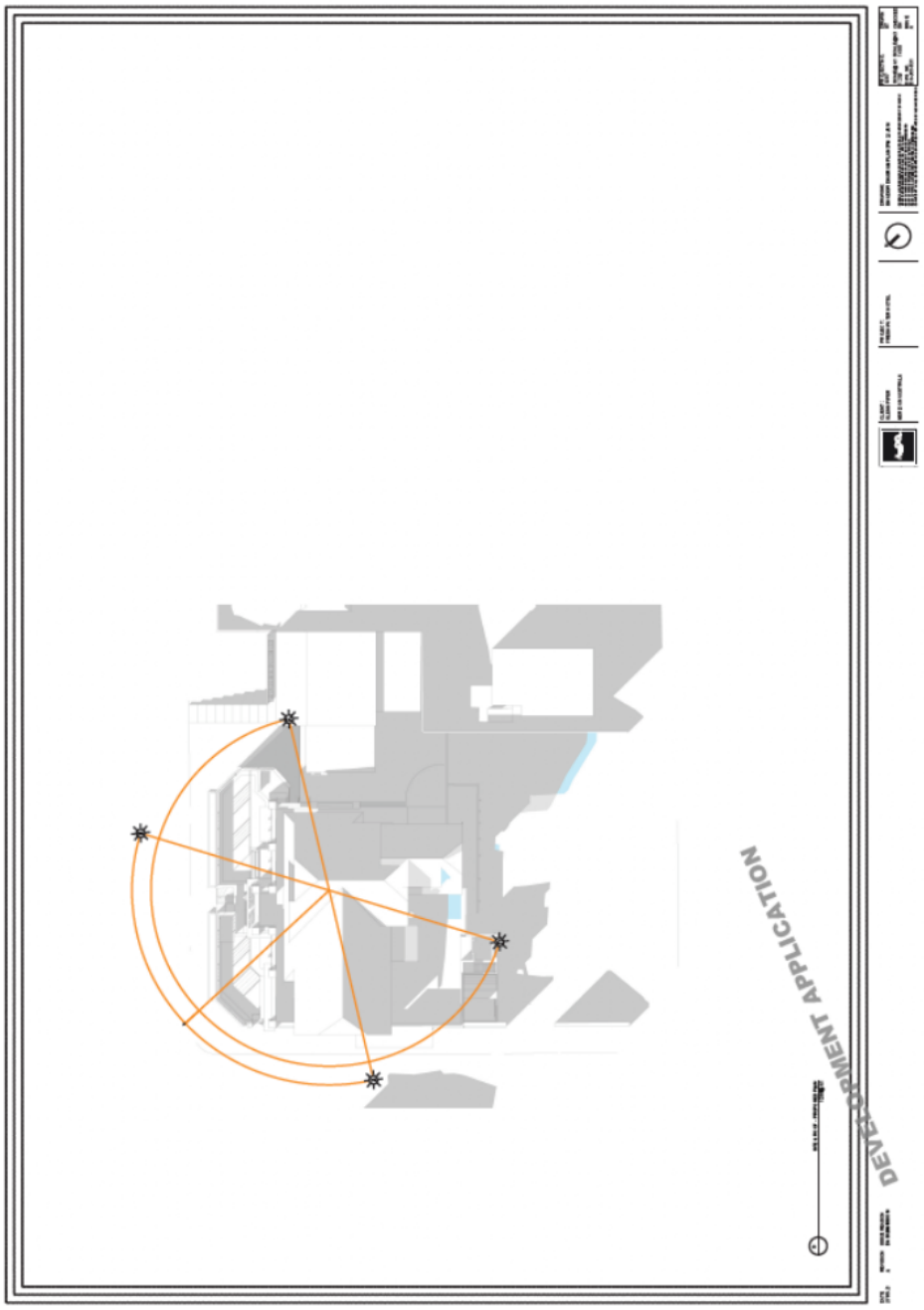


Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1 Shadow diagrams


DEVELOPMENT APPLICATION


DEVELOPMENT APPLICATION


DEVELOPMENT APPLICATION

ITEM 4.2	**DA2020/1756 - 351-353 BARRENJOEY ROAD, NEWPORT - DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT (SHOP TOP HOUSING)**
AUTHORISING MANAGER	**Tony Collier**
TRIM FILE REF	**2021/815755**
ATTACHMENTS	**1 Assessment Report** **2 Site Plan & Elevations** **3 Design & Sustainability Advisory Panel Report** **4 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 PLEP 2014 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. DA2020/1756 for demolition works and construction of a mixed use development (Shop Top Housing) at Lot 65 Sec 5 DP 6248 & Lot 64 DP 1090224 & Lot 66 Sec 5 DP 6248, 351-353 Barrenjoey Road, Newport subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1756

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 66 DP 6248, 353 Barrenjoey Road NEWPORT NSW 2106 Lot 65 DP 6248, 351 Barrenjoey Road NEWPORT NSW 2106 Lot 64 DP 1090224, 351 Barrenjoey Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a mixed use development (Shop Top Housing)
Zoning:	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:	RT Investments (NSW) Pty Ltd
Applicant:	Crawford Architects Pty Ltd

Application Lodged:	28/01/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	06/08/2021 to 20/08/2021
Advertised:	06/08/2021
Submissions Received:	262
Clause 4.6 Variation:	4.3 Height of buildings: 13.9% - 37.6%
Recommendation:	Approval

Estimated Cost of Works:	$ 7,055,446.00

EXECUTIVE SUMMARY

The application seeks consent for a shop-top housing development comprising a three (3) storey building above basement parking. The development accommodates 13 Residential units and ground floor commercial/retail tenancies.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposal has received 262 submissions across two (2) separate notification periods. The application

Also seeks a departure from the Height of Buildings development standard of more than 10% pursuant toClause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP).

The key issues that have been raised by the community during the two (2) public exhibition periods is the proposed vehicular access off Robertson Road and the proposed development's contextual fit and contribution to the Newport Commercial Village which includes both the northern andsouthern sides of Robertson Road. The community have raised issue with vehicular access to the site off Robertson Road which, if constructed may inhibit any future opportunity to pedestrianise RobertsonRoad which is currently a one-way street giving access to the subject land and adjoining land to the north-west.

Council has considered the application against the requirements of the Newport Masterplan and Pittwater 21 Development Control Plan (DCP) with regards to the designated vehicular access within the Newport Commercial Village. The development is consistent with the Masterplanand the DCP, which show a vehicular access point to the subject site from Robertson Road. It is also important to note that the Newport Master Plan identifies that Robertson Road is to be maintained as a one-way street. The Masterplan does not envisage the full closure of Robertson Road to vehicles. The proposal is also consistent with the required pattern of site amalgamation identified within the Newport Masterplan and DCP.

Notwithstanding the proposals consistency with the masterplan and the DCP, the applicant has incorporated design measures to facilitate a potential future scenario whereby vehicular access to the site could be achieved through the adjoining land at No. 31 Foamcrest Avenue (to the north-west currently owned by Australia Post) via a basement breakthrough and the subsequent closure of the access driveway off Robertson Road. This would be contingent on development occurring at No. 31 Foamcrest Avenue. As no development upon No. 31 Foamcrest Avenue is imminent, this option is considered a long term solution to minimising vehicles along Robertson Road, if Council in the future amended the Masterplan or required the full closure of Robertson Road.

The breach to the building height is considered against the requirements of the PLEP later in this report. In summary, the applicant's written request is considered to be well founded and the proposed non-compliance is supported in this regard. The development is considered to be consistent with the key Design Criteria under the Apartment Design Guide (ADG) with regard to residential amenity whereby the proposed building design has optimised solar access despite the south facing corner orientation.

The application has been considered on two separate occasions by the Design and Sustainability Advisory Panel (DSAP) and each time the applicant has amended the plans in accordance with the recommendations given by the DSAP in order to provide a satisfactory building design with regards to internal amenity and the streetscape context within the Newport Commercial Village.

Each of the initial concerns raised by Council during the assessment of the application have been addressed by way of amended plans and additional information, and the applicant has provided an appropriate response to address the community concerns regarding vehicular impact on Robertson Road (whilst maintaining the reasonable development rights of the land in accordance with the DCP) therefore, the application is recommended for approval to the NBLPP subject to the conditions outlined at the end of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for demolition of the existing structures on the land and construction of a three (3) storey shop top housing development containing 8 retail shops and 13 Residential units. The proposal comprises the following:

- Demolition of existing buildings and removal of two trees.

Basement Level

- Parking for 16 residential vehicles (with provision for 2 additional spaces).
- Parking for 9 retail vehicles.
- Parking for 1 visitor vehicle.
- Loading zone/washing zone (combined).
- Bicycle parking.
- 1 Accessible Bathroom, 2 x Standard WC.
- Solar Battery Storage room.
- AC Plant Equipment.
- Residential Storage.

.
Ground Level

- Vehicular Access off Robertson Road to the basement.
- Eight (8) retail shops ranging from 41sqm - 151sqm.
- Two (2) residential entrance lobbies accessed off Robertson Road.
- Commercial waste storage room and residential waste storage room.
- Residential bulky goods storage.
- Accessible WC.

Level 1

- Eight (8) residential units, of which 1 x 3 bedroom, ~~5~~ 6 x 2 bedroom and ~~2~~ 1 x 1 bedroom. One (1) unit being an accessible unit.
- Each unit has access to a balcony or outdoor terrace area.

Level 2

- Five (5) residential units, of which 4 x 2 bedroom units and 1 x 1 bedroom unit. Two (2) being accessible units.
- Each unit has access to a balcony or outdoor terrace area.
- Communal open space area.

Roof

- Skylight, lift overrun, kitchen exhaust, carpark exhaust, landscape roof and solar panels.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - Nominated Integrated Development – WaterNSW - Water Management Act 2000 (s91 Permit for Temporary Construction Dewatering)
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.3 Flood planning
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D10.9 Setbacks (Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.19 Subdivision and Amalgamation (Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.22 Arcades (Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.24 Building Depth and Separation (Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.28 Open Space (Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	Lot 66 DP 6248, 353 Barrenjoey Road NEWPORT NSW 2106 Lot 65 DP 6248, 351 Barrenjoey Road NEWPORT NSW 2106 Lot 64 DP 1090224, 351 Barrenjoey Road NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of three (3) allotments located on the north-eastern corner of Barrenjoey Road and Robertson Road. The lot known as No. 351 Barrenjoey Road as is legally described as Lot 64 in DP 1090224 and Lot 65, Sec 5 in DP 6248. The lot known as No. 353 Barrenjoey Road is legally described as Lot 66, Sec 5 in DP 6248.

	The site is irregular in shape with a frontage of 26.4m along Barrenjoey Road and a depth of 46m along Robertson Road. The site has a surveyed area of 1,313m². The site is located within the B2 Local Centre zone and accommodates an existing two and three storey brick shop top housing development (circa 1960s), with at grade car parking at the rear and a driveway access of Robertson Road to this parking. The site has a slight fall from west to east, sloping down towards Barrenjoey Road. The site has a crossfall of 1.6m to the east. The site includes one (1) tree of approximately 5m in height located in the western setback of No. 353 Barrenjoey Road. There is a Lemon Scented Gum Tree straddling the property boundary and the road reserve along the Robertson Road Frontage. In the Barrenjoey Road road reserve fronting the site, there is a landscape garden containing five mature palm trees of varying heights. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mixture of older single storey retail shops, older two and three storey shop top housing and some more modern examples of three storey shop top housing developments. Immediately adjoining the site to the north-east is a single storey retail development, across the road to the south-west are single storey retail shops, to the north-west is a site owned and operated by Australia Post consisting a loading area and retail outlet within a single storey building. Also adjoining the land to the north-west is a local heritage item being St. Michael's Anglican Church, consisting a single storey church buildings. To the east (across Barrenjoey Road) are two and three storey shop top housing developments and commercial developments.

Map:



SITE HISTORY

The land has been used for residential and commercial purposes (i.e. shop top housing) for an extended period of time. A search of Council's records has revealed the following relevant history:

- Pre-lodgement Meeting **PLM2019/0111** was held on 13 June 2019 for the construction of a shop top housing development.

- Development Application **DA2019/1157** for demolition works and construction of a shop top housing development was withdrawn on 13 October 2020.

- A further Pre-lodgement meeting **PLM2020/0269** was held on 26 November 2020 for the construction of a shop top housing development. The pre-lodgement proposal was referred to the Design and Sustainability Advisory Panel (DSAP) for consideration regarding the design and sustainability of the development. The purpose of this PLM was to obtain feedback from the DSAP and no further formal pre-lodgement meeting was held with Council staff.

- The subject Development Application **DA2020/1756** was accepted by Council on 28 January 2021.

Application History

- The application was publicly notified and advertised as Nominated Integrated Development for a period of at least 30 Days from 5 February 2021 to 7 March 2021.

- The application was referred to the DSAP for further review and comment on 29 April 2021. The DSAP did not support the proposal and a list of recommendations were provided to address the issues raised in the meeting. The DSAP report of 29 April 2021 forms an attachment to this assessment report.

- Council wrote to the applicant on 27 May 2021 requesting that the comments of the DSAP be addressed and additional information be provided following on from Council's preliminary assessment and the issues raised by Councils internal referral bodies.

- Council received amended plans and documentation in response to the DSAP recommendations and additional information by Council on 22 June 2021. The additional information was subsequently re-notified and advertised on 6 August 2021 for a period of 14 days (as the statutory requirement for a 30 day advertisement of Nominated Integrated Development had already been undertaken during the initial exhibition).

- The application and amended plans were referred back to the DSAP for comment and input on 23 September 2021. The Panel noted the changes made by the applicant were improvements and provided recommendations to further resolve and refine the development.

- The applicant provided an amended set of plans and response to each of the DSAP recommendations on 2 November 2021. These are discussed in detail later within the report. In accordance with Council's adopted Community Participation Plan, the application was not required to be re-notified again due to the minor nature of these changes.

It is also noted that at the Council meeting held on 23 March 2021, Council endorsed a Mayoral Minute following significant community interest to the public exhibition of the subject DA. Council resiolved to write to land owners in the Newport Village Commercial Centre and local community grups inviting them to participate in a meeting/workship with Council representatives to discuss the realization of the vision to revitalise the Newport Village Commerical centre as documented in the Masterplan prepared by Pittwater Council (and which forms part of Pittwater 21 Development Control Plan (DCP) – including opportunities for site amalgamations.

The landowners/community meeting, facilitated by Elton Consulting, was held on 28 July 2021. The applicant's proposal to incorporate design measures to facilitate a potential future scenario whereby vehicular access to the site could be achieved through the adjoining land at No. 31 Foamcrest Avenue (to the north-west currently owned by Australia Post) via a basement breakthrough and the subsequent closure of the access driveway off Robertson Road, arose from listening to the concerns of some community members raised at the landowners/community meeting.

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 the purpose of shop top housing for an extended period of time. The proposed development retains the use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at

Section 4.15 Matters for Consideration'	Comments
	lodgement of the development application. This documentation has been submitted. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to plan amendments to address the requirements of the Design Panel, building height, engineering and stormwater issues, amended car parking design, amended geotechnical forms and report, waste storage design and water management. The applicant submitted additional information for Council to assess and this was accepted and assessed as part of the application. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This 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 Matters for Consideration'	Comments
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 on two occasions, with the most recent exhibition from 06/08/2021 to 20/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning andAssessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 262 submission/s from:

Name:	Address:
Jacquie Thomson	Address Unknown
Mr Simon Barlow	3 / 27 Ocean Avenue NEWPORT NSW 2106
Mrs Lynda Barlow	53 Bardo Road NEWPORT NSW 2106
Mrs Sandra Joan Tall	6 Myola Road NEWPORT NSW 2106
Claire Suzanne Macewan	3 Walworth Avenue NEWPORT NSW 2106
Mrs Bronwyn Joan Brooks	4 / 13 Trevor Road NEWPORT NSW 2106
David William Broadbridge	Po Box 864 MONA VALE NSW 1660
Mr Ross Ashley Curtin	12 Neptune Road NEWPORT NSW 2106
Ms Sarah May Garnett	101 Bungan Head Road NEWPORT NSW 2106
Ms Patricia Marilyn Fry	2 / 14 Queens Parade NEWPORT NSW 2106
Ms Katherine Margaret Howard Tripp	5 Elouera Road AVALON BEACH NSW 2107
Mr Anthony Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Ms Roslyn Faye Tebble	39 Grandview Parade MONA VALE NSW 2103
Rhonda Elizabeth Campbell	5 / 6 Foamcrest Avenue NEWPORT NSW 2106
Mr Justin Henderson Grunwald	16 Robertson Road NEWPORT NSW 2106
Mrs Anie Diana Spalding	1 / 108 A Irrubel Road NEWPORT NSW 2106
Mr Shane Douglas Cook	18 The Avenue NEWPORT NSW 2106
Mr Andrew Sim McFarlane	2 / 3 Seaview Avenue NEWPORT NSW 2106
Mrs Alana Hadfield	12 A Bishop Street NEWPORT NSW 2106

Name:	Address:
Mr Christopher George Fesdekjian	24 / 326 - 330 Barrenjoey Road NEWPORT NSW 2106
Ms Linda Georgia Silmalis	8 / 20 Seaview Avenue NEWPORT NSW 2106
Jessica Lee Knight	3 Mariposa Road BILGOLA PLATEAU NSW 2107
Mr James Rupert Charles Knight	13 / 1 Vuko Place WARRIEWOOD NSW 2102
Mrs Sonia Spoard	14 Seabeach Avenue MONA VALE NSW 2103
Julien Firlop	1 Wollombi Road BILGOLA PLATEAU NSW 2107
Mrs Jillian Clare King	32 Queens Parade NEWPORT NSW 2106
Petrina Nicklin	1 Stuart Street NEWPORT NSW 2106
Mr Graeme John Taylor	7 / 35 - 37 Ocean Avenue NEWPORT NSW 2106
Millie King	32 Queens Parade NEWPORT NSW 2106
Kate Ponton	40 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Bronwyn Gaye-Laney Green	15 A Crane Lodge Place PALM BEACH NSW 2108
Mrs Judith Helen Kenmore Eastman	32 Queens Parade NEWPORT NSW 2106
Mr Jeffery Conway Tinker	41 Queens Parade NEWPORT NSW 2106
Gail Margaret Broady	41 Patrick Street AVALON BEACH NSW 2107
Ms Kristen Deamer	11 / 29 Gladstone Street NEWPORT NSW 2106
Elizabeth Robertson	90 Wallumatta Road NEWPORT NSW 2106
Skye Beckett	3 Sanctuary Avenue AVALON BEACH NSW 2107
Nerolie Jan Heckendorf	22 A Nullaburra Road NEWPORT NSW 2106
Lisa Denvir	12 / 32 Ross Street NEWPORT NSW 2106
Mr Deane Tinker	41 Queens Parade NEWPORT NSW 2106
Mrs Elaine Denise Krek	3 Goodwin Road NEWPORT NSW 2106
Mrs Diana Rendell Gilder	11 Gertrude Avenue NEWPORT NSW 2106
Sandy Duffield	2/2 The Avenue NEWPORT NSW 2106
Mrs Simonne Kusturin	31 A Hillcrest Avenue MONA VALE NSW 2103
Ms Melissa Joan Turnock	12 Herbert Avenue NEWPORT NSW 2106
Mrs Kerrie Shimeld	51 Careel Head Road AVALON BEACH NSW 2107
Mrs Susan Rix	13 Daly Street BILGOLA PLATEAU NSW 2107
Mr John Edmond Koerner	6 Bungan Head Road NEWPORT NSW 2106
Mrs Elizabeth Elsie Albers	282 Barrenjoey Road NEWPORT NSW 2106
Mr Matthew David Hardy	58 Herbert Avenue NEWPORT NSW 2106
Mrs Nicole Margaret Koerner	6 Bungan Head Road NEWPORT NSW 2106
Mr Mark Stephen Tooker	30 Walworth Avenue NEWPORT NSW 2106
Ms Sonja Pettersen	27 Robertson Road NEWPORT NSW 2106
Ms Janine Gisela Moller	87 Plateau Road BILGOLA PLATEAU NSW 2107
Mrs Michaela Ann Visser	59 Park Avenue AVALON BEACH NSW 2107
Mrs Elizabeth Jane Collis	49 Chisholm Avenue AVALON BEACH NSW 2107

Name:	Address:
Macarena Astrain	64 Cheryl Crescent NEWPORT NSW 2106
Brett Baker	149 Queens Parade East NEWPORT NSW 2106
Mrs Vicky Louise King	54 Irrubel Road NEWPORT NSW 2106
Mrs Susan Lois Rogers	96 Bungan Head Road NEWPORT NSW 2106
Mrs Merren Elizabeth Bracey	80 Queens Parade East NEWPORT NSW 2106
Ms Suzanne Elizabeth Crossman	13 / 125 Darley Street West MONA VALE NSW 2103
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Frances Louisa Colley	1 Loombah Street BILGOLA PLATEAU NSW 2107
Timothy Chamberlain	31 Bellevue Avenue AVALON BEACH NSW 2107
Mrs Lucy Emma Creegan	77 Park Avenue AVALON BEACH NSW 2107
Ms Lisa Nicole Tyndall	2 Argyle Street BILGOLA PLATEAU NSW 2107
Ms Susan Wendy Logan	712 Barrenjoey Road AVALON BEACH NSW 2107
David Catchlove	77 Myola Road NEWPORT NSW 2106
Ms Catherine Yetts	13 Prince Alfred Parade NEWPORT NSW 2106
Janice Leach	36 Hillside Road NEWPORT NSW 2106
Mr Glenn Raymond Moore	30 Prince Alfred Parade NEWPORT NSW 2106
Mrs Jacqueline Mary Paton	10 Palm Road NEWPORT NSW 2106
Sonia Petereit	19 Wallumatta Road NEWPORT NSW 2106
Mrs Renee Claire Fabian Voice	63 Bungan Head Road NEWPORT NSW 2106
Mrs Tasmin Jean Holloway	83 Central Road AVALON BEACH NSW 2107
Steven John Collins	4 Wallumatta Road NEWPORT NSW 2106
Mrs Christine Jane Jephcott	23 - 27 Calvert Parade NEWPORT NSW 2106
Mr Matthew Charlton Jeans	19 Wallumatta Road NEWPORT NSW 2106
Newport Residents Association	PO Box 1180 NEWPORT BEACH NSW 2106
Mrs Karen Lorraine Alchin	49 Riverview Road AVALON BEACH NSW 2107
Mr Peter John Middleton	PO Box 1055 NEWPORT BEACH NSW 2106
Mr Michael John Bullen	9 The Avenue NEWPORT NSW 2106
Mr David John Abbott	Po Box 1166 MONA VALE NSW 1660
Gregory Ross	Address Unknown
Ms Penelope Ann Auburn	6 Stuart Street NEWPORT NSW 2106
Ms Susanne Elizabeth Corney	4 / 36 Seaview Avenue NEWPORT NSW 2106
Mrs Debra Birch	19 Myola Road NEWPORT NSW 2106
Mrs Katrina Lorraine Meek	38 A Queens Parade NEWPORT NSW 2106
Mr Kyle A Hill	55 Irrubel Road NEWPORT NSW 2106
Mrs Christina Mary Hutchinson	79 Dolphin Crescent AVALON BEACH NSW 2107
Mr David Charles Hutton	16 / 40 Foamcrest Avenue NEWPORT NSW 2106

Name:	Address:
Ms Justine Helen Lobb	PO Box 196 BYRON BAY NSW 2481
Mr Richard James Nagle	32 Grandview Parade MONA VALE NSW 2103
James Nagle	8 Bungan Head Road NEWPORT NSW 2106
Reef Nagle	8 Bungan Head Road NEWPORT NSW 2106
Mrs Janice Marie Lobb	55 / 16 Mona Vale Road MONA VALE NSW 2103
Mrs Jodi Gai Newton	14 Nooal Street NEWPORT NSW 2106
Mr Theunis Cornelius Van Den Berg	6 / 34 - 38 Foamcrest Avenue NEWPORT NSW 2106
Ms Saffron Amelia Carter	58 Irrubel Road NEWPORT NSW 2106
Ms Sasha Carrel	6 / 30 - 32 Foamcrest Avenue NEWPORT NSW 2106
Ms Karen Louise Sheehy	202 / 3 Seaview Avenue NEWPORT NSW 2106
Hamish Robert Macewan	3 Walworth Avenue NEWPORT NSW 2106
Mrs Cherie Michelle Lovett	61 Bardo Road NEWPORT NSW 2106
Mrs Glenda Hanks	21 Wallumatta Road NEWPORT NSW 2106
Mr Michael Mogens Peschardt	91 A Myola Road NEWPORT NSW 2106
Ms Sarah Kate Rose	54 Grandview Drive NEWPORT NSW 2106
Mrs Janine Lesley Weiss	28 Nullaburra Road NEWPORT NSW 2106
Mrs Deborah Ann Einspinner	1C Bungan Head Road NEWPORT NSW 2106
Phil Pettitt	Address Unknown
Mr David Alan Lye	25 Trevor Road NEWPORT NSW 2106
Tina Berkeley	54 Seaview Avenue NEWPORT NSW 2106
Mrs Jill Kemp	18 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Kristen Duross	18 Beaconsfield Street NEWPORT NSW 2106
Christine Bodart	Address Unknown
Mr David Hugh Goodman	153 Wallumatta Road NEWPORT NSW 2106
Ms Suzanne Andree Portefaix	PO Box 718 NEWPORT BEACH NSW 2106
Mr Andrew Kinnaird Collingridge	37 Seaview Avenue NEWPORT NSW 2106
Mr Glenn Wilson Lukey	PO Box 718 NEWPORT BEACH NSW 2106
Mr Dick England	1 / 39 - 41 Ocean Avenue NEWPORT NSW 2106
Mr Michael Kevin Musgrave	3 Wallumatta Road NEWPORT NSW 2106
Mr Toby Goodman	Address Unknown
Mr Andrew James Bracher	15 Lovering Place NEWPORT NSW 2106
Mrs Karen Louise Bond	18 / 337 Barrenjoey Road NEWPORT NSW 2106
Mrs Cheryl Ann Cullen	38 Prince Alfred Parade NEWPORT NSW 2106
Mr Gavin Fortescue Birch	19 Myola Road NEWPORT NSW 2106
Miss Rebecca Lee Duke	16 Bareena Road AVALON BEACH NSW 2107
Ms Sara Daisy Bell	1 Fazzolari Avenue MONA VALE NSW 2103
Ms Stella Edith Stovin-	2 / 40 Foamcrest Avenue NEWPORT NSW 2106

Name:	Address:
Bradford	
Mr Michael Gordon Heckendorf	PO Box 70 NEWPORT BEACH NSW 2106
Mrs Sarah Jane Kennedy	17 / 10 Queens Parade NEWPORT NSW 2106
Mrs Dianne Margaret Cook	22 Myola Road NEWPORT NSW 2106
Mr David Charles Holmes	15/4 Young Street NEUTRAL BAY NSW 2089
Mrs Trudi Maria Davanzo	10 Utingu Place BAYVIEW NSW 2104
Ms Marion Joan Delprado	5 Ismona Avenue NEWPORT NSW 2106
Mrs Sarah Jane Voysey	20 Ocean Avenue NEWPORT NSW 2106
Ms Suellen Therese Riegler	7 / 34 - 38 Foamcrest Avenue NEWPORT NSW 2106
Mrs Jenny Doreen Crayfourd	5 / 40 Foamcrest Avenue NEWPORT NSW 2106
Mr Brian William Jefferys	128 Queens Parade East NEWPORT NSW 2106
Mrs Kim Linda Jefferys	128 Queens Parade East NEWPORT NSW 2106
Ms Lisa Jane Clothier	9 The Avenue NEWPORT NSW 2106
Katherine Ashley	21 Irrubel Road NEWPORT NSW 2106
Mrs Wendy Dunnet	17 Calvert Parade NEWPORT NSW 2106
Mr Adam George Fitzpatrick	78 Herbert Avenue NEWPORT NSW 2106
Mrs Felicity Gai Hance	32 Irrubel Road NEWPORT NSW 2106
Ms Jennifer Catherine Rushforth Mr Ian Keith Barton Storey	1 A Nullaburra Road NEWPORT NSW 2106
Mrs Amber Corin Marsh	104 Plateau Road BILGOLA PLATEAU NSW 2107
Peta Di Palma	38 Greystoke Street WHEELER HEIGHTS NSW 2097
Patsy Clayton-Fry	2 / 14 Queens Parade NEWPORT NSW 2106
Mrs Lucy Geraldine Wright	15 Terama Street BILGOLA PLATEAU NSW 2107
Mr Roman Zwolenski	8 Calvert Parade NEWPORT NSW 2106
Ms Linda Joan Dry-Parker	88 Hilltop Road AVALON BEACH NSW 2107
Mrs Philomena Noela Zwolenski	8 Calvert Parade NEWPORT NSW 2106
Mrs Rebecca Louise Antcliff	12 Wallumatta Road NEWPORT NSW 2106
Liz Metzler	86 Irrubel Road NEWPORT NSW 2106
Imogen McDonell	3 / 16 Foamcrest Avenue NEWPORT NSW 2106
Andrew Porter	15 Georgia Lee Place CLAREVILLE NSW 2107
Ms Danina Dupain Anderson	PO Box 1120 NEWPORT BEACH NSW 2106
V King	Address Unknown
Mr Raymond Russell Brooks	4 / 13 Trevor Road NEWPORT NSW 2106
Ms Cassandra Star Mappin	4 Stanley Street NEWPORT NSW 2106
Mrs Deborah Elizabeth Denman	8 Urara Road AVALON BEACH NSW 2107
Mr Gregory James Mckean	36 Cheryl Crescent NEWPORT NSW 2106
Mrs Alicia Jacqueline Campbell	34 Kanimbla Crescent BILGOLA PLATEAU NSW 2107

Name:	Address:
Ms Alexandra Edith Annette Harman-Brown	30 Myola Road NEWPORT NSW 2106
Mr Robert John Evans	145 Prince Alfred Parade NEWPORT NSW 2106
Kenneth Preben Christensen	9 Lovering Place NEWPORT NSW 2106
Mr Paul Handscomb	44 Seaview Avenue NEWPORT NSW 2106
Mrs Nicola Elizabeth Pfennigwerth Elliott	25 Hillside Road NEWPORT NSW 2106
Prof Michael Lawrence	55 Bungan Head Road NEWPORT NSW 2106
Mr Paul Edward Marsh	3 Yachtview Avenue NEWPORT NSW 2106
Mrs Maxine Belle Hogan	47 Loombah Street BILGOLA PLATEAU NSW 2107
Ms Martha Alma Gee	PO Box 463 NEWPORT BEACH NSW 2106
Mrs Petrina Jane Flaherty	34 Hampden Road PENNANT HILLS NSW 2120
Mr Richard Kingsley Hall	1 Gertrude Avenue NEWPORT NSW 2106
Polly Browne	36 Neptune Road NEWPORT NSW 2106
Mr Beau Michael McDonell	19 Myola Road NEWPORT NSW 2106
Mr Simon Paul William Brown	2 / 118 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Ms Claudia Berry	28 Ocean Avenue NEWPORT NSW 2106
Mr Ulf Christer Palm	13 / 41 Foamcrest Avenue NEWPORT NSW 2106
Jain Beverly Parsons	53 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Mr William Kenneth Thomson	99 Queens Parade East NEWPORT NSW 2106
Cate Archibald	2 Ocean Avenue NEWPORT NSW 2106
Mr Matthew Paul Stevens	2 Howell Close NEWPORT NSW 2106
Mrs Joanne Dawn Palm	13 / 41 Foamcrest Avenue NEWPORT NSW 2106
Mr Robert Athol Baird	5 / 16 Foamcrest Avenue NEWPORT NSW 2106
Skye Heazlett	82 Prince Alfred Parade NEWPORT NSW 2106
Mrs Marita Ann Macrae	24 Catalina Crescent AVALON BEACH NSW 2107
Mr Barry Steven Ridley	20 Herbert Avenue NEWPORT NSW 2106
Ms Rose Ishbel Cullen	26 Capua Place AVALON BEACH NSW 2107
Billie Abbott	Address Unknown
Mr Kyle Arthur Hill	PO Box 35 NEWPORT BEACH NSW 2106
Mr Howard Gavin Moxham	23 / 14 Princes Street NEWPORT NSW 2106
Mr Simon Paul Rossington	16 / 23 Woolcott Street NEWPORT NSW 2106
Mr John Guthrie	11 / 67 Foamcrest Avenue NEWPORT NSW 2106
Ms Susan Louise Coleman	1 / 75 Beaconsfield Street NEWPORT NSW 2106
Mr David John Garnham	2 / 9 - 11 Kalinya Street NEWPORT NSW 2106
Ms Shelley Margret Doust	71 Myola Road NEWPORT NSW 2106
Mr Roger Timothy Johnston	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Mrs Patricia Ann Stewart	2 / 1 Seaview Avenue NEWPORT NSW 2106
Mr Roger James Pugh	2 / 41 Foamcrest Avenue NEWPORT NSW 2106
Mr Rossiter John Kerr	35 Raymond Road BILGOLA PLATEAU NSW 2107

Name:	Address:
Mr Gregory James Moore	7 Mount Pleasant Avenue MONA VALE NSW 2103
Mr Geoffrey Bernard Appleton	1 / 2 - 4 Foamcrest Avenue NEWPORT NSW 2106
Mrs Jane Elizabeth alison Hardy	58 Herbert Avenue NEWPORT NSW 2106
Mr Brian Gerard Smith	14 Irrubel Road NEWPORT NSW 2106
Ms Karen Margaret Robinson	129 Prince Alfred Parade NEWPORT NSW 2106
Dr Dominique Marguerite Beck	23 / 14 Princes Street NEWPORT NSW 2106
Ms Diana Shanks	177 Wallumatta Road NEWPORT NSW 2106
Banner Nagle	36 Grandview Drive NEWPORT NSW 2106
Ms Margaretha Hester Hoekstra	4 Hillslope Road NEWPORT NSW 2106
Mr Roy Edwin Toomey	8 / 35 - 37 Ocean Avenue NEWPORT NSW 2106
Ms Robyn Ann Davies	33 Argyle Street BILGOLA PLATEAU NSW 2107
Andrew Herriott	1 / 14 Seaview Avenue NEWPORT NSW 2106
Mrs Susan Christine Martin	19 Hudson Parade AVALON BEACH NSW 2107
Mr Kevin John Wickenden	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Fred Fokker	Address Unknown
Ms Anna Mary Schloeffel	PO Box 922 NEWPORT BEACH NSW 2106
Patricia Margaret Colquhoun	40 Bardo Road NEWPORT NSW 2106
Mrs Pia Maarit Lehtonen-Davies	5 / 11 - 13 A Oyama Avenue MANLY NSW 2095
Mrs Roxana Rose Grunwald	16 Robertson Road NEWPORT NSW 2106
Rudwin Barry Doherty	39 Nullaburra Road NEWPORT NSW 2106
Mr John Colquhoun	60 Cowan Drive COTTAGE POINT NSW 2084
Mrs Danielle Coates	Address Unknown
Mr Gregory Alfred Eccles	PO Box 714 NEWPORT BEACH NSW 2106
Mr Richard Raymond Links	81 Queens Parade East NEWPORT NSW 2106
Ms Penelope Jane Hunstead	85 Bungan Head Road NEWPORT NSW 2106
Mrs Renae Ridley	18 Herbert Avenue NEWPORT NSW 2106
Mrs Michelle Leigh Lye	25 Trevor Road NEWPORT NSW 2106
Mrs Robbie Alyshia Carter	13 Lovering Place NEWPORT NSW 2106
Mr Simon John Bodley	2 / 19 - 21 Ocean Avenue NEWPORT NSW 2106
Mr Peter Bruce Coulter	2 / 18 Foamcrest Avenue NEWPORT NSW 2106
Andrea Kisser-Quig	132 Wallumatta Road NEWPORT NSW 2106
Ms Leonie Desree Leonard	636 Barrenjoey Road AVALON BEACH NSW 2107
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mr Christopher Pearce	6 Riviera Avenue AVALON BEACH NSW 2107
Stephanie Maria Kirby	13 Mirrabooka Street BILGOLA PLATEAU NSW 2107
Ms Amanda Jane Pearce	7 / 19 - 21 Ocean Avenue NEWPORT NSW 2106

Name:	Address:
Mr Robert Bruce Charlton	6 / 26 Seaview Avenue NEWPORT NSW 2106
Mrs Susan Patricia Blunsden	14 Palm Road NEWPORT NSW 2106
Mrs Piera Erica Thomas	162 Barrenjoey Road NEWPORT NSW 2106
Paulina Barlow	24 A Nullaburra Road NEWPORT NSW 2106
Mrs Michele Cecelia Paul	79 Princes Lane NEWPORT NSW 2106
James Ricketson	316 Whale Beach Road PALM BEACH NSW 2108
Lucille Moore	30 Prince Alfred Parade NEWPORT NSW 2106
Chris Blunsden	Address Unknown
Mrs Susan Margaret Young	28 Hillcrest Avenue MONA VALE NSW 2103
Ms Miranda Maragret Korzy	80 Wandeen Road CLAREVILLE NSW 2107
Ms Christine Jeanne Josephine Ghislaine Bodart	30 Prince Alfred Parade NEWPORT NSW 2106
Mrs Lynette Therese Newman	28 Irrubel Road NEWPORT NSW 2106
Zoe Daly	95 Cheryl Crescent NEWPORT NSW 2106
Selena Anne Cameron Webber	7 Foamcrest Avenue NEWPORT NSW 2106
Mr Richard Henry Harper	37 Beaconsfield Street NEWPORT NSW 2106
Mrs Wendy Ashley	21 Irrubel Road NEWPORT NSW 2106
Mrs Kay Lynette Middleton	PO Box 1055 NEWPORT BEACH NSW 2106
Mrs Margrethe Ingemann Marsh	3 Yachtview Avenue NEWPORT NSW 2106
Mr Stuart Colquhoun	17 Wallumatta Road NEWPORT NSW 2106
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Kim Perry	Address Unknown
Ms Caitlin Rachel Capp	4 / 11 - 15 Foamcrest Avenue NEWPORT NSW 2106
Mr Robert Anthony Piper	4 Jedda Place MONA VALE NSW 2103
Ms Elizabeth Iris Catherine Hay	7 / 12 Seaview Avenue NEWPORT NSW 2106

The application was originally notified and advertised for a period of 30 days (being nominated integrated development), whereby 146 submissions were received regarding the proposed development.

As a result of Council receiving amended plans, the proposal was renotified and advertised for a period of 14 days (the renotification being 14 days, as the 30 statutory requirement for nominated integrated development had already been carried out). The second round of notification resulted in an additional 116 submissions, making a total of 262 submissions regarding the proposed development.

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

- ***Non-compliance with building height resulting in bulk and scale out of character for the***

locality.
- ***Non-compliance with upper floor side setback and rear setback, resulting in overdevelopment of the site.***
- ***Overshadowing of the southern side of Robertson Road.***
- ***The proposed vehicular access point off Robertson Road will mean that pedestrianisation of Robertson Road cannot occur in the future and inhibits closing of Robertson Road for street events, as well as potential permanent closure of Robertson Road to create a pedestrian village hub. The driveway should also be moved closer to Barrenjoey Road as to not inhibit this.***
- ***The development is not in keeping with the Newport village feel and character and does not do activate Robertson Road in a satisfactory way.***
- ***The development is too dense, resulting in increased vehicle movements on Robertson Road.***
- ***Removal of a significant lemon scented gum tree on Robertson Road.***
- ***The development of sites in the vicinity of Robertson Road should include a consolidated approach and include more/all parcels of land fronting Robertson Road, including both sides of Robertson Road. A coordinated approach to development of both sides of Robertson Road should be taken by Council.***

The matters raised within the submissions are addressed as follows:

- ***Non-compliance with building height resulting in bulk and scale out of character for the locality.***

  Comment
  An assessment of building height is considered in detail under Clause 4.6 of the PLEP later within this report.

  In summary, the proposed development has been amended to reduce the amount of building encroaching into the portion of the site that has a 8.5m height limit, allowing the two storey character at the western corner of the site to be achieved.

  As considered under the assessment of Clause 4.6, the remaining areas of non-compliant building are located centrally within the site, resulting in a two storey building appearance being maintained at the western corner and retain the solar access outcomes for the southern side of Robertson Road, as envisaged by the masterplan. The bulk and scale of the development when viewed from the street is less than that of the existing building onsite.

  Overall, the proposal is found to be satisfactory as detailed within the assessment under Clause 4.6 of the PLEP and this issue does not warrant the refusal of the application.

- ***Non-compliance with upper floor side setback and rear setback, resulting in overdevelopment of the site.***

  Comment
  An assessment against the DCP with regards to side setbacks is undertaken later in this assessment report.

  In summary, the north-western boundary (facing No. 31 Foamcrest Avenue) is treated as a side setback given the corner position of the site, with the proposed development being compliant with the required 3m second level setback at the north-western boundary. The non-compliance to the north-eastern second level upper floor setback is considered in detail later in this

assessment report.

Overall, the proposed setbacks are satisfactory with regard to achieving the character of the B2 Local Centre zone and providing an optimal building orientation for solar amenity and building separation in accordance with the Apartment Design Guideline (ADG).

This issue does not warrant the refusal of the application.

- ***Overshadowing of the southern side of Robertson Road.***

  Comment
  The prescribed building height under Clause 4.3 of the PLEP compliments the intended outcome to achieve a high level of solar access to the southern side of Robertson Road and the future pedestrian plaza to be provided in the reddevelopment of properties on the southern side of Robertson Road.

  As detailed later (in the Clause 4.6 assessment regarding building height), the satisfactory solar outcome to the southern side of Robertson Road is achieved notwithstanding the numerical non-compliance with the control. This is due to the substantial setback to the non-complaint portion of the building which does not have a direct impact upon overshadowing. Furthermore, the applicant has provided an additional street setback for Level 1 adjoining Robertson Road in this portion of the site, to further improve solar access outcomes for Robertson Road.

  Overall, the proposal is found to be satisfactory with regards to the solar access outcomes for Robertson Road and this issue does not warrant the refusal of the application.

- ***The proposed vehicular access point off Robertson Road will mean that pedestrianisation of Robertson Road cannot occur in the future and inhibits closing of Robertson Road for street events, as well as potential permanent closure of Robertson Road to create a pedestrian village hub. The driveway should also be moved closer to Barrenjoey Road as to not inhibit this.***

  Comment
  In response to the above concern regarding permanent closure and pedestriansation of Robertson Road, the Newport Masterplan does not make any reference to permanently closing off Robertson Road to vehicles and pedestrianising Robertson Road. Rather, the Masterplan makes reference to Robertson Road being retained as a one-way street. This is further supported by Figure 4.4 of the Masterplan which shows a vehicular access point to the site from Robertson Road. The Newport Masterplan recognises that development adjoining Robertson Road will have a role in activating the street and providing a 'pedestrian friendly' environment, with temporary closure for events.

  It has been raised by the community that the proposal will restrict the closing off of Robertson Road for future street events due to the volume of traffic generated by the proposal. However, given the proposal is consistent with the required pattern of site amalgamation and the vehicular access point, as guided by the Masterplan, the proposal can be supported in the current configuration and refusal of the application for this reason would be unwarranted. The short term closure for the purpose of street events could continue to be undertaken with the appropriate notification to businesses and residents and this may still occur as a result of the proposed development.

  In recognition of the issue raised by the community and the desire by the community to have an outcome whereby Robertson Road could be closed off to vehicles in the future (for both events

and permanently if that is what the Council decides to do at a future date), the applicant has put forward some measures to address this should the land at No. 31 Foamcrest Avenue (which is currently owned and operated by Australia Post) be developed in the future. The measures which are proposed and shown on the plan include:

- Designing the basement to allow 'punch through' connections to No. 31 Foamcrest Avenue and No. 355 Barrenjoey Road. Noting, that any future development of 355 Barrejoey Road must obtain vehicular access from either 351-353 Barrenjoey Road or 359-356 Barrenjoey Road.
- Allowing the driveway to be removed and access gained through No. 31 Foamcrest Avenue to the basement carpark of the proposed development, at a time No. 31 Foamcrest Avenue is developed;
- Designing the crest of the driveway to be removable so the access to the site from Robertson Road could be removed;
- Providing details of the floor plan and elevation of how the former driveway off Robertson Road could be made into a retail space, following the above occurring.

Whilst the above scenario is contingent upon the development of No. 31 Foamcrest Avenue, Council is satisfied that sufficient measures have been established to allow this to occur as a medium to long term solution in achieving the community's desired outcome for pedestrianising Robertson Road and removing vehicular access from Robertson Road.

Furthermore, in addition to structural solutions that are proposed to be built into the development to allow this to occur, Council has also recommended a consent condition for a positive covenant and a restriction under *Section 88E of the Conveyancing Act* that imposes and obligation upon the owner of the land to obtain the necessary consents and carry out all necessary ancillary work at its own cost to provide practical and appropriate vehicular access by registered instrument for the development site and adjoining development site at 355 Barrenjoey Road to and from Foamcrest Avenue. The covenant shall state that when such access becomes available to and from Foamcrest Avenue the subject site access from Robertson Road is to be made inaccessible by Vehicles.

Therefore, the proposed development can be supported given consistency with the Masterplan and the solutions put forward by the applicant for a future solution, at a time when the adjoining land is developed at 31 Foamcrest Avenue. At present allowing a driveway off Robertson Road is within the reasonable development rights of the land and consistent with the Newport Masterplan, with the ability to still conduct temporary closures for community events.

The proposed driveway location has been considered with regards to the proximity to Barrenjoey Road. Whilst it has been raised that the driveway should be closer to Barrenjoey Road to make it easier to close off for events, Council's traffic engineer is satisfied with the location of the driveway to prevent cueing onto Barrenjoey Road. See Council's traffic engineer's comments later in this report.

This issue does not warrant the refusal of the application.

- ***The development is not in keeping with the Newport village feel and character and does not do activate Robertson Road in a satisfactory way.***

Comment
The issue regarding activation of Robertson Road is addressed above. The proposed development provides three retail/commercial tenancies fronting Robertson Road which are capable of a variety of uses, including restaurants and cafes which will serve to activate the street.

This issue does not warrant the refusal of the application.

- ***The development is too dense, resulting in increased vehicle movements on Robertson Road.***

  Comment
  The proposed development is a reasonable density considering the required building separation under the ADG, the height limits under the PLEP and the DCP setbacks applying to the land.

  The non-compliances with the DCP are supported given any additional floor area gained has been off-set with more than compliant DCP setbacks to the north-eastern boundary in order to achieve a high level of solar access for the proposal and separation to the northern-eastern site.

  Council's Transport Department have reviewed the proposal with regards to traffic generation and consider it satisfactory with regards to the impact upon Robertson Road in the context of the Masterplan nominating a vehicular access point to the site form Robertson Road.

  This issue does not warrant the refusal of the application.

- ***Removal of a significant Lemon Scented Gum tree on Robertson Road.***

  Comment
  The proposal requires the removal of one (1) significant gum tree which straddles the site boundary and Robertson Road.

  The application is accompanied by an Arborist Report and Council's Landscape Department are satisfied that removal of this tree is reasonable in the circumstances of the case. New street tree planting is proposed to compliment the existing street tree planting in the vicinity of the site. It is also noted that the Newport Masterplan does not show the retention of this tree in the landscape concept for Roberston Road.

  This issue does not warrant the refusal of the application.

- ***The development of sites in the vicinity of Robertson Road should include a consolidated approach and include more/all parcels of land fronting Robertson Road, including both sides of Robertson Road. A coordinated approach to development of both sides of Robertson Road should be taken by Council.***

  Comment
  Council has engaged with adjoining land owners in the vicinity of Robertson Road through the assessment process to ascertain if a coordinated approach could be undertaken. At this time however, not all property owners in the vicinity of Robertson Road are in a position to develop imminently alongside the subject site.

  The required amalgamation pattern of the Newport Commercial Centre is setout in the DCP and the proposed development is consistent with that requirement, combining No. 351 and No. 353 Barrenjoey Road. Council cannot force development of the adjoining privately owned land, including land across the road. The north-western property at No. 31 Foamcrest Avenue (Australia Post site) has also indicated there is no current plans for development of this site and therefore, the proposed of No. 351 - 353 Barrenjoey Road with vehicular access from Robertson Road is reasonable, in accordance with the Masterplan and allows the development rights of the subject land. The future solution whereby access would be gained through No. 31 Foamcrest Avenue is achievable subject to development of No. 31 Foamcrest Avenue in the future.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	The application was initially referred to the Design Sustainability Advisory Panel (DSAP) on 29 April 2021. As a result of the Panel

Internal Referral Body	Comments
	review, there were a total of 27 recommendations made with regards to sustainability and urban design of the proposal. The fundamental recommendations raised were as follows: - Rearrange access to units by providing multiple lift cores in lieu of access off balconies. - Explore in conjunction with Council a reduction in off-street parking requirements (by reduction in the extent or depth of the basement). - Resolve access to waste storage areas for retail and commercial. - Deletion of unit 14 which is in breach of the 8.5m height limit at the south-western portion of the site. The purpose of the 8.5m height limit tro provide solar access to the café strip and future public plaza on the southern side of Robertston Road. - Reconfiguration of units 12 and 13 to achieve compliant solar access and reduce unit depth. - Assess compliance with egress requirements. - Natural lighting to the lobbies. - Reconsider size and location of common areas on second level. - Resolve privacy for level 1 units Private Open Space. - Inclusion of sustainability measures such as rainwater, onsite renewable energy generation, EV charging, natural lighting through skylights top level. The applicant subsequently undertook redesign of the proposal and provided a response to each of the items raised by the DSAP. Of note, the applicant included a second lift core within the development which resolved privacy and solar access, a unit was deleted to remove a significant portion of building which breached the 8.5m height limit and replaced this area with a more substantial communal open space, removal of one basement level of parking with the agreement of Council, resolve access and implement sustainability measures where required. The DSAP report containing these recommendations are attached to this report. Following the receipt of amended plans, the proposal was referred back to the DSAP on 23 September 2021 to consider the proposal in light of the changes. The DSAP recognised and commended the changes made by the applicant in response to the first meeting. The DSAP made comment on the issues raised by the community with regards to vehicular access and parking off Robertson Road, noting the vehicular access point is in accordance with the Newport Masterplan and the applicant has provided opportunity for basement breakthroughs and potential removal of the driveway off Robertson Road in the future, with the panel raising no issue to this aspect of the proposal. The Panel still considered that some of the internal planning and amenity of the units remained unresolved and further recommendations with regards to the internal planning and amenity of

Internal Referral Body	Comments
	the units were made. A copy of the DSAP report is provided as an attachment to this report. In response to the internal planning and amenity, the applicant provided further amended plans which responded and incorporated each of the recommendations of the Panel as directed by sketches provided by the Panel. This included rearranging the internal planning for Units 5, 6, 8, 12 and 13, as directed by the sketches provided by the DSAP. This change included a raised roof form over bedroom 6, which resulted in a minor encroachment to the 8.5m height limit and this is addressed under the Clause 4.6 assessment later within this assessment report and found to be inconsequential. The remainder of the changes were adopted by the applicant, with the exception of the replacement of the glass balustrade to the southern edge of communal open space. The applicant has advised this will add further bulk and scale to the proposal, with glass a better solution. Council agree removal of the glass balustrade in lieu of concrete or solid balustrade would add further height and scale to the proposal and therefore the applicants position of not adopting this change is supported. Overall, the applicant has adopted the second round of recommendations by the DSAP to improve the internal planning and amenity of the proposal, along with further refinement of the Robertson Road façade by additional planters and refinement of the shop front window treatment. The proposal was not required to be referred back a third time, due to the minor nature of these changes and the applicant providing a satisfactory response to resolve each of the outstanding matters raised by the DSAP.
Building Assessment - Fire and Disability upgrades	**Supported subject to conditions** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.
Environmental Health (Acid Sulphate)	**Supported subject to conditions** Environmental Health has been requested to consider this proposal for "Demolition works and construction of a mixed use development (Shop Top Housing)" in relation to the potential presence of acid sulphate soils. The Acid Sulfate Soils Risk Map (Pittwater Local Environmental Plan

Internal Referral Body	Comments
	2014) indicates that the site is within land mapped as Class 3 and Class 4 acid sulphate soils which are represented as follows: <u>Class 3</u> Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface. <u>Class 4</u> Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. The plans supplied with the proposal indicate the requirement for significant excavation of soil and rock beyond the levels described above, to enable the construction of two basement levels. A report (Preliminary Geotechnical Assessment ref 5622-G1 Rev 1 dated 11 December 2020 by assetgeoenviro) supplied with the proposal documentation states that certain Geomorphic Criteria are met for the subject site, indicating that acid sulphate soils are likely to be present. These criteria are described as: - Sediments of recent geological age (Holocene). - Marine or estuarine sediments and tidal lakes. - In coastal wetlands or back swamp areas; waterlogged or scalded areas; interdunal swales or coastal sand dunes (if deep excavation or drainage is proposed). The report further recommends "Further sampling and testing are recommended to verify presence of potential and/or actual acid sulfate soils". Accordingly, the proposal is supported, subject to appropriate conditions being imposed on the development. **Recommendation** APPROVAL - subject to conditions.
Environmental Health (Industrial)	**Supported subject to conditions** Environmental Health has been requested to consider this proposal for "Demolition works and construction of a mixed use development (Shop Top Housing)". Of major concern with developments such as the one proposed, is the generation of noise and how it may affect the amenity of both external and internal receivers.

Internal Referral Body	Comments
	A report (Acoustical Report - DA Stage dated 20 January 2021 by Koikas Acoustics) has been supplied with the proposal documentation. It is standard practice in such reports to undertake unattended noise monitoring surveys to establish levels of ambient noise. It is noted that section "3.0 AMBIENT NOSIE SURVEY" of the above report references unattended noise monitoring surveys which were conducted from Friday 29th July to Thursday 4th August 2011 for seven consecutive days. Environmental Health has previously recommended refusal of this application based on the above information. The applicant has now acknowledged that further noise monitoring needs to be conducted. As the nearest residential receiver appears to be located some distance away, it is considered appropriate to condition the development to require a new Acoustic Report prior to works being conducted. The Acoustic Report is to be submitted to Councils Environmental Health Department for review and approval before the commencement of works. **Recommendation** APPROVAL - Subject to condition.
Landscape Officer	**Supported subject to conditions** The application is for the demolition of the existing buildings and structures, excavation for basement parking and theconstruction of a shop-top housing development. The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65), and associated Apartment Design Guide (ADG), and Pittwater Local Environmental Plan (PLEP) and Pittwater Development Control Plan (DCP), including but not limited to the following clauses: - Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity ..... well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable

Internal Referral Body	Comments
	access, respect for neighbours' amenity ..." - ADG: Part 3E Deep Soil Zones. - PDCP: clause C1.1 and C2.1 Landscaping and clause C2.20 Public Road Reserve - Landscaping and Infrastructure, and Newport Commercial Centre controls D10.17 Character of the Public Domain. The DCP clause D10.17 requires that development with frontages within the Commercial Centres shall include the design and construction of works in the public domain including the footpath zone, footpath paving finish, kerb and gutter, drainage facilities, street furniture, street lighting and landscaping and making good the adjacent road formation and pavement for the full width of the development site on all public road reserve frontages at the full cost to the developer. The landscape component of the proposal is acceptable subject to the protection of existing trees within the Barrenjoey Road road reserve footpath, and the completion of landscape works as proposed and the completion of public domain works upon the road reserve footpath including paving and street tree planting.
NECC (Development Engineering)	**Supported subject to conditions** The proposal involves excavation for two levels of basement. Certified Forms 1 & 1A are required to be submitted with the geotechnical report in accordance with Geotechnical Risk Management Policy for Pittwater – 2009. <u>Stormwater</u> The proposal to discharge site stormwater to the kerb in Robertson Road and Barrenjoey Road in four locations is not supported. It is recommended that the site discharge be connected to the existing Council pit in Robertson Road adjacent to the site. <u>Additional Information Provided on 7/7/2021</u> Previous comments regarding regarding stormwater discharge have not been addressed. It is recommended that the site discharge be connected to the existing Council pit in Robertson Road adjacent to the site. Additionally Certified Forms 1 & 1A are required to be submitted with the geotechnical report in accordance with Geotechnical Risk Management Policy for Pittwater – 2009. <u>Additional Information Provided on 23/9/2021</u> Amended stormwater plans have been reviewed. Certified Forms 1 & 1A have been provided. No objections to approval subject to conditions as recommended.
NECC (Stormwater and Floodplain Engineering –	**Supported subject to conditions**

Internal Referral Body	Comments
Flood risk)	This is a new DA since the relatively recent DA2019/1157, however the pertinent floor levels are the same. The Flood Planning Level (FPL) and the Probable Maximum Flood (PMF) level vary across the site, generally sloping down as per the slope on Foamcrest Avenue. The 1% AEP levels in Figure 1, "Flood Planning Levels - Rev B" in Demlakian's Flood Management Report (March 2020) include an allowance for climate change, as required due to intensification of the site. The water levels provided on this Figure have been checked against the Newport Flood Study (2019). They show that the driveway crest and each of the main floor areas of the individual retail areas is above the FPL. For each individual retail area, Control F10 is met with not more than $30m^2$ or the first 5m from the front being below the FPL. The proposed development generally complies with the flood requirements of the LEP and DCP.
NECC (Water Management)	**Supported subject to conditions** The development application has been amended with a Water Quality Treatment Chain. The project is satisfactory and present low environmental risk during the operational stage. Sedimentation and erosion control shall be in place during all construction and landscape establishment period. The development application is supported subject to conditions.
Road Reserve	**Supported without conditions** There is no significant impact on existing road infrastructure. The redevelopment of the site should include replacement of paving in Robertson Road in accordance with Counci's Public Domain guidelines.
Strategic and Place Planning (Heritage Officer)	**Supported and no conditions imposed** The proposal seeks consent for a three storey shop top development on the subject site. The heritage item is located to the rear of the site, directly behind No. 353 Barrenjoey Road. It does not extend along the rear of No. 351 Barrenjoey Road. The heritage item is located deep into its site, close to the common boundary. Its primary presentation and view corridor is to and from Foamcrest Avenue. The southern elevation of the building can be seen from Robertson Road however this is through adjoining sites, most notably the car park of No. 31 Foamcrest Avenue. Further,

Internal Referral Body	Comments
	its presentation to this side is relatively simple presenting as a blank wall and gable end. Thus the primary consideration of heritage will be how the building relates to the Foamcrest Avenue presentation. When viewed from Foamcrest Avenue, the proposal is considered to be acceptable to heritage. This is because it has attempted to locate the bulk of the upper levels away from the common boundary with the heritage item. This allows more room for the item to be easily read without higher dominant features behind. If amendments to further improve the proposal are to be considered this should include reducing the northern extent of Unit 3 on Level 1 and the communal terrace area on Level 2. It would also include reducing the extent of the building height breach in the western area of the site. These would further reduce visual impacts of the bulk and scale of the development on the heritage item. Nevertheless the proposal as currently presented is considered to have a tolerable impact on the heritage item. Therefore Heritage raises no objections and requires no conditions.
Traffic Engineer	**Supported subject to conditions** <u>Second referral response - additional information received</u> The proponent has submitted updated plans to Council to resolve some of the issues that the community had with the proposed development and the impact on the amenity of Robertson Road. <u>Parking provision</u> The update plan reduces the Basement Level from 2 to 1 and reduces the parking provision from 52 to 26. The allocation of spaces has not been confirmed as a part of the documentation provided, however it is noted that to achieve the required precinct outcome for Robertson Road all parking provided within the subject site is to be allocated for the residential component of the development, including residential visitors only. All commercial parking will be provided with in the overall Newport Village precinct. It is noted that this will result in a deficiency of approximately 20 spaces (although there is not this number provided for the existing commercial usage of the site). The parking provision is supported in line with the community vision for the adjoining road and reducing the volume of traffic using Robertson Road. <u>Access driveway</u> The access driveway is proposed to be initially located from Robertson Road with the future potential for the site to achieve a long term connection to Foamcrest Avenue through the site to the west. The applicant has also made provision for the next site to the north to potentially achieve access through the car park to eliminate the need for the access from Barrenjoey Road.

Internal Referral Body	Comments
	The location of the access driveway in Robertson Road is near the western boundary of the property away from Barrenjoey Road (approx. 35 metres), with the location allowing the future conversion to additional commercial space should access from Foamcrest Avenue be achieved in the future. The location will have the least impact from the combined queue length of vehicles accessing the basement, and using the angled parking on the southern side of Robertson Road. Whilst the option to completely remove vehicle access from Robertson Road would be ideal, access form Barrenjoey Road is not permitted and the impact of any development on the traffic flow along Barrenjoey Road needs to be considered including the potential for queuing to affect the pedestrian safety and accessibility. The revised proposal is supported as it has less impact on the amenity in the area and provides a benefit to the future pedestrian safe environment in Robertson Road. <u>Initial Referral Response</u> The proposed redevelopment of the site has been assessed against the required parking for the number of residential units and commercial floor space within the development. The proposed car parking provision and layout meets the requirement of the DCP and AS2890.1:2004. - There is 1 - 3 bedroom unit with a requirement of 2 spaces, 10 - 2 bedroom unit with a requirement of 20 spaces, 2 1 bedroom unit with a requirement of 2 spaces, and 6 visitor spaces totaling 30 spaces for the residential component. The proposal has an additional 2 residential parking spaces totaling 32 spaces for the residential component. - There is 548m² of retail floor space with the requirement of 1 space per 30m². There is 20 parking spaces provided for the retail component of the development. Access is provided from the Robertson Road site frontage, with a 5.5 metre wide two way access driveway to the basement car park. The auto-turn has been reviewed and complies with the intent of the access requirements. The applicant has submitted a Construction Traffic Management Plan with the documentation package which has been reviewed and requires amendment, as such this will need to be submitted separately as per the condition with amendments. The application is supported on traffic grounds.
Waste Officer	

Internal Referral Body	Comments
	Supported subject to conditions Recommendation - acceptable subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**Supported subject to conditions** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Police – Crime Prevention Office (Local Command matters)	**No Comment** The application was referred to the NSW Police for comment. No comments were received from the NSW during the consideration of the application. This is taken to be no comment.
NSW Roads and Maritime Services (Traffic Generating Development)	**Support Subject to conditions** The application was referred to Transport for New South Wales (TfNSW) being traffic generating development under Schedule 3 of the SEPP (Infrastructure) 2007. TfNSW have reviewed the proposal and support the proposed development, subject to conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and commercial purposes (shop top housing) for a significant period of time with no prior land uses which would likely result in contaminated land.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the residential and commercial land use (shop top housing).

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provisions of 14 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

The application was referred to the Design and Sustainability Advisory Panel on two occasions for input and recommendation regarding the design and criteria of the ADG. On both occasions, the recommendations of the panel were incorporated by the applicant and any issues resolved to Council's satisfaction. A detailed discussion is contained earlier within this report regarding the referrals to the

DSAP.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment
The area is a B2 Local Centre Zone which is characterised by shop top housing and commercial buildings, between one and three stories in height. The Newport Master Plan, the DCP and PLEP guide the future desired character of the area and the proposal has responded to the key principles and built form controls to provide a building that is consistent with the B2 Local Centre Zone and gradually developing Newport Town Centre.

The proposal provides opportunity for traffic movements to be minimised and potentially removed in the future along Robertson Road, while retaining the reasonable development rights of the land at present.

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 building is a scale consistent with the nearby recently developed sites which comprise up to three storey shop top housing.

The building is compliant with height at the Barrenjoey Road street edge and Robertson Road Street Edge, with the building height breaches central to the site and do not comprise a two storey form being achieved the Robertson Road Street edge.

The building is therefore of a scale that would reasonably be expected for a new shop top housing development under the current planning controls and within a B2 Local Centre zone.

Principle 3: Density

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

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

community facilities and the environment.

Comment
The building provides amenity in accordance with the ADG with regard the amenity outcomes achieved for solar access, cross ventilation and privacy.

The density is appropriate for the B2 Local Centre context given the proximity to services and transport.

There is no density control which guides the development apart from the built form controls. The breaches to the built form controls have been considered in detail in this assessment and they are found to be reasonable given the development potential of the site, which includes large portions of the site with an 11.5m height limit undeveloped in order to achieve high levels of solar amenity and building separation to the north adjoining 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 proposal incorporates a high level of cross ventilation, with a high number of units either dual frontage or corner units. The proposal also achieves a compliant level of solar access and includes skylights to further enhance daylighting of the units. Solar panels are used for the development and rainwater harvesting is proposed, in line with the recommendations of the DSAP.

Principle 5: Landscape

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

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

Comment
The proposed development has included planter boxes fronting the street to compliment the exiting landscaping in the public domain.

The area adjoining the communal open space is provided with landscape planting to soften the development as viewed from the adjoining heritage building. The Level 1 units are provided with landscape gardens to enhance amenity and provide an internal landscape outlook for these units.

Principle 6: Amenity

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

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

Comment
The proposed development provides compliant building separation that does not restrict future development of the adjoining lands with regards to solar access, outlook and privacy.

The building itself provides adequate storage, sunlight, ventilation, room sizes and POS dimensions. Although some of the units slightly exceed the recommended room depths under the ADG, these units have optimal orientation to the north and large private open space landscaped gardens to improve outlook and amenity. This is discussed below the ADG assessment table.

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 building has good passive surveillance over Robertson Road to enhance public safety and activate this street. The building entrances are defined and public/private space is easily identifiable.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

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

Comment
The building provides an appropriate mix of one, two and three bedroom units which is consistent with the context of the B2 Local Centre Zone. The building provides three (3) accessible units which is consistent with the ADG.

Principle 9: Aesthetics

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

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

Comment

The building includes a variety of materials, landscape treatments and roof forms that compliment the area and is consistent with the character desired by the Newport Master Plan.

The ground level retail provides shop fronts with attractive windows and a scale that has been broken down through window and facade treatments. The spatial proportions of the building are consistent with the controls, presenting a stepped back upper level to Barrenjoey Road and a two storey building form adjacent to the Robertson Road street edge at the south-western corner.

APARTMENT DESIGN GUIDE

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

<table>
<tr><th>Development Control</th><th>Criteria / Guideline</th><th>Comments</th></tr>
<tr><td colspan="3">Part 3 Siting the Development</td></tr>
<tr><td>Site Analysis</td><td>Does the development relate well to its context and is it sited appropriately?</td><td>Consistent
Yes, see comments above under Design Quality Principles.</td></tr>
<tr><td>Orientation</td><td>Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</td><td>Consistent
Yes, the development steps away from the north-eastern boundary to allow solar aspect and a northern aspect to the majority of units.</td></tr>
<tr><td>Public Domain Interface</td><td>Does the development transition well between the private and public domain without compromising safety and security?

Is the amenity of the public domain retained and enhanced?</td><td>Consistent
Yes, all retail spaces front the public road and the vehicular access point is consistent with the masterplan.</td></tr>
<tr><td>Communal and Public Open Space</td><td>Appropriate communal open space is to be provided as follows:

1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</td><td>Inconsistent
No, only 9.7% of the site area is provided as communal open space, with this area receiving at least 3 hours and achieves the required amount of solar access.

This is discussed below under this table.</td></tr>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:

<table>
<tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr>
<tr><td>Less than</td><td>-</td><td>7%</td></tr>
</table>
</td><td>Inconsistent
No deep soil zone.</td></tr>
</table>

	650m^2	
	650m^2 – 1,500m^2	3m
	Greater than 1,500m^2	6m
	Greater than 1,500m^2 with significant existing tree cover	6m
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: Building height / Habitable rooms and balconies / Non-habitable rooms Up to 12m (4 storeys) / 6m / 3m Up to 25m (5-8 storeys) / 9m / 4.5m Over 25m (9+ storeys) / 12m / 6m ***Note:*** *Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.* *Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.*	**Consistent** - The proposal provides building separation in accordance with the ADG. - Zero setback walls contain no window openings or balconies. - All terraces and windows facing the northern boundary provide minimum 6m building separation to the northern boundary. - No window openings to the western boundary where Level 3 is setback 4.3m. - Privacy screen provided to western elevation of Unit 13 terrace to resolve privacy. - Privacy screen used for units 10 and 12 to resolve direct views between POS.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	**Consistent** Two easily identifiable residential entrances are provided.
Vehicle Access	Are the vehicle access points designed and	**Consistent**

	located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	The vehicle access point satisfies the Newport Masterplan and the requirements of Council's Transport Department and Transport for NSW with regards to its proximity to Barrenjoey Road.
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	**Shortfall when considered against DCP** The amount of off-street parking is less than the DCP requirement. See comments made by Council's traffic team and the comments made by the DSAP in regards to this issue which is addressed elsewhere within this report.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: - Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	**Consistent** 10/13 (77%) of the units receive a minimum 3 hours solar access to living rooms and balconies.
	- A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	**Consistent** 2/13 (15%) receive no sunlight between 9am and 3pm mid winter (Unit 1 and 2). Unit 9 receives some solar access to terrace mid-

<table>
<tr><td></td><td></td><td>winter and west facing clerestory window.</td></tr>
<tr><td rowspan="2">Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

- At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</td><td>Consistent
12/13 (92%) naturally cross ventilated.
12 of the units are either corner or dual aspect.</td></tr>
<tr><td>- Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td>Inconsistent
All units comply except Unit 5 which is 18.9m.
See discussion later in report.</td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table></td><td>Consistent
Habitable floor areas all minimum 2.7m.
All retail floor to ceiling minimum 3.6m.</td></tr>
<tr><td>Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:

<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m^2</td></tr><tr><td>1 bedroom</td><td>50m^2</td></tr><tr><td>2 bedroom</td><td>70m^2</td></tr><tr><td>3 bedroom</td><td>90m^2</td></tr></table>
The minimum internal areas include only one bathroom. Additional bathrooms increase the</td><td>Consistent
All units achieve minimum size.</td></tr>
</table>

	minimum internal area by 5m^2 each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^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.	**Consistent**
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Combined living/dining/kitchen see below.
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	**Inconsistent** - All open plan units. - Level 1 - Units 4 and 6 are 8.2m. Unit 5 is 9.6m, non-compliant. Remainder comply. - Level 2 - All units comply. See discussion following.
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	**Consistent** All bedrooms minimum 10sqm.
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	**Consistent** All bedrooms achieve minimum dimensions.
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom apartments - 4m for 2 and 3 bedroom apartments	**Consistent** All living rooms achieve minimum dimensions.
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	**Consistent** Apartments achieve minimum 4m width.
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: **Dwelling Type** / **Minimum Area** / **Minimum Depth** Studio apartments / 4m^2 / - 1 bedroom apartments / 8m^2 / 2m 2 bedroom apartments / 10m^2 / 2m 3+ bedroom apartments / 12m^2 / 2.4m	**Consistent** All units achieve minimum area and dimensions for POS/balcony.

	The minimum balcony depth to be counted as contributing to the balcony area is 1m	
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.	**Consistent** Level 1 apartments provide podium level POS compliant with the area and dimensions.
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	**Consistent** Two lift cores are provided for a total 13 units.
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments / 4m^2 1 bedroom apartments / 6m^2 2 bedroom apartments / 8m^2 3+ bedroom apartments / 10m^2 At least 50% of the required storage is to be located within the apartment.	**Consistent** Minimum of 8 cubic metres is provided within basement per unit, in addition to within the unit.
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	**Generally consistent - Condition recommended to resolve** This is achieved throughout the development, with the exception of bedroom 1 of Unit 13 adjoining the communal open space area. To resolve this, it is recommended that a condition of consent be placed to include a 1.7m sill height window and this window be acoustically attenuated with details provided prior to the issue of the Construction certificate.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and	**Consistent** An Acoustic Report has

	pollution and mitigate noise transmission.	been prepared for the proposal demonstrating the required internal noise levels can be achieved and no unreasonable impacts upon adjoining properties.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	**Consistent** The proposal provides 2 x 1 bedroom, 10 x 2 bedrooms and 1 x 3 bedroom apartments. This is considered suitable for the locality.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	**Consistent** The building facade provide a continued active frontage along Robertson Road and Barrenjoey Road, with window that provide visual interest, are openable and promote street activation. The building facade is well articulated, incorporating materials sympathetic to the area and planter boxes on each elevation with landscaping.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	**Consistent** The building has been given a skillion roof form that that is consistent with the desired character of Newport, with this style of roof form encouraged rather than flat, concrete parapet to provide the building with visual interest.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	**Consistent** Yes, suitable landscape plan submitted to soften the development upon the upper levels and street tree planting. Landscape plan has been reviewed by Council's expert landscape

<table>
<tr><td></td><td></td><td>officer and is supportive of the proposal subject to conditions.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
<tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr>
<tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr>
<tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr>
</table></td><td>Consistent
The landscape planter boxes and areas of turf which form POS have beengiven appropriate soil depth to facilitate medium height planting and shrubs in accordance with the landscape plan.</td></tr>
<tr><td>Universal Design</td><td>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features</td><td>Consistent
The application is accompanied by an access report which demonstrates 3/13 units or 23% are silver level universal design.</td></tr>
<tr><td>Adaptable Reuse</td><td>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</td><td>N/A</td></tr>
<tr><td>Mixed Use</td><td>Can the development be accessed through public transport and does it positively contribute to the public domain?

Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</td><td>Consistent
The proposal places retail floor area upon the ground level and apartments above, consistent with the permitted use of shop-top housing.</td></tr>
<tr><td></td><td></td><td></td></tr>
</table>

Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	**Consistent** Continuous awning is provided around the building which provides weather protection for the retail shop fronts and building entrances. No signage is proposed apart form a street number for the building.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	**Consistent** Yes, shown on submitted plans where required by the BASIX Certificate submitted.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	**Consistent** Yes, this has been assessed by Council's development engineers and water quality team and found to be satisfactory.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	**Consistent** Yes, waste management plan has been submitted and waste storage areas are in accordance with Council's Waste Management Team requirements.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	**Consistent** Yes, robust materials selected.

Deep soil zone

The proposal does not provide deep soil zones in accordance with the ADG. However, this is not unusual for the B2 Local Centre Zone and commercial town centres for shop-top housing developments in this context.

The ground floor area is maximised for retail GFA and the associated back of house services to support these uses. Given the B2 Local Centre context, the provision of no or limited deep soil zones in lieu of retail ground floor area is acceptable given the objective zone, which is to support local centers and provide opportunity for employment.

The proposed development provides landscape planter boxes upon the edges of Robertson Road to soften the building facade and allow for landscaping to be introduced upon the street edge. The communal open space is highly landscaped and the back gardens of the Level 1 units provide landscaped outlook within the development. Therefore, the provision of no deep soil zone is considered appropriate given the context of the site.

Communal Open Space

Having regard to the context of the site, the area of communal open space is considered suitable for the residents of the development, with the area receiving a high level of solar access and offering facilities catering to their needs including green space, decking and a BBQ area.

The site is located in a highly accessible, well serviced location and is across the road from Newport Beach and the nearby public parkland. Therefore, although the proposal has a numerical shortfall, this is acceptable given the location of the development.

Living room and apartment depth

The ADG recommends a maximum apartment dimension of 18m glass line to glass line. The proposed development compliant with this, with the exception of unit 5 which is 18.9m glass to glass. The ADG also recommends a maximum combined living room and kitchen depth of 8m. The development is compliant with the exception of Units 4 and 6 at 8.2m, whilst Unit 5 is 9.6m.

Whilst these units are numerically inconsistent with the ADG, there are other benefits of these three units which off-set the non-compliance with the control. These include:

- Each of these three units are provided with optimal north-east orientation.
- Units 5 and 6 are dual aspect, with a balcony oriented off Robertson Road to provide an additional aspect for the units.
- Each of the units are provided with a landscape garden open space area between 27sqm and 49sqm, which is in addition to a compliant sized balcony private open space area. Each of these unit have a garden outlook which provides an extension of outdoor living space that will receive a high level of solar access and provide amenity for these units in addition to the minimum required by the ADG. The landscape outcome and garden setting will provide a high level of amenity for these units.

Therefore, although numerically non-compliant with the ADG and provide a depth greater than the requirement, each of these units provides other benefits with regards to amenity which are considered to off-set the non-compliance and provide a unit that overall, has a high level of amenity for a future resident.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment
An assessment regarding car parking is provided by Council's Traffic engineer elsewhere within this report. The application is supported with regards to the carparking arrangements. The internal floor area of the building is compliant with the ADG requirements. The floor to ceiling heights are consistent with the ADG.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and
(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

(a) sub-clause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in sub-clause (1), including on the basis of sub-clause (2), and
(b) the design criteria specified in sub-clause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment
The design has given due consideration to the numerical requirements and criteria of the ADG, in addition to the buildings response to the context of the site in the B2 Local Centre zone. The application was referred to the design review panel and the recommendations to resolve internal amenity and planning were adopted in full and the panel were satisfied with the external building appearance.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1044257M_03 dated 21 November 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	45	47

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:
The proposal was referred to Ausgrid. Ausgrid provided a referral response and raised no objections subject to their usual conditions with regard to construction near powerlines.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to a classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

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

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

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

Comment
The proposal was referred to Transport for NSW, who have raised no objection to the development, subject to conditions of consent which will be included in any consent issued. Further, Council's Transport department have reviewed the proposal and are satisfied with the vehicular access arrangements which is from Robertson Road and not directly from Barrenjoey Road.

Clause 102 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment
The application is accompanied by an Acoustic Report which makes as assessment against the above noise criteria. Subject to the recommendations of the Report, Council is satisfied the development is capable of achieving the required internal noise levels as outlined in the SEPP. The recommendations of the Report will form consent conditions.

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Parking	200 or more motor vehicles	50 or more motor vehicles
Shops	2,000m²	500m²

Note: Under Clause 104(2) of the SEPP, 'relevant size of capacity 'is defined as meaning:

"*(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."

Comment
The application was referred to the Transport for NSW as traffic generating development, as the original basement design containing two levels had room for 50 vehicles. TfNSW did not raise any objection to the proposal, subject to their conditions which will be included in any consent issued.

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
4.3 - Height of Buildings	Flood Planning Level (FPL)	Area 1: 10.3m - 11.9m	3.5% (0.4m)	**No**

	Area 1: 11.5m above FPL Area 3: 8.5m above FPL Existing Ground Level (EGL) Area 1: 11.5m from EGL Area 3: 8.5m from EGL	above FPL Area 3: 6.3m - 11m above FPL **Note:** FPL is 720mm from EGL Area 1: 11.0m - 12.6m above EGL Area 3: 7.0m - 11.7m above EGL	29% (2.5m) 9.7% (1.1m) 37.6% (3.2m)	

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	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	4.3 - Height of Buildings
Requirement:	Area 1: 11.5m Area 3: 8.5m
Proposed:	Area 1: 12.6m Area 3: 11.7m
Percentage variation to requirement:	Area 1: 9.6% (1.1m) Area 3: 37.6% (3.2m)

The site has a split height limit as represented by the below extract from the PLEP Building Height Map:

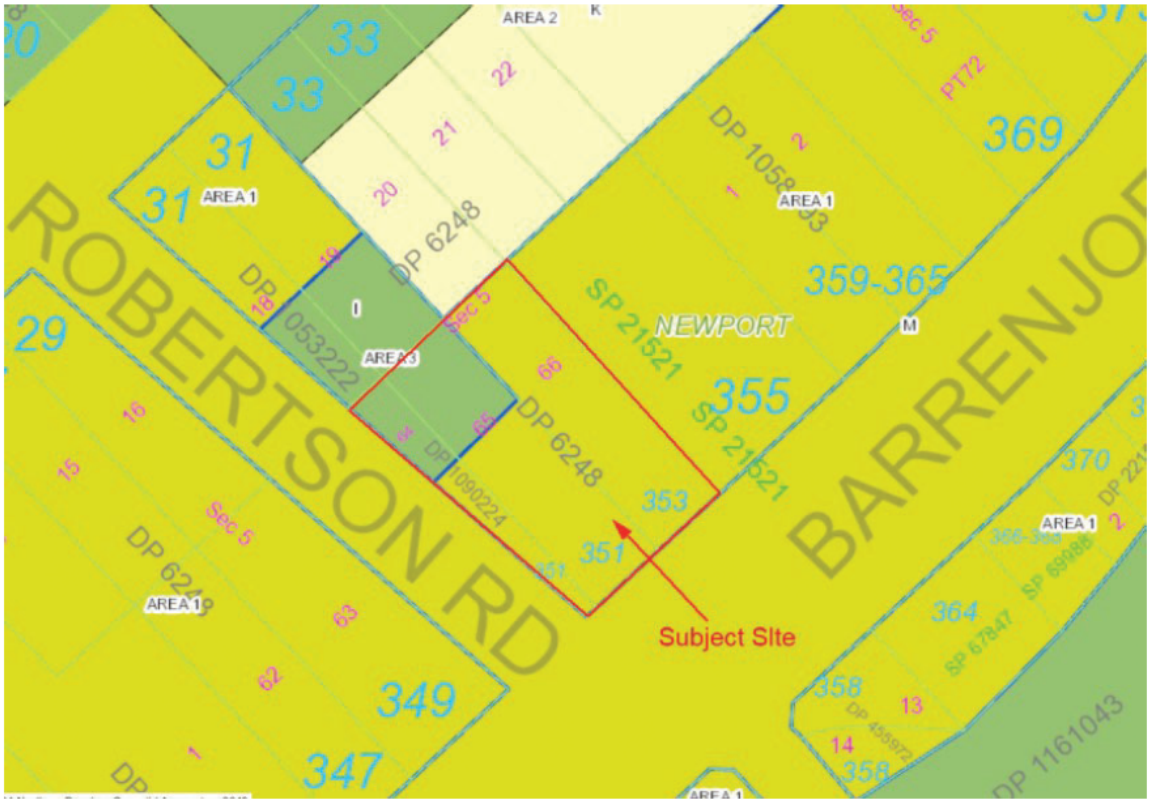


Figure 1 - Height of Buildings Map PLEP 2014. Area 1 (yellow) is 11.5m, Area 3 (green) is 8.5m.

The western corner of the site is subject to an 8.5m height limit, with the remainder of the site subject to an 11.5m height limit.

The site is also subject to Clause 4.3 (2C) which provides the following:

(2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this sub-clause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.

Column 1	**Column 2**
Area	**Maximum height above the flood p**
Area 1	**11.5 metres**
Area 2	8.5 metres on the street frontage and
Area 3	**8.5 metres**
Area 4	7.0 metres

The site is flood prone land and has a flood planning level of 720mm above the natural ground level across the site. As demonstrated in the sections provided the majority of the building is compliant with Clause 4.3(2C) with those areas not having a height greater than 8.5m and 11.5m relative to the flood planning level. However, for those sections of the building that exceed the maximum height relative to the flood planning level, Clause 4.3 (2C) does not apply and the building height must be taken from the

Existing Ground Level (EGL) and the variation to the development standard is measured against 8.5m and 11.5m from the EGL in accordance with Clause 4.3(2). Therefore, the non-compliant portions of building are up to 37.6% and 13.9% relative to the 8.5m and 11.5m height from EGL.

Whilst the variation from the development standard appears to be relatively large, the areas which encroach the building height are considered to be a relatively minor proportion of the site.



Figure 2 - Extent of non-compliance measured from EGL.

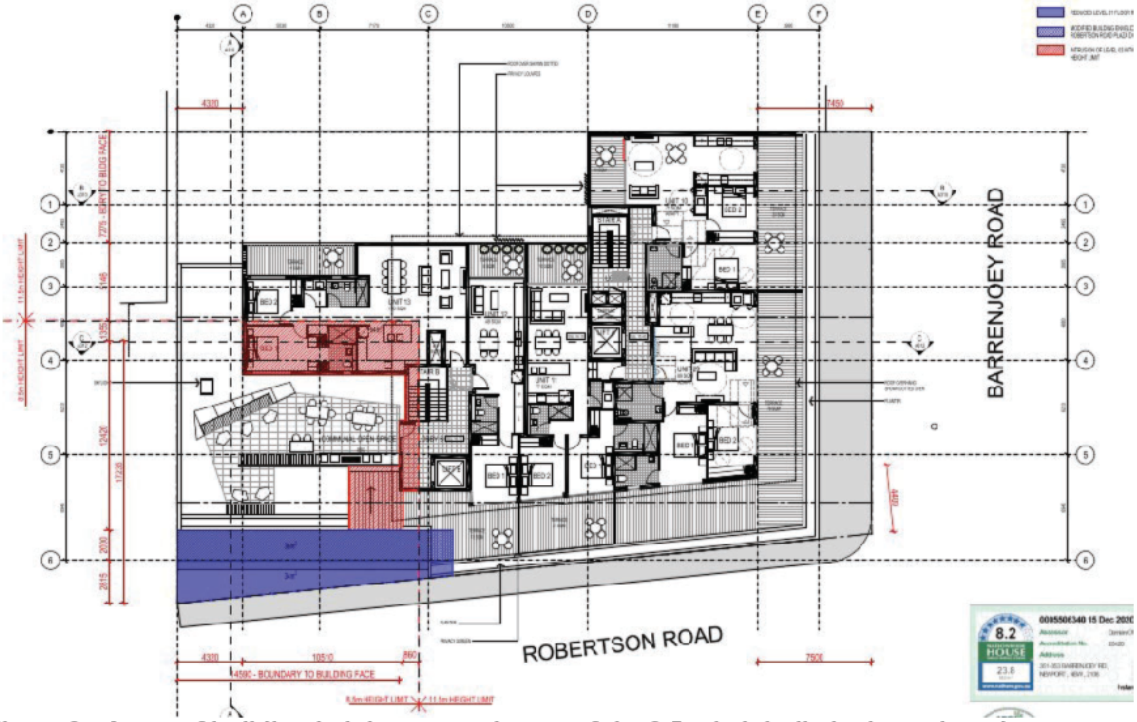


Figure 3 - Areas of building height encroachment of the 8.5m height limit shown in red.

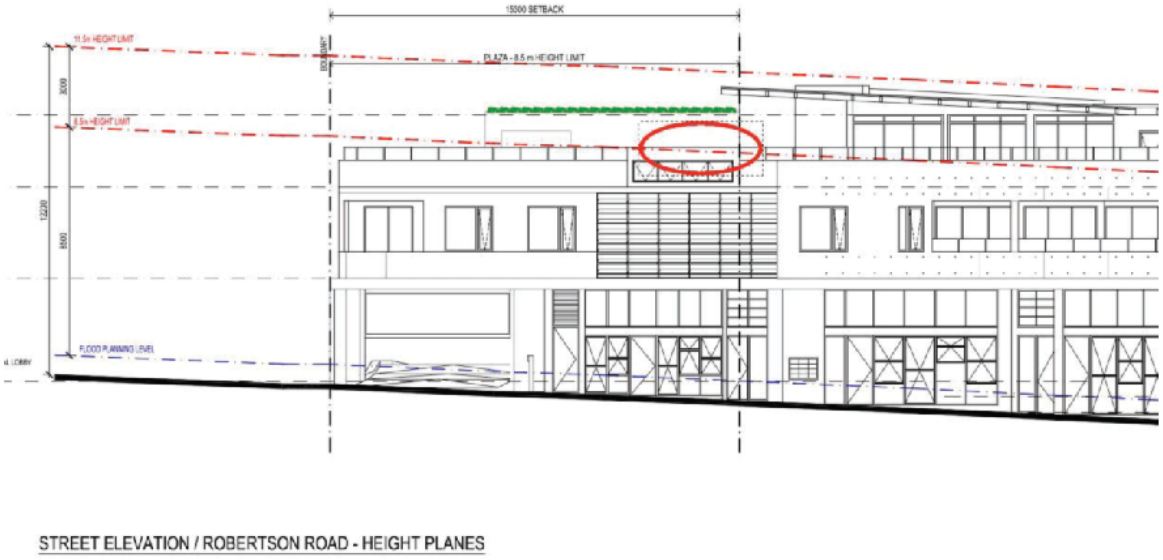


Figure 4 - Portion of Unit 6, bedroom 2 room encroaching 8.5m height limit, circled red.

Assessment of request to vary a development standard

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

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 I*nitial 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 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:

"Clause 4.6(3)(a) Unnecessary or unreasonable

The common approaches for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC827. Cases such as Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, Randwick Council v Micaul Holdings Pty Ltd [20176] NSWLEC 7 and, most recently, Initial Action, have confirmed that adopting the Wehbe principles remains an appropriate approach.

The first option and the applicable in this case, 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.

Set out below is an extract from the judgement in Wehbe that explains the rationale for adopting this approach in the context of clause 4.6.

The rationale is that development standards are not ends in themselves but means of achieving ends… The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

Consistency with objectives of the standard (clause 4.6.4(a)(ii))

The proposed variation is assessed having regard to the development standard as set out in the below table.

(a) to ensure that any building by virtue of its height and scale, is consistent with the desired character of the locality.

The proportion of built form that results in a non-compliant outcome enables a design that will provide a contemporary built form which will contribute to the immediate urban context of the neighbourhood and the desired character of the locality. As outlined previously, the proportion of non-compliance has been designed based on a clear understanding of the spatial and contextual considerations of the site and detailed feedback from the Council in relation to compliance with solar access requirements for the

southern side of Robertson Road, which is considered to be a highly valued public space within the immediate context.



As shown in the figure above, the roof structure of Apartment 9 marginally exceeds the height limit to enable the provision of a sky light, with Apartment 13 also has a minor exceedance for part of the dwelling. The remaining sections of the proposed built form are under the height limit and compliant.

For the latter non-compliance, this has no material impact in terms of height and scale, remaining consistent with the desired future character of the locality. The non-compliant element has limited discernable visibility within the surrounding context and still ensures that adequate separation of built form is achieved to the north of the site, including having regard to the setting of the heritage listed church.

The reconfiguration of the communal open space area is also of limited impact when viewed from the street and does not add to the bulk and scale of the overall building form. Further, the recessive design of the form, through the use of landscape treatment and open space, further reduces the presence of building form to the street.

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

The height and scale of the proposed development is consistent with that of surrounding developments as the site is located in an area comprising of a mixture of residential and commercial uses of building height varying from two to three storeys, generally with upper levels of higher building setback from the street frontage, similar to the proposed development.

(c) to minimise any overshadowing of neighbouring properties.

Matters of overshadowing have been detailed above and demonstrate in detail, a design outcome that maximises solar access to the opposing side of Robertson Road, noting that it is not, in fact, the non-compliant part of the development that causes solar access impact, but those sections of the building, below the height limit that this is caused by. These lower building sections have also been modified to ensure that maximum solar access is achieved.

(d) to allow for reasonable sharing of views.

The non-compliant component of the building does not result in any impacts to existing views enjoyed within the vicinity of the site.

(e) to encourage buildings that are designed to respond sensitively to the natural topography.

The subject site does not contain any heritage items, nor is it located within a heritage conservation area. However, the site is adjoining a heritage item known as St Michael's Anglican Church (#2270471).

The proposed design ensures that adequate setbacks are provided that allow for sufficient visual separation from the heritage item, so as to ensure that the setting of the item is not compromised.

Consistency with Zone Objectives – clause 4.6(4)(a)(ii)

In relation to whether a proposal is consistent with the objectives of a zone, the test for consistency is set out in Coffs Harbour Environment Centre v Coffs Harbour City Council (1991) 74 LGRA 185 (the Coffs Harbour case). The principles for determining what is meant by consistent are as follows:

- *a development that is consistent with zone objectives does not need to promote the objective concerned strictly, but also encompasses development which may be complementary or ancillary to development and promotes the objective concerned; and*
- *a development is not consistent with zone objectives if it is antipathetic development to thoseobjectives, irrespective of whether efforts have been made to minimise the extent to which it is antipathetic*

Thus, development will be consistent with zone objectives if it is not antipathetic to them. It is not necessary to show that the development promotes, or is ancillary to, those objectives, nor even show it is compatible, Schaffer Corporation v Hawkesbury City Council (19s92) 77 LGRA 21.

The building height above the development standard is consistent with the objectives of the B2 Local Centre zone objectives as set out in the Table below.

- ***To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.***
- ***To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.***

The proposed development will provide for a range of retail and businesses uses that will serve the needs of the local area. Eight separate retail tenancies are offered of varying sizes, to accommodate a diversified combination of business interests.

The residential component of the site will be able to utilise those facilities and services which are available and further enhance their economic viability.

The proposed residential use, above street level, will be compatible with the characteristics surrounding the site. The proposed number of dwellings is moderate and designed and orientated such that interference with ground floor uses will not result, particularly given the intended setback distances from the street frontages, as well as materials treatment that will ensure adequate acoustic provision.

The intention of the zone is to combine living and working environments and this site provides a suitable opportunity to achieve this.

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

The in-situ population will support the creation of new jobs in the locality, driven by additional demand for goods and services in the immediately surrounding vicinity.

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

As outlined previously, the proposal is near public transport facilities. The development encourages alternative transport modes and avoids private car use. Given the proximity to the general commercial and retail facilities, the opportunity for walking and/or cycling is easily maximised in association with this development.

- ***To provide healthy, attractive, vibrant and safe local centres.***

The proposed development will provide a significant outcome in terms of attractive, vibrant and safe communities. The architectural design will provide a contemporary response and, in particular, the ground floor level provides a good urban design outcome with the provision of retail tenancies and public domain improvements to ensure a degree of vibrancy is promoted and the extensive openings of the retail tenancies that allow for an understanding of activity therein. The proposal maximises opportunities for passive surveillance over the surrounding street frontages, which is a substantial improvement over the existing situation.

- ***To strengthen the role of centres as places of employment.***

The proposed retail tenancies will provide new employment opportunities within the commercial centre.

- ***To provide an active day and evening economy.***

The introduction of tenancies that will be attractive to food and drink premise operators which will assist to provide an active day and evening economy.

Environmental Planning Grounds to Justify Contravening the Development Standards (clause 4.6(3)(b)?

The second element of clause 4.6(3) on which the Court must be satisfied is that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds relate to the subject matter, scope and purpose of the Environmental Planning & Assessment Act [EP&A Act] including the objects of the EP&A Act (Wehbe para 23).

The environmental planning grounds which support departure from the development standards are as follows:

- *The proposal satisfies the objectives of the B2 zone and the objectives of the building height standards.*
- *The lower levels of the building are in fact those which cause a greater degree of impact in terms of solar enjoyment to the southern side of Robertson Road, as opposed to the non-compliant section of the building. By losing floor space at the ground and first floor levels, where height compliance is achieved allows for a minor trade-off to be made to accommodate a small proportion of non-compliant height in the interests of protecting sunlight to the southern side of the public domain along Robertson Road.*
- *The resulting design outcome ensures that a high quality common open space area is furnished to the development. The proposed building height provides for a much more effective design outcome, consistent with the character of the locality, without causing negative impacts on surrounding developments and ensures an enhanced visual setting for the heritage listed church.*
- *From a site context perspective, the developments located along Barrenjoey Road such as the*

one at No.332 is of similar height and comprise of retail facilities on the ground floor and residential units above, such that the upper levels are setback to create separation along each level as well as provide articulated building design. Both buildings have the same development standard for building height, that is, a maximum of 11.5m above the flood planning level. As such there is not a marginal difference between the proposed building height and the building height of that developments and is considered appropriate.

- *The non-compliant sections of the building will not be out of context within the streetscape, particularly that of Robertson Road. The non-compliant portion of Level 3 provides desirable internal amenity while minimising any potential impact on the enjoyment of the public plaza area below on the southern side of the street (which is affected by the lower levels of the building and not the non-compliant component). Given that this will be not compromised by the non-compliant section of this design, and a better environmental planning outcome is achieved for residents of the development, by providing a quality common open space area, this is considered to be far more desirable than achieving compliance for the sake of compliance.*
- *The outcome also provides a far improved visual relationship with the heritage listed church, such that a better environmental planning outcome is achieved by setting the building form back from this to ensure that adverse visual crowding does not occur.*
- *The non-compliant component of the development does not result in adverse impact to neighbouring properties, particularly in terms of bulk, scale and overshadowing. This is demonstrated in that a better design response to the broader context can be achieved, without compromising the public plaza to the south, providing a more balanced urban outcome.*

As such, there are sufficient environmental planning grounds for justifying contravention of the development standard in this case.

Is the proposed variation in the public interest?
Clause 4.6(a)(ii) – Public Interest

The fourth element that the Council needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the standard's and zone's objectives.

As demonstrated in this Request, the proposed development will comprehensively achieve the objectives of the development standards for height of building, as well as the objectives of the B2 zone.

The bulk and scale of the proposed built form, including the non-compliant section of the building, is appropriate to the contextual considerations of the site. Most importantly, the proposed height does not impact the heritage item located towards the north at 33 Foamcrest Avenue and the pedestrian plaza located at 349 Barrenjoey Road, as well as residential development in the vicinity of the site.

The minor trade off of additional building height is warranted in the context of preserving solar access to the public domain and retail frontages along Robertson Road, which are instead caused by the lower, compliant sections of the proposed building, which has been set back from the street frontage (resulting in a loss of permitted floor space) to ensure that the public interest is not only preserved, but enhanced.

There is public interest in maintaining a degree of flexibility in specific circumstances. In this case, strict compliance with the height control would result in reduced supply of adequate apartments on the site, therefore, unable to supply for the growing housing needs in an area that is highly accessible, facilitated by local services and suitable for young families.

There is no adverse consequence as a result of the non-compliant sections of the building from the public domain as this is set well back from the street frontages to ensure that it has limited visual effect, while also providing an attractive and contemporary response in this location. There is no adverse

consequence as a result of this proposal from the public domain.

Overall, the proposal responds to its social context in terms of access to housing diversity and to services. Further, the proposed built form incorporates the CPTED principles which will help to activate and improve the safety and security of the local area.

Therefore, the proposed development, at the height proposed, is well within the public interest and will open the site up to broader public opportunity and interest, as it will provide a high-quality residential accommodation in close proximity to public transport opportunities that will ultimately result in tangible social benefits.

Accordingly, the Council can be satisfied that, it is in the public interest to vary the standard for the purpose of this development application.

Council Comment

The assertions made in the applicants written request are agreed with by Council, in particular solar access outcomes for the future pedestrian plaza which is to be delivered within the site upon No. 349 Barrenjoey Road on the southern side of Robertson Road. The design of the first floor at the western corner of the site has been pulled back from the Robertson Road frontage (as notated in plan A110 Issue 04) to allow an improved solar access outcome to the southern side of Robertson Road, with the leading edge of the first floor the cause of overshadowing for the portion of the site subject to the 8.5m height limit. The majority floor space that is in breach of the 8.5m height limit is located central to the site which does not cause additional overshadowing. Any overshadowing that is caused by the encroachment caused by Lobby B is off-set by the reduction of floor area along the leading southern edge of Level 1.

The portion of non-compliant building caused by Unit 13 is setback such a distance that it would not be visually imposing or visually prominent as read from the street level of Robertson Road and the building will maintain a two storey visual appearance as viewed from Robertson Road, which matches the intent of the Newport Masterplan.

The portion of roof form that encroaches the 8.5m height limit resulting from the roof of Bedroom 2 to Unit 6 is intended to improve amenity outcomes for this unit by providing a high level window and is setback in a way that will maintain the desired two storey character in the portion of the site subject to the 8.5m height limit. The height of this pop-out roof is consistent with the balustrade height and is setback consistent with the alignment of the balustrade for the level 2 communal open space, integrating into the building design.

The clerestory window which services Unit 9 provides further amenity and direct sunlight for this unit, whilst not having a visual impact for surrounding sites as it is centrally located within the roof. Whilst it could be removed and compliance achieved, it is not considered to result in any benefit with regards to streetscape, bulk and scale and therefore its removal is not considered necessary or warranted.

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

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

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

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

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

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

Comment
In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment
The desired character for the Newport Commercial Centre is guided by the Newport Master Plan, which is reflected in the applicable PLEP and DCP controls.

The varied height limit across the site reflects the desired building heights and scale of the Newport Commercial Centre, with the 11.5m building height reflective of a three storey building and the 8.5m height reflective of two storey buildings. The building at the frontage of Barrenjoey Road and eastern portion of Robertson Road is a three storey form, consistent with the Masterplan.

The portion of the site which is subject to the 8.5m height limit and fronts Robertson Road will read as two stories from the public domain. The portion of non-compliant building caused by Unit 13 is setback such a distance that it would not be visually imposing or visually prominent as read from the street level of Robertson Road and the building will maintain a two storey visual appearance as viewed from Robertson Road, which matches the intent of the Newport Masterplan.

The minor encroachment of Lobby B (860mm wide) is not considered to render the entire development contrary to the desired character of the locality and this encroachment has been offset by a reduction of floor area upon Level 1 to improve solar access outcomes for the southern side of Robertson Road.

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

Comment
There are varying styles of development in the Newport Town Centre, with the maximum height

of the surrounding developments being three stories.

The proposal is consistent being a combination two and three stories as read from the public domain and is therefore compatible with the surrounding shop top housing developments.

c) to minimise any overshadowing of neighbouring properties,

Comment
The solar access outcomes for the future pedestrian plaza which is to be delivered within the site upon No. 349 Barrenjoey Road on the southern side of Robertson Road.

The design of the first floor at the western corner of the site has been pulled back from the Robertson Road frontage (as notated in plan A110 Issue 04) to allow an improved solar access outcome to the southern side of Robertson Road, with the leading edge of the first floor the cause of overshadowing for the portion of the site subject to the 8.5m height limit.

The majority floor space that is in breach of the 8.5m height limit is located central to the site which does not cause additional overshadowing. Any overshadowing that is caused by the encroachment caused by Lobby B is off-set by the reduction of floor area along the leading southern edge of Level 1.

d) to allow for the reasonable sharing of views,

Comment
The non-compliance to the building height will not have a direct impact upon views.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment
The site has a minor fall from west to east, with the ground floor retail tenancies stepped across the site to suit and the roof form of the development suited to the fall of the site to comply with the 11.5m height limit at the Barrenjoey Road frontage.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment
A detailed assessment has been undertaken by Council's Heritage Officer with regards to the impact upon the adjoining heritage item to the North-East. Council's Heritage Officer supports the application. Although non-compliant with building height for a portion of the 8.5m height limit, there is a large area of the site subject to the 11.5m height limit that the building sits well below and therefore reduces the buildings dominance upon the adjoining heritage item. Landscaping is provided around the non-compliant area of the building to assist in providing greenery as viewed from afar.

Zone objectives

The underlying objectives of the B2 Local Centre zone are:

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

Comment
The ground floor provides a range of retail spaces of varied size for the future uses to support the local centre. The proposal is consistent with this objective.

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

  Comment
  The site is well serviced by buses being located on Barrenjoey Road. The proposal contributes to retail floor area within the town centre.

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

  Comment
  The basement level contains bicycle parking to encourage cycling for residents of the development. The site is within walking distance to a varied of services for residents and businesses.

- ***To provide healthy, attractive, vibrant and safe local centres.***

  Comment
  The proposal provides retail shop frontage to both Barrenjoey Road and Robertson Road to support the town centre and smaller scale 'boutique' shops that contribute to the vibrancy of the centre. The location of the vehicular access is consistent with the Newport Masterplan on Robertson Road.

- ***To strengthen the role of centres as places of employment.***

  Comment
  The development provides a generous amount of retail floor area within the ground level of the site to contribute to employment generating businesses.

- ***To provide an active day and evening economy.***

  Comment
  The two largest tenancies are located fronting Robertson Road and would be well suited to a restaurant/cafes to contribute to the nighttime economy.

- ***To provide for residential uses above street level, where they are compatible with the characteristics and uses of the site and its surroundings.***

  Comment
  The proposed development is for shop top housing and this is compatible with the surrounding developments along Barrenjoey Road.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

to be granted.

Planning Circular 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. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

The site is located adjacent to a locally listed heritage item at 33 Foamcrest Avenue, St Michael's Anglican Church.

The application has been considered by Council's Heritage Officer with regards to the impact upon the Local Heritage Item. Council is satisfied that the proposed development will not have an unacceptable impact upon the heritage significance of St. Michael's Anglican Church.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil (ASS) Class 4, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface within a Class 4 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 3.6m below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by Assetgeoenviro dated 11 December 2020. In the assessment, Asetgeoenviro recommended a site criteria and further assessment to determine the presence of ASS and Council's Environmental Health Officer is satisfied that this may be undertaken through the construction certificate process, with appropriate conditions recommended to address the requirements of the LEP.

Conditions have been recommendations and have been included in the recommendation of this report.

7.2 Earthworks

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

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

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

stability in the locality of the development

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

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

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

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

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

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

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

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

Comment
The excavated material will be processed according to the Waste Management Plan for the development.

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

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

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

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

Comment
The proposed development has been considered with regards to the impact upon the adjoining heritage item. Council is satisfied the excavation will not have an impact or undermine the integrity of the heritage item.

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

7.3 Flood planning

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(a) is compatible with the flood hazard of the land, and

Comment
The development has been assessed by Council's Flood Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is compatible with the flood hazard of the land.

(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and

Comment
The development has been assessed by Council's Flood Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.

(c) incorporates appropriate measures to manage risk to life from flood, and

Comment
The development has been assessed by Council's Flood Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from flood.

(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

Comment
The development has been assessed by Council's Flood Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Comment

The development has been assessed by Council's Flood Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line (Barrenjoey Road)	Ground 3.5m First 3.5m Second 7.5m	3.5m 3.5m 7.5m	N/A	Yes Yes Yes
Front Building Line (Robertson Road)	Ground Nil First Nil Second 4m	Nil Nil - 2m 4.4m	N/A	Yes Yes Yes
Side building line (North-eastern boundary)	Ground Nil First Nil Second 3m	Nil Nil 4.32m	N/A	Yes Yes Yes
Side building line (North-Western Boundary)	Ground Nil First Nil Second 3m	Nil Nil Nil - 7.225m	N/A N/A 100%	Yes Yes **No**

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 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
A4.10 Newport Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.3 Subdivision - Business Zoned Land	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	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
C1.2 Safety and Security	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.2 Safety and Security	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
C2.11 Signage	Yes	Yes
C2.15 Car/Vehicle/Boat Wash Bays	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.2 Character - Newport Commercial Centre	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.6 Street Frontage Building Envelope (Newport Commercial Centre)	Yes	Yes
D10.9 Setbacks (Newport Commercial Centre)	No	Yes
D10.17 Character of the Public Domain - Newport Commercial Centre	Yes	Yes
D10.19 Subdivision and Amalgamation (Newport Commercial Centre)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10.20 Design of Mixed Use Developments (Newport Commercial Centre)	Yes	Yes
D10.21 Active Frontages (Newport Commercial Centre)	Yes	Yes
D10.22 Arcades (Newport Commercial Centre)	Yes	Yes
D10.23 Building Entries (Newport Commercial Centre)	Yes	Yes
D10.24 Building Depth and Separation (Newport Commercial Centre)	No	Yes
D10.25 Roof Form (Newport Commercial Centre)	Yes	Yes
D10.26 Views (Newport Commercial Centre)	Yes	Yes
D10.27 Design for Flooding (Newport Commercial Centre)	Yes	Yes
D10.28 Open Space (Newport Commercial Centre)	No	Yes
D10.29 Landscaping (Newport Commercial Centre)	Yes	Yes
D10.30 Facades (Newport Commercial Centre)	Yes	Yes
D10.31 Ecological Sustainable Development Responsive Design (Newport Commercial Centre)	Yes	Yes
D10.32 Solar Access and Ventilation (Newport Commercial Centre)	Yes	Yes
D10.33 Privacy (Newport Commercial Centre)	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Requirement

The DCP requires parking to be provided at the following rate:

Land Use	Rate	Proposed	Required	Provided
Commercial/Retail	1 space per 30sqm of GLA (excludes storage) inclusive of 1 disabled space	548sqm GLA	18.2 spaces	9 spaces (1 share zone for disabled provided)
Residential	1 space for 1 bedroom dwelling 2 spaces for 2 bedroom dwelling 1 visitor space per 3 units (rounded up) 1 vehicle wash bay 1 bicycle rack per 3 units	2 x 1 bedroom 11 x 2/3 bedroom 13 units total	24 residential 5 visitor 1 wash bay 5 racks	16 residential 1 visitor 1 wash bay 8 racks
			48 spaces	26 spaces **(-22 spaces)**

Merit Consideration

The proposed development had originally proposed fully compliant car parking by including two levels of basement parking within the development.

When the application was referred to the DSAP, the DSAP raised issue with the amount of car parking within the development and the excavation needed to provide this carparking in two basement levels.The DSAP made the following comments:

Given the valid concerns expressed in many submissions that the ambience of Robertson Road will be degraded by vehicle movements, the Panel suggests that Council consider whether there should be no requirement for on-site retail parking and a relaxation of the car parking rates for residential.

This could have the following benefits:

- *eliminating the need for an entire basement level (approximate 34 spaces could be accommodated if loading and waste were off site)*
- *reducing embodied carbon in the construction,*
- *reduced operating energy consumption*
- *a reduced construction time and disruption to the centre.*

The following recommendation was made by the DSAP:

In order to minimize the disruption to the street, in consultation with council

- *investigate the removal of the requirement for on-site loading and explore the possibility of curbside loading during restricted hours*
- *investigate the possibility of reducing car parking rates for retail*
- *the Panel suggests that further reduction in car parking could be considered given the accessible location*

Council considered the above recommendations and resolved through consultation with Council's traffic and waste team that the removal of the second level of basement parking could be supported given the circumstances of the case, which included the proposal being in a well serviced location in the centre of Newport Town Centre.

Council's Traffic Engineer has commented on the amount of car parking spaces provided for the development and has recommended a condition that all car parking within the development be designated to the residential component of the development, resulting in a total of 26 spaces being provided for the residential component (including 4 visitor spaces). Council's traffic engineer's comments are placed earlier in this report and the proposed reduction in parking is supported by the traffic team. Furthermore, an addition two (2) spaces could be provided should the future scenario occur where access is gained through No. 31 Foamcrest Avenue.

The required amount of bicycle parking is maintained for the development, along with a vehicle wash bay that also allows for deliveries to occur in the basement. Council's waste team have been consulted and are satisfied that waste collection can occur from the Barrenjoey Road Frontage which minimises disturbance to Robertson Road. See Council's waste officer's comments earlier in the report.

C1.25 Plant, Equipment Boxes and Lift Over-Run

Mechanical ventilation is shown on the basement level for the development adjacent to the basement ramp and located at the north-western extent of the basement level. The lift overun is located centrally

to the building and does not breach the height limit. A kitchen exhaust is integrated into the roof form to service the below retail/commercial tenancy fronting Robertson Road.

D10.9 Setbacks (Newport Commercial Centre)

DCP Control

The DCP requires that a 3m side setback is provided for the second floor. The north-western boundary is considered to be a side boundary, as the proposed development is sited upon a corner lot. The proposal provides a compliant second floor setback of 4.32m to this boundary. For the north-eastern second floor setback, the proposal provides between nil and 7.225m, with the north-eastern wall of Unit 10 non-compliant with the control.

Merit Consideration

In consideration of the portion of façade resulting from Unit 10 which is not setback 3m, the proposal is considered against the outcomes of the control as follows:

A variety of built form and a sense of openness within the streetscape and on the skyline.

Comment
The building uses a mixture of materials, including a variation of materials and form upon the top floor and a roof form which is complimentary to the desired feel and character of the area, with a skillion style roof for the top floor. The non-inclusion of the 3m upper floor setback to the wall of unit 10 is not considered to remove a sense of openness, with this portion being setback the required 4m from the lower two floors adjoining Barrenjoey Road to retain an open feel along Barrenjoey Road, reducing the visual presence of the second level.

The public domain is enhanced.

Comment
The public domain is enhanced by the eight retail tenancies facing the street frontages, with associated awnings and at-grade retail entrances which activate the street level.

Retail and dining uses on Barrenjoey Road spill out to the exterior of the shopfront, utilising and activating the footpath.

Comment:
The 3.5m ground floor setback to the lot boundary allows the use of this space for footpath dining.

A two storey street frontage wall height is maintained.

Comment
The proposal is consistent with this, with ground level and first floor maintaining a two storey street frontage height and the second level stepped back a further 4m compliant with the control.

Built form is characteristically 'broken down' into smaller components, with breaks between buildings, particularly on the 3rd level.

Comment
The urban form and design of the streetscape is not considered to be jeopardized by the nil setback to Unit 10, with the the setbacks to the ground, first and second level compliant with the street front setbacks which guide the bulk and scale of the building as experienced from the street level. The recessed second level, although not strictly compliant with the 3m side setback, still minimises the presence of the built form through material selection, roof form and street setbacks. It must be

recognised that the remainder of the building is more than compliant, providing a 7.225m setback to the north-eastern boundary to achieve compliance with the building separation under the ADG, enhance solar amenity within the development and retain the reasonable development opportunity for the next site to the north-east. The nil setback to Unit 10 is considered to be off-set by the generous setback to the remainder of the development which provides increased separation for an optimal outcome for the development itself and future development to the north.

Opportunities for view sharing are protected and enhanced.

Comment
The proposal will not impact upon any view corridors.

Adequate residential amenity is provided in the form of access to daylight and natural ventilation, and generous balcony areas for private outdoor space.

Comment
The top floor of the building has been designed in an 'L' shape to optimise solar access from the north-eastern orientation. Should a consistent 3m setback be provided to the top floor, none of these units would be able to provide a habitable window or balcony facing north-east due to the 6m building separation requirement under the ADG. Therefore, it is more appropriate to provide the 'L' shape plan, with a nil setback to Unit 10 and a generous setback for the remainder of the top floor to achieve optimal amenity for the development. This also provide adequate opportunity for the next site to develop in accordance with the ADG and achieve a consistent urban form along Barrenjoey Road and spatial separation in accordance with the ADG.

Efficient building layouts are achieved.

Comment
The building layout proposed is efficient in provided nil setback for the section of building that does not require window openings or balconies, whilst providing a setback of 7.225m well in excess of the 3m minimum for those areas which need to achieve compliance with the ADG and obtain solar access from the northern orientation.

A public plaza on Robertson Road.

Comment
This does not inhibit the pedestrian plaza on Robertson Road from being achieve. Solar amenity to the southern side of Robertson Road is achieved.

On the northernmost sites adjacent to the beachfront path network (ie 370-386 Barrenjoey Road), high quality development and an attractive and inviting entry to Newport that visually integrates the main street with the beachfront open space.

Comment
Not applicable to this site.

Courtyard spaces, balconies and above ground open space is provided for building users and residents, to encourage outdoor living and communal activity and allow for additional outdoor dining areas.

Comment
The building has been designed to achieve consistency with the ADG with regards to spatial separation. The units upon level 1 are provided with generous outdoor private open space and

landscape gardens due to the increased setback to the north-eastern boundary for the majority of the units.

Adequate building separation is provided for visual and acoustic privacy for all occupants and building users.

Comment:
The proposal has been designed in accordance with the ADG with regards to visual privacy and building separation. The nil setback is consistent with the ADG and does not provide any window openings. The design does not restrict future development potential of the adjoining sites or these sites ability to develop in accordance with the ADG and Pittwater DCP/LEP.

Overall, the proposed development meets the outcomes of the Pittwater DCP and is considered to be of good design, optimising setbacks specific to the constraints and orientation of the land and therefore, a variation is supported in this particular circumstance.

D10.19 Subdivision and Amalgamation (Newport Commercial Centre)

The DCP makes reference to the pattern of site amalgamation within the Newport Masterplan, which is described in the below figure:



Extract from Newport Masterplan Figure 5.2 'Subdivision and Amalgamation'

The proposed development is consistent with the requirements for site amalgamation, in that the sites

Nos. 351 and 353 Barrenjoey Road are proposed to be amalgamated for development in accordance with the above figure. The site adjoining to the north-west known as No. 31 Foamcrest Avenue is marked as a 'potential amalgamation option' and this site is current owned and operated as Australia Post as a post office and mail distribution center. The applicant has provided written evidence to Council which includes correspondence from Australia Post that the site is not intended to be developed in the short to medium term. Council has also engaged with Australia Post who have confirmed that there is no current intention or plans for the site to be developed. As shown in the below figure 2, there is a separate vehicular access point designated for the Australia Post site off Foamcrest Avenue that can be utilized in any development of this land.

The DCP makes reference to the following figure within the Newport Masterplan with regards to vehicular access:



Extract from Newport Masterplan Figure 4.4 'Vehicular Access and underground parking'

The above figure shows the anticipated vehicular access points to basement parking within the Newport Town Centre. As indicated in the above figure, it clearly shows that a vehicle access point to the subject site is anticipated off Robertson Road.

The proposed development is consistent with the above, in that a vehicular driveway is provided off Robertson Road to the site. The basement plan also indicated basement 'breakthrough' points to the north-east and north-western sides to link basements through. Council's traffic team have considered the proposal with regards to the masterplan and are supportive of the proposal, being consistent with the Masterplan.

The proposal is therefore consistent with the requirements of the Newport Master Plan and requirements of this control.

As discussed earlier within this assessment report under the 'public submissions' section regarding vehicular access from Robertson Road, the applicant has put forward a potential future solution that involves basement breakthroughs and the potential for vehicular access to be gained through the site 31 Foamcrest Avenue upon development of this land, resulting in the potential removal of vehicular access to the site off Robertson Road. This is considered a long term solution and is contingent upon the development of 31 Foamcrest Avenue for which there are no current plans for redevelopment. It must also be considered that if the land at 355 Barrenjoey Road was to be developed prior to 31 Foamcrest Avenue, the option must be available to gain vehicular access to 355 Barrenjoey Road through the subject site from Robertson Road (as the masterplan does not allow for vehicular access from Barrenjoey Road for this site).

To assist this future solution to obtain access from Foamcrest Avenue, a condition of development consent as described earlier in this report is recommended for a positive covenant and a restriction under *Section 88E of the Conveyancing Act* to require the owner of the subject site to undertake the necessary works and approvals to facilitate this solution upon the development of 31 Foamcrest Avenue. There are a number of reasons Council recommend this condition be imposed, as follows:

- In considering the Public Interest under Section 4.15 (1)(e), Council has received a total of 262 submissions regarding the proposal, the majority of which make some reference to Robertson Road being an important community hub for the Newport Village Commercial Centre that would benefit from reduced vehicle movements or complete removal of vehicle movements upon Robertson Road. In light of this, there are considered sufficient grounds based on the public interest to warrant imposition of a condition to require the land owner to undertake the necessary steps to facilitate this future solution. Noting, this solution has also been offered up by the applicant via concept plans.

- The Newport Masterplan is referred to in the Pittwater DCP under Clause D10.2 Character – Newport Commercial Centre which provides "*development in the Newport Commercial Centre shall be in accordance with the approved Masterplan"* and the Masterplan is referred to at Appendix 12 of the DCP. The following parts within the Newport Masterplan which support the proposed future solutioninclude:

    - 3.5 "*Principles – Desired Future Character …the role of Robertson Road as an activity hub for the village will be enhanced…primary retail main street focus on Barrenjoey and Robertson Road …retention of the clusters of café/dining uses on Barrenjoey and Robertson Road".*

    - 4.3 *"Vehicle movement and Public parking –….Roberston Road and Coles Road remain one way streets…. Vehicle access to properties is generally not permitted from Barrenjoey Road. Where there is potential to amalgamate lots, provide for future access to and integration with underground car parking areas, to consolidate entry points on Foamcrest Avenue and to minimise disruption to pedestrian-focussed main street"*

    - 4.4 "*Vehicular Access and Underground Parking….The diagram shows that entries to parking areas can be consolidated with amalgamation, reducing the number of footpath crossings required and the associated impacts on streetscape".*

    Although the Masterplan clearly nominates a vehicular access point off Robertson Road and

advises that it is to be maintained as a one-way street (consisted with the proposal), the Masterplan refers to the enhancement of Robertson Road and consolidation of vehicle entry points off Foamcrest Avenue. Therefore, whilst the proposal in its current form is acceptable and in accordance with the masterplan, the imposition of a condition requiring covenant to carry out the necessary works and approvals to facilitate this future solution upon development of 31 Foamcrest Avenue is consistent with the further enhancement of Robertson Road and consolidation of vehicle access points as encouraged by the Masterplan.

A condition requiring a right of access for a 'through site link' to be provided upon development of 355 Barrenjoey Road has also been recommended given the masterplan requires access to that site through the subject land.

D10.22 Arcades (Newport Commercial Centre)

The Newport Master Plan Contains references to potential through site connections and pedestrian arcades within the Newport Town Centre. The Newport Master Plan, Section 4.2 Open Space, Section 4.5 Pedestrian and Cycle Networks and 4.9.1 Built Form show a number of potential through site links and pedestrian arcades which could be investigated in redevelopment of sites within the Newport Town Centre.

Part 4.2 Open Space provides the following guidance for through site connections with regards to the Masterplan:

- *Retain and enhance the key pedestrian through-site connections, in particular the mid-block route through the existing Foamcrest car park, and the connecting links to Barrenjoey Road. This route should be extended to Robertson Road. Two potential new connections could link with Foamcrest Avenue, one springing from the mid-block link in the southern block and another through the church site, should its buildings be reconfigured. These routes could be open to the sky or within a building or a combination of both. They should be lined with active uses, accessed directly off the route and visible from it through clear openings or extensive areas of glazing. NOTE that the position of these links is indicative. Their exact location will depend on site amalgamation and development.*



Newport Masterplan Figure 4.5.

Clause D10.22 Arcades provides the following prescriptive requirements for arcades within the DCP:

Arcades are to be provided in accordance to the Masterplan for the Newport Commercial Centre at Appendix 12 of this DCP.

Comment
It is important to note that the above Figure 4.5 within the Newport Masterplan should not be considered in isolation and the supporting references and guidance within Part 4.5 of the Masterplan is relevant when considered the ability to provide arcades within each development site. The mid-block north-south connection to Robertson Road is noted as a 'potential connection', an 'indicative connection' and depends on site amalgamation and redevelopment of adjoining sites. The completion of a through site link would also depend on relocation of the heritage listed church buildings on No. 33 Foamcrest Avenue, as well as development of the land at No. 355 Barrenjoey Road.

Figure 5.2 of the Masterplan indicates the sites which are requires to be amalgamated. The land to the north-west at No. 31 Foamcrest is identified as a 'potential amalgamation site' and is owned by Australia Post. Australia post has indicated that there is no current desire to develop No. 31 Foamcrest Avenue and therefore, not including the land No. 31 Foamcrest Avenue into the development of Nos. 351-353 Barrenjoey Road is reasonable. The land at No. 355 Barrenjoey Road is also not identified as land to be amalgamated with the development site.

There is no current known plans for development of the site 355 Barrenjoey Road and this site is under strata ownership between 18 owners. Its short term development is considered unlikely.

Therefore, the requirement for the applicant to provide a north-south through site link through the development site is considered onerous and unnecessary, given there is no current option to consolidate with No. 31 Foamcrest Avenue, no consolidation requirement with 355 Barrenjoey Road and there being no known plans for relocation of the heritage listed church at No. 33 Foamcrest Avenue that would be necessary to complete this link.

There is no current through site link in this location and the Masterplan gives more weight to enhancing existing through site links in the Newport Town Centre, whilst exploring potential options where this would be reasonably practical subject to amalgamation.

In the "car park precinct" (refer to controls at D10.19 of this DCP and the adopted Newport Masterplan at Appendix 12 for location of precinct), link east-west arcades with a north-south arcade connecting to Robertson Road.

Comment
The above control is not applicable to the subject land and is applicable to the land located on the southern side of Robertson Road. Note, that the DCP places more emphasis on the through site connection on the southern side of Robertson Road as there is existing connections from the Foamcrest Avenue Carpark.

To maintain the existing through site link from Barrenjoey Road to the Bramley Avenue carpark on the north-eastern side of Barrenjoey Road, an arcade is to be located where the existing privately owned laneway is located at 378 Barrenjoey Road.

Comment
This is not applicable to the subject land.

Arcades are not to terminate, i.e. must provide through site access.

Comment
As discussed in detail above, the provision of a through site link in this location is not reasonably practical in this circumstance. The DCP requires Arcades to provide through site connection and not to terminate and therefore, provision of a half built Arcade that terminates within the property is not desirable as prescribed by the DCP.

Arcades are to be designed with clear lines of sight, minimising recesses or corners.

Comment
Not applicable to the development, no arcade.

Arcades are to be fully accessible 24 hours a day, open to the sky or allow daylight access.

Comment
Not applicable to the development, no arcade.

Colonnades are not permitted in arcades (refer to advisory note in clause D10.21 of this DCP).

Comment
Not applicable to the development, no arcade.

Overall, the proposed development has been considered against the controls contained within the DCP which accompany the Newport Masterplan and the proposal compliant with the control, when considering the opportunities and constraints of the subject site.

D10.24 Building Depth and Separation (Newport Commercial Centre)

The proposal has been considered in detail against the requirements of the Apartment Design Guidelines which includes controls relating to building depth and building separation. See assessment against the ADG earlier in this report.

D10.28 Open Space (Newport Commercial Centre)

DCP Control

The DCP requires a communal open space area for shop top housing residential developments. The area must be 15% of the site area with a minimum dimension in one direction of 6 metres. The site has an area of 1313sqm and therefore, a communal open space area of 196sqm is required in accordance with the DCP.

The proposed development has 128sqm of communal open space located on the second floor, or, 10% of the site area. This area has a minimum dimension in one direction of 6 metres.

Communal open space is also considered against the apartment design guidelines earlier in this report.

Merit Consideration

The proposal has a shortfall of communal open space what considered against the DCP requirement. In consideration of this variation to the DCP, the proposal is assessed against the outcomes of the control as follows:

A consolidated area of useful, accessible private and/or communal open space for all new dwellings is provided.

Comment
Having regard to the context of the site, the area of communal open space is considered suitable for the residents of the development, with the area receiving a high level of solar access and offering facilities catering to their needs including green space, decking and a bbq area. It is common for developments of this nature located in town centres to have either reduced or no communal open space based on their proximity to public open space networks and the beach. The site is located in a highly accessible, well serviced location and is across the road from Newport Beach and the surrounding public parkland. Therefore, although the proposal has a numerical shortfall, this is acceptable given the location of the development.

Landscaping contributes to the 'green' mid block character and provides for soft landscaping and deep soil planting.

Comment
The communal open space contains landscaping that contributes to the mid-block green character, as viewed from short and long distance. The 1m soil depth is capable of accommodating medium height landscape planting.

Stormwater infiltration can occur in the open space area.

Comment
Council's development engineers have reviewed the stormwater drainage plans for the site and are satisfied with site drainage.

A pleasant outlook for building users is provided.

Comment
A planter box is used adjacent to Bedroom 1 of unit 13, to assist outlook and soften the building.

The proposed development is considered consistent with the outcomes of the control and therefore, the variation to the control is supported in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $70,554 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $7,055,446.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 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.

Summarised Conclusion

The proposed development is considered to be an appropriate contextual fit for the Newport Commercial Village and responds to the key aspects of the DCP and Masterplan with regards to the vehicular access, site amalgamation and design in response to the amenity of Robertson Road in regards to building bulk and scale.

When considered against the ADG, the proposal is consistent with the key objectives which guide residential amenity for the development and provides suitable building separation to enable development of the future adjoining land. The proposed shortfall in carparking is able to be supported in the context of the B2 Local Centre Zone and the provision of a single level basement parking is a suitable outcome for the site that minimises disturbance for the precinct, whilst providing an appropriate

amount of parking for the residents of the building.

The proposal has responded and incorporated the recommendations of the DSAP in each instance and the applicant has addressed each of the issues identified by Council through the assessment process. Therefore, the proposal is considered worthy of approval subject to the conditions outlined at the end of this report.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 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 DA2020/1756 for Demolition works and construction of a mixed use development (Shop Top Housing) on land at Lot 66 DP 6248, 353 Barrenjoey Road, NEWPORT, Lot 65 DP 6248, 351 Barrenjoey Road, NEWPORT, Lot 64 DP 1090224, 351 Barrenjoey Road, NEWPORT, 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**
A011, Issue 07	21/06/2021	Crawford Architects
A101, Issue 24	21/11/2021	Crawford Architects
A102, Issue 34	21/11/2021	Crawford Architects
A103, Issue 33	21/11/2021	Crawford Architects
A104, Issue 32	21/11/2021	Crawford Architects
A105, Issue 28	21/11/2021	Crawford Architects
A300, Issue 23	21/11/2021	Crawford Architects
A301, Issue 19	21/11/2021	Crawford Architects
A302, Issue 18	21/11/2021	Crawford Architects
A310, Issue 16	21/11/2021	Crawford Architects
A311, Issue 16	21/11/2021	Crawford Architects
A312, Issue 09	21/11/2021	Crawford Architects
A320, Issue 08	21/06/2021	Crawford Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**

SW05 P3, SW00 P4, SW03 P4, SW01 P6, SW04 P6, SW02 P7	14 and 15 September 2021	Demlakian

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Report, 5622-G1, Rev 2	22 September 2021	Assettgeoenviro
Water Mangement Report, Ref 219120rpt20210914	14 September 2021	Demlakian
Statement of Compliance - BCA Access Report, Rev B	16 June 2021	ABS
BCA Report, Ref 19/0405	15 June 2021	Dix Gardner
Flood Management Report	6 March 2020	Demlakian
BASIX Certificate No.1033257M_03	21 November 2021	Damian O'Toole Town Planning
Acoustic Report V2, Project No 3918	20 January 2021	Koikas Acoustics
Construction Traffic Management Plan	11 December 2020	SBMG Planning

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Dw 000, Issue E	17/06/2021	Site Image Landscape Architects
Dw 101, Issue E	17/06/2021	Site Image Landscape Architects
Dw 102, Issue F	21/06/2021	Site Image Landscape Architects
Dw 103, Issue F	21/06/2021	Site Image Landscape Architects
Dw 104, Issue A	21/06/2021	Site Image Landscape Architects
Dw 501, Issue D	06/12/2020	Site Image Landscape Architects

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	December 2020	Crawford Architects

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Transport for NSW	2021/097880	15 February 2021
Water NSW	2021/318057	3 May 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 $70,554.46 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 $7,055,446.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Security Bond (Road works)**
The applicant is to lodge a bond with Council of $60 000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction, Ker and gutter reconstruction and driveway crossing 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.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $1,000 as security against any damage Council's stormwater 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.

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

9. **Public Domain Plan**

A Public Domain Plan shall be submitted to the Certifying Authority and Council, with sufficient detail design information including the following:
• Provision of new granite pavement to the Robertson Road road reserve frontage to match existing granite pavement on opposite side of Robertson Road, as approved by Council,
• Finished pavement gradients to achieve a minimum 2.5% rise from kerb to building openings, and match existing levels to adjoining properties,
• Details of any utility alignment and level changes,

• Tactile ground surface indicators at the pedestrian crossings in accordance with AS1428.4.1,
• Identification of existing street furniture to be retained and protected including bollards, safety fencing, street signs and the like,
• Existing utility pit lids are to be altered to paver infill type to accommodate the granite paving paver within Robertson Road,
• Protection of Barrenjoey Road unit pavers and replacement as required,
• Street tree planting in accordance with Northern Beaches Standard Drawing 1300 - Tree Pit Details, Plan and Section, including 4600 x 2200 strata cell system, 1600 x 1400 tree pit opening finished with porous paving sitting on a cast iron perforated grate. The perforated grate shall sit over the strata cell system,
• Street tree planting shall match the planting theme within the opposite side of Robertson Road, including the first street tree from the corner shall be nominated as Tristaniopsis laurina, and the other two street trees shall be Waterhousia floribunda,
• All street trees shall be planted at a minimum container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation, and are to be placed in consideration of existing street lighting and utilities,
• Street trees shall include tree guard TG6 'Silva Guard', black in colour, manufactured by Street Furniture Australia,

Any work carried out upon public land shall include an application for construction of kerb & gutter, footpath, pavement and any other encroachment works on council's road reserve: Section 138, including approvals and permits from Council in place prior to commencement to conduct such works.

The Public Domain Plan is to be provided to the Certifying Authority and Council prior to the issue of the Construction Certificate.

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

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.

A soil depth of 600mm is required to support landscaping as proposed. 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).
Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

11. **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 Asset Geotechnical Engineering Pty Ltd dated 22/09/2021 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.

12. **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.

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 Water Management Report (REF: 219120rpt20210914_AM), Stormwater Plan SW02 rev P7 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.

14. **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.

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. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council 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. **On-Street Work Zone**
The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council's website or at the Customer Service section at Council's administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

An application must be lodged with Council for consideration and approval for a work zone for the frontage of the site.

The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Applications must be lodged at least four (4) weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

17. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

18. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- Bedroom 1, Unit 13 shall have a window sill height of 1.7m from the finished floor level upon the south-western elevation.

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.

19. **Fire Safety**

The works and recommendations as contained in the "Deemed to Satisy Assessment" Report prepared by Dix Gardner Group, dated 18/12/2020, Report Ref No. 19/0405 are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

20. **Building Code of Australia Access Report**
Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1.
In this regard the Access Report - "Statement of Compliance" prepared by Accessible Building Solutions, job no. 219164 and dated 3/10/2019 is to be considered as part of the assessment of the Construction Certificate.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a Disability.

21. **On-site Stormwater Detention Details**
The Applicant is to provide a 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 concept drainage plans prepared by Demlakian Consulting Engineers, job number 219120 drawing number SW00 to SW05, dated 14/9/21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. OSD to be provided in accordance with Clause 9.0
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.

22. **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 design of driveway crossing, reinstatement of existing driveway crossings, stormwater connection from the site and public domain works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. 5.0 meter wide driveway crossing in accordance with Northern Beaches Council Drawing

No.A4-3330/1 N.
2. Reinstatement of all old driveway crossings
3. Reconstruction of kerb and gutter along the entire Robertson Road frontage with 600mm AC reinstatement.
4. Paving and landscape reconstruction along Robertson Road frontage in accordance with the Public Domain Plan Condition of this consent.
5. Site stormwater discharge connection to the existing Council pit in Robertson Road showing details including but not limited to size, invert levels, long section with existing services, and connection details.

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.

23. **Tanking of Basement Level**
The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

24. **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.

25. **Acid Sulfate Soils Management Plan (ASSMP)**
An Acid Sulfate Soils Management Plan (ASSMP) is to be prepared by suitably qualified and experienced persons to manage the potential disturbance of Potential Acid Sulfate Soils (PASS)

during works.

The Acid Sulfate Soils Management Plan (ASSMP) is to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To ensure management of potential acid sulfate soils.

26. **Amended Acoustic Report to be Submitted**
Prior to the issuing of a Construction Certificate, an amended acoustic report by a suitably qualified acoustic consultant with updated unattended monitoring data is to be submitted to Councils Environmental Health Department for review and approval. The report and monitoring is to be done in accordance with NSW EPA's Noise Policy for Industry.

Reason: To preserve the amenity of the neighbourhood (DACHPCPCC6)

27. **Mechanical Ventilation Provisions for Retail Tenancies**
Prior to the issuing of any Construction Certificate, certification is to be provided from a suitably qualified professional that the building's design and construction will provide adequate provisions to the retail tenancies for mechanical ventilation to be installed for any future retail tenancies that may require mechanical ventilation. The certification is to consider that the buildings provisions for mechanical ventilation are satisfactory to:

- Prevent potential amenity issues including noise and odour for occupants of the building and surrounding premises; and
- Allow compliance with relevant legislation and standards including Building Code of Australia, AS1668.1 "The use of ventilation and air conditioning in buildings Fire and smoke control in buildings" and AS1668.2 "The use of ventilation and air conditioning in buildings Mechanical ventilation in buildings".

Certification is to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect the amenity of building occupants and neighbouring properties. (DACHPCPCC6)

28. **Noise - Design of Mechanical Plant**
Prior to the issue of a Construction Certificate, the design, specifications and location of noise generating mechanical plant are to be provided to the Principal Certifying Authority. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to
determine acoustic treatments to control noise emissions from all mechanical plant noise in accordance
with recommendations in the amended acoustic Report.

Any design recommendations made by the consultant must be implemented into the plans prior to
issuing the Construction 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.

(DACHPCPCC6)

29. **Tree Protection Plan**
In order to protect existing road reserve trees, palms and vegetation in close proximity, and in particular to the existing planting fronting Barrenjoey Road, the following applies to the development site:
i) A Tree Protection Plan prepared by a AQF Level 5 Arborist with qualifications in arboriculture/horticulture shall be provided, in accordance with AS4970-2009 Protection of trees on development sites, demonstrating as a minimum, the following:
• Location of tree protection fencing / barriers,
• General tree protection measures, including trunk and canopy protection.
ii) A schedule of site inspections, hold points and related certification of construction works near existing vegetation, including in particular during the installation of scaffolding.
iii) The Tree Protection Plan is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.
iv) Tree protection measures identified on the plan are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting in the vicinity of the works.

30. **Flooding**
In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. The PMF level on the site varies, but the maximum PMF is 7.24m AHD. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level (for FPLs, refer to Figure 1 of Demlakian's Flood Management Report, March 2020).

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Car parking – G3

All access, ventilation and any other potential water entry points, including entry ramp

crests to the basement car park shall be at or above the Flood Planning Level, and as shown on Drawing A102/07. This includes that the driveway crest must be at or above 7.49m AHD, and the stairs from the street down to the basement car park must rise to at least 7.15m AHD before descending

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

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

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

(a) AS2601.2001 - Demolition of Structures**
(b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
(c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
(d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
(e) AS 4970 - 2009 'Protection of trees on development sites'**
(f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
(g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
(h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
(i) AS 2890.5 - 1993 Parking facilities - On-street parking**
(j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
(k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
(l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**
(m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website www.hreoc.gov.au/disability rights /buildings/good.htm. <www.hreoc.gov.au/disability% 20rights%20/buildings/good.htm.>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

32. **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.

33. **Basement Wall Structural Design**
Prior to the issue of any construction certificate, details shall be provided by a suitably qualified structural engineer demonstrating the two areas of the basement marked 'soft construction for future breakthrough' have been incorporated into the structural design of the basement and building to allow connections to future adjoining developments.

Details shall be provided to the Principle Certifying Authority prior to the issue of any construction certificate.

34. **Driveway crest structural design**
Prior to the issue of a construction certificate, details shall be provided by a suitably qualified structural engineer demonstrating the area identified as 'Area of slab shown hatched to be detailed as removeable' upon drawing A102 Issue 33 has been incorporated into the structure design of the driveway and the building.

Details shall be provided to the Principle Certifying Authority prior to the issue of any construction certificate.

35. **Acoustic Treatment**
Prior to the issue of a construction certificate, details shall be provided by a suitably qualified acoustic engineer demonstrating acoustic measures will be implemented to the window of Bedroom 1, Unit 13 to mitigate external noise sources from the communal open space area.

Details shall be provided to the Principle Certifying Authority prior to the issue of any construction certificate.

36. **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.

37. **Covenant and Restriction under 88E Conveyancing Act for future vehicular access**

Prior to the issue of any Construction Certificate in relation to the development a positive covenant and restriction under section *88E of the Conveyancing Act* noting Council as the authority with the right to vary, modify or release and in terms to the satisfaction of Council, must be registered on the title to the subject site 351-353 Barrenjoey Road.

Such instrument is to impose an obligation to obtain all necessary consents in relation to the carrying out of the works for the demolition of the basement break through walls (as shown in plan

A101 Issue 24, dated 21/11/2021 and prepared by Crawford Architects) (as agreed by the owner of 31 Foamcrest Avenue) and all ancillary necessary work at its cost and to provide for practical and appropriate vehicular access by registered instrument for the development site and site adjoining the development site on Barrenjoey Road to and from Foamcrest Avenue (as shown in Plan Robertson Road as shown in Plan A005 Titled 'Traffic Sequencing Option' Issue 01 dated 21/08/2021 prepared by Crawford Architects). When such access becomes available to and from Foamcrest Avenue the subject site access from Robertson Road is to be made inaccessible by vehicles.

Such instrument is to be prepared and registered at the cost of the applicant.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

38. **Tree Removal Within the Property**

The following Exempt Species as defined in the Development Control Plan or the Arboricultural Impact Assessment may be removed without consent:
i) T2, T3, T4, T5 and T6 - all under 5 metres in height.

Reason: To enable authorised building works.

39. **Tree Removal Within the Road Reserve**
In consideration of the assessment and recommendation of Arboricultural Impact Assessment prepared by Arboriculture Australia dated 11/01/2021, the following tree is approved for removal due to tree health and its useful life expectancy:
- T1 Lemon Scented Gum

Removal of approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council Tree Services Section prior to removal.

Reason: Public liability

40. **Road Occupancy Licence (ROL) from Roads and Maritime Services**
The developer shall apply for a Road Occupancy Licence (ROL) from the RMS Transport Management Centre (TMC) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant Roads Authority of proposed disruption to traffic flows.

41. **Road Occupancy Licence**
Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

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 Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected in accordance with the Tree Protection Plan.

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.

44. **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.

45. **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.

46. **Substitution of Stormwater Treatment Measures**
The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

47. **Dewatering Management**
Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about

permits.

The groundwater/tailwater 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.

48. **Traffic Management**
Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Consent Authority.

Reason: To ensure pedestrian safety and continued efficient network operation.

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. **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.

53. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising 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.

54. **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) Concrete slab under paving
(c) Prior to laying of pavers
(d) Connection to stormwater gully pit
(e) Prior to pouring of kerb and gutter, driveway crossing
(f) Subgrade level / basecourse level / subbase
(g) 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.

55. **Acid Sulphate Soils**
All excavation, construction and associated works must be conducted in accordance with the approved Acid Sulfate Soils Management Plan.

Reason: To ensure management of potential acid sulfate soils.

56. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

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

57. **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

58. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) street trees shall be in accordance with the Public Domain Plan, including 1 x Tristaniopsis laurina and 2 x Waterhousia floribunda, all planted at 200 litre container size,

ii) all nominated Raphiolepis indica 'oriental pearl' species (parent weed species) to be replaced with non self-seeding species of similar form and size.

Prior to the issue of any Occupation Certificate details (from a 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.

59. **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 engineering plans and manufacturer specifications . 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.

60. **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 any 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.

61. **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.

62. **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.

63. **Strata Management Statement**
The Strata Management Statement must specifically list the stormwater treatment measures

that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

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.

64. **Stacked Parking Spaces (Residential)**
Stacked parking spaces are to be assigned as the same residential unit which blocks in the parking spaces.

Reason: To minimize conflicts regarding parking areas.

65. **Allocation of parking spaces (strata title)**
All car parking spaces are to be assigned to individual units. All residential units must be assigned a minimum of one parking space. Four (4) visitor spaces are to be provided and clearly marked as such within the development. 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 and visitors.

66. **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.

67. **Stacked Parking Spaces (residential)**
Stacked parking spaces are to be assigned as the same residential unit which blocks in the parking spaces. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To minimize conflicts regarding parking areas.

68. **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.

69. **Footpath Construction**
The footpath, in accordance to Council's standard specifications, shall be constructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property.

70. **Convex Mirror at Ramps**

One (1) convex mirror is to be installed and maintained at the curved ramp leading from ground floor to the basement floor level. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To minimise vehicular conflicts at ramps.

71. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user 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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

72. **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 is to include the original 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 by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf

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 the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

73. **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.

74. **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 prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

75. **Acoustic Compliance Report**
Prior to the issuing of any interim / final occupation certificate an Acoustic Compliance Report, prepared by a suitably qualified professional such as an acoustic engineer, must be submitted certifying that the noise emitted from mechanical plant when operational:

- Complies with recommendations within the acoustic report
- Will not cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997; and
- Complies with NSW EPA Noise Policy for Industry.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent. Certification is to be submitted to the satisfaction of the Principal Certifying Authority and Councils Environmental Health
Team.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of Neighbouring properties. (DACHPFPOC6)

76. **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.

77. **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.

78. **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.

79. **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.

80. **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.

81. **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

82. **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.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

83. **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.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

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.

84. **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.

85. **Right of Access (through-site vehicle link)**

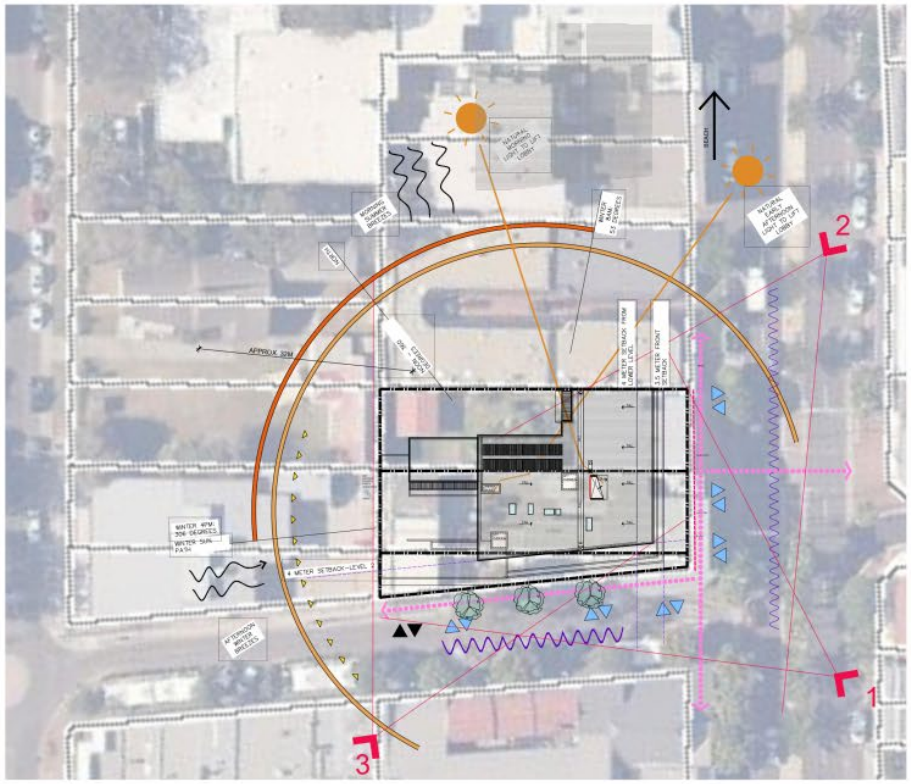
A right of access (under the provisions of Section 88B of the Conveyancing Act) is to be created to ensure a through-site vehicle access to 355 Barrenjoey Road Newport is provided within the basement of the subject development site, consistent with the location of the basement breakthrough as show in A101, Issue 24 dated 21/11/2021 prepared by Crawford Architects.

The terms of the right of way (available from Northern Beaches Council), are to be prepared by a registered surveyor to Northern Beaches Council's standard requirements at the applicant's expense.

Activation of the through site link will only occur upon redevelopment and physical commencement development containing a basement level upon 355 Barrenjoery Road Newport.

Details demonstrating compliance with this condition are to be submitted to Council.

Reason: To allow the reasonable development of the neighbouring site.

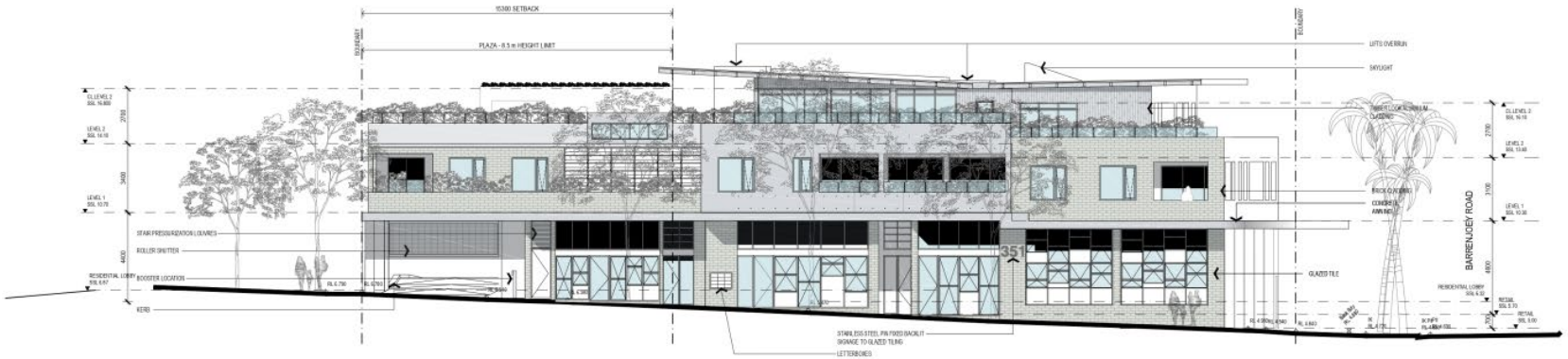




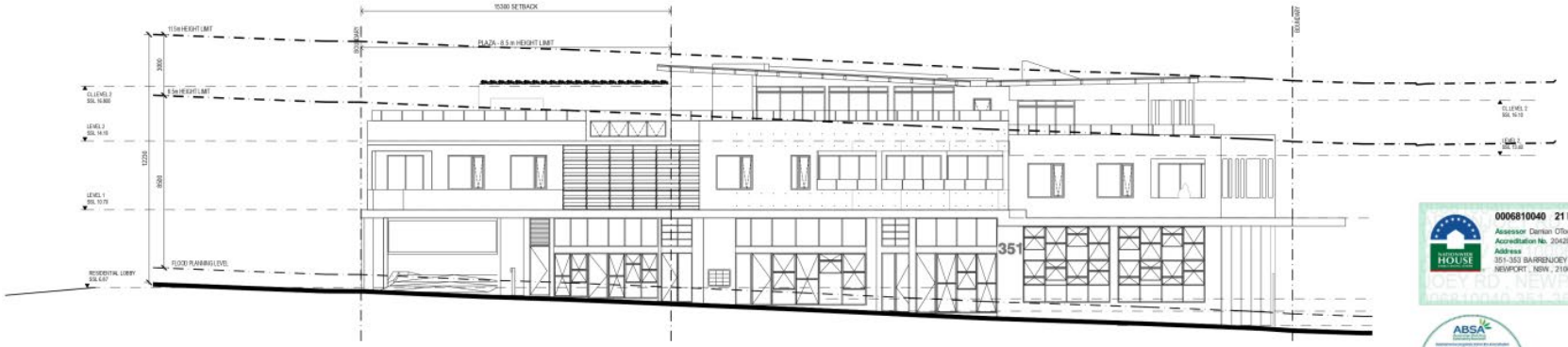


CLIENT	DEVELOPMENT LINK	
PROJECT	MIXED USE DEVELOPMENT	351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
TITLE	SITE ANALYSIS	
PROJECT NUMBER	18057	
DRAWING NUMBER	A002	
ISSUE	07	

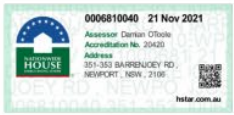
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STREET ELEVATION / ROBERTSON ROAD



STREET ELEVATION / ROBERTSON ROAD - HEIGHT PLANES





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ISSUE	DATE	AMENDMENTS
23	21.11.21	COUNCIL ISSUE

CLIENT: DEVELOPMENT LINK

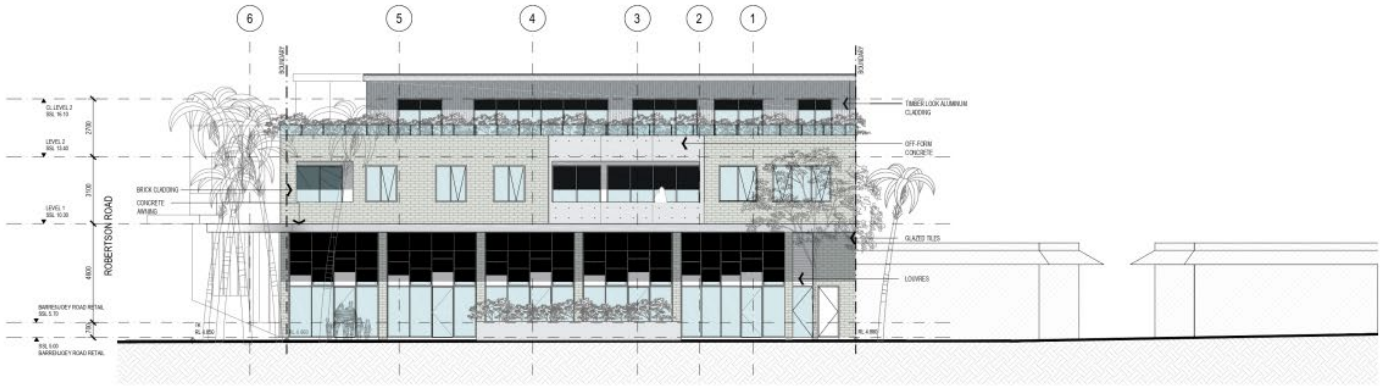
PROJECT: MIXED USE DEVELOPMENT
351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
LOT 65 & 66 DP2 D P10248

TITLE: SOUTH ELEVATION

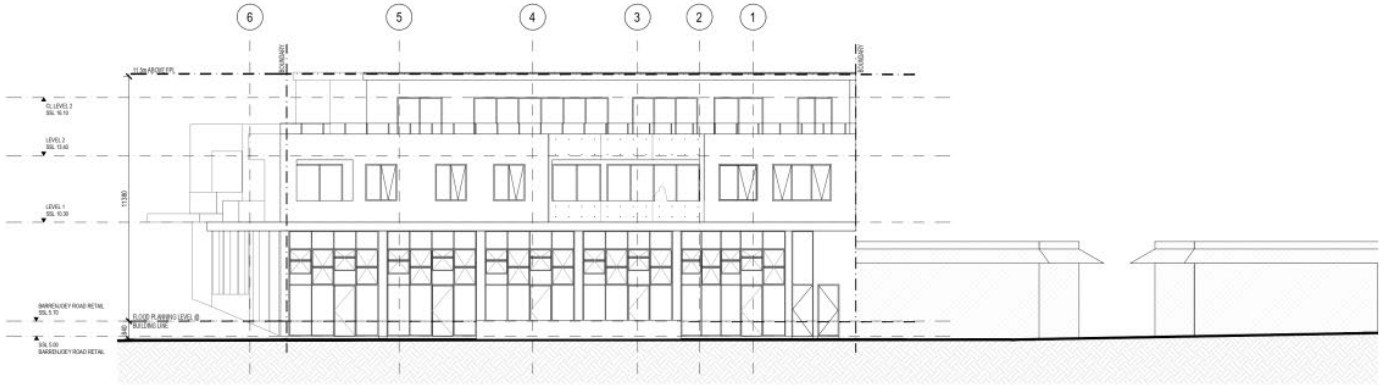
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APPROVED: MN
DRAWN: PG
CHECKED:
DATE: JAN 2019
STATUS: DA

PROJECT NUMBER: 18057
DRAWING NUMBER: A300
ISSUE: 23

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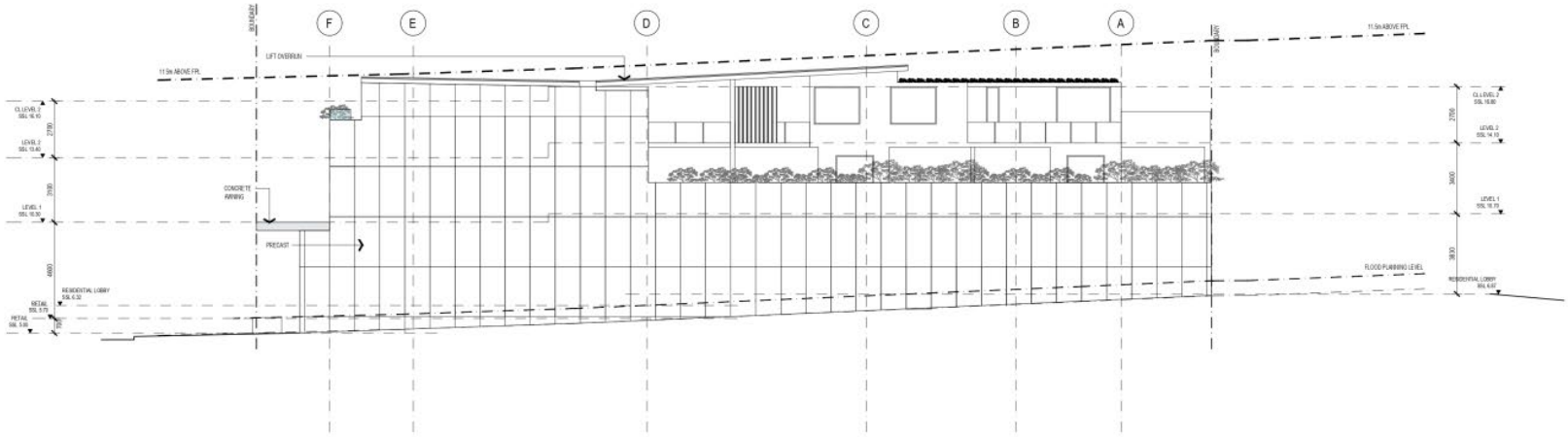
STREET ELEVATION / BARRENJOEY ROAD



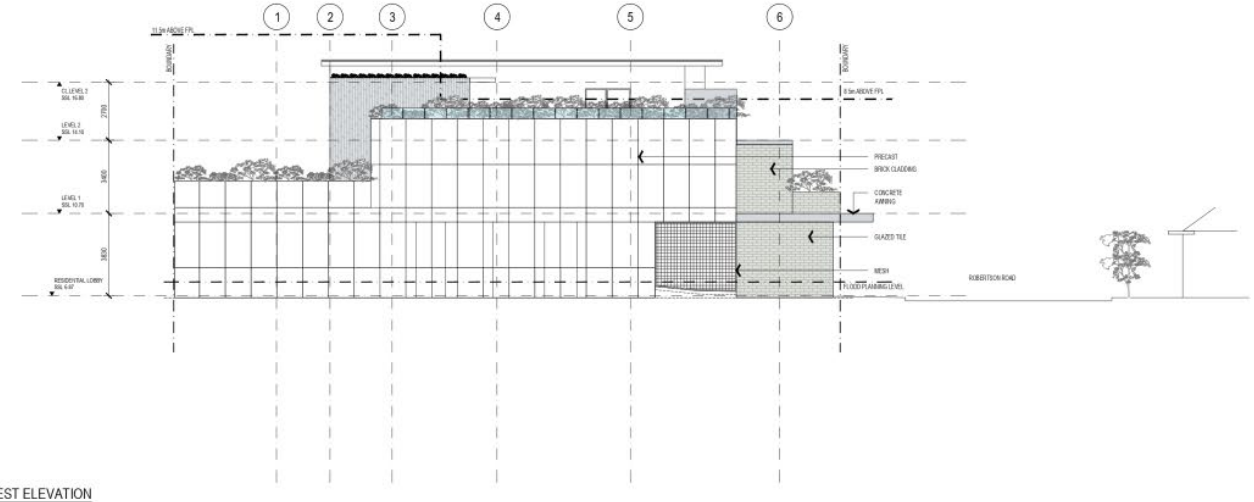
STREET ELEVATION / BARRENJOEY ROAD - HEIGHT PLANES

0006810040 21 Nov 2021
Assessor Damian OToole
Accreditation No. 20420
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DEVELOPMENT LINK	MIXED USE DEVELOPMENT	EAST ELEVATION	18057	A301	19	crawford architects
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NORTH ELEVATION



WEST ELEVATION





CLIENT	DEVELOPMENT LINK	PROJECT	MIXED USE DEVELOPMENT 351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
TITLE	NORTH AND WEST ELEVATIONS	PROJECT NUMBER	18057
DRAWING NUMBER	A302	ISSUE	18

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Design + Sustainability Advisory Panel Meeting Report – Date 23 September 2021

6. DA2020/1756 - 351 Robertson Road NEWPORT

PANEL COMMENT AND RECOMMENDATIONS

General

This proposal was previously considered by the DSAP as a pre-lodgement application under PLM2020/0269 at the meeting on 26 November 2020 and again as DA 2020/1756 at the DSAP meeting of 29 April 2021.

The Panel did not support the design and made a number of recommendations some of which have been incorporated in an amended design.

The Panel both recognises and commends the applicant for making these changes, but more needs to be done.

The Panel has been made aware of community concerns regarding the vehicular access from Robertson Road and the long term objective or potential for this to be pedestrianised, but notes that vehicular access has been shown in the Newport Masterplan and is noted in clause D10.19 of the DCP.

The Panel recommended that consideration be given to not requiring visitor or retail parking on the site, and that allowance should be made for connections to adjoining sites to allow for an integrated car park in the longer term that would allow for removal of the vehicular entrance and access from Robertson Road in the future.

The applicant has indicated this possibility on the submitted drawings.

The Panel re-affirms its advice that a reduction in retail customer car parking could be investigated with the aim of minimising vehicular movement in Robertson Road. This could facilitate the closure to through traffic and conversion of Robertson Road to a shared pedestrian mall with limited vehicular movements. This would need to be explored further with Council staff.

Despite these improvements, the Panel considers the internal amenity and internal planning of the units' poor.

With the aim of providing clear ***suggestions*** a number of sketches are attached

It is not normal practice for the Panel to provide sketches and it should be noted that these should not be understood as instructions, but serve to identify areas of poor planning and amenity and ***possible improvements,*** without prejudice in relation to assessment.

Strategic context, urban context: surrounding area character

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

Scale, built form and articulation

The Panel notes that the built form has been modified to reduce overshadowing impacts on the south side of Robertson Road.

The Panel also notes that there are minor intrusions into the setbacks but considered these to be minor and acceptable.

Refer to amenity section for comments relating to Unit 13

Whilst risers have been provided for commercial kitchen exhaust through the floorplates of the building, this infrastructure typically requires filters, ducting and vents on the roof. This need to be explored and

integrated into the design in the Development Application rather than left to retrofitting after the building has been constructed.

Recommendations.

1. The minor intrusions into the setbacks are acceptable.
2. Re-arrangement of Unit 13 may result in further intrusions into the 8.5m setback area. The Panel would consider this acceptable if it can be demonstrated that there is no additional impact on the overshadowing of the south side of Robertson Road (refer to section sketch).
3. Further investigation should be undertaken, and expert advice provided on the requirements for commercial kitchen exhaust and ducting on the roof top and presented in the architectural plan

Access, vehicular movement and car parking

The panel notes the improved waste and vehicular access, and the provision that has been made for joining the car park to adjoining sites at a later date. The Panel support the minor under-provision of car parking that avoids the necessity of an additional level and allows for connecting to adjoining sites.

Recommendations

4. Provide further design and construction details regarding the potential for opening to adjoining sites
5. Consider conditions of approval to ensure the potential for connection to adjoining sites
6. Provide schematic proposals for the removal and conversion of the driveway at a later date.

Landscape

The proposal has increased the common area but this is only easily accessed by 6 of the 12 units as a result of the re-design with 2 cores.

The photo montages indicate much of the landscaped area and planting will adjoin private terraces.

The Panel supports the planter boxes in the scheme and suggests that these could be extended to the roof area outside Lobby B and in front of outside the bedrooms in unit 8

The success or failure of these planter boxes will rely on easy access and on residents maintaining this landscape, which cannot be guaranteed.

Attention is draw to the Landscape referral:

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.
For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.
Reason: To maintain local environmental amenity.

Recommendations.

7. Incorporate a planter box accessible from and adjoining lobby B.
8. Ensure the body corporate is committed to maintenance of the planters and planting in the common areas.

northern beaches council

Amenity

The amenity of some of the units remains poor. The internal planning is inefficient and contorted.

There are many aspects that could be improved, but these should be resolved in the re-design. The applicant should refer to the Apartment Design Guideline (ADG) for guidance.

Recommendation.

9. Review and amend planning for unit and refer to suggestions on attached drawings. (DSAP 1-4)

Façade treatment/Aesthetics

The material pallet presented is supported with the exception of the glass balustrades on the out side of the planter boxes.

A number of submissions referred to the 'commercial scale' of some of the shopfronts. The Panel agrees with this statement.

Recommendation.

10. Delete glass balustrades and replace with non scalable balustrades on the inside of planter boxes.
11. Investigate finer grain fenestration on Robertson Road

Sustainability

Some of the previous recommendations of the Panel have been adopted

There is space for a lot more PV on the roof, however it may need to connect through to the apartments directly or the retail, as 15kW is probably already more that what is needed for the communal energy use.

The Panel supports the incorporation of roof lights. Ventilated roof lights in the bathrooms will improve amenity, and domed skylights in the kitchens to improve daylight access.

The single level basement is a good outcome in relation to embodied energy and CO_2-e.

Recommendations.

12. Gas cooktops have been included, but a better result will be achieved with induction cooktops
13. Gas hot water is proposed, but heat pump hot water will be a better outcome
14. Rainwater is no longer included, recommend it is reinstated to improve sustainability
15. Investigate additional PV
16. The rainwater tank appears to be deleted, none is shown on the drawings and there is no rainwater in the BASIX certificate. If there is a rainwater tank, it should be connected to landscaping or toilet flushing and included on the BASIX certificate

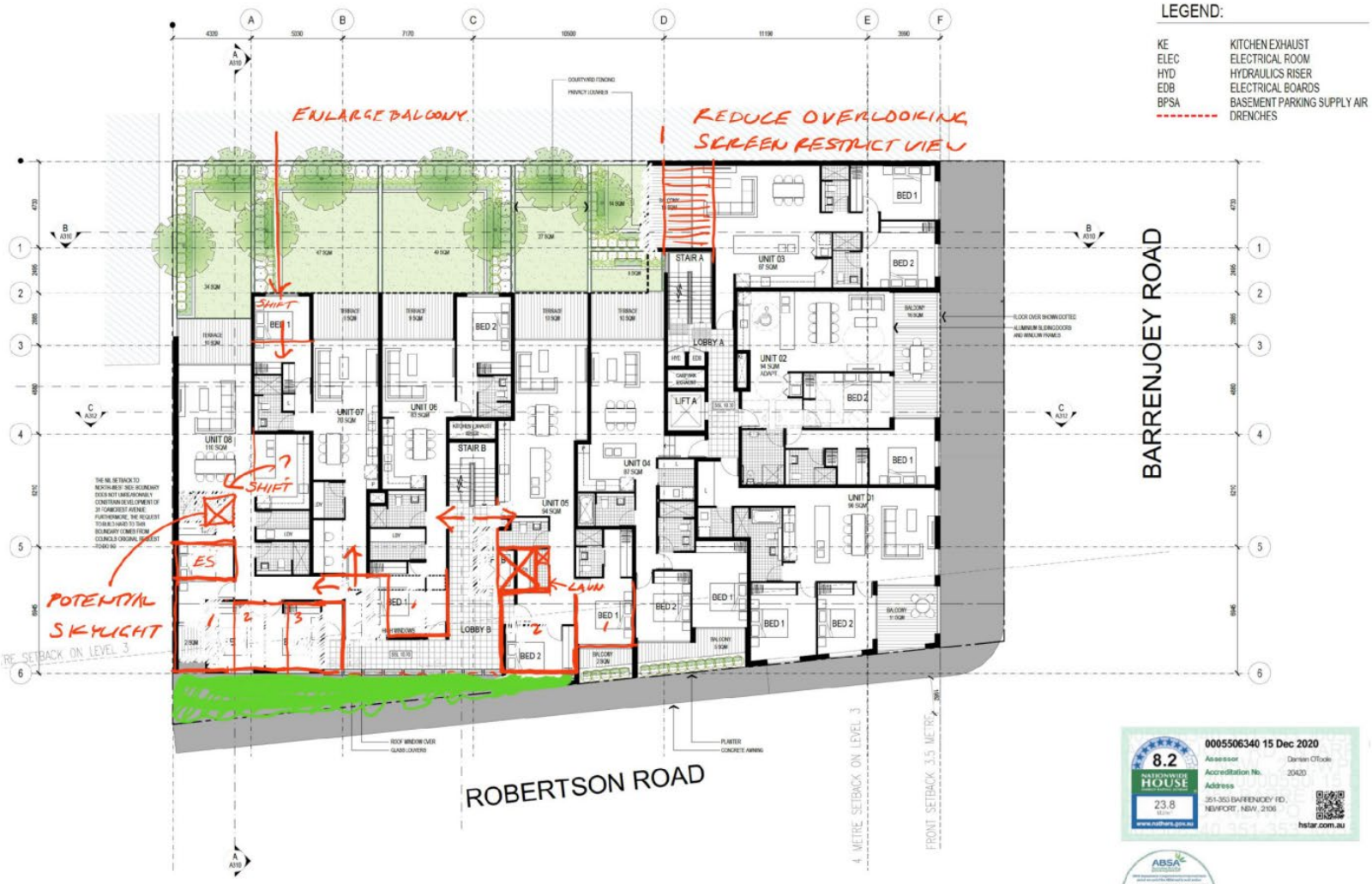
PANEL CONCLUSION

Despite the changes that have been made Panel does not support the proposal in its current form due to the poor interior planning and low amenity of some of the units.

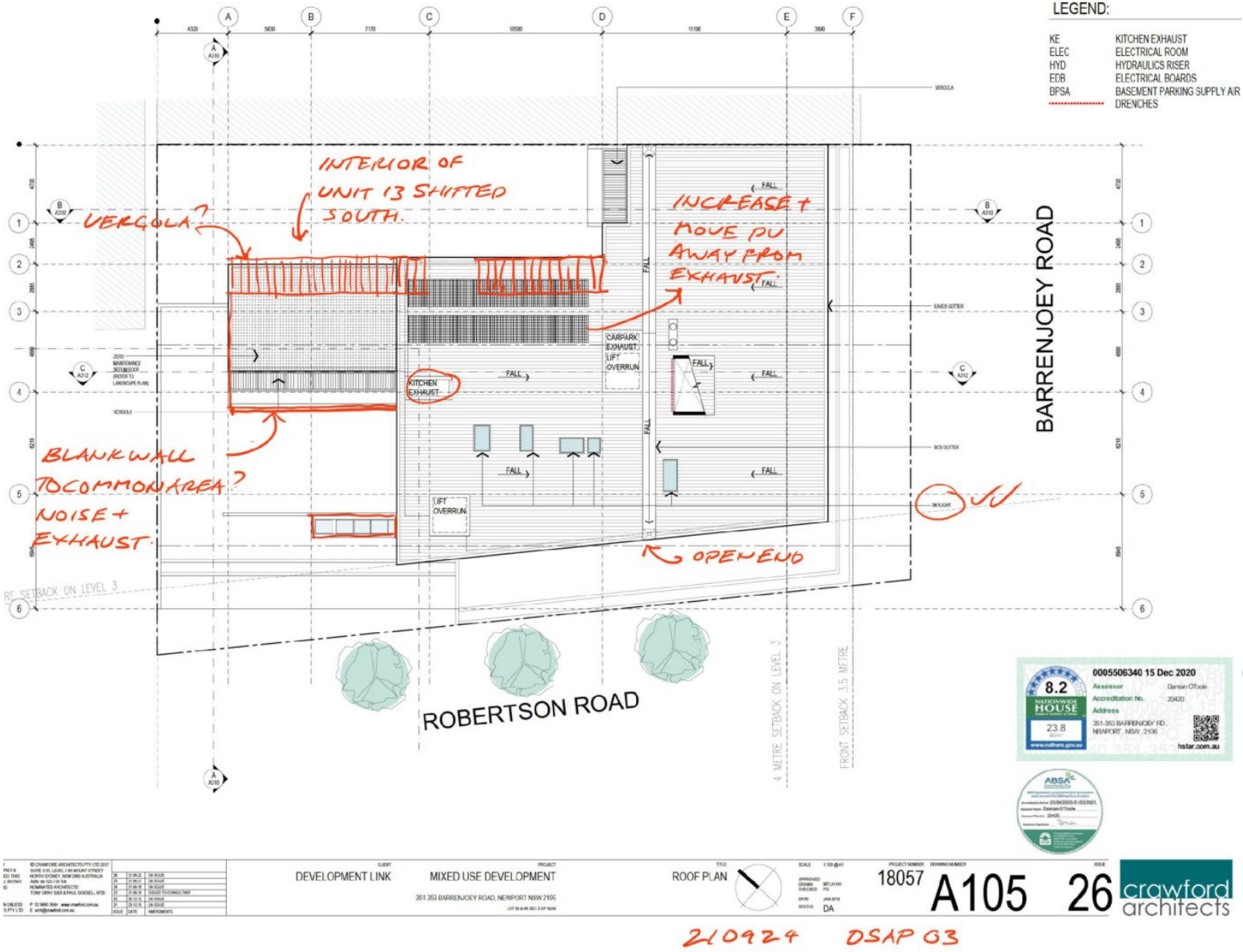
The design should be modified in accordance with the recommendations. This should be discussed with the assessing officer at Council prior to amending the proposal.

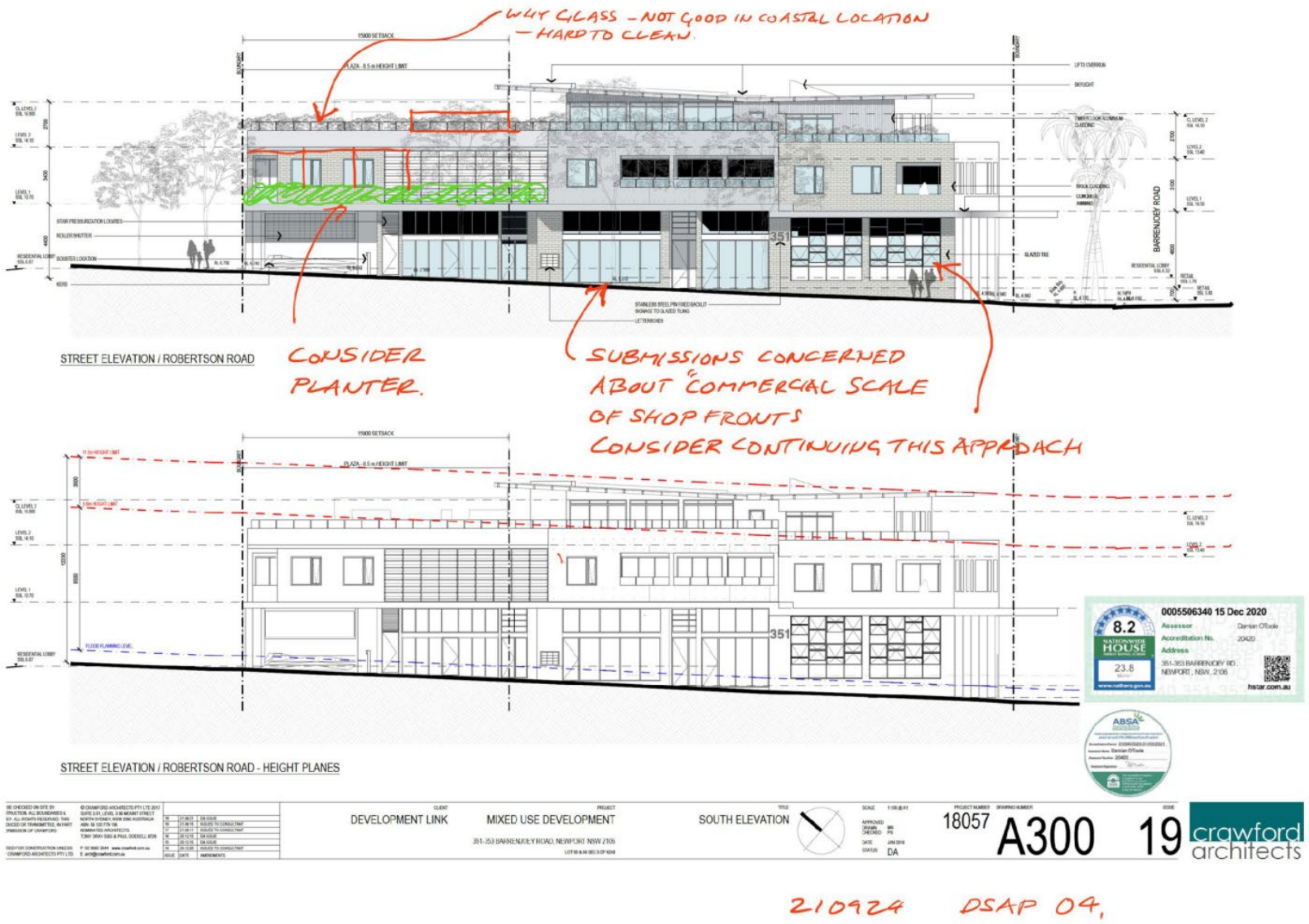
The Panel has made suggestions for how the planning could be improved and are shown on the attached Drawings "DSAP 1-4"

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


LEGEND:
KE KITCHEN EXHAUST
ELEC ELECTRICAL ROOM
HYD HYDRAULICS RISER
EDB ELECTRICAL BOARDS
BPSA BASEMENT PARKING SUPPLY AIR
DRENCHES
ENLARGE BALCONY
REDUCE OVERLOOKING SCREEN RESTRICT VIEW
SHIFT
SHIFT
POTENTIAL SKYLIGHT
LAWN
BARRENJOEY ROAD
ROBERTSON ROAD
4 METRE SETBACK ON LEVEL 3
FRONT SETBACK 3.5 METRE
UNIT 08 110 SQM
UNIT 07 70 SQM
UNIT 06 93 SQM
UNIT 05 94 SQM
UNIT 04 87 SQM
UNIT 03 87 SQM
UNIT 02 96 SQM ADAPT
UNIT 01 96 SQM
STAIR A
STAIR B
LIFT A
LOBBY A
LOBBY B
BED 1
BED 2
0005506340 15 Dec 2020
8.2
23.8
DEVELOPMENT LINK
MIXED USE DEVELOPMENT
351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
FIRST FLOOR PLAN
18057 A103 30
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210924. DSAP 01


LEGEND:
KE KITCHEN EXHAUST
ELEC ELECTRICAL ROOM
HYD HYDRAULICS RISER
EDB ELECTRICAL BOARDS
BPSA BASEMENT PARKING SUPPLY AIR
DRENCHES
SHIFT? IMPROVE PRIVACY
SHIFT WHOLE SECTION SOUTH
1 WHY IS TERRACE ON SOUTH? PRIVACY + NOISE ISSUES ALSO EXHAUST
"MONITOR" ROOF? TO BEDROOM + LOBBY BELOW
BARRENJOEY ROAD
4 METRE SETBACK ON LEVEL 3
FRONT SETBACK 3.5 METRE
COMMUNAL OPEN SPACE
STAIR A
STAIR B
LIFT A
LIFT B
LOBBY A
LOBBY B
UNIT 13
UNIT 12
UNIT 11
UNIT 10
UNIT 09
BED 1
BED 2
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MIXED USE DEVELOPMENT
351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
SECOND FLOOR PLAN
18057
A104
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DA
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DSAP 02


LEGEND:
KE KITCHEN EXHAUST
ELEC ELECTRICAL ROOM
HYD HYDRAULICS RISER
EDB ELECTRICAL BOARDS
BPSA BASEMENT PARKING SUPPLY AIR
DRENCHES
INTERIOR OF UNIT 13 SHIFTED SOUTH.
VERGOLA?
INCREASE + MOVE DU AWAY FROM EXHAUST.
BLANK WALL TO COMMON AREA? NOISE + EXHAUST.
OPEN END
BARRENJOEY ROAD
ROBERTSON ROAD
CARPARK EXHAUST LIFT OVERRUN
KITCHEN EXHAUST
LIFT OVERRUN
FALL
VERGOLA
EAVES GUTTER
BOX GUTTER
SKYLIGHT
RC SETBACK ON LEVEL 3
4 METRE SETBACK ON LEVEL 3
FRONT SETBACK 3.5 METRE
8.2
0005506340 15 Dec 2020
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DEVELOPMENT LINK
MIXED USE DEVELOPMENT
351 353 BARRENJOEY ROAD, NEWPORT NSW 2105
ROOF PLAN
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WHY GLASS - NOT GOOD IN COASTAL LOCATION - HARD TO CLEAN.
STREET ELEVATION / ROBERTSON ROAD
CONSIDER PLANTER.
SUBMISSIONS CONCERNED ABOUT "COMMERCIAL SCALE OF SHOP FRONTS
CONSIDER CONTINUING THIS APPROACH
STREET ELEVATION / ROBERTSON ROAD - HEIGHT PLANES
BARRENJOEY ROAD
351
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DEVELOPMENT LINK
MIXED USE DEVELOPMENT
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SOUTH ELEVATION
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Pittwater Local Environmental Plan 2014 - Clause 4.6: Exception to Development Standards

Amended Development Application for 351-353 Barrenjoey Road, Newport 2106

The Development Application

1. This report relates to a development application that seeks consent for construction of a mixed use development consisting of a three storey development comprising of eight retail facilities and 13 residential apartments, located at 351-353 Barrenjoey Road, Newport (the ***site***) and legally described as Lot 64 in Deposited Plan 1090224 and Lot 65 and 66, Section 5 in Deposited Plan 6248.
2. The Environmental Planning Instrument to which this variation relates is the Pittwater Local Environmental Plan 2014 (the LEP).
3. The site is located in the B2 Local Centre Zone, pursuant to Clause 2.2 of the LEP and the proposed use of the site for mixed use purposes comprising of retail premises and shop top housing is permissible with development consent. Retail premises and shop top housing are defined in the LEP as follows:

> ***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 –*
>
> *(Repealed) ...*
>
> *(n) .. vehicle sales or hire premises,*
>
> *but does not include highway service centres, service stations, industrial retail outlets or restricted premises. Note - Retail premises are a type of* ***commercial premises***[1]*—see the definition of that term in this Dictionary.*
>
> ***shop top housing*** *means one or more dwellings located above ground floor retail premises or business premises.*
>
> *Note – shop top housing is a type of residential accommodation – see definition of that term in this Dictionary.*

4. The purpose of this report is to seek a variation to the development standard at cl. 4.3 of the LEP, relating to Height of buildings, in accordance with cl. 4.6 and is to be read in conjunction with the Statement of Environmental Effects (SEE) accompanying the development application.

---

[1] **commercial premises** means any of the following –

(a) business premises,
(b) office premises,
(c) retail premises.

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The Variation Sought

The Development Standard for Building Height

5. The Building Height map demonstrates that a portion of the rear part of the site is subject to a maximum building height of 8.5m above the flood planning level; the remainder of the site is subject to a maximum building height of 11.5m above the flood planning level. The flood planning level for the site is 720mm. An extract of the map is shown at Figure 1. The resulting height above the existing ground level permitted is therefore 9.22m and 12.22m, respectively.

Figure 1: Height of Building height map, site highlighted with red boundary



6. The definition of *building height or height of building* is contained at the Dictionary to the LEP and states as follows:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to 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.

7. Section C-C, prepared by Crawford Architects demonstrates those portions of the building that exceed the development standard.

Figure 2: Extent of non-compliant building form with the development standard, as shown on Section C



8. Figure 3, below, demonstrates the amended layout of the proposed second floor, including that part of the proposal that exceeds the 8.5m height limit (shown in red). The extent of proposed building form at this part of the site has been significantly reduced (as demonstrated at Figure 4) in response to concerns raised about the loss of solar access that would otherwise occur to the public domain and associated shopfronts on the southern side of Robinson Road. This section of the building has been replaced with a common open space area that relies less on solid built form and thus reducing its impact to the south, such that it more appropriately aligns with the height limit than previously proposed.
9. In addition to the second-floor change, the setback of Level 1 has been increased, resulting in a floor space reduction of 36m^2, achieved by increasing the building setback from the southern façade to further enhance solar enjoyment to the southern side of Robinson Road.
10. This has been furthered with an increased setback distance at the ground floor level at the latter corner of the proposed form, again to improve solar amenity.
11. The full size drawing may be found at Attachment 1.

Figure 3: Plan view of reduced area of non-compliance at the Second Floor

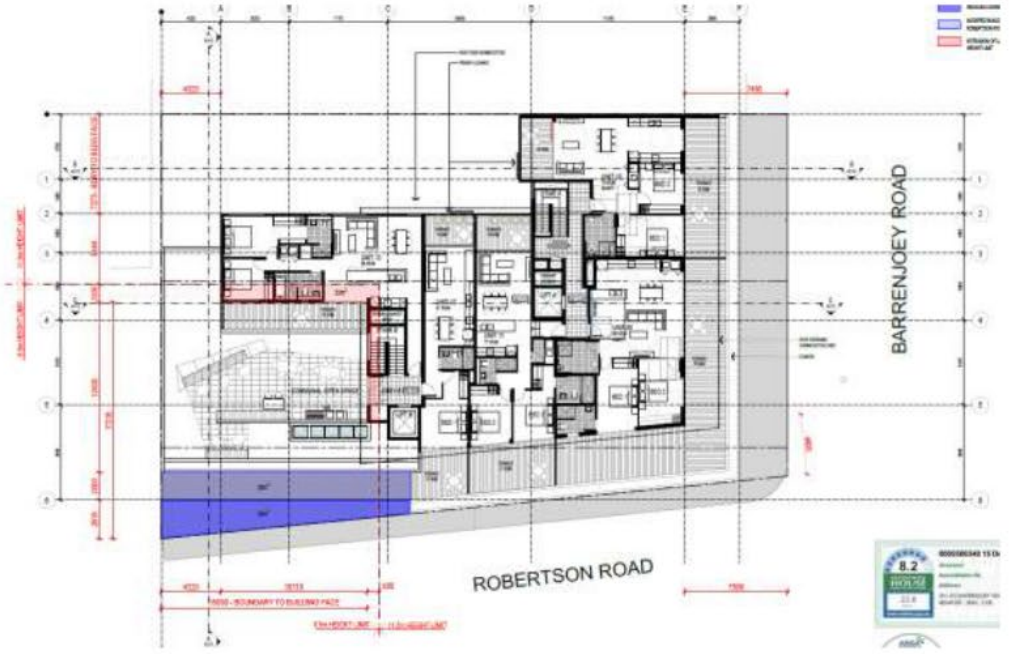


Figure 4: Original development application, second floor layout, with extended built form towards the south-western corner of the site



12. The changes that have been made to the design have resulted in a reduction by one apartment to ensure that the impacts of non-compliance with the development standard is significantly reduced to those properties to the south of the site.
13. The main impact was related to the loss of solar access to the public domain and associated retail shopfronts on the southern side of Robertson Road.
14. The figures below demonstrate the significant improvement to solar access that will be achieved to those properties and the public domain to the south, as a result of peeling the building back from the street frontage, and reducing the building height.

Figure 5: Development application as lodged and potential solar access impact to Robertson Road



Figure 6: Amended proposal showing shadow impacts as a result of common open space area being located to south-western corner of the proposed building



15. A detailed elevational analysis of the properties on the southern side of Robertson Road, is provided on A402, Issue 2 (Attachment 2).

The Site and Context

16. The site is located at 351-353 Barrenjoey Road, Newport resulted through amalgamation of two lots as proposed in the accompanying SEE. The site has a total area of 1,313m² and has a primary frontage to Barrenjoey Road and secondary frontage to Robertson Road.

17. The site is positioned at the intersecting corner of Barrenjoey Road and Robertson Road. The site's south-eastern boundary fronts Barrenjoey Road and is approximately 26.44m in length and the north- western boundary fronts Robertson Road and is 45.975m in length. There is a cross fall of approximately 2m from east to west, across the site at the Robertson Road boundary.

18. The site is located within the Newport Commercial Centre and comprises of a mix of residential and commercial uses, the latter of which are found predominately aligning Barrenjoey Road, as well as a smaller degree of activity along Robertson Street, which directly aligns the southern boundary of the site. Built form, in the vicinity of the site, comprises single, through to three storey buildings, generally with the upper levels of higher buildings set back from the street frontage.

19. The proposal has taken into consideration the adjoining heritage item to the north and the surrounding residential developments. The proposal seeks to provide an integrated design solution to establish a holistic residential community in this location.

The Proposed Development & The Impact of the Non-Compliant Section of Building Height

20. The proposed development is non-compliant with the development standard for height of buildings for the proportions of built form identified above. The non-compliance ranges between 0.4m above Apartment 9 as a result of the proposed skylight and 2.46m, being the roof overhang of Apartment 13.

21. The non-compliance relating to Apartment 9 is simply to enable additional solar penetration into that apartment and this has no external effect beyond the property boundaries in terms of amenity, nor appearance, while improving the amenity of the apartment itself.

22. The non-compliance for Apartment 13 relates to a small proportion of the apartment, which is a result of the change in height limit that occurs through this section of the site.

23. The portion of building form attributable to Apartment 13, on the second floor that sits proud of the development standard is a direct response to the proposed layout, which has a small section of the building outside of the permitted height standard. The affected section of the apartment is through a bedroom and bathroom area. Compliance could be achieved by cutting back this section of the apartment; however, in doing so would not derive any material benefit, particularly in terms of the public interest as it is not this section of the building that comprises adjoining properties, but instead the lower levels of the proposed form.

24. Further, the private open space area has also replaced the originally proposed built form at this corner of the site, such that, from a visual perspective, the non-compliant section of the building is

not visible from the street frontage, being recessed towards the centre of the site, so that is does not compromise the visual perception of the development when viewed from that frontage.

25. This outcome has been achieved without pushing the built form towards the northern boundary, otherwise increasing the visual presence of the proposal on the setting of the heritage listed church, to the north-west of the site.

26. The proposal also enhances the degree of solar access that is achieved to the common open space area that would otherwise be sheltered by the apartment if these were located to the north of the common open space area.

27. Therefore, the resulting design outcome ensures that a high quality common open space area is furnished to the development. The proposed building height provides for a much more effective design outcome, consistent with the character of the locality, without causing negative impacts on surrounding developments and maintains the visual setting for the heritage-listed church.

28. The proposed development provides a creative design response that is based on a clear understanding of the spatial and urban context and the neighbourhood character. Most importantly, the non-compliant portion of Level 3, which has been significantly reduced, provides a better design outcome that remains economically feasible and contributes to the economic viability of the site, while providing material improvement to solar access particularly the public plaza over that previously proposed.

29. The SEE also demonstrates that the non-compliant portions of the building do not cause any increased solar impacts below the thresholds of the NSW Apartment Design Guide (ADG) such that the amenity of neighbouring properties would be otherwise compromised as a result of this non-compliant section of the proposed building, which has been minimised.

30. Further, there is no adverse impact in terms of view loss as a result of the non-compliant sections of the proposed building, having regard to the height of buildings surrounding the subject site.

31. Therefore, the sections of the building which do not comply with the development standard will have no impact in terms of loss of views nor solar access, such that they may otherwise be unacceptable in the context of a variation sought in accordance with cl.4.6.

The Context and Future Character

What is the character of the locality?

32. Character is what makes a neighbourhood distinctive and represents the identity of a place. To this end, Section A4.10 of the Pittwater 21 Development Control Plan (the DCP) deals with Locality Statement. The subject site is located in the Newport Commercial Centre. The DCP outlines the desired development outcomes for the site as envisaged by the Northern Beaches Council (the Council).

Is the proposal consistent/compatible with the objectives of locality /character of the Newport Commercial Centre?

33. The DCP provides the following significant characteristics in relation to the locality. The table below provides an assessment of the proposal having regard to these objectives.

Table 1: Assessment of the proposed development having regard to the desired character of the Newport Commercial Centre

Provision	Comments	Compliance
○ Diversity rather than uniformity of building type and style is a desirable part of the existing character and is encouraged to continue. Strategies to achieve this include modulating buildings in both the vertical and horizontal plane, and enabling a variety of fenestration, awning treatments and roof forms. This diversity, including the mix of new and remodelled buildings, will be unified by the streetscape and public domain treatments.	The design seeks to provide a contemporary built form on a corner location which will contribute to the immediate urban context of the neighbourhood and the desired character of the locality. The proposed design contributes to the variety of development type in the locality. The proposed façade design represents a well-articulated and modulated design with appropriate materials and finishes, adding to the distinct appearance of the building in the area.	Yes
○ At the topmost level of buildings, setbacks to front, sides and rear will break down the overall scale of the street, support view sharing, and will also provide useable roof terraces and garden areas. Views from the upper slope down and across the roofscape will be significantly improved by thoughtful roof design. The permeability of the centre will be further improved by both protecting and creating views through and between buildings.	The proposed development is setback 3.5m from the Barrenjoey Road at ground floor level. Additionally, Level 2 is setback 4m from both Barrenjoey Road and Robertson Road, reducing the bulky appearance of the building as well as providing visual separation between the lower and upper levels of the building. In addition, while approximately two thirds of the building form is set back __m from the property boundary, along the southern boundary, towards the south-western corner, this increases to __m at the first floor and __m at the ground floor, to further break down the building scale at the street and reduce the continuum of building form to this frontage. This setback distance at the ground plane will also increase the permeability of Robertson Road at the	Yes

Provision	Comments	Compliance
	ground plane and open up the visual corridor along Robertson Road, thus enhancing the public domain. The proposed design also includes a communal terrace with adequate landscaping on Level 2 ensuring efficient use of the space while enhancing the living standard of residents occupying the site. In terms of view sharing, the building is designed to encourage view sharing through effective roof design and ensuring that the extent of bulk is appropriate to the site.	
○ The architectural character will be expressed strongly through the design of facades, including shading and screening devices, lightness and transparency of materials, and elements that promote natural ventilation.	The design concept indicates an acceptable level of compliance with the principles of the Apartment Design Guide and will not compromise the potential future development of the adjoining sites. The design maximises residential amenity for future occupants (views, solar access, cross ventilation), as well as ensuring that impacts on amenity to the adjoining properties are minimised, whilst allowing the site to achieve the maximum development potential.	Yes
Building orientation, internal layouts, the location and design of balcony and courtyard areas, should all optimise people's ability to use and enjoy the spaces.	The proposed development has been designed to ensure easy access is provided to facilities on site, including the balconies and communal terrace.	Yes
Shop fronts will be largely transparent, with large openings, connecting directly with the footpath areas, to contribute to a sense of permeability.	The ground floor plane will be provided with large transparent openings on both street frontages to ensure that the site provides a strong and vibrant relationship with the public domain. Activity is achieved by locating the balconies fronting the street to ensure casual surveillance over the adjoining public domain.	Yes
Building users will benefit from terraces, balconies and openings with a pleasant outlook, while the space	The upper level balconies, terraces and window openings overlook the surrounding street network to ensure natural, passive surveillance over the	Yes

Provision	Comments	Compliance
benefits from passive surveillance and from being attractively edged.	public domain. This will assist to provide a safe, local environment and create a sense of place.	
The desired future character for the commercial centre includes an increased diversity and range of retail, commercial and community activities for the Newport community. Barrenjoey Road and Robertson Road will be consolidated as the primary retail streets, and the role of Robertson Road as an activity hub for the village will be enhanced. Further development of shop top housing will enliven the village, particularly at nights and weekends, and increase the retail customer base. The Newport Commercial Centre will have increased patronage from visitors as well as local residents, due to: ○ Retention and enhancement of the clusters of cafe/dining uses on Barrenjoey Road and Robertson Road. ○ Active land uses on highly visible sites at the northern and southern ends of the commercial centre, with a high degree of interaction with the public domain	The proposed development will provide for a range of retail and business uses that will serve the needs of the local area. Eight separate tenancies are offered of varying sizes, to accommodate a diversified combination of business interests.	Yes

34. Notwithstanding the exceedance of the height controls, the development will provide a mixed use outcome in a contemporary manner that will complement the immediate urban context of the neighbourhood and the desired future character of the locality.

Does the proposed development make for a good design?

35. From an architectural and urban design perspective, the proposed development will achieve a good design outcome as it:

- Responds and contributes to the built context by providing an appropriate scale in terms of the bulk and height relative to the scale of the street and surrounding buildings.
- Achieves an appropriate built form and density appropriate for a site and its context in keeping with the desired character of the area as it provides a mixed use development of a bulk and scale

appropriate to the site consistent with similar developments in the vicinity. The facades are designed as an integral part of the overall development and have a human scale and appearance, incorporating pattern in relation to the proportion of the building, including a balanced solid-to-void relationship and materiality that is responsive to the local context.

- Provides a communal terrace for the exclusive use of the residents, designed to optimise the site capabilities and allowing for breaks in the building for an enhanced visual appearance. Additionally, extensive landscaping and planting is provided for greater visual interest. The proposed design includes retail facilities on the ground level providing for an opportunity for increased social interaction amongst community members.
- Capitalises on the solar access for residential apartments while mitigating overshadowing impacts on adjoining properties, most importantly the plaza located in front of No.349.
- Responds to its social context in terms of access to housing diversity and to services as well as optimises safety and security for internal areas and the public domain.

36. Notwithstanding the exceedance of the height control, the development will provide much needed, residential accommodation that is consistent with the architectural integrity of the approved developments and which will contribute to the immediate urban context of the neighbourhood and the character of the locality.

Figure 7: Proposed development looking fronting Barrenjoey Road (Source: Crawford Architects)



Figure 8: Proposed development looking fronting Robertson Road (Source: Crawford Architects)

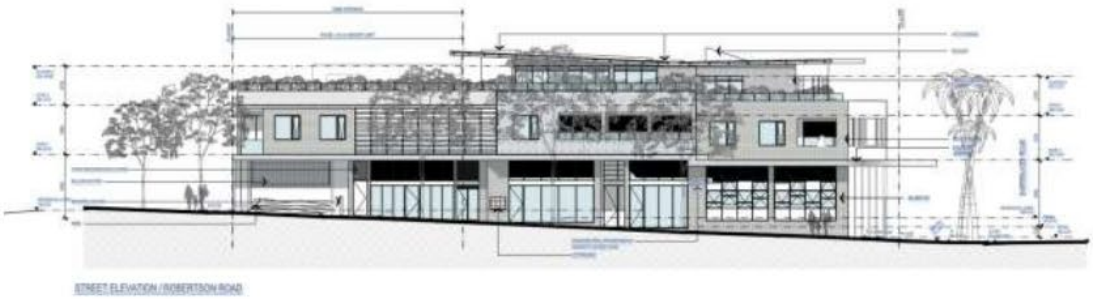


Figure 9: Proposed development north elevation (Source: Crawford Architects)

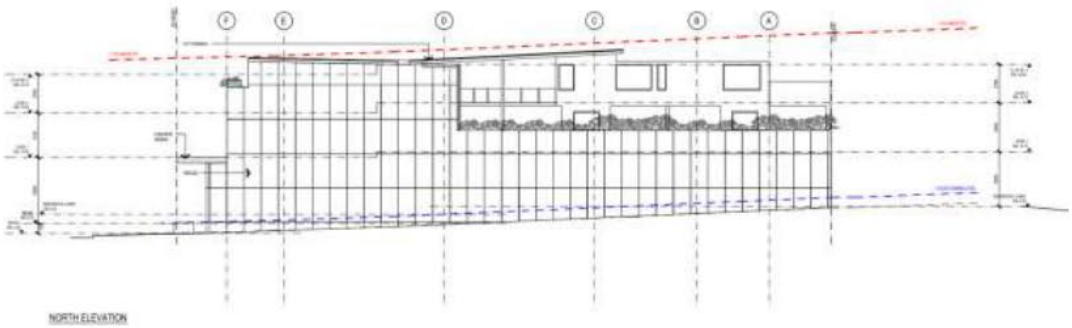


Figure 10: Proposed development west elevation (Source: Crawford Architects)



Clause 4.6 of the LEP

37. Clause 4.6 of PLEP provides, so far as relevant:

(1) The objectives of this clause are as follows:
(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.
(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.
(5) In deciding whether to grant concurrence, the Secretary must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Is height a development standard?

38. Clause 4.6 can only be used to vary a control that is a development standard. Development standards are relevantly defined in s1.4 of the EP & A Act as follows:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) .....

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

(d) – (o)

39. Being a provision of the LEP in relation to the carrying out of development, under which a requirement is fixed in respect to the maximum height of buildings, clause 4.3 of the LEP is a development standard. Accordingly, clause 4.6 can be used to approve a variation of the standard.

40. As noted by the Chief Judge of the Land & Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [***Initial Action***], clause 4.6 is facultative in permitting a consent authority to grant consent for development even though that development would contravene a development standard imposed by an environmental planning instrument. However, clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Clause 4.6(4)

41. In order for the consent authority to grant a variation to the development standard under clause 4.6, it must be satisfied:

- That this clause 4.6 Request adequately addresses the matters required by clause 4.6(3), namely that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case and secondly that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the standard and zone; and
- That the concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Whether request adequately addresses requirements

42. This request is comprehensive in its discussion of whether compliance with the zone and objectives of the standard is unreasonable or unnecessary because the development will comply with the zone and height standard objectives and whether there are sufficient environment planning grounds for varying the standard. Both issues are discussed below.

Clause 4.6(3)(a) Unnecessary or unreasonable

43. The common approaches 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. Cases such as Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, Randwick Council v Micaul Holdings Pty Ltd [20176] NSWLEC 7 and, most recently, Initial Action, have confirmed that adopting the Wehbe principles remains an appropriate approach.

44. The first option and the applicable in this case, 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.

45. Set out below is an extract from the judgement in Wehbe that explains the rationale for adopting this approach in the context of clause 4.6.

> *The rationale is that development standards are not ends in themselves but means of achieving ends…The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)*

Assessment of the Proposed Variation

Consistency with objectives of the standard (clause 4.6.4(a)(ii))

46. The proposed variation is assessed having regard to the development standard as set out in the below table.

Table 2: Assessment of the proposed variation having regard to the objectives of the development standard for the building height

Objective of the Development Standard	Comment
(a) *to ensure that any building by virtue of its height and scale, is consistent with the desired character of the locality,*	The proportion of built form that results in a non-compliant outcome enables a design that will provide a contemporary built form which will contribute to the immediate urban context of the neighbourhood and the desired character of the locality. As outlined previously, the proportion of non-compliance has been designed based on a clear understanding of the spatial and contextual considerations of the site and detailed feedback from the Council in relation to compliance with solar access requirements for the southern side of Robertson Road, which is considered to be a highly valued public space within the immediate context. **Figure 11: Building sections indicating what areas of the building that are above the height standard (Source: Crawford Architects)**

Objective of the Development Standard	Comment
	 As shown in the figure above, the roof structure of Apartment 9 marginally exceeds the height limit to enable the provision of a sky light, with Apartment 13 also has a minor exceedence for part of the dwelling. The remaining sections of the proposed built form are under the height limit and compliant. For the latter non-compliance, this has no material impact in terms of height and scale, remaining consistent with the desired future character of the locality. The non-compliant element has limited discernable visibility within the surrounding context and still ensures that adequate separation of built form is achieved to the north of the site, including having regard to the setting of the heritage listed church. The reconfiguration of the communal open space area is also of limited impact when viewed from the street and does not add to the bulk and scale of the overall building form. Further, the recessive design of the form, through the use of landscape treatment and open space, further reduces the presence of building form to the street.
(b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*	The height and scale of the proposed development is consistent with that of surrounding developments as the site is located in an area comprising of a mixture of residential and commercial uses of building height varying from two to three storeys, generally with upper levels of higher building setback from the street frontage, similar to the proposed development.
(c) *to minimise any overshadowing of neighbouring properties,*	Matters of overshadowing have been detailed above and demonstrate in detail, a design outcome that maximises solar access to the opposing side of Robertson Road, noting that it is not, in fact, the non-compliant part of the development that causes solar access impact, but those sections of the building, below the height limit that this is caused by. These lower building sections have also been modified to ensure that maximum solar access is achieved.
(d) to allow for reasonable sharing of views,	The non-compliant component of the building does not result in any impacts to existing views enjoyed within the vicinity of the site.

Objective of the Development Standard	Comment
(e) to encourage buildings that are designed to respond sensitively to the natural topography,	The proposed development is designed to be sensitive to the natural topography and retain natural features around the site.
(f) to minimise the adverse visual impact of development on the natural environmental, heritage conservation areas and heritage items.	The subject site does not contain any heritage items, nor is it located within a heritage conservation area. However, the site is adjoining a heritage item known as St Michael's Anglican Church (#2270471). The proposed design ensures that adequate setbacks are provided that allow for sufficient visual separation from the heritage item, so as to ensure that the setting of the item is not compromised.. **Figure 12: Heritage Items within the vicinity of the site highlighted in red** 

Consistency with Zone Objectives – clause 4.6(4)(a)(ii)

47. In relation to whether a proposal is consistent with the objectives of a zone, the test for consistency is set out in *Coffs Harbour Environment Centre v Coffs Harbour City Council (1991) 74 LGRA 185* (the Coffs Harbour case). The principles for determining what is meant by consistent are as follows:

- a development that is consistent with zone objectives does not need to promote the objective concerned strictly, but also encompasses development which may be complementary or ancillary to development and promotes the objective concerned; and
- a development is not consistent with zone objectives if it is antipathetic development to those objectives, irrespective of whether efforts have been made to minimise the extent to which it is antipathetic

48. Thus, development will be consistent with zone objectives if it is not antipathetic to them. It is not necessary to show that the development promotes, or is ancillary to, those objectives, nor even show it is compatible, *Schaffer Corporation v Hawkesbury City Council* (19s92) 77 LGRA 21.

49. The building height above the development standard is consistent with the objectives of the B2 Local Centre zone objectives as set out in the Table below.

Table 3:Assessment of the proposal having regard to the B2 zone objectives

Zone Objective	Comment
○ To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. ○ To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.	The proposed development will provide for a range of retail and businesses uses that will serve the needs of the local area. Eight separate retail tenancies are offered of varying sizes, to accommodate a diversified combination of business interests. The residential component of the site will be able to utilise those facilities and services which are available and further enhance their economic viability. The proposed residential use, above street level, will be compatible with the characteristics surrounding the site. The proposed number of dwellings is moderate and designed and orientated such that interference with ground floor uses will not result, particularly given the intended setback distances from the street frontages, as well as materials treatment that will ensure adequate acoustic provision. The intention of the zone is to combine living and working environments and this site provides a suitable opportunity to achieve this.
To encourage employment opportunities in accessible locations.	The *in-situ* population will support the creation of new jobs in the locality, driven by additional demand for goods and services in the immediately surrounding vicinity.
To maximise public transport patronage and encourage walking and cycling.	As outlined previously, the proposal is near public transport facilities. The development encourages alternative transport modes and avoids private car use. Given the proximity to the general commercial and retail facilities, the opportunity for walking and/or cycling is easily maximised in association with this development.
To provide healthy, attractive, vibrant and safe local centres.	The proposed development will provide a significant outcome in terms of attractive, vibrant and safe communities. The architectural design will provide a contemporary response and, in particular, the ground floor level provides a good urban design outcome with the provision of retail tenancies and public domain

	improvements to ensure a degree of vibrancy is promoted and the extensive openings of the retail tenancies that allow for an understanding of activity therein. The proposal maximises opportunities for passive surveillance over the surrounding street frontages, which is a substantial improvement over the existing situation.
To strengthen the role of centres as places of employment.	The proposed retail tenancies will provide new employment opportunities within the commercial centre.
To provide an active day and evening economy.	The introduction of tenancies that will be attractive to food and drink premise operators which will assist to provide an active day and evening economy.

50. Given the circumstances of the case, the provision of strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the zone and the standard.

Environmental Planning Grounds to Justify Contravening the Development Standards (clause 4.6(3)(b)?

51. The second element of clause 4.6(3) on which the Court must be satisfied is that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds relate to the subject matter, scope and purpose of the *Environmental Planning & Assessment Act* [***EP&A Act***] including the objects of the EP&A Act (*Wehbe* para 23).

52. As Preston CJ explains in Wehbe:

> *".. the focus of clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds 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. 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 clause 4.6(a)(i) that the written request has adequately addressed the matter."*

53. The environmental planning grounds which support departure from the development standards are as follows:

- The proposal satisfies the objectives of the B2 zone and the objectives of the building height standards.
- The lower levels of the building are in fact those which cause a greater degree of impact in terms of solar enjoyment to the southern side of Robertson Road, as opposed to the non-compliant section of the building. By losing floor space at the ground and first floor levels, where height

compliance is achieved allows for a minor trade-off to be made to accommodate a small proportion of non-compliant height in the interests of protecting sunlight to the southern side of the public domain along Robertson Road.

- The resulting design outcome ensures that a high quality common open space area is furnished to the development. The proposed building height provides for a much more effective design outcome, consistent with the character of the locality, without causing negative impacts on surrounding developments and ensures an enhanced visual setting for the heritage listed church.
- From a site context perspective, the developments located along Barrenjoey Road such as the one at No.332 is of similar height and comprise of retail facilities on the ground floor and residential units above, such that the upper levels are setback to create separation along each level as well as provide articulated building design. Both buildings have the same development standard for building height, that is, a maximum of 11.5m above the flood planning level. As such there is not a marginal difference between the proposed building height and the building height of that developments and is considered appropriate.
- The non-compliant sections of the building will not be out of context within the streetscape, particularly that of Robertson Road. The non-compliant portion of Level 3 provides desirable internal amenity while minimising any potential impact on the enjoyment of the public plaza area below on the southern side of the street (which is affected by the lower levels of the building and not the non-compliant component). Given that this will be not compromised by the non-compliant section of this design, and a better environmental planning outcome is achieved for residents of the development, by providing a quality common open space area, this is considered to be far more desirable than achieving compliance for the sake of compliance.
- The outcome also provides a far improved visual relationship with the heritage listed church, such that a better environmental planning outcome is achieved by setting the building form back from this to ensure that adverse visual crowding does not occur.
- The non-compliant component of the development does not result in adverse impact to neighbouring properties, particularly in terms of bulk, scale and overshadowing. This is demonstrated in that a better design response to the broader context can be achieved, without compromising the public plaza to the south, providing a more balanced urban outcome.

54. As such, there are sufficient environmental planning grounds for justifying contravention of the development standard in this case.

Matters of state or regional significance (cl. 4.6(5)(a))

55. There is no prejudice to planning matters of Regional significance resulting from varying the development standard as proposed by this application. The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to

local and contextual conditions. The variation sought is responding to the nature of a control applied across an area that supports viable use of the site while being sympathetic to the character of the locality and surrounding uses.

Is *the proposed variation in the public interest?*

Clause 4.6(a)(ii) – Public Interest

56. The fourth element that the Council needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the standard's and zone's objectives. Preston CJ in Initial Action (para 27) described the relevant test for this requirement as follows:

> *"The matter in cl 4.6(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 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 purpose of clause 4.6(4)(a)(ii)."*

57. As demonstrated in this Request, the proposed development will comprehensively achieve the objectives of the development standards for height of building, as well as the objectives of the B2 zone.

58. The bulk and scale of the proposed built form, including the non-compliant section of the building, is appropriate to the contextual considerations of the site. Most importantly, the proposed height does not impact the heritage item located towards the north at 33 Foamcrest Avenue and the pedestrian plaza located at 349 Barrenjoey Road, as well as residential development in the vicinity of the site.

59. The minor trade off of additional building height is warranted in the context of preserving solar access to the public domain and retail frontages along Robertson Road, which are instead caused by the lower, compliant sections of the proposed building, which has been set back from the street frontage (resulting in a loss of permitted floor space) to ensure that the public interest is not only preserved, but enhanced.

60. There is public interest in maintaining a degree of flexibility in specific circumstances. In this case, strict compliance with the height control would result in reduced supply of adequate apartments on the site, therefore, unable to supply for the growing housing needs in an area that is highly accessible, facilitated by local services and suitable for young families.

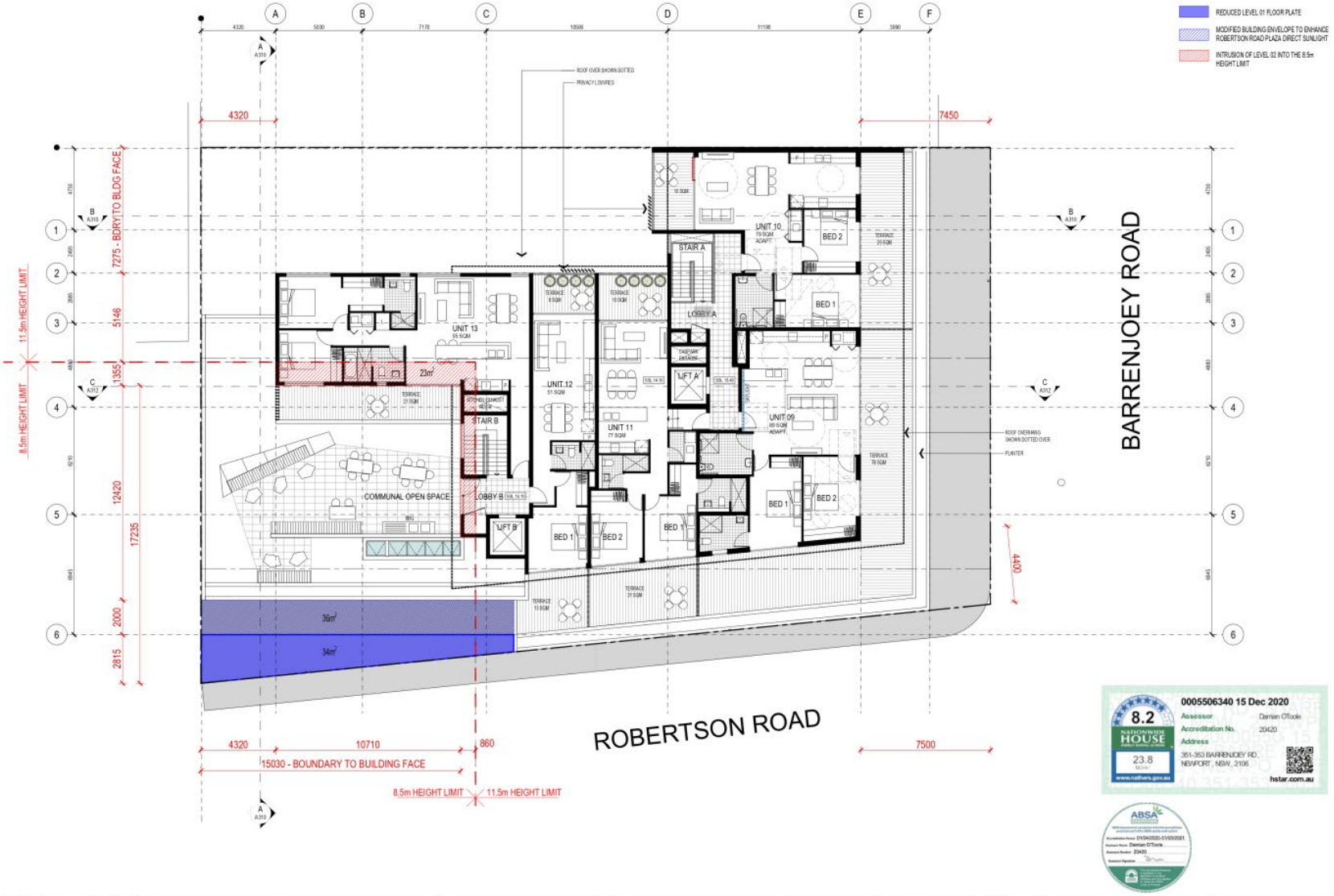
61. There is no adverse consequence as a result of the non-compliant sections of the building from the public domain as this is set well back from the street frontages to ensure that it has limited visual effect, while also providing an attractive and contemporary response in this location. There is no adverse consequence as a result of this proposal from the public domain.

62. Overall, the proposal responds to its social context in terms of access to housing diversity and to services. Further, the proposed built form incorporates the CPTED principles which will help to activate and improve the safety and security of the local area.

63. Therefore, the proposed development, at the height proposed, is well within the public interest and will open the site up to broader public opportunity and interest, as it will provide a high-quality residential accommodation in close proximity to public transport opportunities that will ultimately result in tangible social benefits.

64. Accordingly, the Council can be satisfied that, it is in the public interest to vary the standard for the purpose of this development application.

ATTACHMENT 1: A110, REVISION 2 – VARIATION TO BUILDING HEIGHT & SETBACKS



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ISSUE	DATE	AMENDMENTS
02	21.06.20	DA ISSUE
01	21.06.20	DA ISSUE

CLIENT: DEVELOPMENT LINK

PROJECT: MIXED USE DEVELOPMENT
351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
LOT 45 & 46 SEC 5 DP 9268

TITLE: VARIATION TO BUILDING HEIGHT

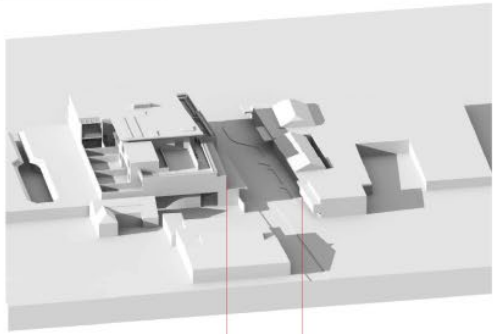
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APPROVED: MT,LI
DRAWN: PO
CHECKED:
DATE: JAN 2019
STATUS: DA

PROJECT NUMBER: 18057
DRAWING NUMBER: A110
ISSUE: 02

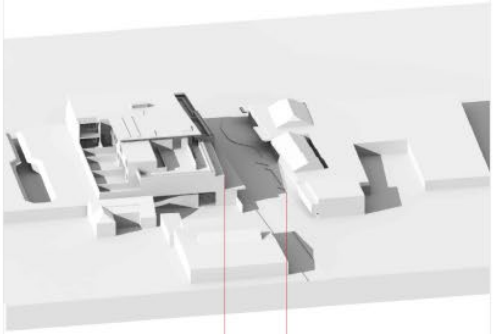
crawford architects

ATTACHMENT 2: A402, REVISION 2 – SHADOW DIAGRAMS

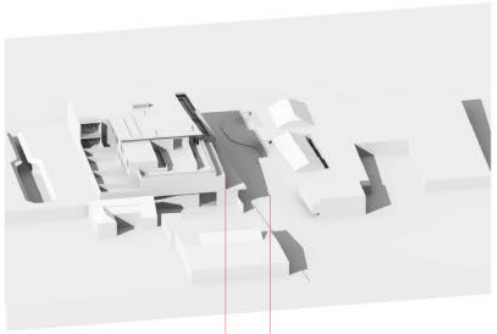
AMENDED SCHEME



9:00am
21th JUNE



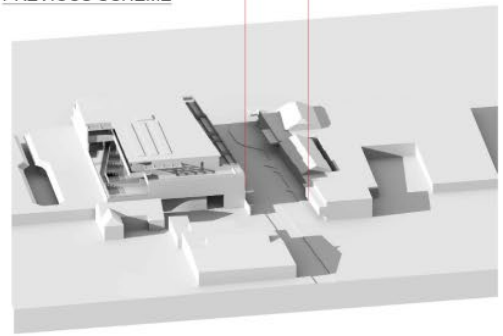
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21th JUNE



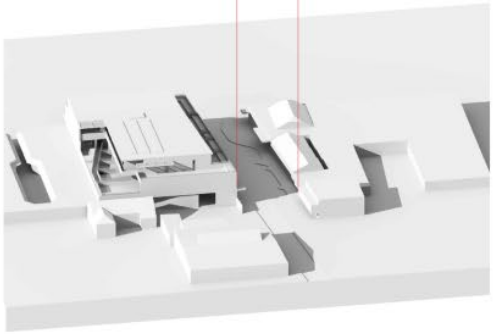
11:00am
21th JUNE

CHANGES	REDUCED PARAPET	NO FOOTPATH PERCEIVED CHANGE REDUCED ELEVATIONAL SHADOWS	REDUCED PARAPET	REDUCED SHADOWLINE	REDUCED PARAPET	REDUCED SHADOWLINE

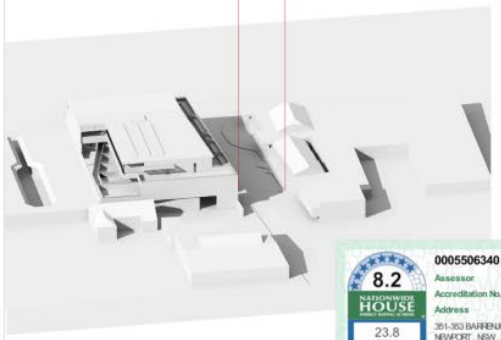
PREVIOUS SCHEME



9:00am
21th JUNE



10:00am
21th JUNE



11:00am
21th JUNE





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NOMINATED ARCHITECTS:
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ISSUE	DATE	AMENDMENTS
02	15.12.20	DA ISSUE
01	17.9.20	DA ISSUE

CLIENT: DEVELOPMENT LINK

PROJECT: MIXED USE DEVELOPMENT
351-353 BARRENJOEY ROAD, NEWPORT NSW 2106
LOT 10, 11 & 12 SEC 5 DP 9268

TITLE: SHADOW DIAGRAMS
SHEET 03

SCALE: NTS
APPROVED:
DRAWN:
CHECKED: PO
DATE: JAN 2016
STATUS: DA

PROJECT NUMBER: 18057
DRAWING NUMBER: A402
ISSUE: 02

crawford architects

ITEM 4.3	**DA2021/1164 - 521 BARRENJOEY ROAD, BILGOLA BEACH - CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**
AUTHORISING MANAGER	**Tony Collier**
TRIM FILE REF	**2021/849703**
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, **refuses** Application No. DA2021/2340 for demolition works and construction of a seniors living development at Lot 15 DP 212195 & Lot 1 DP 28219, 521 Barrenjoey Road, Bilgola Beach subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1164

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 129 DP 16902, 521 Barrenjoey Road BILGOLA BEACH NSW 2107
Proposed Development:	Construction of a Dwelling House including a swimming pool
Zoning:	C4 Environmental Living SP2 Infrastructure
Development Permissible:	No - Zone SP2 Infrastructure Yes - Zone C4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peter Michael Sydney Madew
Applicant:	Peter Downes

Application Lodged:	22/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/08/2021 to 31/08/2021
Advertised:	Not Advertised
Submissions Received:	258
Clause 4.6 Variation:	4.3 Height of buildings: 38.75 %
Recommendation:	Refusal

Estimated Cost of Works:	$ 2,499,325.00

EXECUTIVE SUMMARY

The application seeks consent for construction of a seven (7) level dwelling, garage and pool involving significant excavation and the removal of 28 trees.

The proposal includes work on the Barrenjoey Road reserve which is zoned SP2 a classified road. As concurrence from Transport for NSW (TfNSW) has not been granted Council does not have the power to grant development consent. In addition, the application is not supported by the following Department's within Council: Transport, Road Reserve, Development Engineer, Landscape,Bushland and Biodiversity and Heritage.

Aside from TfNSW concurrence issues the proposal includes a 38.75% breach of the height of building development standard. A clause 4.6 variation was not submitted with the original plans and Council does not have the power to grant a variation to the development standard.

The removal of 28 native canopy trees to allow the extensive footprint will have unreasonable impacts on biodiversity and the landscape character of the Bilgola Locality. The height, scale, massing and footprint of the development represents overdevelopment as expressed by the non-compliance to the built form controls (height, front setbacks, building envelope and landscape area). The proposal will have adverse impacts on the desired future character of the Bilgola Locality. Insufficient information has been submitted to address the following issues: road safety, geotechnical hazards, stormwater management and view sharing.

Revised plans were received on 19 November 2021, however, they have not been formally accepted by Council or lodged via the Planning Portal as they do not address the concurrence issues raised by TfNSW nor adequately address the other issues of non-compliance and matters raised by Council's referral departments. While the revised plans were referred to the TfNSW and all relevant Officers in Council for consideration only, this assessment report is based on the original plans.

A total of 258 submissions were received which raise issues in respect of road safety (vehicular, pedestrian and cyclist), construction impacts, access issues, parking, congestion and impacts on emergency services using Barrenjoey Road, excessive excavation and geotechnical issues including landslip, overdevelopment / build form (excessive height, footprint, bulk and massing) including visual impact on the scenic quality of the area and impact on neighbouring residential amenity including view loss and privacy issues, removal of 28 native canopy trees, insufficient offset planting and impacts on biodiversity, insufficient information and errors in documentation. These matters are addressed in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for excavation and the construction of a seven (7) level dwelling accessed via Barrenjoey Road via a horizontal tunnel and vertical lift shafts / stairs excavated into the slope. In detail, the proposal includes:

Road Reserve

- Turntable 6m in diameter.
- Retaining walls which vary in height (max height 5.5m to the west and 3m to the east)
- New concrete driveway.

Underground Garage / store

- Ground level - garage for three (3) cars with garage door, car lift, stairs and bin store.
- Level 1- store with three (3) projecting skylights above.
- Masonry frontage to garage door and numbering.
- Side fences along the upper level of the garage with associated planter boxes and stainless-

steel handrail along the southern edge.

*The garage / store and fences are partially located within the road reserve.

Horizontal Access Tunnel

- A 3m wide 27.6m long horizontal access tunnel connected at ground level from the garage. The horizontal tunnel provides connections to two sets of lifts and two sets of stairs to access the dwelling. The northern lift shaft is 30.2m in height and the southern lift shaft is 9.2m in height.

Offices and studio

- Office 1 (level 1) and office 2 (level 2) with associated toilet and shower, lift and stairs and balcony and studio with toilet and shower (level 3).

Level 3 (main dwelling)

- Family room with bathroom.
- Lift and stairs.
- Plant room and store.

Level 4

- Four (4) bedrooms.
- Two (2) bathrooms.
- Laundry.
- Lift and stair access.
- Balconies.

Level 5

- Open plan lounge and dining.
- North and south facing balconies.
- Lift and stair access.

Level 6

- Bedroom ensuite.
- South facing balcony.
- Lift and stair access.

Level 7

- Pool and deck.
- Lift and stair access.

Materials

- Metal cladding, aluminium doors and windows, stone cladding.

Landscaping

- Removal of 28 mature trees and replacement planting.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone SP2 Infrastructure
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites
Pittwater 21 Development Control Plan - B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - B5.15 Stormwater
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - B6.2 Internal Driveways
Pittwater 21 Development Control Plan - B6.7 Transport and Traffic Management
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.5 Construction and Demolition - Works in the Public

Domain
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D3.6 Front building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D3.13 Fences - Flora and Fauna Conservation Areas
Pittwater 21 Development Control Plan - D3.15 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 129 DP 16902, 521 Barrenjoey Road BILGOLA BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Barrenjoey Road and is legally known as Lot 129 in Deposited Plan (DP) 16902, No. 521 Barrenjoey Road, Bilgola Beach. The site is regular in shape with a frontage of 17m along Barrenjoey Road and a depth of 44.2m to the west and 47.1m to the east. The site has a surveyed area of 689m² with a slope of approximately 43% from the higher northern boundary (rear) to the lower southern boundary (Barrenjoey Road). The site is vacant and heavily vegetated with no formal means of vehicular or pedestrian access. The site is located along a stretch of Barrenjoey Road commonly referred to as “the bends”. The site has a split zoning, comprising E4 Environmental Living and SP2 Classified Road under the provisions of the Pittwater LEP 2014. The division of the two zonings occurs at a distance approximately 8.2m from the property boundary fronting Barrenjoey Road. The works proposed on private property are entirely reliant upon works within the road reserve zoned SP2 Classified Road (Barrenjoey Road). The road reserve varies in width from 3.8m to 8m and does not contain any existing structures. The site is highly constrained by its slope and is mapped as Geotechnical Hazard 1. It is densely vegetated Bushfire Prone land with biodiversity value, including its protection as the Bilgola Flora and Fauna Category 1/2 Area. **Detailed Description of Adjoining/Surrounding Development** The land to the immediate east, west and south (across the road) comprises dense bushland. The land to the

	immediate north is characterised by one and two storey detached dwellings accessed via Plateau Road. Bilgola beach is located approximately 290m to the east at a significantly lower level.

Map:



SITE HISTORY

Development Application N0335/11

Development Application N0335/11 was approved on 1 July 2013 for excavation and earthworks, construction of a new driveway, double garage, access stairs and installation of a turntable. The consent was not activated and therefore has since lapsed.

Pre-lodgment meeting PLM/2020/0204

On 10 September 2020 a pre-lodgement meeting (PLM) took place to discuss the redevelopment of the site for a dwelling, garage and secondary dwelling. The issues raised at the PLM related to concerns about the excessive height, visual impact, loss of high value vegetation and impacts on biodiversity. The applicant was advised that concurrence would be required from Transport for NSW (TfNSW) and it was recommended that consultation with TfNSW take place before lodging any future DA.

APPLICATION HISTORY

On 26 October 2021, a letter was sent to the applicant raising concerns about the building height, bulk and scale, the store above the garage, the extent of excavation and tree removal and resulting impacts on biodiversity, transport issues, including TfNSW concurrence issues, engineering and stormwater issues and heritage issues.

On 17 September 2021, an amended Landscape Plan and Stormwater Plan was submitted.

On 1 November 2021, a further amended Stormwater Management Plan was submitted in addition to an Engineering letter.

On 19 November 2021, the applicant submitted revised plans and addition information. The revised plans included the following:

- Reduce the height of the top floor by 500mm.
- Delete store above garage.
- Delete front and side boundary fences.
- Delete the lower portion of the rear lift and access tunnel which reduces the extent of excavation.
- Delete the turntable from the road reserve.
- Additional tree planting proposed.
- All exposed walls to frontage be clad in sandstone.

It is Council's opinion that the revised plans and documentation submitted on 19 November 2021 fail to satisfactorily address the fundamental issues raised with the proposal. Notwithstanding, the revised plans were referred to the TfNSW and all relevant Officers in Council for comparative analysis only and this assessment report is based on the original plans dated 17 June 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	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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the application be supported, these matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. A letter was issue raising issues with the proposal in

Section 4.15 Matters for Consideration	Comments
	relation to the following issues: traffic, excavation, building height non-compliance, biodiversity, engineering and stormwater, view loss and heritage impacts. Additional information and concept plans have been submitted, however, as the information and plans do not address the fundamental TfNSW concurrence issues they have not been formally accepted (refer to history section of this report). Clause 92 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. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should the application be approved this matter can be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should the application be approved this matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater LEP and Pittwater 21 Development Control Plan section in this report. It has been concluded that the proposal will have unreasonable impact on the environment as a result of the significant loss of native canopy trees and biodiversity issues. Insufficient information has been submitted to demonstrate that the construction of the development will not have adverse impacts on road safety and geotechnical issues. (ii) **Social Impact** The proposed development will have a detrimental social impact in the locality considering the character of the proposal in terms of traffic and road safety issues, potential view loss, visual impacts on the character of the area and impacts on the environmental values of the site including biodiversity. (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 site is considered unsuitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
the development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the built form controls, including the building height development standard and the building envelope control. The height, bulk and scale of the development will have unreasonable visual impacts on the scenic quality of the area and potential view loss issues which have not been fully addressed by the applicant. The proposal includes work within the road reserve and insufficient information has been submitted to address road safety issues which has resulted in the refusal of concurrence from TfNSW. The proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectation's of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Roads Act 1993

The development application before Council has been put forward in respect to all works, both on private property and within the road reserve.

That part of the application located on private property is assessed under Part 4 of the Environmental Planning and Assessment Act 1979. The works proposed within the road reservation will be considered pursuant to the Roads Act 1993 and Part 5 of the Environmental Planning and Assessment Act 1979. Given the extent of the works with the road reservation, and the reliance upon these works to enable the works proposed on private property, it is considered appropriate to consider the cumulative impacts of the entire proposal as part of this assessment.

Whilst the assessment of the application considers the entire proposal in accordance with the Environmental Planning and Assessment Act, any consent issued is technically only in respect to works on private property. Consent pursuant to Section 138 of the Roads Act 1993 will still be required, should this application be approved a condition of consent can be includes requiring approval under Section 139 of the Roads Act.

Section 138 of the Roads Act 1993 requires concurrence from TfNSW for any of the following works:

(a) erect a structure or carry out a work in, on or over a public road, or
(b) dig up or disturb the surface of a public road, or
(c) remove or interfere with a structure, work or tree on a public road, or
(d) pump water into a public road from any land adjoining the road, or
(e) connect a road (whether public or private) to a classified road.

In respect to Barrenjoey Road, Northern Beaches Council is the Roads Authority. However, pursuant to Clause 138(2) of the Roads Act 1993, concurrence from Transport for NSW is required as Barrenjoey Road is a classified road.

Section 138 (2) of the Roads Act 1993 states that:

"A consent may not be given with respect to a classified road except with the concurrence of TfNSW"

Section 4.47(4) of the Environmental Planning and Assessment Act 197 states:

If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.

The application was referred to TfNSW who have been unable to provide concurrence for the reasons elaborated upon in the External Referral section of this report. It is noted that the revised plans dated 19 November 2021 do not address all the issues raised in the TfNSW referral response, as such the revised plans have not been formally accepted. In the absence of concurrence from TfNSW Council cannot approve the application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 specification's 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 prepared by Bushfire Planning Service, dated 2 June 2021. The report stated that the bushfire attack level of the site is “BAL-Flame Zone” with the eastern aspect of the site the most potentially hazardous aspect due to the effective slope, potential run of fire and prevailing fire weather in the area. The report recommends measures to comply with Planning for Bush Fire Protection, including an Asset Protection Zone (APZ).

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions which are to be included in a consent should this application be approved.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/08/2021 to 31/08/2021 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 258 submission/s from:

Name:	Address:
Mr John Cuthbert Geeves	107 Avalon Parade AVALON BEACH NSW 2107
Ms Leigh McGaghey	Address Unknown
Ms Prudence Abby Rydstrand	1100 Barrenjoey Road PALM BEACH NSW 2108
Mr Dayne Peter McGowan	89 Grandview Drive NEWPORT NSW 2106
Mrs Giles Richard Stoddard	32 Elouera Road AVALON BEACH NSW 2107
Katherine Clarke	63 Palmgrove Road AVALON BEACH NSW 2107

Name:	Address:
Mrs Zena Debra Carter	5 Lewis Street AVALON BEACH NSW 2107
Mr Thomas Matthew McGee	55 Careel Head Road AVALON BEACH NSW 2107
Anonymous	N/A
Ms Patricia Elizabeth Thomson	14 Plateau Road AVALON BEACH NSW 2107
Mrs Elizabeth Jane Collis	49 Chisholm Avenue AVALON BEACH NSW 2107
Ms Linda Anita Jansen	4 Mariposa Road BILGOLA PLATEAU NSW 2107
Mr Jack Franken	25 Wollombi Road BILGOLA PLATEAU NSW 2107
Simone Blake	6 Patrick Street AVALON BEACH NSW 2107
Mr Matthew Stuart Francis	243 Lower Plateau Road BILGOLA PLATEAU NSW 2107
Tessa Mullen	Address Unknown
Mantas Paulius Juska	45 Daly Street BILGOLA PLATEAU NSW 2107
Mrs Pauline Marie Allan	8 Coral Close AVALON BEACH NSW 2107
Michele Tick	14 Plateau Road AVALON BEACH NSW 2107
Mrs Rebbecca Joy Stewart	11 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Jain Beverly Parsons	53 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Ms Jennifer Nathalie Cuthbertson	4 Coonanga Road AVALON BEACH NSW 2107
Mrs Amber Corin Marsh	104 Plateau Road BILGOLA PLATEAU NSW 2107
Mr Christopher Pearce	6 Riviera Avenue AVALON BEACH NSW 2107
Mr Bruce Cornwall	Address Unknown
Mrs Lisa Anne Evans	23 The Circle BILGOLA PLATEAU NSW 2107
Mr Michael Anthony Henry	59 Dress Circle Road AVALON BEACH NSW 2107
Mrs Danielle Louise Nash	3 Howell Close NEWPORT NSW 2106
Mr James Moulang	294 Sackville Street CANLEY VALE NSW 2166
Mr Kenneth James Watkins	5 Totala Place ELANORA HEIGHTS NSW 2101
Mr Gareth Jones	PO Box 60 AVALON BEACH NSW 2107
Mr Matthew Robert Leith	32 The Circle BILGOLA PLATEAU NSW 2107
Mrs Nicola Donlan	21 Mirrabooka Street BILGOLA PLATEAU NSW 2107
Toni-Lou Howard	123 Wallumatta Road NEWPORT NSW 2106
Mr Simon Alastair Brian Fitch	54 Elvina Avenue AVALON BEACH NSW 2107
Mr Peter Ronald Coltman	4 D Dress Circle Road AVALON BEACH NSW 2107
Mr Geoff Gorick Mrs Mary Therese Gorick	19 Plateau Road AVALON BEACH NSW 2107
Ms Amelia Jane Berczelly	40 George Street AVALON BEACH NSW 2107
Ms Leonie Desree Leonard	636 Barrenjoey Road AVALON BEACH NSW 2107
Karina Hammond	22 Dolphin Crescent AVALON BEACH NSW 2107
Mrs Christina Mary Hutchinson	79 Dolphin Crescent AVALON BEACH NSW 2107
Mr Andrew James Bracher	15 Lovering Place NEWPORT NSW 2106
Mr Mark Francis Horton	2 Elwyn Close MONA VALE NSW 2103

Name:	Address:
Mr David John Goudie	45 Careel Head Road AVALON BEACH NSW 2107
Cal Van	Address Unknown
Mr Michael Carmody	12 Victoria Parade MANLY NSW 2095
V King	Address Unknown
Mr Greg John Hanley	9 The Serpentine BILGOLA BEACH NSW 2107
Mrs Stephanie Rene Bicknell	122 Avalon Parade AVALON BEACH NSW 2107
Stubbs Cruickshank	Level 4 1 Chandos Street ST LEONARDS NSW 2065
Anna Kramer-Higgins	32 Careel Head Road AVALON BEACH NSW 2107
Mrs Susan Christine Martin	19 Hudson Parade AVALON BEACH NSW 2107
Mrs Gabrielle Anne Angles	12 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Anne Coltman	4 D Dress Circle Road AVALON BEACH NSW 2107
Mrs Susannah Lisa Goudie	45 Careel Head Road AVALON BEACH NSW 2107
Mr Colin McKenzie Thomson	15 Plateau Road AVALON BEACH NSW 2107
Mr Ian Keith Barton Storey	1 A Nullaburra Road NEWPORT NSW 2106
Mr Vincent Jeremiah Carmody	7 Plateau Road AVALON BEACH NSW 2107
Ms Rosalene Dorothy Collison Clements	42 Plateau Road BILGOLA PLATEAU NSW 2107
Mrs Deborah Elizabeth Denman	8 Urara Road AVALON BEACH NSW 2107
Mrs Julia Fiona Blenkhorn	9 Plateau Road AVALON BEACH NSW 2107
Mr Philip John Clements	42 Plateau Road BILGOLA PLATEAU NSW 2107
Mr Matthew Philip Lumsdaine	16 Riviera Avenue AVALON BEACH NSW 2107
Mr Simon John Terry	12 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Richard Evelyn Woolveridge	63 Elvina Avenue AVALON BEACH NSW 2107
Mrs Amanda Helen Woolveridge	63 Elvina Avenue AVALON BEACH NSW 2107
Mrs Jennifer Anne Reddan	22 Kevin Avenue AVALON BEACH NSW 2107
Ms Clare Ann Strickland	13 Georgina Avenue ELANORA HEIGHTS NSW 2101
Mrs Denise Joy Leith	32 The Circle BILGOLA PLATEAU NSW 2107
Dave Smith	Address Unknown
Mr Robert Harley	15 a Chisholm Avenue AVALON BEACH NSW 2107
Ms Christine Anne Noldus	10 Burrawong Road AVALON BEACH NSW 2107
Mrs Angela Pearce	30 Allenby Park Parade ALLAMBIE HEIGHTS NSW 2100
Glenda Anne Paradine	60 George Street AVALON BEACH NSW 2107
Lynne Whitaker	Address Unknown
Mr David Reginald Smith	5 Plateau Road AVALON BEACH NSW 2107
Mr Charlie Class	52 Elaine Avenue AVALON BEACH NSW 2107
Sam Potter	Address Unknown
Mr Ralph John Lancaster Evans	135 Pacific Road PALM BEACH NSW 2108

Name:	Address:
Nicholas Gorick	Address Unknown
Mr David Lorne Macdonald Armstrong	50 George Street AVALON BEACH NSW 2107
Mr Steven Bevan Jones	5 The Appian Way AVALON BEACH NSW 2107
Mrs Nicole Erin Tognetti	3 Cannes Drive AVALON BEACH NSW 2107
Mrs Christine Joy Brown	120 Whale Beach Road WHALE BEACH NSW 2107
Mr Stephen John Riley	234 Hudson Parade CLAREVILLE NSW 2107
Mrs Deborah Louise Kaldor	122 Palmgrove Road AVALON BEACH NSW 2107
Mr Christopher John Power	55 Riviera Avenue AVALON BEACH NSW 2107
Ms Maryam Hughes	10 The Serpentine BILGOLA BEACH NSW 2107
Mrs Susan Nicholson	3 Buyuma Place AVALON BEACH NSW 2107
Ms Sally Louise Carmody	11 / 42 - 44 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Fiona Jane Shipman	21 York Terrace BILGOLA PLATEAU NSW 2107
Mrs Sandra Kay Mander	11 Plateau Road AVALON BEACH NSW 2107
Sonny Vandevelde	6 Joseph Street AVALON BEACH NSW 2107
Mrs Lucy Emma Creegan	77 Park Avenue AVALON BEACH NSW 2107
Gregory Ross	Address Unknown
Mrs Kerry Anne Paramor	11 Bay View Street MCMAHONS POINT NSW 2060
Mr Kevin Lovell Donohoe	2 / 64 - 66 Avalon Parade AVALON BEACH NSW 2107
Mrs Mary Agnes Fisher	77 Chisholm Avenue AVALON BEACH NSW 2107
Sarah-Jane Bailey	Address Unknown
Mrs Julie Robyn King	12 Ascot Road KENTHURST NSW 2156
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108
Ms Dale Christine Kentwell	22 Coonanga Road AVALON BEACH NSW 2107
Mr John William Ogden	26 A Plateau Road AVALON BEACH NSW 2107
Mrs Rebeccah Emily Vick	22 Riverview Road AVALON BEACH NSW 2107
Ms Georgia Ann Mansur	5 C Iluka Road PALM BEACH NSW 2108
Mrs Carmel Mary Johnson	1 Catalpa Avenue AVALON BEACH NSW 2107
Miss Nicola Suzanne Michael	5 Bulkara Road BELLEVUE HILL NSW 2023
Mrs Jennifer Anne McDowell	14 Birubi Crescent BILGOLA PLATEAU NSW 2107
Mr Martin Joseph Shannon	9 The Outlook BILGOLA PLATEAU NSW 2107
Mr Matthew James Healey	PO Box 73 AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Ashlie Casey	1 Westmoreland Avenue COLLAROY NSW 2097
Mrs Annabel Selby-Jones	48 Marine Parade AVALON BEACH NSW 2107
Mr Phillip Gregory Jones	48 Marine Parade AVALON BEACH NSW 2107
Mr John Warburton	106 Whale Beach Road AVALON BEACH NSW 2107
Mrs Karin Diana Turner	26 Marine Parade AVALON BEACH NSW 2107
Mr David Blyth Stubbs Mrs Helen Stubbs	17 Plateau Road AVALON BEACH NSW 2107
Mrs Prudence Wawn	47 Riverview Road AVALON BEACH NSW 2107

Name:	Address:
Phil Richards	248 Hudson Parade CLAREVILLE NSW 2107
Mrs Helen Olivia Richards	248 Hudson Parade CLAREVILLE NSW 2107
Mrs Elizabeth Ann Thorn	64 Roseville Avenue ROSEVILLE NSW 2069
Ms Kathryn Jeanne Franco	7 Crane Lodge Place PALM BEACH NSW 2108
Mr Anthony Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Mrs Linda Pamela Baxter Young	50 Park Avenue AVALON BEACH NSW 2107
Mrs Karman Lorraine Whitford	59 Plateau Road AVALON BEACH NSW 2107
Ms Elisabeth Bartlett Powis	PO Box 336 AVALON BEACH NSW 2107
Mrs Shannon Lee Kristen Murray	9 Catalina Crescent AVALON BEACH NSW 2107
Mrs Dorothy Elizabeth Saxon-Williams	3 The Outlook BILGOLA PLATEAU NSW 2107
Mr Richard Ian McEvoy	22 The Outlook BILGOLA PLATEAU NSW 2107
Penny Selby	120 B Cabarita Road AVALON BEACH NSW 2107
Ms Deborah Jane Collins	Po Box 838 AVALON BEACH NSW 2107
Ms Francesca Isabella Tanti	242 Hudson Parade CLAREVILLE NSW 2107
Mr Nicholas Kenneth Martin Allen	20 Bishops Avenue RANDWICK NSW 2031
Ms Lisa Nicole Tyndall	2 Argyle Street BILGOLA PLATEAU NSW 2107
Mrs Michelle Louise Newman	61 Palmgrove Road AVALON BEACH NSW 2107
Mr Peter Matthew Morrall	27 Central Road AVALON BEACH NSW 2107
Harrison Pickering	12 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Anna Louise Rudd	2 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Ms Andrea Mccormick	50 George Street AVALON BEACH NSW 2107
Ms Camilla Lynn Mok	14 / 1580 Pittwater Road MONA VALE NSW 2103
Mrs Sue Marsh	6 The Pinnacle BILGOLA PLATEAU NSW 2107
Mr Ian Clayton Lee	18 Wollombi Road BILGOLA PLATEAU NSW 2107
Mrs Louise Emily Hutchinson	7 Eurobin Avenue MANLY NSW 2095
Mr William James Goddard	4 Mariposa Road BILGOLA PLATEAU NSW 2107
Ms Lezli An Ryan	40 Argyle Street BILGOLA PLATEAU NSW 2107
Ms Sheila Frances Rose	310 Whale Beach Road PALM BEACH NSW 2108
Ms Susan Patricia Flaye	8 Burrendong Place AVALON BEACH NSW 2107
Mrs Sarah Carrington Yates	1078 Barrenjoey Road PALM BEACH NSW 2108
Ms Jill Patricia Morrison-Churchill	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Patrick Noble	18 Elaine Avenue AVALON BEACH NSW 2107
Ms Danielle Janice Bressington	13 York Terrace BILGOLA PLATEAU NSW 2107
Clare Julia Crawford	8 Gunjulla Place AVALON BEACH NSW 2107
Mr Nicolas Leslie Coleman	12 Bilwara Avenue BILGOLA PLATEAU NSW 2107

Name:	Address:
Ms Michelle Risa Robinson	11 Whale Beach Road AVALON BEACH NSW 2107
Mrs Jessica Dalziel	16 Dress Circle Road AVALON BEACH NSW 2107
Monique La Forgia	293 Hudson Parade CLAREVILLE NSW 2107
Miss Vanita Pamela Ogden	26 Chisholm Avenue AVALON BEACH NSW 2107
Ms Vicki Louise Crosby	53 Queens Avenue AVALON BEACH NSW 2107
Ms Miranda Maragret Korzy	80 Wandeen Road CLAREVILLE NSW 2107
Ms Lyn Meredith Huxham	PO Box 202/ AVALON BEACH NSW 2107
Mr Norman Nolan	63 The Serpentine BILGOLA BEACH NSW 2107
Ms Nicola Hughes	129 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Jonathan Harvey Gertler	18 Dress Circle Road AVALON BEACH NSW 2107
Fred Fokker	Address Unknown
Skye Beckett	3 Sanctuary Avenue AVALON BEACH NSW 2107
Kristen Duross	18 Beaconsfield Street NEWPORT NSW 2106
Mrs Louisa Leigh Hart	30 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Elizabeth Williams	1 Surf Side Avenue AVALON BEACH NSW 2107
Ms Lesley Garrett	25 Palm Beach Road PALM BEACH NSW 2108
Ms Prunella Karin Noonan	30 Plateau Road AVALON BEACH NSW 2107
John Herro	1 Bilgola Terrace BILGOLA BEACH NSW 2107
Mrs Margot Helena Paul	43 Patrick Street AVALON BEACH NSW 2107
Ms Jocelyn Margaret Sparks	3 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr John Douglas Moore	6 Gunjulla Place AVALON BEACH NSW 2107
Poppy Roxburgh	488 Barrenjoey Road BILGOLA PLATEAU NSW 2107
Mrs Chantal Cecile Huberte Hobson	14 Beauty Drive WHALE BEACH NSW 2107
Mrs Annabel Jane Fieldhouse	36 Hilltop Road AVALON BEACH NSW 2107
Mr Brian William Hobson	14 Beauty Drive WHALE BEACH NSW 2107
Ms Joanna Dalby-Ball	39 Daly Street BILGOLA PLATEAU NSW 2107
Mr Jean-Pierre Paul	43 Patrick Street AVALON BEACH NSW 2107
Mr Andrew Charles Robert Baldey	12 Beauty Drive WHALE BEACH NSW 2107
Ms Cristen Elizabeth Giles	23 Plateau Road AVALON BEACH NSW 2107
Mrs Marita Ann Macrae	24 Catalina Crescent AVALON BEACH NSW 2107
Douglas James Wright	151 Hudson Parade CLAREVILLE NSW 2107
Mr David Ashley Hammond	544 Barrenjoey Road AVALON BEACH NSW 2107
Mrs Dorothy Margaret Mary Kamaker	158 A Whale Beach Road WHALE BEACH NSW 2107
Chantal Harrison	7 Daly Street BILGOLA PLATEAU NSW 2107
Mr Janis Ivars Polfanders	8 Dress Circle Road AVALON BEACH NSW 2107
Mr Nicholas Hugh Hart	30 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Tyson Rose	38 Mariposa Road BILGOLA PLATEAU NSW 2107
Mrs Shae Claverie	37 York Terrace BILGOLA PLATEAU NSW 2107

Name:	Address:
The Palm Beach & Whale Beach Association Inc	Palm Beach/Whale Beach Areas AB Dummy For Daba Notification WARRIEWOOD NSW 2102
Richard West	87 Florida Road PALM BEACH NSW 2108
Mr Trevor James Hannah	180 B Riverview Road AVALON BEACH NSW 2107
Mr Philip Edward John Crenigan	19 The Serpentine BILGOLA BEACH NSW 2107
Ms Diana Tebbutt	103 Riverview Road AVALON BEACH NSW 2107
Mr Richard Maxwell Osborn	132 / 79 - 91 Macpherson Street WARRIEWOOD NSW 2102
Mr Paul Francis Williams	26 Monterey Road BILGOLA PLATEAU NSW 2107
Mr Keith James Woodward	182 Riverview Road AVALON BEACH NSW 2107
Newport Residents Association	PO Box 1180 NEWPORT BEACH NSW 2106
Ms Donna Louise O'Keefe	52 Argyle Street BILGOLA PLATEAU NSW 2107
Mr John Yates Williams	12 / 15 Old Barrenjoey Road AVALON BEACH NSW 2107
Malcolm Henry Saunders	57 Riviera Avenue AVALON BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
David William Broadbridge	Po Box 864 MONA VALE NSW 1660
Mrs Kristina Czepl	514 Barrenjoey Road AVALON BEACH NSW 2107
Mrs Leonor Isabel Gouldthorpe	2 Surf Road PALM BEACH NSW 2108
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mr Jonathon Pratten	4 Malo Road WHALE BEACH NSW 2107
Ms Natasha Perri Goulden	Po Box 876 EDGECLIFF NSW 2027
Mrs Karen Lorraine Alchin	49 Riverview Road AVALON BEACH NSW 2107
Ms Emma Gilmour	2 Bilgola Terrace BILGOLA BEACH NSW 2107
Mrs Debbie Anne Banham	29 Binburra Avenue AVALON BEACH NSW 2107
Mr Mark Ernest Alchin	49 Riverview Road AVALON BEACH NSW 2107
Bilgola Beach Residents Association Inc	7 Bilgola Avenue BILGOLA BEACH NSW 2107
Mr Robert John Kellick	11 Elvina Avenue AVALON BEACH NSW 2107
Mrs Penelope Ferguson	48 Kempbridge Avenue SEAFORTH NSW 2092
Ms Barbara Anne Webb	4 / 81 - 83 Avalon Parade AVALON BEACH NSW 2107
Rosemary Edgell Bush	19 Thyra Road PALM BEACH NSW 2108
Ms Helen Margaret Rennie	3 Marine Parade AVALON BEACH NSW 2107
Mrs Deborah Margaret Gartrell	2 Yallumba Close FORESTVILLE NSW 2087
Kevin Wyld	522 Barrenjoey Road AVALON BEACH NSW 2107
Clareville & Bilgola Plateau Residents Association	PO Box 292 AVALON BEACH NSW 2107
Catherine Mary Kerr	1 A Paradise Avenue AVALON BEACH NSW 2107

Name:	Address:
Mr Nicholas Edward Ferguson	40 Ellery Parade SEAFORTH NSW 2092
Mr Richard Russell Mason	3 / 8 - 12 Darley Street East MONA VALE NSW 2103
Mr Peter James Stutchbury	11 Surf Side Avenue AVALON BEACH NSW 2107
Suzi Fearon	15 Crane Lodge Place PALM BEACH NSW 2108
Mr David Laurence Nairne Fearon	15 Crane Lodge Place PALM BEACH NSW 2108
Pittwater Natural Heritage Association	PO Box 187 AVALON BEACH NSW 2107
Mr Mark William Badger	1 Milga Road AVALON BEACH NSW 2107
Mr Darren John Flynn	5 George Street AVALON BEACH NSW 2107
Mrs Suzanne Michelle Daly	95 Cheryl Crescent NEWPORT NSW 2106
Tony Sedgwick	Address Unknown
Ms Jill Luise Stephenson	1/10-14 Elgin Street WOOLWICH NSW 2110
Mr Christopher Newton Daly	95 Cheryl Crescent NEWPORT NSW 2106
Ms Rochelle Elizabeth Devries	6 York Terrace BILGOLA PLATEAU NSW 2107
Ms Julie Irene Malcolm	6 Careel Head Road AVALON BEACH NSW 2107
Mrs Susan Joy Myers	1 A Tasman Road AVALON BEACH NSW 2107
Mr Stuart Mackenzie Walker	28 Riviera Avenue AVALON BEACH NSW 2107
Graham Carruthers	32 Mirrabooka Street BILGOLA PLATEAU NSW 2107
Mrs Amanda Jane Louise Champion	PO Box 373 AVALON BEACH NSW 2107
Mrs Louise Helen Wylie Alston	2 / 85 - 87 Avalon Parade AVALON BEACH NSW 2107
Ms Judith Mary Davie	22 Hilltop Road AVALON BEACH NSW 2107
Mrs Helen Jean Mackay	53 Hilltop Road AVALON BEACH NSW 2107
Ms Anja Lisa Taylor	66 Whale Beach Road AVALON BEACH NSW 2107
Dr Rohan Thomas Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Martin Christopher Joy	22 Hilltop Road AVALON BEACH NSW 2107
Mrs Glenda Kathleen Killingsworth	6 Bilgola Terrace BILGOLA BEACH NSW 2107
Mr Anthony Robert Milburn	38 Queens Avenue AVALON BEACH NSW 2107
Mr Mark Graham Pearsall	10 Beauty Drive WHALE BEACH NSW 2107
Tracy Napthali	10 Beauty Drive WHALE BEACH NSW 2107
Ms Jacinta Newcombe	101 Whale Beach Road AVALON BEACH NSW 2107
H Napthali	10 Beauty Drive WHALE BEACH NSW 2107
Lucy Vader	12 Idaline Street COLLAROY PLATEAU NSW 2097
Mr Michael Francis Green	21 Bareena Road AVALON BEACH NSW 2107
Mr Dennis Leslie Wright	12 Park Avenue AVALON BEACH NSW 2107
Mr David Richard Ravenscroft	100 Binburra Avenue AVALON BEACH NSW 2107

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

- **Traffic congestion/ parking/vehicle access and safety concerns and encroachment on public land**
- **Excavation/landslip/runoff**
- **Environmental concerns tree removal and biodiversity impacts.**
- **Overdevelopment / built form concerns / non-compliance with the built form controls**
- **The development is contrary to E4 Environmental Living zone and SP2 Infrastructure zone**
- **Owners consent**
- **Visual impact**
- **View loss**
- **Privacy (acoustic and visual) impacts**
- **Construction impacts**
- **Mixed residential/commercial uses involving multiple offices or dual occupancy**
- **Insufficient notification**
- **Cost summary**

The matters raised within the submissions are addressed as follows:

- **Traffic congestion/ parking/vehicle access and safety concerns and encroachment on public land**

  Concerns are raised regarding significant traffic congestion / delays during the construction phase and in the long-term including the potential obstruction of access for emergency services. Impacts on access to other areas of the northern suburbs given that Barrenjoey Road is the principal access point to these areas to the north of Newport. Vehicular, pedestrian, cyclists, and public transport (buses) road safety concerns given the location of the site on a blind bend in the road. A recent fatal accident caused the road to be closed for a considerable length of time. Insufficient traffic management plan which presents a road safety issue. Sight lines do not meet the required standards. No parking for visitors or for construction workers and no safe pedestrian access. Inadequate planning for services such as garbage collection and post deliveries. The traffic management plan is misleading and uninformative. Trucks, cranes and excavators cannot access the site without impacting on access along Barrenjoey road. Damage to the fragile public road caused by heavy equipment and runoff from the site. Encroachment on public land (turntable, driveway, retaining walls and letterbox) which is not supported by T.NSW

  Comment:
  The site is located near the bends on Barrenjoey Road and insufficient information has been submitted to demonstrate that the proposal will not impact on road safety particularly during construction. The proposal includes work located within the road reserve which is zoned SP2 a classified road. TfNSW have not issued concurrence and Council does not have the power to grant development consent. Refer to discussion from TfNSW in the External Referral Section of this report and under the section titled Road's Act.

This issue forms a reason for the refusal of the application.

- **Excavation/landslip/runoff**

Concerns are raised regarding major excavation including 21m deep excavation for a lift shaft / and 27m long tunnel which will impact on adjoining properties and the public domain. Lack of detail in stormwater plan to managing runoff. Landslip issues with slope erosion and issues with the stability of existing dwellings. There is a history of land slippage in the area. The geotechnical report is insufficient e.g. it does not address the detrimental effect the earthworks will have on drainage patterns and soil stability, or the fact that recent landslips have occurred in front of numbers 517 and 519 Barrenjoey Rd and Barrenjoey Terrace. There is a high likelihood that the proposed excavation may have a similar impact and could lead to further landslips, with the intense vibrations from drilling into rock, destabilizing the surrounding area. The applicant has also failed to identify that the site is located in an area identified as "Geotechnical Hazard H1".

Comment:
It is agreed that the proposed excavation is significant and has the potential to impact on landslip the geotechnical report and insufficient information has been submitted to fully address the environmental issues. Refer to detailed discussion under Clause 7.2 and 7.7 of the PLEP.

This issue forms a reason for the refusal of the application.

- **Environmental concerns tree removal and biodiversity impacts.**

Concerns are raised regarding the extensive removal of trees, including native canopy trees on the subject site, the road reserve and to neighbouring properties. The arborist report said 43/53 trees have high retention value. The DA proposes to remove 28 - more than half of the trees on the property. The Pittwater Spotted Gum Forest - Endangered Ecological Community (EEC) is a forest community, it is not a few single trees. The proposal will create a gap in the otherwise contiguous strip of bushland vegetation. Impact to landscape quality and ecological network (native species). Loss of landscaped view from view corridors and the public domain (Bilgola Beach and Bilgola Bends). Concerns about the impacts on the health of the trees identified to be retained. Any surviving trees will be subject to the bushfire provisions and may require removal. Impact on biodiversity and wildlife corridors contrary to the objectives of the E4 zone. The area should be purchased and remain as natural bushland and rezoned as community land, RMS reserve or similar. The area to the south of the roundabout at Plateau Road, known as Bilgola Benda needs to retained as a green corridor / gateway to the north. The removal of canopy trees is contrary to measures to address climate change.

Comment:
The extensive removal of 28 mature canopy native trees on the subject site and within the road reserve is not supported as it will have unreasonable negative impacts on the biodiversity of the site, the landscape character of the area and view corridors. Concerns about the health of trees retained is a valid concern given the extent of the excavation. Refer to the detailed discussion within the Internal Referral section of this report (Landscape Officer and Bushland and Biodiversity Officer). The subject site is privately owned and there are no plans to purchase it and / or re-zone the land.

This issue forms a reason for the refusal of the application.

- **Overdevelopment / built form concerns / non-compliance with the built form controls**

Concerns are raised regarding overdevelopment as expressed by the breach in the built form controls including the height limit, building envelope, setbacks and car parking requirements (the SEE refers to 4 car parking spaces the garage is for 3 cars). The excessive footprint (72.5% of the site), height, bulk and scale is out of character with the Bilgola Locality and will have a visual impact on the scenic quality of the area including the view corridors along the Bilgola bends and the Bilgola Beach. The additional height of the balustrades results in a four (4) storey building. The width of the garage is 59.6% of the frontage and will be a dominate feature which is non-compliant. Approval will set a negative precedent for future development. Inappropriate materials concrete and glass which may result in reflectivity issues.

Comment:
It is agreed that the development represents overdevelopment as expressed by the non-compliance with the built form controls including height, setbacks, envelope, landscape open space. The extensive footprint will require the removal of a significant amount of existing tree canopy which combined with the Asset Protection Zone required to address Bushfire requirements will result in a new altered landscape character. The development fails to integrate into the existing landscape and the excessive bulk, height, scale and building footprint is not consistent with the desired future character for the Bilgola area. The materials incudes extensive use of glass which may have the potential to cause reflectivity issues.

This issue forms a reason for the refusal of the application.

- **The development is contrary to E4 Environmental Living zone and SP2 Infrastructure zone**

Concerns are raised that the proposal does not achieve the objectives of the E4 Environmental Living zoning and SP2 Infrastructure zone and has failed to address Clause 5.1A - Development on land intended to be acquired for public purposes of the PLEP .

Comment:
It is agreed that the proposal is inconsistent with the requirements and objectives of the E4 Environmental Living zone, the SP2 Infrastructure zone and Clause 5.1A of the LEP. Refer to the detailed discussion under each of the LEP provisions within this report.

This issue forms a reason for the refusal of the application.

- **View loss**

Concerns are raised with respect to impact on views.

Comment:
The affected properties are those to the north (rear) of the site between 17 - 25 Plateau Road. Insufficient information has been submitted to fully consider view sharing requirements and principles particularly given the 38.75% breach in the height development standard.

This issue forms a reason for refusal of the application.

- **Privacy (acoustic and visual) impacts**

Concerns are raised with respect to impact on privacy due to the roof top pool and patio being close to the adjoining rear yard and being elevated 2.4m - 3.1m above the adjoining rear yard.

Comment:
The roof top pool is located 6.7m from the rear (northern) boundary. Clause C1.5 of the PDCP requires habitable windows and areas of private open space (POS) to adjoining dwellings to be protected from direct overlooking within 9m of elevated decks and pools. The habitable windows and primary areas of POS to the dwellings to the rear exceed 9m to the pool. However, given the elevated design of the pool and the need for extensive tree removal concerns regarding privacy impacts are considered to remain valid.

This issue forms a reason for refusal of the application.

- **Construction impacts**

Concerns are raised with respect to construction impacts, noise, pollution, increased traffic and congestion, road safety issues and no parking for construction staff.

Comment:
Insufficient information has been submitted to demonstrate that the construction will not impact on road safety. There is no provision on site for construction staff to park.

This issue forms a reason for the refusal of the application.

- **Mixed residential/commercial uses involving multiple offices or dual occupancy**

Concerns are raised regarding the purpose of the development which appears to be a mixed residential / commercial uses involving multiple offices or dual occupancy.

Comment:
The office / studio is connected to the dwelling via the underground tunnel. Should the application be approved conditions should be included to ensure that the office / studio remains to be ancillary to the dwelling and not used as separate accommodation or commercial business. Refer to detailed discussion under Clause C1.14 of the PDCP.

This issue does not warrant the refusal of the application.

- **Insufficient notification**

There is no evidence of a notification sign at front of property and the notification requires to be extended.

Comment:

The applicant has submitted photographic evidence of the notification sign and the exhibition period was extended for an additional two (2) weeks on 11 August 2021.

This issue des not warrant the refusal of the application.

- **Cost summary**

Concern is raised that the cost summary is understated.

Comment:
The application is not supported therefore further information in respect of the cost of work has not been requested. Should the application be approved, a Quantity Surveyor Report should be requested to confirm the actual cost of the development.

This issue does not warrant the refusal of the application.

- **Inaccurate supporting documentation**

Concerns are raised that the supporting documents are inaccurate and erroneous.

Comment:
It is agreed that some of the supporting information lack details and insufficient information has been submitted to allow a proper assessment of all aspects of the proposal.

This issue forms a reason for the refusal of the application.

- **Access to services**

Concern is raised that the site does not have adequate access to services.

Comment:
Insufficient information has been submitted in terms of how the development will be serviced.

This issue forms a reason for the refusal of the application.

- **Owners consent**

Concern is raised that owners consent has not been provided from the two neighbours for the work outside the application site.

Comment:
Owners consent (Transport for NSW) has not been granted for the work proposed along the frontage of No. 519 and 523 Barrenjoey Road.

One submission has been received in support of the application which notes that access is good, trees are retained and the 8kl water tank is supported.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Not supported** Original Response 29/07/2021 The development application is for the construction of a new dwelling, pool and associated landscape works. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): - B4.22 Preservation of Trees and Bushland Vegetation. - C1.1 Landscaping. - D3 Bilgola Locality, and in particular D3.1 Character as viewed from a public place The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the E4 Environmental Living zone. The existing site is a vacant lot and contains many significant trees indicative of the original vegetation found in the locality, typical of the Pittwater and Wagstaffe Spotted Gum Forest Endangered Ecological Community. The site is in proximity to stands of Cabbage Tree Palms (*Livistona australis*) of local heritage significance with natural, aesthetic, scientific, historic and social significance for the local area, and it is determined that it is unlikely that the proposed development will have any impact on the heritage significance of this item. Landscape Plans are provided with the application indicating existing trees to be either retained or removed, and additional landscape planting. The frontage treatment to the site provides no adequate landscaped front setback and concerns are raised regarding the built form presentation to the streetscape and surrounds, contrary to the objectives of clause D3.1 Character as viewed from a public place. The natural landscape and slope character of this section of the Bilgola Bends is predominately dense vegetation growing in close proximity in clumps along the slopes for slope stability, and this proposal will expose a portion of the Bilgola Bends to public view and thus will be visually inconsistent with the local character, and this matter shall be addressed by Planning in terms of merit considerations, as land use zoning permits residential development. The Landscape Plans include retaining walling and mass planting

Internal Referral Body	Comments
	within the road reserve fronting the adjoining properties at 519 and 523 Barrenjoey Road, and no approval is granted for such works within the road reserve within this development application. Should the application be approved, any works within the road reserve are subject to a section 138 application and approval or otherwise. The scheme provides for two small trees and mass planting above the garage and store building, and one canopy tree with five smaller trees and mass planting along the rear of the property, and otherwise the scheme does not provide for any other tree replacement. The nominated Rhaphiolepis species shall be deleted and is not permitted to be planting to ensure no self-seeding into bushland areas, and shall be replaced with a locally native species typically found in the Pittwater and Wagstaffe Spotted Gum Forest Endangered Ecological Community. The Landscape Plans include planting on slab over the garage and store building with two Coast Banksia trees as well as mass planting. The soil depth planters shown in the proposal plans are inadequate to support tree planting which requires at least 1 metre soil depth, and the shown planters are only sufficient to support groundcovers and grasses. Deep soil areas are available elsewhere throughout the site to support tree planting. There are design improvements that are required to improve the landscape outcomes of the proposal. As the design stands, the bulk and scale is not softened by landscaping and the east elevation is a prominent visual built form. Deep soil areas are provided to the side boundary areas between the garage and store building, and the main residence. The Landscape Plans do not provide any tree planting to these areas that are able to support replacement tree planting, and it is advised that this is necessary to reduce the built form of the development. It is noted that the existing vegetation pattern of trees along this area of the locality upon steep slopes supports trees planted in clumps and thus such proposed tree planting is required to enhance the local character and slope stability. The proposed 400mm depth planters over the offices and studio area is to be increased in depth to be able to support mass tall shrub planting, and where possible small tree planting to soften the built form and provide a soft landscaped visual break between the garage and store building, and the main residence, that would otherwise appear as a six storeys. DCP control C1.1 Landscaping requires the following soil depths: 300mm for lawns and groundcovers, 600mm for shrubs, and 1metre for trees. In consideration of the above assessment of the Landscape Plans, amended plans are required to demonstrate how the proposed development will be softened by landscaping to satisfy the zone objectives of E4 Environmental Living as well as the DCP controls C1.1 and D3.1, prior to further determination of the development proposal.

Internal Referral Body	Comments
	A Arboricultural Impact Assessment is provided with the application, and recommends the removal of 20 native trees within the site, removal of 8 native trees from the road reserve, retention of 11 native trees within the site, and protection of existing trees within adjoining properties in proximity to the proposed works. The loss of the existing native trees nominated for removal is unavoidable with no design alternative available. Existing trees proposed for retention within the site include tree identified as Angophora costata (T10, T26, T27, T28, T31, T32, T33, T43, T44 and T44), and Eucalyptus umbra (T21). At this stage Landscape Referral are unable to support the application until Amended Landscape Plans are received to address the concerns raised. In summary, it is envisaged that the proposed development if approved will create a new and altered 'landscape character' that presents a substantial development footprint upon the site, and cannot be landscaped to integrate into the existing landscape character as use of the site for residential living is required to satisfy asset protection zone that limits tree canopy and understorey vegetation. The site is designated as a bushfire asset protection zone, and as such the character of the landscape fundamentally changes, as any new landscaping to the site will be required to comply with the principles of Appendix 4 and section 3.7 of Planning for Bush Fire Protection 2019. Much of this includes isolating tree canopies, increased tree separation, and reduced planting densities. A residential lot within asset protection zones cannot compliment the existing landscape character that is present to this area, nor satisfy the intent of DCP control D3.1 Character as viewed from a public place. The landscape proposal includes new tall canopy trees however many of these are within the 5 metres of the proposed buildings and therefore do not comply with the recommendations of DCP control C1.1 whereby the 5 metres is required to allow the establishment of such large trees in the long term. The location as shown of the many large canopy trees in close proximity to the proposed buildings and structures will present an ongoing risk to buildings and persons, and it is not anticipated that full growth will be possible. The arrangement of tree planting including smaller canopy trees are proposed only along boundaries and thus the bulk and scale, and integration of the proposed buildings in elevation, into the landscape setting is not achieved. The LEP zone E4 Environmental Living outcomes and DCP control D3.1 Character as viewed from a public place intent becomes difficult

Internal Referral Body	Comments
	to satisfy without a reduced building footprint to permit the retention or the planting of trees that also satisfies the asset protection zone guidelines, where residential development is of a low density and scale integrated with the landform and landscape. The landscape plans and arborist report are not precisely coordinated and no reference is provided on the landscape plans to include like for like identification of trees to be removed and retained. In the Arborist report existing trees along the southern front side boundary area includes retention of Sydney Red Gums identified as numbers T27 to T33 and T43 and T44 and listed as being outside of the tree protection zone, yet on the plans proposed retaining walls in close proximity may impact upon the retention of these existing trees, further increasing the loss of existing canopy, and thus not satisfying DCP control B4.22 Preservation of Trees and Bushland Vegetation. The predominately full width coverage of the garage and driveway alters the natural landscape character of the streetscape that is dominated by trees and vegetation, and this proposal exposes a portion of the Bilgola Bends to a built form visually inconsistent with the local character. Concern remains regarding the encroachment of retaining walling, stairs and mass planting within the road reserve fronting the adjoining properties at 519 and 523 Barrenjoey Road, and an arrangement will limit development of those properties including vehicular access as this development occupies an extensive portion of the road reserve available to the adjoining properties, that are also zoned as E4 Environment Living as is the subject development site, and any future removal of such encroachment works is placed upon future applicants. <u>Additional comments on revised landscape plan received 17/09/2021</u> I have reviewed the updated landscape plans and whilst the landscape scheme is improved I still have issues including: To satisfy the intent of LEP zone E4 Environmental Living, the site is required to support many tall canopy trees above the building height to allow the proposed building to be secondary to the landscape setting. - The landscape proposal includes 9 new tall canopy trees however many of these are within the 5 metres of the proposed buildings and therefore do not comply with the recommendations of DCP control C1.1 whereby the 5 metres is required to allow the establishment of such large trees in the long term. - The location as shown of the many large canopy trees in close proximity to the proposed buildings will present an ongoing risk to buildings and persons, and it is not anticipated that full growth will be possible.

Internal Referral Body	Comments
	- At best possibly only three large canopy trees are able to be supported within the site at a distance of 5 metres from buildings and structures. Whilst this satisfies the DCP control C1.1 requiring three trees upon a site, the intent of LEP zone E4 Environmental Living is not satisfied as existing land in this area contains extensive tall canopy trees over and above the C1.1 control of the DCP, and other DCP controls are additionally required to be satisfied including D3.1 Character as viewed from a public place, and LEP objectives for the E4 zone. - The arrangement of tree planting including smaller canopy trees are proposed only along boundaries and thus the bulk and scale, and integration of the proposed buildings in elevation, into the landscape setting is not achieved. - The east elevation remains a prominent visual built form. Deep soil areas between the garage and store building, and the lower main residence are occupied by the studio and 2 offices. The Landscape Plans do not provide any tree planting to these areas that are able to support replacement tree planting, and it is advised that this is necessary to reduce the built form of the development. - The frontage treatment to the site provides no adequate landscaped front setback and concerns are raised regarding the built form presentation to the streetscape and surrounds, contrary to the objectives of clause D3.1 Character as viewed from a public place. The natural landscape and slope character of this section of the Bilgola Bends is predominately dense vegetation growing in close proximity in clumps along the slopes for slope stability, and this proposal will expose a portion of the Bilgola Bends to public view and thus will be visually inconsistent with the local character. - The Landscape Plans include retaining walling, stairs and mass planting within the road reserve fronting the adjoining properties at 519 and 523 Barrenjoey Road, and concern is raised that such an arrangement will limit development of those properties including vehicular access as this development occupies an extensive portion of the road reserve available to the adjoining properties. <u>Additional Comments on revised plans received 19/11/2021</u> Revised plans are submitted indicating additional tree replacement planting and other planting primarily between the garage and store building at the front boundary and the lower residence occupied by the studio and offices. This includes proposed native tree planting of Spotted Gums, Turpentines and Coast Banksia. It is assumed, but not clearly known from the documents if this area will be preserved as natural ground or removed as part of the site works and then replaced, as no side boundary retaining walls are indicated that would otherwise suggest

Internal Referral Body	Comments
	removal of the natural ground between the garage and store building at the front boundary and the lower residence occupied by the studio and offices. Given this it seems appropriate that existing trees in this area should be preserved rather than removed and replaced. A total of four Sydney Red Gums and two Bastard Mahogany trees exist and all are rated in the arborist report with suitable retention values. Whilst the amended landscape plans provides planting to the available landscape area outside of the building footprint to satisfy DCP control C1.1 Landscaping, the amended plans continue to essentially alter the landscape character of the existing site and area that is characterised by a natural landscape of steep slopes with tree and vegetation planting that is the prominent visual element of the surrounding area, impacting the desired intent of DCP control D3.1 Character as viewed from a public place. The amount of canopy and vegetation lost as a consequence of the construction and building footprint upon the site results in the deliverance of a building that will be the prominent focus. The establishment of any replacement canopy trees and vegetation is not an easily achieved occurrence and relies on good management and intent. The site is designated as a bushfire asset protection zone, and as such the character of the landscape fundamentally changes, as any new landscaping to the site will be required to comply with the principles of Appendix 4 and section 3.7 of Planning for Bush Fire Protection 2019. Much of this includes isolating tree canopies, increased tree separation, and reduced planting densities. A residential lot within a asset protection zone cannot compliment the existing landscape character that is present to this area, nor satisfy the intent of DCP control D3.1 Character as viewed from a public place. In view of the above analysis of the amended plans, the LEP zone E4 Environmental Living outcomes and DCP control DCP control D3.1 Character as viewed from a public place intent becomes difficult to satisfy without a reduced building footprint to permit the retention or the planting of trees that also satisfies the asset protection zone guidelines, where residential development is of a low density and scale integrated with the landform and landscape. The amended landscape plans and arborist report are not precisely coordinated and no reference is provided on the amended landscape plans to include like for like identification of trees to be removed and retained. In the Arborist report existing trees along the southern front side boundary area includes retention of Sydney Red Gums identified as numbers T27 to T33 and T43 and T44 and listed as being outside of the tree protection zone, yet on the amended plans proposed retaining walls in close proximity may impact upon the retention of these existing trees, further increasing the loss of existing canopy, and thus not satisfying DCP control B4.22 Preservation of Trees and

Internal Referral Body	Comments
	Bushland Vegetation. The predominately full width coverage of the garage and driveway alters the natural landscape character of the streetscape that is dominated by trees and vegetation, and this proposal exposes a portion of the Bilgola Bends to a built form visually inconsistent with the local character. Concern remains regarding the encroachment of retaining walling, stairs and mass planting within the road reserve fronting the adjoining properties at 519 and 523 Barrenjoey Road, and an arrangement will limit development of those properties including vehicular access as this development occupies an extensive portion of the road reserve available to the adjoining properties, that are also zoned as E4 Environment Living as is the subject development site, and any future removal of such encroachment works is placed upon future applicants. In summary, it is envisaged that the proposed development if approved will create a new and altered 'landscape character' that presents a substantial development footprint upon the site, and cannot be landscaped to integrate into the existing landscape character as use of the site for residential living is required to satisfy asset protection zone that limits tree canopy and understorey vegetation.
NECC (Bushland and Biodiversity)	**Not supported** Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions: - Pittwater LEP cl. 7.6 Terrestrial Biodiversity. - Pittwater 21 DCP cl. B4.17 Littoral Rainforest - Endangered Ecological Community. - Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. - Coastal Management SEPP 2018 cl. 11 Development on land in proximity to coastal wetlands or littoral rainforest. The Development Application seeks consent for the construction of a new dwelling house including swimming pool, within a vacant vegetated block of land. It is noted that the following biodiversity related reports/documentation have been reviewed during the assessment of this proposal: - Statement of Environmental Effects (Peter Downes Designs). - Arboricultural Impact Assessment Report (Joanne Willis, June 2021). - Flora and Fauna Surveys and Biodiversity Impact Assessment

Internal Referral Body	Comments
	(ACS Environmental, June 2021). - Bushfire Risk Assessment (Bush Fire Planning Services, June 2021). - Landscape Plan (Aspect Designs, January 2021). The Arborist Report recommends the removal of a total of 28 native prescribed trees which form part of PCT 1778: Coastal Sandstone Foreshores Forest as identified by Ecologist. This is a loss of approximately 460m2 of PCT 1778 (ACS Environmental, June 2021). 30 of the 53 trees are located within the subject site, and of these, 20 are proposed for removal. This is a reduction in canopy trees by 66%. The Biodiversity Impact Assessment has addressed PLEP cl. 7.6 within the report, however it appears that the statements provided do not adequately assess the proposed impacts. The Ecologist states that "*the individuals mostly occur in only fair condition, and this removal would be offset by replacement planting of species landscaped to 80% of representative species for Coastal Sandstone Foreshore Forest. This offset could be considered adequate to maintain the condition, ecological value and habitat for flora and fauna at this small section of the subject land*". The Landscape Plan has only proposed one (1) replacement tree, an *Angophora costata*, which is not sufficient to offset the removal of 28 mature trees. The reduction of native canopy trees as a result of the proposed development is a loss of approximately 66% from the site, and unfortunately given the size of the development and existing trees proposed for retention, It does not seem feasible to sufficiently offset the canopy trees proposed for removal at a ratio of even 1:1. Furthermore, as the site is designated as an Asset Protection Zone (APZ), any new landscaping to the site will be required to comply with the principles of Appendix 4 and section 3.7 of Planning for Bush Fire Protection 2019. The subject site is located within the Flora and Fauna Conservation Areas-Category 2 map in accordance with cl. B4.4 of the P21DCP, which prescribes that development shall provide flora and fauna habitat and wildlife corridors by active restoration, regeneration, and/or creation. The development does not comply with this clause as it will impact connectivity within the wildlife corridor due to direct impact of removal of trees and lack of adequate replacement of lost habitat. In relation to the Coastal Management SEPP, the SEE simply states "*The writer submits that the proposed development will have no impact on the coastal processes, or public use, or access to a beach or adjoining coastal headland*". Further assessment of the potential impacts on the patch of Littoral Rainforest below the site is required in relation to the following: (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

Internal Referral Body	Comments
	(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest. Due to the tree removal proposed, and lack of offset planting proposed, the development does not comply with P21DCP cl. B4.4 and cl. B4.17, as the proposal will result in a significant onsite loss of canopy cover and a net loss in native canopy trees and will cause impacts to connectivity within the mapped wildlife corridor. Additional Comments based on the revised plans received 19/11/2021 It is noted that additional documentation has been submitted in response to the Original Biodiversity Referral. The following additional amended documentation relating to biodiversity have been reviewed in preparation of these comments: - Amended Landscape Plan (Aspect Designs, September 2021). - Biodiversity Letter – Response to Natural Environment Referral Response - Biodiversity (ACS Environmental Pty Ltd, November 2021). *Pittwater Local Environmental Plan 2014 (PLEP)* PLEP cl. 7.6 Biodiversity Protection requires that consent must not be granted if the consent authority is not satisfied that the development has been designed, sited and will be managed to avoid and minimise significant adverse environmental impact. It is considered that design alternatives are available (e.g. deletion of the secondary dwelling, reduction in footprint of the primary dwelling) which would assist in reducing the extent of tree removal required to facilitate the development. The amended landscape plan provides for 21 native replacement tree plantings (increased from one in the original plans), as well as an additional 24 smaller native trees and abundant native shrubs and groundcovers. However, as the entire lot will be required to be managed as an Asset Protection Zone (APZ), any new landscaping must comply with the requirements of Appendix 4 of Planning for Bushfire Protection (PBP) 2019 (including maintenance of a reduced canopy coverage). It is considered that the dense replacement plantings of the amended landscape plan would not comply with the landscaping requirements of PBP (2019). As such, it is considered that the amended landscape plans cannot satisfactorily mitigate the loss of native vegetation that will result from a development of this scale. In accordance with previous advice, the proposal should be redesigned to reduce the footprint of the development and thereby reduce the extent of impacts to vegetation, rather than relying on replacement plantings.

Internal Referral Body	Comments
	In light of the above, Council's biodiversity referrals body is not satisfied that the proposal has been designed and sited to avoid and minimise adverse environmental impacts, and thus considers that the proposal remains inconsistent with PLEP cl. 7.6. *Pittwater 21 Development Control Plan (PDCP)* Pittwater 21 DCP cl. B4.4 – Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor requires that development shall result in "no significant onsite loss of canopy cover or net loss in native canopy trees". As noted above, the amended landscape plan provides for dense replacement plantings to compensate for extensive tree removal required to facilitate a development of this scale. As these dense plantings are unlikely to comply with the landscaping requirements of PBP, it is considered that replacement planting cannot be relied upon to achieve consistency with the canopy retention requirements of DCP cl B4.4. Instead, the proposal should be redesigned to retain more of the existing native vegetation on site. Furthermore, the removal of 28 native canopy trees offset by the proposed replacement planting of 21 native canopy trees still results in a net loss in native canopy trees, which remains non-compliant with cl. B4.4 of the P21DCP. *Coastal SEPP* In accordance with cl. 11 of the Coastal Management SEPP 2018, consent must not be granted if the consent authority is not satisfied that the development will not significantly impact on the i) biophysical, hydrological or ecological integrity of the adjacent littoral rainforest; or ii) the quantity and quality of surface and ground water flows to and from the adjacent littoral rainforest. The additional information provided by the Ecological Consultant does not adequately demonstrate how the proposal will meet the abovementioned requirements. As per previous biodiversity referral advice, further information is required before Council can be satisfied that the proposal complies with SEPP (Coastal Management**).**
NECC (Development Engineering)	**Not supported** Original comments The proposal is for the construction of a new dwelling with new vehicular access to Barrenjoey Road. *Access* The proposed vehicular access, turntable, access stairs and associated structures in the road reserve require comments from Road Asset team and concurrence from TfNSW. TfNSW have provided comments on the proposed access arrangements that require significant changes to the design. Further

Internal Referral Body	Comments
	assessment is required once required amendments are completed. *Stormwater* The impervious area calculated in the stormwater plans by Taylor Consulting appears to be underestimated. all built areas including roof gardens shall be assumed as impervious. The plans are to include a catchment plan indicating the impervious and pervious areas assumed in calculations and the areas draining to the OSD system. OSD shall be provided in accordance with Clause 9.3.1 of Counci's Water Management for Development Policy. Additional comments on revised plans submitted 19/11/2021 *Access* Based on the amended plans the previously proposed turntable on the road reserve has been deleted. However the vehicular crossing, retaining walls and pedestrian access stairs still require concurrence from TfNSW and comments from Road Asset team before engineering conditions can be provided. Additionally the Applicant shall provide a long-section at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890. *Stormwater* The amended stormwater plans showing the catchment area and calculations is acceptable. Any issues with the OSD can be addressed via conditions.
NECC (Riparian Lands and Creeks)	**Supported** This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. This site is close to Bilgola Beach and drains to that coastal zone. The development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the ocean and beachfront. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Bilgola Beach.
Road Reserve	**Not supported** The referral comments from the Department for Transport remain unresolved in relation to a number of elements, namely retaining

Internal Referral Body	Comments
	walls, support structures and turntable, being located within private property. The use of retaining walls and other support structures to allow vehicle access to properties in steep terrain is typical along this corridor and in this instance would seem reasonable and warrant further investigation. Further consideration of locating a turntable within the driveway may be warranted if it were to allow visiting vehicles and deliveries to enter and leave in a forward direction. The need for further details demonstrating safe access (swept paths and sight distance) for turning vehicles is supported. The proposal is therefore unsupported. Additional comments on revised plans received 19/11/2021 The removal of the turntable is noted. The compliance of swept paths and sight distance for turning vehicles is noted. The retaining structures associated with the driveway access are supported subject to s138 Road Act application and consent with TfNSW concurrence
Strategic and Place Planning (Heritage Officer)	**Not supported** The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item: - Grove of Cabbage Tree Palms (*Livonstona Australis*) - Numerous lots within Bilgola Beach. Details of the item as contained within the Pittwater inventory is as follows: Statement of Significance The Grove of Cabbage Tree Palms (*Livistona australis*) is a landscape heritage item of local significance with natural, aesthetic, scientific, historic and social significance for the Pittwater local government area. Strong and densely established, this grove is emblematic of Bilgola as a locality within the larger peninsula and municipality. The occurrence of cabbage tree palms, said to be the best remaining stand in the Sydney area, add to the natural beauty of the area. The area is an important recreational resource for the people of Sydney. Physical Description The Grove of Cabbage Tree Palms in the Bilgola Valley covers several properties to the east and west of Barrenjoey Road in Bilgola. The general area is within the Watagan Soil Landscape grouping, a colluvial landscape characterised by rolling to very steep hills on fine-

Internal Referral Body	Comments
	grained Narrabeen Group sediments. Local relief is 60-120 metres with slopes exceeding 25%. The area is typical of the soil landscape grouping, with narrow convex crests and ridges, steep colluvial slopes, occasional sandstone boulders and benches. Vegetation grades from open forest of eucalypts and *Angophora costata* (Smooth-barked Apple) on the ridges down to closed forest of *Livistona australis* (Cabbage Palm) with associated rainforest species in the sheltered gullies on the mid and lower slopes. The disturbed margins of the remnant bushland are heavily infested with *Lantana camara* (Lantana). The major stands of Cabbage Palm are within Attunga Reserve, although scattered individuals and small groups of mixed ages are also found near the edges of the remnant bushland areas. Consideration of the application The proposal seeks consent for a new dwelling, garage, significant excavation and vegetation removal on the subject land. Immediately adjacent to the east and west of the property are undeveloped lands. To the south and south west is the heritage listed strand of Cabbage Tree Palms. These palm trees benefit from being located mostly within densely vegetated lands which contribute to the character of the item and its aesthetic significance, as well as the landscape character of Bilgola Beach. This heritage item has not been addressed by the proposal. The proposal is not supported by Heritage as it is inconsistent with control B1.2 of the Pittwater 21 DCP, Development in the vicinity of heritage items. While the item is located opposite the site and separated via Barrenjoey Road, there is extensive works for the garage and storeroom proposed with a tall retaining wall and fence that is inconsistent with the character of this heritage item and area. This treatment extends beyond the front of this property into the road reserve in front of adjacent properties which increases the impact. Overall the proposal (including the garage and dwelling) is not considered to be designed in a way that respects and compliments the heritage item and its aesthetic character, nor does it provide an adequate buffer zone to allow for a transition in character to occur. In addition there is tree removal proposed without much opportunity for replacement planting to soften the proposal. It is noted that there is otherwise a strongly defined densely landscaped character (including the heritage palms) in this area which this proposal runs counter to. Therefore Heritage recommends amended plans which better respond to the heritage item and character of the area. Based on the current plans Heritage cannot support the proposal.
Traffic Engineer	**Not supported** Original Response 29/07/2021 The application has been assessed in line with the accepted plans

Internal Referral Body	Comments
	submitted. The location is problematic from an access and constructability perspective. *Access and Parking* The applicant needs to consider the provision of suitable parking numbers for the property as there is no potential for the on-street parking to be available, with parking available on site for 4 cars. The provision of a vehicle turntable allows vehicles to enter and leave the site in a forward direction. The proposal has significant structures to be constructed with in the public road reserve and these actually impact on the adjoining authority (TfNSW) owned adjoining properties, which also have the potential to impact the line of sight to the parking garage entry. The concern regarding location in relation to the horizontal road alignment and vehicles entering the travel lane need to be provided suitable vision of traffic approaching the site and that the requirement for safe stopping distances can be met. The vehicle access is to be limited to left in and left out only with the necessary infrastructure to be provided to provide an engineering control to achieve this requirement. Concurrence has not been provided by TfNSW in respect to the proposal adjoining the classified state road corridor. No structures are to be located within the road reservation that impact the potential for future works to be undertaken within the road reserve, or impact on the future access to the adjoining properties, or impact on vision of road users or the drivers accessing the proposed site. *Construction Management* The draft Construction Traffic Management Plan provided with the application appears to be a generic document that has not considered the site specific restrictions that the management will need to address. - The nearest on-street parking is over 400m away and there is no safe pedestrian path of travel to the site. - The road shoulder is generally less than 1.5 m wide and will require significant traffic control to be implemented during the construction program - Access and deliveries to the site will be restricted by the times available for the road occupancy (TMC ROL) likely to be limited to 10 am to 2pm Mon - Fri only. - The turning paths provided and the travel route are not indicating that vehicles will follow the travel route provided and appear in one plan to head north from the site and in the other appears to head directly to the south. - The major work on site may need to be undertaken during non standard hours and limited to periods when traffic flows are significantly reduced, especially for major crane lifts etc.

Internal Referral Body	Comments
	The concern is that these issues have not be considered in sufficient detail to allow a constructive assessment to be undertaken. The application is not supported in its current form.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**Supported** The proposal was referred to Ausgrid who confirmed that there are no Ausgrid assets present.
NSW Rural Fire Service – local branch (s4.14 EPAA)	**Supported** The application was referred to the New South Wales Rural Fire Service for comment as the site is identified as being 'Flame Zone'. The Rural Fire Service have advised they support the application, subject to conditions.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	**Not Supported** TfNSW has reviewed the development application and is unable to provide concurrence under the Roads Act, 1993 to the proposed vehicular crossing on Barrenjoey Road due to the following reasons: 1. The proposed vehicular access is to be designed so that all vehicles are able to enter and exit in a forward direction. The proposed turntable or other turn around facility is be located entirely within the private property. 2. Retaining walls, support structures and landscaping proposed within the road reserve are not supported and need to be located within the private property. 3. Swept paths of passenger vehicles entering and exiting the subject site from the kerbside lane have not been submitted for review. The swept path plans need to demonstrate forward entry and exit of vehicles into each of the proposed car parking spaces. Lane allocation of Barrenjoey Road should be included on the swept paths plans to demonstrate manoeuvres from the kerbside lane. Movements should not impact traffic flow on adjacent lanes and vehicles are to be wholly contained on site before being required to stop. 4. TfNSW notes the location of the driveway is at the bend of Barrenjoey Road and there could be reduced visibility in this location due to vegetation and topography. The applicant is requested to confirm whether a sight distance analysis has been under taken in accordance with Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists. 5. Barrenjoey Road in this location is a single lane in each

External Referral Body	Comments
	direction and there may be constraints with having all construction and demolition vehicles to be located entirely within this site. Potential impacts on motorists and mitigation measures need to be considered early on. Additional comments on revised plans received 19/11/2021 Based on your information that density of development remain the same and that turning table has been removed in the latest plan, TfNSW would require more details in relation to accommodating access arrangement for this development, at that specific location. The applicant needs to demonstrate how the site can be safely accessed if there is no alternative access option and the proposed size of development remains the same. Can the turntable option be re-designed to be located within the the property boundary? In summary, concurrence from TfNSW remains outstanding based on the amended plans.

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 vacant and heavily vegetated 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. 1207364S dated 29

June 2021).

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

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

Should the application be supported a condition can be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:
The proposal was referred to Ausgrid who advised that there are no Ausgrid assets present and therefore no objections to the proposal.

Transport for NSW (TfNSW) previously known as Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road

Clause 101 states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

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

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is

appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:
Transport for NSW have confirmed that insufficient information has been submitted to demonstrate that the proposal will not impact on the safety, efficiency and ongoing operation of the classified road during construction and as a result of the development and concurrence cannot be issued. The proposal therefore fails to satisfy Clause 101 of the Infrastructure SEPP 2007.

Clause 102 - Impact of road noise or vibration on non-road development

Clause 102 states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—
(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:
It is not anticipated that impact from road noise or vibration will have unreasonable impacts on the future dwelling. Should the application be supported a condition can be imposed to ensure that the dwelling is sign to meet the acoustic limits specified in Clause 102(3)(a) and (b).

SEPP (Coastal Management) 2018

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

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

(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- *(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- *(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- *(c) the carrying out of any of the following:*
  - *(i) earthworks (including the depositing of material on land),*
  - *(ii) constructing a levee,*
  - *(iii) draining the land,*
  - *(iv) environmental protection works,*
- *(d) any other development.*

Comment:
The site is mapped as being located within the Littoral Rainforest Proximity Area.

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

(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
Council's Bushland and Biodiversity Officer has confirmed that the additional information dated 19/11/2021 provided by the Ecological Consultant does not adequately demonstrate how the proposal will meet the abovementioned requirements. As per previous biodiversity referral advice, further information is required before Council can be satisfied that the proposal complies with SEPP (Coastal Management).

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
As discussed above, insufficient information has been submitted to demonstrate that the proposal complies with SEPP (Coastal Management) in terms of its impacts on the ecological environment.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
As discussed above, insufficient information has been submitted to demonstrate that the proposal has been designed, sited and managed to avoid and minimise adverse impacts on the ecological environment.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: No Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Zone SP2: No Zone C4 : No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.3 - Height of Buildings	8m	9.9m building 11.1m Balustrades	23.75% 38.75%	**No** **No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.1A Development on land intended to be acquired for public purpose	No
5.10 Heritage conservation	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	No
7.10 Essential services	No

Detailed Assessment

Zone SP2 Infrastructure

The portion of the site frontage zoned SP2 is subject to *'Area 24' Schedule* 1 additional permitted uses which allows *'Development for the purposes of enabling access to a dwelling house'*.

Whilst a garage is considered to form part of access to the dwelling house, the storeroom above the garage is not consistent with the permitted development in this part of the site and therefore is therefore prohibited in the SP2 zone. In addition, the store above the garage (within the SP2 zone) is inconsistent with the objectives of zone, namely:

- ***To provide for infrastructure and related uses.***
- ***To prevent development that is not compatible with or that may detract from the provision of infrastructure.***

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone SP2 Infrastructure of the Pittwater Local Environmental Plan 2014.

Zone C4 Environmental Living

While a dwelling house is permissible within the E4 Environmental Living zone the proposal is inconsistent with the objectives of the zone as discussed below.

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:
The footprint of the dwelling is not considered to represent a low-impact residential development. The proposal includes the removal of 28 mature canopy trees and the entire lot will be required to be managed as an Asset Protection Zone (APZ) in compliance with the requirements for Planning for Bushfire Protection (PBP) 2019. The significant loss of native vegetation will have unreasonable impacts on the ecological and aesthetic values of the area.

- ***To ensure that residential development does not have an unreasonable adverse effect on the ecological and aesthetic values of the area.***

Comment:
For the reasons discussed above, the proposal will have an unreasonable adverse effect on the ecological and aesthetic value of the area. The amount of canopy and vegetation lost as a consequence of the construction and building footprint upon the site results in the deliverance of a building that will be the prominent focus which cannot be integrated into the existing landscape. In summary, the proposal and will have adverse impacts on the ecological and aesthetic values of the area.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:
The proposal represents overdevelopment as expressed by the inconsistency with a number of built form controls, including height, building envelope and the front setback. In addition, the footprint of the dwelling and garage is extensive, and the proposal requires a significant amount of excavation and treeremoval. The development is not considered to be of a low density and as a direct result of the excessive scale and bulk of the development it fails to integrate with the existing landform and landscape.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment:
Council's Biodiversity Officer has confirmed that the dense replacement planting in the revised landscape plan would not comply with the landscape requirements needed to meet the APZ requirements of PBP (2019). As such, the revised landscape plan cannot mitigate the loss of native vegetation that will result from this scale of development and the impacts on wildlife corridors (refer to discussion under the Internal Referrals (Biodiversity) section of this report). The proposal fails to retain and enhance the riparian vegetation resulting in adverse impacts on the existing wildlife corridors.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8m
Proposed:	11.1m (balustrade) 9.9m (building)
Percentage variation to requirement:	38.75% (balustrade) 23.75% (building)

A clause 4.6 variation was not submitted with the original application. Therefore, Council does not havethe power to grant a variation to Clause 4.3 Height of Buildings development standard.

*It is noted that a Clause 4.6 variation was submitted with the concept plans received via email on 19 November 2021. However, for the reasons discussed in the history section, the plans have not been formally accepted by Council.

5.1A Development on land intended to be acquired for public purpose

Clause 5.1A (1) states:

The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.

Sub-clause (2) states *This clause applies to land shown on the Land Reservation Acquisition Map and specified in Column 1 of the table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.*

Sub-clause (3) states *Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.*

Column 1	***Column 2***
Land	***Development***
Zone SP2 Infrastructure and marked "Classified road"	*Roads*

Comment:
The southern section of the site is zoned SP2 classified road on the Pittwater Land Reservation Acquisition Map, however, the land has not been acquired by TfNSW. The proposal includes work within the SP2 zone, namely, a turntable, retaining wall and landscaping which are not directly related to the purpose specified in column 2, namely roads and concurrence for this work has not been granted by TfNSW.

This site is also subject to the *Area 24' Schedule 1 additional permitted uses* provisions which allows development for the purpose of enabling access to a dwelling house. While the garage and driveway facilitate access in compliance with Schedule 1 the store located above the garage is prohibited. Refer to the discussion under section Zone SP2 Infrastructure of this report.

Therefore, pursuant to Clause 5.1 (3) development consent cannot be granted.

5.10 Heritage conservation

Clause 5.10 (4) of the PLEP requires:

- *The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.*

Comment:
The proposal seeks consent for a new dwelling, garage which requires significant excavation and significant removal of vegetation on the subject site. Immediately adjacent to the east and west of the property are undeveloped lands, to the south and south west is the heritage listed strand of Cabbage Tree Palms (Local Heritage Item Ref: 2270031). These palm trees benefit from being located mostly within densely vegetated lands which contribute to the character of the item and its aesthetic significance, as well as the landscape character of Bilgola Beach.

The heritage item has not been satisfactorily addressed by the proposal and the works along the road frontage will have unreasonable impacts on the landscape character and the setting of the heritage listed grove of Cabbage Tree Palms contrary to Cause 5.10 (4) of the PLEP (refer to Council's Heritage Officers comments in the referral section of this report).

7.2 Earthworks

Clause 7.2 requires:

In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:
(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
(b) the effect of the development on the likely future use or redevelopment of the land,
(c) the quality of the fill or the soil to be excavated, or both,
(d) the effect of the development on the existing and likely amenity of adjoining properties,
(e) the source of any fill material and the destination of any excavated material,
(f) the likelihood of disturbing relics,
(g) the proximity to, and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,
(h) any appropriate measures proposed to avoid, minimise or mitigate 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 application is supported with a geotechnical report prepared by Douglas Partners who conclude that subject to compliance with the recommendations of the report that the proposal is not expected to affect the overall stability of the site or adjacent properties or individual risk to life in compliance with Clause 7.2 of the PLEP.

Significant concern has however been raised in the submissions regarding the extent of excavation which is agreed to be extensive. Insufficient mitigation measures having been submitted to address the concerns from TfNSW relating to the potential impacts of the development during construction (and excavation) on road safety given the location of the site at the bend in the classified road.

In this regard, the proposed earthworks fail to sufficiently provide details on measures to avoid, or mitigate the impacts of the earthworks on the public road contrary to Clause 7.2(h) of the PLEP.

7.6 Biodiversity protection

Clause 7.6 requires:

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:
(a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land, and
(v) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
(a the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
(c) if that impact cannot be minimised - the development will be managed to mitigate that impact.

Comment:
The proposal includes the removal of 28 mature canopy trees to facilitate the extensive footprint of the development. The amended /concept landscape plan provides for 21 native replacement tree plantings (increased from one in the original plans), as well as an additional 24 smaller native trees and abundant native shrubs and groundcovers. However, as the entire lot will be required to be managed as an Asset Protection Zone (APZ), any new landscaping must comply with the requirements of Appendix 4 of Planning for Bushfire Protection (PBP) 2019 (including maintenance of a reduced canopy coverage).

It is considered that the dense replacement plantings of the revised landscape plan would not comply with the landscaping requirements of PBP (2019) and therefore cannot satisfactorily mitigate the loss of native vegetation that will result from a development of this scale. The revised landscape plans have not been considered but not formally accepted due to the fact that they fail to address the TfNSW concurrence issues. The application has therefore been assessed against the original plans.

In summary, Council's Biodiversity Unit is not satisfied that the proposal has been designed and sited to avoid and minimise adverse environmental impacts, and the proposal is inconsistent with clause 7.6 of the PLEP.

7.7 Geotechnical hazards

Clause 7.7 requires:

(4) Development consent must not be granted to development on land to which this clause applies unless:
(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and
(b) the consent authority is satisfied that:
(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:
Insufficient information has been submitted to ensure that stormwater management is addressed. Furthermore, insufficient information has been submitted to satisfy Council that the development has been designed, sited and managed to avoid significant impacts on the land surrounding the development (including Barrenjoey Road) particularly during construction and that the risks or impacts associated with the development can be reasonably avoided or managed.

In summary, the proposal is inconsistent with Clause 7.7 of the PLEP.

7.10 Essential services

Clause 7.10 requires:

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:
(a) the supply of water,
(b) the supply of electricity,
(c) the disposal and management of sewage,
(d) stormwater drainage or on-site conservation,
(e) suitable vehicular access.

Comment:
The site is vacant, heavily vegetated and has no formal means of access. Insufficient information has been submitted to demonstrate that the development has suitable vehicular access. Concern has also been raised in the submissions regarding the supply of other essential services to the site.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form	Requirement	Proposed	%	Complies

Control			Variation*	
Front building line	6.5m	0m Garage 10 Dwelling	100%	**No (refer to discussion under Cl D3.6)** Yes
Rear building line	6.5m	6.7m dwelling and pool	N/A	Yes
Side building line	2.5m	West - 1m	N/A	Yes
	1m	East 2.7m	N/A	Yes
Building envelope	3.5m	Up to 4.5m Outside envelope	Refer to details	**No (refer to discussion under Cl D3.9)**
	3.5m	Up to 3.7m Outside envelope	Refer to details	**No (refer to discussion under Cl D3.9)**
Landscaped area	60% (413.4sqm) variation 6% of site area (41.34sqm).	54.2% (373.3sqm) soft landscape variation 6% of site area (41.39sqm). (Note: The variation is subject to compliance with the objectives of the control) 60% when allowing permitted variations	5.8%	**No (refer to discussion under Cl D3.11)** The proposal does not satisfy the objectives of the control and the variation cannot therefore be applied.

***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	No	No
A4.3 Bilgola Locality	No	No
B1 Heritage Controls	No	No
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	No	No
B4.22 Preservation of Trees and Bushland Vegetation	No	No
B5.15 Stormwater	No	No
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	No	No
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	No	No
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	No	No
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	No
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	No	No
D3.11 Landscaped Area - Environmentally Sensitive Land	No	No
D3.13 Fences - Flora and Fauna Conservation Areas	No	No
D3.14 Construction, Retaining walls, terracing and undercroft areas	No	No
D3.15 Scenic Protection Category One Areas		

Detailed Assessment

A4.3 Bilgola Locality

Clause A4.3 stipulates that:

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

- ***Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics.***

Comment:
The proposal requires significant excavation of the existing landform and the removal of 28 native trees for the construction of a seven level dwelling. The proposed development will create a new and altered 'landscape character' that presents a substantial development footprint as a result of the significant tree removal and the need to satisfy the Bushfire Asset Protection Zone requirements that limits tree canopy and understorey vegetation.

The proposal exceeds the 8m height limit and the bulk and massing of the dwelling is not considered to be low density or a design that respond to the unique qualities of the area.

The development cannot be integrated into the existing landscape character and is therefore considered to be inconsistent with the desired future character of the Bilgola area.

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

Clause B1.2 stipulates that:

- ***Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.***

Comment:
A grove of Cabbage Tree Palms located to the south of the site along Barrenjoey Road is listed under the PLEP as a Local Heritage Item. The proposal is inconsistent with the requirements and outcomes of the control as discussed below:

- ***Conservation of the environmental heritage of Pittwater LGA in accordance with the principles contained in the Burra Charter.***

Comment:
The proposal does not maintain the setting of the heritage item located within the vicinity of the site and therefore does not promote the conservation of the environmental heritage of Pittwater LGA.

- ***Enhancement of the identified heritage values and significant character of the heritage conservation areas and encourage contemporary design that responds appropriately to their character.***

Comment:
While the heritage item is located opposite the site and separated via Barrenjoey Road, there are extensive works required for the garage and storeroom proposed with a tall retaining wall and fence that conflict with the environmental heritage of the area. The treatment to the frontage extends beyond

the front of this property into the road reserve and in front of adjacent properties which visually increases the impact on the setting of the heritage item.

Overall, the proposal (including the garage and dwelling) is not considered to be sensitively designed in a way that respects and complements the heritage item and its aesthetic character, nor does it providean adequate buffer zone to allow for a transition in character to occur.

In addition, there is extensive tree removal without much opportunity for replacement planting to soften the proposal (due to required APZs). It is noted that there is otherwise a strongly defined densely landscaped character (including the heritage palms) in this area which this proposal runs counter to.

- ***Development respectful of environmental heritage, undertaken in a manner that is sympathetic to, and does not detract from, any heritage significance.***

Comment:
As discussed above, the development is not respectful or sympathetic of the environmental heritage and detracts from the heritage significance of the item.

B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor

Clause B4.4 requires that:

- *Development shall retain and enhance habitat for threatened species, endangered populations, endangered ecological communities and other locally native species.*
- *Development shall provide an adequate buffer to wildlife corridors.*
- *Development shall provide flora and fauna habitat and wildlife corridors by active restoration, regeneration, and/or creation.*
- *Development shall result in no significant onsite loss of canopy cover or net loss in native canopy trees.*
- *Development shall ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plants for Your Garden available on the Pittwater Council website). Landscaping is to be outside areas of existing bushland and should not include environmental weeds.*
- *Planting is to maximise linkage to the wildlife corridor.*
- *Development shall not negatively impact on threatened species, endangered populations or endangered ecological communities.*
- *Caretakers of domestic animals shall prevent them from entering bushland.*
- *Fencing, where permitted, shall be passable by native wildlife.*

Comment:
The proposal is considered to be inconsistent with the requirements and outcomes of the control as discussed below:

- ***Conservation, enhancement and/or creation of habitats for locally native flora and fauna to ensure the long-term viability of locally native flora and fauna and their habitats.***

Comment:
The revised landscape plan provides for dense replacement plantings to compensate for extensive tree removal required to facilitate the scale of the proposed development. As these dense plantings are unlikely to comply with the landscaping requirements of PBP (owing to the need for considerable

APZs), it is considered that replacement planting cannot be relied upon to achieve consistency with the canopy retention requirements of DCP cl B4.4. Instead, the proposal should be redesigned to retain more of the existing native vegetation on site. Furthermore, the removal of 28 native canopy trees offset by the proposed replacement planting of 21 native canopy trees still results in a net loss in native canopy trees.

In summary, both the concept landscape plan and the original landscape plan are non-compliant with the control and the loss of native vegetation will have unreasonable impacts on native flora and fauna.

*__Note:__ Although the revised plans have been considered they have not been formally accepted by Council.

B4.22 Preservation of Trees and Bushland Vegetation

Clause B4.22 requires that:

- *Development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees and understorey vegetation, and on remnant native ground cover species.*
- *Where the applicant demonstrates that no reasonable alternative design exists and a tree must be removed, suitable compensatory tree planting is required. Details including proposed species and the location of replacement planting are to be provided.*
- *Development must also avoid any impact on trees on public land.*
- *For development applications involving the construction of new buildings and works containing Classes 2-9 (BCA), the information contained in Appendix 18 (P21DCP) is to be submitted.*
- *Where trees proposed to be retained may be affected by the construction of new buildings and works of Classes 1 and 10, a Tree Protection Plan as per Appendix 19 (P21DCP) is to be submitted.*

Comment:
The existing site is a vacant lot and contains many significant trees indicative of the original vegetation found in the locality, typical of the Pittwater and Wagstaffe Spotted Gum Forest Endangered Ecological Community.

The proposal to remove 28 mature native canopy trees will impact on remnant native vegetation, including canopy trees and understorey vegetation and on remnant native ground cover species. The proposal is therefore inconsistent with the requirements and outcomes of the control as discussed below:

- ***To protect and enhance the urban forest of the Northern Beaches.***

Comment:
The proposal will not protect or enhance the urban forest.

- ***To effectively manage the risks that come with an established urban forest through professional management of trees.***

Comment:
The removal of approximately 66% of native canopy trees from the site is not supported.

- ***To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.***

Comment:
The extensive removal of the trees is likely to result in adverse environmental impacts.

- ***To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.***

Comment:
The extensive removal of canopy trees will have an adverse impact on endangered ecology.

- ***To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.***

Comment:
As noted above the removal of the trees will likely impact on plant and animal communities.

- ***To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.***

Comment:
The proposal will have an adverse visual impact in the scenic value and character of the Bilgola Locality.

B5.15 Stormwater

Clause B5.15 requires:

- *Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.*
- *The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.*

Comment:
Council's Development Engineer cannot support the proposal as insufficient information has been submitted to address stormwater issues in compliance with Council's Water Management Policy.

It is noted that the revised stormwater plans were considered in principle to be acceptable by Council's Engineer. However, for the reasons discussed throughout this report the concept plans have not been formally accepted.

B6.1 Access driveways and Works on the Public Road Reserve

Clause B6.1 requires:

- *Access Driveways shall be designed and located to provide adequate sight distance to maximise*

pedestrian and vehicular safety as follows.

- *The location of the Access Driveway is to maximise the retention of trees and native vegetation in the public road reserve.*
- *Ancillary structures within the Road Reserve will be supported for the purposes of structurally supporting the access driveway only. Ancillary structures include retaining walls. Encroachment into the road reserve is to be minimised. Where retaining walls and structures are visible from a public place, preference is given to the use of textured finishes of dark earthy tones or sandstone-like finishes.*
- *All structural elements within the Road Reserve must be certified by a Structural Engineer. In addition, where the land is identified on the Landslip Hazard Map, the design of all structural elements must satisfy the Landslip Hazard Controls.*

Comment:
The proposal is inconsistent with the requirements and outcomes of the control for the reasons detailed below:

- ***Safe and convenient access.***

Comment:
Pursuant to Clause 4.47(4) of the Environmental Planning and Assessment Act 1979 and Section 138 (2) of the Roads Act 1993 Transport for NSW (TfNSW) have not granted concurrence for the work on Barrenjoey Road which is a classified road. The reasons are detailed in the External Referral section of this report but include issues related to road safety given the location of the driveway at the bend of Barrenjoey Road. TfNSW note that insufficient information has been submitted to demonstrate that there will be no unreasonable reduction of visibility in this location due to vegetation and topography on sight lines to and from the vehicular crossing to motorists, pedestrians and cyclists.

In addition, TfNSW note that Barrenjoey Road in this location is a single lane in each direction and insufficient information has been submitted to demonstrate that there will be no unreasonable constraints to motorists having all construction and demolition vehicles to be located entirely within this site. In the absence of concurrence from TfNSW the development application and any subsequent Section 138 application for works in the road reserve cannot to be consented.

- ***Adverse visual impact of driveways is reduced.***

Comment:
There is extensive works for the garage and storeroom proposed with a tall retaining wall and fence being presented to the public road that extends beyond the front boundary of the property into the road reserve in front of adjacent properties. The driveway and associated structures will have an unreasonable adverse visual impact on the character of area.

- ***Pedestrian safety.***

Comment:
As noted above, TfNSW have raised issues with pedestrian safety given the reduction of visibility in this location due to vegetation and topography.

- ***An effective road drainage system.***

Comment:
Insufficient information has been submitted with the original documentation in terms of the stormwater management

- ***Maximise the retention of trees and native vegetation in the road reserve.***

Comment:
The proposal includes the removal of all existing vegetation from the road reserve to construct the turntable, retaining walls and associated structures.

B6.2 Internal Driveways

Clause B6.2 requires:

- *Provision is to be made for vehicles to enter and leave the site in a forward direction, where:*
  - *the internal driveway grade exceeds 1:4 (V:H);*
  - *the land abuts a roadway subject to high pedestrian use (e.g. School, Commercial Centre);*
  - *driveways are more than 30m in length; and*
  - *the driveway enters onto a classified road.*

Comment:
The driveway is proposed within the road reserve of a classified road and the proposal is inconsistent with the requirements and outcomes of the control as discussed below:

- ***Safe and convenient access.***

Comment:
TfNSW do not support the proposal as the turntable is not permitted to be located within the road reserve and vehicular access is to be designed so that all vehicles are able to enter and exit in a forward direction. In addition, insufficient information, including swept paths plans, have not been submitted to demonstrate forward entry and exit of vehicles into each of the proposed car parking spaces. Vehicular movements should not impact traffic flow on adjacent lanes and vehicles are to be wholly contained on site before being required to stop.

- ***Reduce visual impact of driveways.***

Comment:
For the reasons discussed under Clause B6.1 the work associated with the driveway will have an unreasonable visual impact on the character of the area.

- ***Pedestrian safety.***

Comment:
For the reasons discussed under Clause B6.1 insufficient information has been submitted to demonstrate that the work associated with the driveway will not have an unreasonable impact on pedestrian safety.

- ***An effective road drainage system.***

Comment:
For the reasons discussed under Clause B6.1 insufficient stormwater information has been submitted to ensure that there is an effective road drainage system provided.

- ***Maximise the retention of trees and native vegetation.***

Comment:
For the reasons discussed under Clause B6.1 the work associated with access to the site involves the removal of existing trees and vegetation within the road reserve.

- ***Reduce contaminate run-off from driveways.***

Comment:
The is no record of the site being contaminated.

B6.7 Transport and Traffic Management

Clause B6.7 requires:

- *Adequate vehicular entrances to and exits from the site are to be provided so that vehicles using those entrances and exits will not endanger persons using adjoining roads.*
- *Adequate space is to be provided within the site of the building or development for the loading, unloading or fueling of vehicles, and for the picking up and setting down of passengers.*

The proposal is inconsistent with the requirements and outcomes of the control as discussed below:

- ***Safe and orderly traffic, pedestrian and cyclist access to and from all development via the surrounding road network and transport infrastructure.***

Comment:
For the reasons discussed throughout this report, insufficient information has been submitted to demonstrate that adequate vehicular access and egress has been designed to mitigate road safety to drivers, pedestrians and cyclists using Barrenjoey Road.

- ***The developer meets the cost of upgrading the surrounding road, and traffic and transport infrastructure to meet the needs generated by the development.***

Comment:
The development cannot be supported as concurrence has not been granted from TfNSW.

B8.1 Construction and Demolition - Excavation and Landfill

A geotechnical report has been submitted which is a basic requirement of the Clause B8.1. However, insufficient information has been submitted to address all geotechnical issues associated with the proposed earthworks, refer to discussion under Clause 7.2 and 7.7 of the PLEP.

B8.5 Construction and Demolition - Works in the Public Domain

Clause B8.5 requires:

- *All works undertaken within the public road reserve must be protected in a manner to ensure pedestrian and vehicular safety at all times.*
- *All works undertaken on site or in the public road reserve must make provision for pedestrian and traffic flow and not adverse nuisance.*
- *All works undertaken on a site or in the public road reserve must make good any damage or disruption to the public infrastructure.*

Comment:
The proposal is inconsistent with the requirement and outcomes of the control for the reasons discussed below.

- ***Protection of Infrastructure.***

Comment:
TfNSW require all structures to be removed from the road reserve.

- ***Ensuring Public Safety.***

Comment:
TfNSW have raise a concern about the impacts on pedestrian and vehicular safety both during the construction of the development and the operation of the development. As such, insufficient information has been submitted to demonstrate that public safety will be protected.

- ***Compliance with the Roads Act 1993***

Comment:
TfNSW have refused to issue concurrence under the Roads Act.

B8.6 Construction and Demolition - Traffic Management Plan

Clause B8.6 requires:

- *For all development where either excavated materials to be transported from the site or the importation of fill material to the site is 100m3 or greater, a Construction Traffic Management Plan (CTMP) indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works.*
- *All transport works must not cause adverse disruption or nuisance to adjoining residences, businesses or the street system.*

Comment:
While a condition could be imposed requiring the submission and approval of a CTMP, concern has been raised by TfNSW requiring the potential adverse impacts during construction on the road.

As such, the proposal is inconsistent with the requirements and outcomes of the control which seek to minimise disturbance to the residential community and protect roads.

C1.1 Landscaping

Clause C1.1 requires:

- *All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species.*
- *In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form.*
- *At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to planted to ensure that the canopy is retained over the long-term.*
- *The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:*
- *60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy*
- *Screening shall be of vegetation (not built items), and shall be calculated when viewed directly onto the site.*
- *In bushfire prone areas, species shall be appropriate to the bushfire hazard.*
- *Landscaping shall not unreasonably obstruct driver and pedestrian visibility.*
- *Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.*
- *Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.*

Comment:
The proposed development is inconsistent with the requirements and outcomes of the control as discussed below:

- ***A built form softened and complemented by landscaping.***

Comment:
The proposal includes the removal of 28 mature native canopy trees with insufficient replacement planting to soften the built form.

- ***Retention of canopy trees by encouraging the use of pier and beam footings.***

Comment:
The proposal seeks to remove canopy trees and includes significant excavation as opposed to the use of pier and beam footing.

- ***Development results in retention of existing native vegetation.***

Comment:
A significant portion of the exiting native vegetation will be cleared (approximately 66%) to facilitate the substantial footprint proposed. In addition, the landscape character will change and in order to meet

the landscape requirements of PBP which requires an APZ around the dwelling.

- ***Landscaping results in the long-term retention of Pittwater's locally native tree canopy.***

Comment:
The proposal will result in the loss of a significant number of Pittwater's native tree canopy.

- ***Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species.***

Comment:
The extensive loss of trees will have unreasonable impacts on the biodiversity values of the site.

- ***Landscaping enhances habitat and amenity value.***

Comment:
Insufficient landscaping will be retained to enhance habitat and amenity value.

- ***Landscaping results in reduced risk of landslip.***

Comment:
The proposal results in extensive removal of landscaping which may have implications on landslip risk.

- ***Landscaping results in low watering requirement.***

Comment:
Insufficient replacement planting is proposal which will aid low watering requirements.

Refer to detailed discussion in the Internal Referrals Section (Landscape Officer's comments) contained within this report.

C1.3 View Sharing

Clause C1.3 requires that:

- *The proposal must demonstrate that view sharing is achieved though the application of the Land and Environment Court's planning principles for view sharing.*

Comment
The proposal breaches the 8m height limit by 38.75% and concern has been raised from a number of neighbouring properties located to the north along Plateau Road regarding view loss as a result of the development. Insufficient information has been submitted to allow for a considered assessment of view loss in accordance with the application of the Tenacity Land and Environment Court's planning principles.

It is acknowledged that the revised plans reduced the height of the building by 500mm and the

applicant offered to install height poles. However, for the reasons discussed earlier in this report the concept plans have not been formally accepted by Council.

C1.5 Visual Privacy

Clause C1.5 requires:

- *Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*
- *Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

Comment:
The proposed pool and north facing habitable room windows are positioned 6.7m to the rear boundary with a separation distance to the exiting windows and primary areas of open space to the properties to the immediate north, namely No. 15 and 17 Plateau Road that exceeds 9m.

Despite the 9m separation distance concerns raised from the neighbour at No. 17 Plateau Road regarding visual privacy may be valid given that the pool elevated above their rear garden. A site visit confirmed that the southern most garden area to No. 17 Plateau Road is decked and is in use as an outdoor gym.

C1.14 Separately Accessible Structures

Clause C1.14 requires:

- *A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:*
  - *it is ancillary to a dwelling;*
  - *it is not designed for separate habitation and does not contain any cooking facilities.*

Comment:
The proposal includes two offices (both 23sqm in area) on level 1 and 2 with a studio (28.3sqm) located above on level 3, all three levels have separate showers and toilets.

Concerns has been raised in the submissions about the potential commercial / dual occupancy use of the offices / studio. Although the office / studio structure reads as a detached / separate structure it is linked to the dwelling via an underground access tunnel, stair and lift. As such, the offices / studio are not *separately accessible* and Clause C1.14 of the PDCP does not strictly apply. Should the application be supported conditions should be imposed to ensure that the offices are ancillary to the dwelling and are not used as a separate commercial or residential use.

C1.24 Public Road Reserve - Landscaping and Infrastructure

Clause C1.24 requires:

- *All existing trees over 3m in height and native vegetation within the road reserve areas are to be retained where practical. The existing trees are to be protected during the construction of works through temporary perimeter fencing that is 1.8m high.*

Comment:
The proposal includes the removal of the existing vegetation from within the road reserve and is therefore inconsistent with the requirement and outcome of the control which seeks to maintain the desirable character of the Pittwater streetscape and be consistency in the design and construction of landscape works in the road reserve. Refer to detailed discussion in the Internal Referrals (Landscape Officers comments) of this report.

D3.1 Character as viewed from a public place

Clause D3.1 requires:

- *Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.*
- *Walls without articulation shall not have a length greater than 8 metres to any street frontage.*
- *Garages, carports and other parking structures including hardstand areas should not be the dominant site feature when viewed from a public place.*
- *Parking structures must be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser*
- *Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation. The bulk and scale of buildings must be minimised.*

Comment:
The proposal is inconsistent with the requirements and outcomes of the control as discussed below:

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

Comment:
The height, scale, bulk and massing of the proposed development is not considered to be low density. Given the substantial excavation and the removal of 28 mature canopy trees to allow for the extensive footprint the proposal cannot be integrated into the existing landscape character. The proposal is therefore inconsistent with the desired future character of the Bilgola Locality, refer to discussion under Clause A4.3 of this report.

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

Comment:
The development fails to respond in a sensitive manner to the natural environment and will have unreasonable impacts on the biodiversity of the site.

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

Comment:

The scale and density of the development is not in keeping with the natural environment.
The predominately full width coverage of the garage and driveway alters the natural landscape character of the streetscape that is dominated by trees and vegetation, and this proposal exposes a portion of the Bilgola Bends to a built form visually inconsistent with the local character.

- ***The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.***

Comment:
The scale and massing of the dwelling will dominate the site to the detriment of the existing landscape value. The proposal will have an unreasonable visual impact on the character of the area.

- ***High quality buildings designed and built for the natural context and any natural hazards.***

Comment:
The design of the dwelling does not address the natural context or the environmental qualities of the site. The site is mapped as Bushfire Prone Land and, in order to comply with the landscape requirements of Planning for Bushfire Protection, an Asset Protection Zone (APZ) is required which will result in the creation of a significantly altered landscape character. The significant loss of native canopy trees will have adverse impacts in the visual character and biodiversity values of the site.

- ***Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.***

Comment:
As noted above, the scale of the building will dominate the site when viewed from the public domain. The dwelling includes seven (7) levels and presents as a part two / part three (3) storey structure above ground level. in addition, the streetscape will be altered with retaining walls and the garage which extend along the frontage of the site structure to a built form that is inconsistent with the local character.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.***

Comment:
The proposal exceeds the 8m height limit and insufficient information has been submitted to assess view loss.

- ***To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.***

Comment:
The proposal will have an adverse impact on the bushland vista of Pittwater as it will not be possible to integrate the dwelling and associated structures into the landscape due to the excessive footprint, height, bulk and scale.

- ***To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape***

character, public use and enjoyment of that land.

Comment:
With the exception of the public road the site does not adjoin any other public open space. As discussed throughout this report, the development fails to compliment the landscape character of Barrenjoey Road.

D3.6 Front building line

Clause D3.6 requires a 10m minimum front building line on Land zoned E4 or SP2 adjoining Barrenjoey Road.

Comment:
The proposal includes work within the road reserve and the garage / store has a nil setback to the reserve frontage. The proposal is inconsistent with the requirements and outcomes of the control as discussed below.

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

Comment:
For the reasons discussed throughout this report the proposal is inconsistent with the desired future character of the Bilgola Locality. The garage and associated structure, including extensive retaining walls will dominate the frontage of the site and result in a visual impact on the scenic quality of the area.

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

Comment:
Insufficient information has been submitted to assess view sharing principles although it unlikely that the structures at this level will impact on view sharing. Rather, given the extent of the proposed structures facing the roadway, the development would have an adverse impact to the street and, if approved would create a highly undesirable precedent for similarly scaled development to occur.

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

Comment:
Insufficient information has been submitted to demonstrate that the proposal will not impact on road safety during construction which may in turn impacts on the residential amenity to dwellings that have a frontage to Barrenjoey Road.

Furthermore, it is noted that the sightline retaining walls ('wings') at either side of the crossover extend in front of the neighbouring properties such that the approval of the proposal would significantly limit the access/egress ability of both neighbouring lots should those lots be developed in the future thereby further impinging on the amenity of adjoining residential development.

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

Comment:
The proposal requires the extensive removal of native canopy trees. This, combined with the landscape requirements to address the APZ requirements for Bushfire Prone land, will result in limited vegetation being able to be retained to assist in reducing the bulk and visual massing of the development.

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

Comment:
Insufficient information has been submitted to demonstrate that maneuvering in a forward direction is facilitated. Swept paths were provided in the revised documentation (Traffic Report) however, this illustrated that maneuvering could not occur solely within the site and would require the use of the road reserve which is against a reason provided by TfNSW to not grant their concurrence.

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

Comment:
The scale and density of the work proposed along the frontage is out of character with the natural environment in that it does not adequately respond to the topography and the predominantly vegetative character of the road reserve which is evident within the visual catchment.

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

Comment:
The proposed street frontage is inconsistent with the landscape character of Barrenjoey Road. There is no pedestrian footpath and impacts on pedestrian safety is unresolved.

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

Comment:
The proposal fails to sensitively respond or reinforce characteristic and environmental qualities of the site.

D3.9 Building envelope

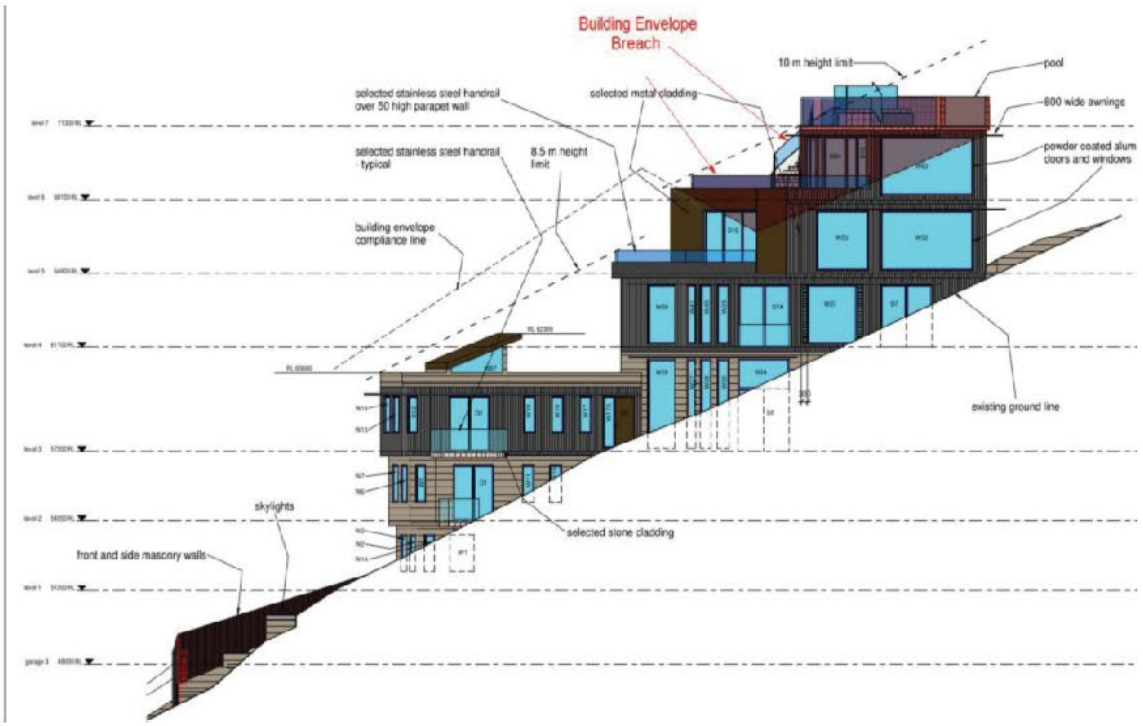
Clause D3.9 requires:

- *Buildings to be contained within an envelope measured 3.5m in height from the side boundary and within a 45 degree angle.*

Comment:
The proposal breaches the envelope along the east and west elevation as follows:

East elevation
The envelope breaches varies between 0.7m - 4.9m in height (including the balustrades) for a length of

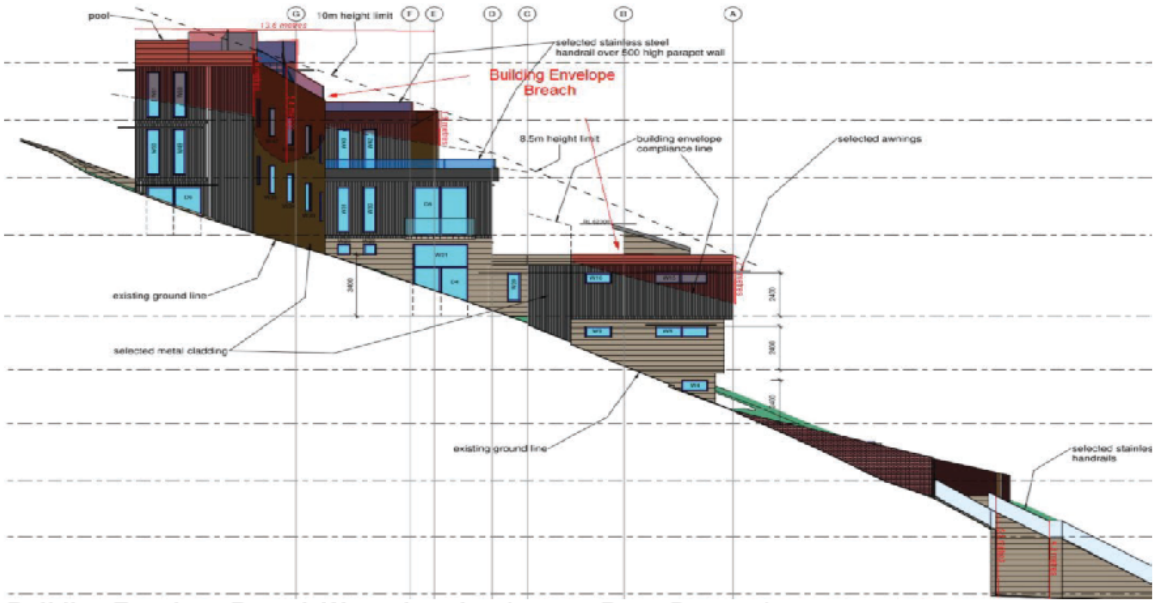
14.7m, refer to image below.



Building Envelope Breach east elevation (source Peter Downes)

West elevation
The west elevation includes two areas of envelope breach:

- studio / offices (0.5m - 2.8m in height x 7.6m in length), and
- dwelling (1.3m - 5.4m in height x 13.6m in length), refer to image below.



Building Envelope Breach West elevation (source Peter Downes)

The proposal is inconsistent with the requirements and outcomes of the control as discussed below:

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

Comment:
The development is not considered to be low density given its extensive footprint and the breach in the built form controls, including the envelope, which collectively contribute to an overdevelopment of the site. The proposal does not integrate into the existing landscape and does not achieve the desired future character of the Locality. Refer to discussion under Clause A4.3 of this report.

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

Comment:
The proposal does not enhance the existing streetscape and the scale and density of the development will dominate the landscaping to the detriment of the natural environment, particularly given that the significant removal of trees from the site are unlikely to be sufficiently replaced due to the extensive APZs that would be required.

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

Comment:
The development fails to respond sensitively to the natural environment. Council's Biodiversity team and Landscape Architect have both expressed fundamental concerns regarding the impact that the proposal would have on the spatial characteristics of the natural environment.

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

Comment:
As noted above, the proposal represents overdevelopment as expressed through the breach of a number of built form controls, including the building envelope. The bulk and scale of the built form is assessed as excessive and the removal of vegetation from the site to enable the development would further visually exacerbate the domineering scale of the development when viewed from the public domain and, possibly from neighbouring private property.

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

Comment:
Insufficient information has been submitted to assess impacts on views.

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

Comment:
The proposal will not give rise to unreasonable impacts on solar access. The elevated pool will result in overlooking of the rear garden of neighbouring properties.

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

Comment:
The proposal includes the removal of 28 native canopy trees which will reduce the ability for the built form to be integrated into the landscaping to soften the visual impact of the built form. In addition, the landscape requirements to meet the bushfire controls for the extensive built footprint will result in the creation of an altered landscape character.

D3.11 Landscaped Area - Environmentally Sensitive Land

Clause D3.11 requires 60% (413.4sqm) of the site (being the portion of the site zoned E4) to be soft landscape. An additional 6% of the site (41.39sqm) is permitted to be impervious. The proposal provides 373.3sqm (54.2%) of the site as soft landscaping with an additional 41.39sqm as recreational landscaping (paved areas and decks) thereby providing a total landscape area of 414.69sqm (60.2%). However, the proposal does not achieve the outcomes of the control, therefore the additional 6% impervious landscaping can not be included in the calculation.

The proposal fails to satisfy the requirements and outcomes of the control as discussed below:

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

Comment:
The proposal fails to achieve the desired future character of the Bilgola Locality as detailed throughout this report.

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

Comment:

The bulk and scale of the built has not been minimised and the proposal represents over development as expressed by the numerous breaches in the built form controls.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Comment:
The proposal will not result in impacts on solar access to neighbouring properties. However, insufficient information has been submitted to allow an assessment of the impacts of the development on view loss.

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

Comment:
The proposal results in the significant clearing of native vegetation. The excessive footprint, height, bulk and scale of the development cannot be integrated into the existing landscape to reduce its visual impact.

- ***Conservation of natural vegetation and biodiversity.***

Comment:
The proposal will result in the significant removal of natural ventilation to the detriment of the biodiversity values of the site.

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

Comment:
Insufficient information has been submitted to address stormwater issues.

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

Comment:
The proposal neither preserves or enhances the bushland character of the site.

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

Comment:
Soft surface is not minimised and the proposal fails to comply with the minimum 60% soft landscaping requirements of the control.

D3.13 Fences - Flora and Fauna Conservation Areas

Clause D3.13 applies to land in the Bilgola Locality including in Flora and Fauna Conservation Category 1 and 2. The site is within the Bilgola Locality and is mapped as being located within a Category 2

Flora and Fauna Fragmented Bushland Area.

The control requires:

a. Front fences and side fences (within the front building setback)

Front fences and side fences (within the front building setback) shall:

not exceed a maximum height of 1 metre above existing ground level,
be compatible with the streetscape character, and
not obstruct views available from the road.

Fences are to be constructed of open, see-through, dark-coloured materials.

Landscaping is to screen the fence on the roadside. Such landscaping is to be trimmed to ensure clear view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians existing the site.

Original stone fences or stone fence posts shall be conserved.

Front fences to a maximum height of 1.8 metres may be erected on the boundary for those properties that have frontage to Bilgola Avenue, or Allen Avenue. These fences should be constructed to conform to adjoining fences, and should provide extensive landscaping incorporated into the fence or in front of the fence.

b. Rear fences and side fences (to the front building line)

Fencing is permitted along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres.

e. Fencing in Category 1 and 2 areas

No front fences will be permitted.

Vegetation is preferred to any fencing.

Side and rear fences where necessary are to be constructed of dark coloured materials and shall not obstruct the passage of wildlife and shall have opening(s) with minimum dimensions of 150mm x 150mm every 5 metres accessible to ground dwelling animals.

Fencing required for the containment of companion animals should be minimised.

Comment:
The proposal includes solid masonry and timber walls / fences up to a height of 3m along the eastern side boundary and up to a height of 5.5m along the western side boundary. The walls are located within the road reserve and extend beyond the boundary of the site encroaching into the frontage of No. 519 and No. 523 Barrenjoey Road.

The proposal fails to meet the requirements and outcomes of the control as discussed in detail below:

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

Comment:
Insufficient information has been submitted to demonstrate that the walls will not impede sightlines to maintain road safety for motorists and pedestrians.

- ***To ensure heritage significance is protected and enhanced.***

Comment:
The walls will have an unreasonable visual impact on the heritage listed strand of Cabbage Tree Palms located to the south-west of the site.

- ***To ensure an open view to and from the waterway is maintained.***

Comment:
It is not expected that the walls will impact on open views to and from a waterway.

- ***To ensure native vegetation is retained.***

Comment:
The work within the reserve will result in the loss of native vegetation and contribute towards the significant loss of vegetation on the site thereby resulting in a degrading of the visual quality of the environment.

- ***To ensure any fencing provides for the safe and unhindered travel of native animals.***

Comment:
As noted above, the fencing is likely to impede safe and unhindered travel for native animal.

- ***Maintenance of the natural open character of the headland and remnant bushland areas.***

Comment:
The proposed high solid walls are inconsistent with the character of the headland and remnant bushland area.

D3.15 Scenic Protection Category One Areas

The Attributes (Control Codes) list the site as being a Scenic Protection Category One Area. Clause D3.15 requires:

Screen planting shall be located between structures and boundaries facing waterways.

Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.

Development is to minimise the impact on existing significant vegetation.

The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of

Comment:
The solid walls which extend up to 5.5m in height along the frontage and side boundaries are inconsistent with the desired future character of the Bilgola Locality.

- ***An open streetscape that allows casual surveillance of the street.***

Comment:
The proposals presents an enclosed streetscape.

- ***Fences, where provided, are suitably screened from view from a public place.***

Comment:
The solid walls would be highly visible from Barrenjoey Road and due to their excessive height, will not contribute to the character of the area.

- ***Safe and unhindered travel for native animals.***

Comment:
The extensive length and height of the solid walls will not allow for safe unhindered travel for native animals.

- ***To ensure fences compliment and conserve the visual character of the street and neighbourhood.***

Comment:
The height and materials of the solid fences along the front and side boundaries do not compliment or conserve the visual character of the area.

- ***To define the boundaries and edges between public and private land and between areas of different function.***

Comment:
The height of the solid walls is deemed to be excessive in defining the edge of the site. Furthermore, the walls are located (a) within the road reserve and TfNSW has not granted concurrence for the work and (b) along the frontage of neigbouring properties and owners consent (both currently owned by Transport for NSW) has not been provided.

- ***To contribute positively to the public domain.***

Comment:
\The walls do not positively contribute to the public domain and are visually obtrusive.

- ***To enhance safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.***

the immediate area required to carry out the development.

The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.

The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.

The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.

Applicants are to demonstrate that proposed colours and materials will be dark and earthy.

Comment:

The proposal is inconsistent with the requirements and outcomes of the control for the reasons detailed below:

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

Comment:
For the reasons detailed throughout this report the proposal will have an adverse impact on the desired future character of the Bilgola Locality.

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

Comment:
The proposal is not considered to be low impact development and fails to integrate into the existing landscape. The proposal fails to achieve the desired future character of the Bilgola Locality.

- ***To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.***

Comment:
The proposal involves extensive excavation and removal of 66% of the native canopy trees. The proposal fails to preserve and enhance the visual significance of the natural topographical features of the area.

- ***Maintenance and enhancement of the tree canopy.***

Comment:
As noted above, the proposal involves the removal of a significant portion of the existing tree canopy.

- ***Colours and materials recede into a well vegetated natural environment.***

Comment:
Given the extensive footprint, height, scale and massing of the development and the need for extensive tree clearing the proposal fails to recede into a well vegetated natural environment.

- ***To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.***

Comment:
The dwelling will dominate the site and the altered landscape will become the secondary component to the development. This is particularly relevant given that the site is Bushfire Prone and the development will be required to comply with the Bushfire landscape controls, namely an Asset Protection Zone.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.***

Comment:
Due to the extensive footprint and scale of the development and extensive clearing of native bushland the proposal has the potential to have adverse impacts on district and local views.

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

Comment:
Insufficient information has been submitted to fully assess view sharing requirements and principles.

- ***To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.***

Comment:
Due to the extensive footprint and scale of the development it will not integrate into the bushland setting and ensure visual integration and connectivity to the natural environment.

- ***Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.***

Comment:
For the reasons discussed throughout this report the development fails to minimise impacts on the natural environment when viewed from the public road and potentially Bilgola Beach.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 $24,993 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,499,325.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

A clause 4.6 variation was not submitted with the original application, therefore, Council does not have the power to grant a variation to Clause 4.3 Height of Buildings development standard.

*It is noted that a Clause 4.6 variation was submitted with the amended plans received on 19 November 2021. However, for the reasons discussed in the history section the plans have not been accepted as they did not address the fundamental TfNSW concurrence issues and have not been formally lodged via the Planning Portal or accepted by Council.

Road Safety and Transport
The proposal includes work on the Barrenjoey road reserve which is zoned SP2 a classified road and as concurrence from Transport for NSW (TfNSW) has not been granted Council does not have the power to grant development consent. In addition, Transport for NSW have confirmed that insufficient information has been submitted to demonstrate that the proposal will not impact on the safety, efficiency and ongoing operation of the classified road during construction. The concept plans do not address all of the TfNSW concurrence issues and have not been formally accepted.

Height
The proposal results in the 38.7% breach in the height of building development standard. A clause 4.6

variation was not submitted with the original plans therefore Council does not have the power to grant a variation to Clause 4.3 Height of Buildings development standard.

Overdevelopment
The height, scale, massing and footprint of the development represents overdevelopment as expressed by the inconsistencies with the built form controls (building height, front setbacks, building envelope, landscape area). The proposal is not low density and fails to integrate with the existing landscape character and is inconsistent with the desired future character of the Bilgola Locality. The density of the development, including the work within the road reserve will have unreasonable visual impact on the unique qualities of the area.

Landscape and Biodiversity
The removal of 28 Mature canopy native trees to facilitate the extensive footprint will have unreasonable impacts on the ecological integrity of the Littoral Rainforest Proximity area contrary to the biodiversity and landscape requirements of the Coastal Management SEPP and the Pittwater LEP and DCP.

Insufficient information
Insufficient information has been submitted to address stormwater management, view sharing, road safety and landslip.
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2021/1164 for the Construction of a Dwelling House including a swimming pool on land at Lot 129 DP 16902,521 Barrenjoey Road, BILGOLA BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.47 (4) of the Environmental Planning and Assessment Act 1979 Transport for NSW have not granted concurrence.

   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 the State Environmental Planning Policy (Coastal Management) 2018. In particular:

   a) Clause 11 - 'Development on land in proximity to coastal wetlands or littoral rainfore
   b) Clause 13 - 'Development on land within the coastal environment area'.

   3) Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Pittwater Local Environmental Plan 2014. In particular, Clause 1.2 - 'Aims of the Plan'.

   4) Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Pittwater Local Environmental Plan 2014. In particular, Clause 2.3(2) - 'Zone objectives and land use table'.

   5) Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Pittwater Local Environmental Plan 2014. In particular, Clause 2.5 and Schedule 1(24) - 'Use of certain land in Zone SP2 Infrastructure intended to be acquired for public purposes'.

   6) Pursuant to Section 4.15(1)(a)(i) the proposed development is inconsistent with the provisions of the Pittwater Local Environmental Plan 2014. In particular:

   a) Clause 4.3 – 'Height of Buildings';
   b) Clause 4.6 - 'Exceptions to Development Standards';
   c) Clause 5.10 - 'Heritage Conservation';
   d) Clause 7.2 – 'Earthworks';
   e) Clause 7.6 - 'Biodiversity Protection'
   f) Clause 7.7 - 'Geotechnical Hazards'; and
   g) Clause 7.10 - 'Essential Services'.

   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 the Pittwater 21 Development Control Plan. In particular:

   a) Clause A4.3 - 'Bilgola Locality';
   b) Clause B1.2 - 'Heritage Conservation';
   c) Clause B4.4 - 'Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corrid
   d) Clause B4.22 - 'Preservation of Trees and Bushland Vegetation';
   e) Clause B6.1 - 'Access Driveways and Works on the Public Road Reserve';
   f) Clause B6.2 - 'Internal Driveways';
   g) Clause B6.5 - 'Access Driveways and Works on Road Reserves on or Adjacent to a
   h) Clause B6.7 - 'Transport and Traffic Management';

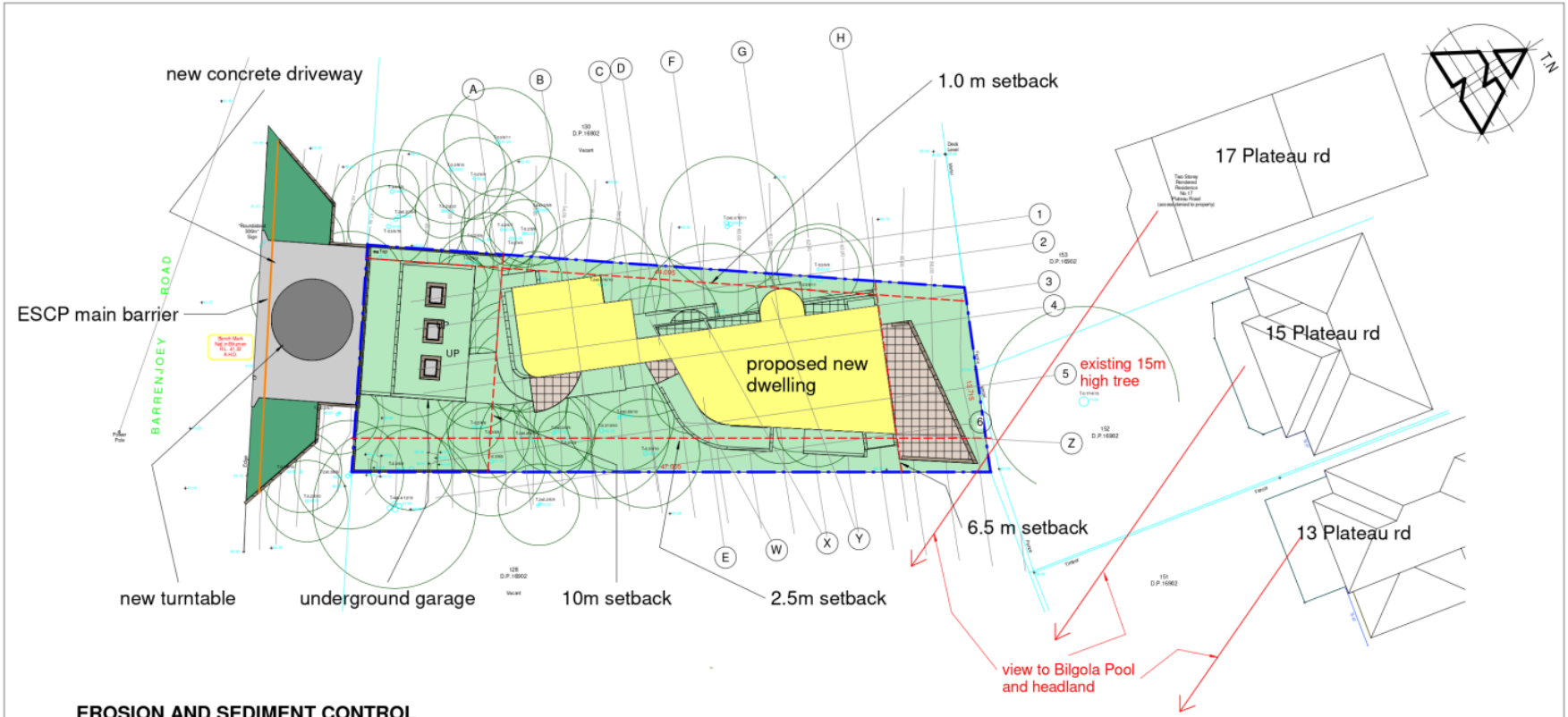
i) Clause B8.1 - 'Construction and Demolition: Excavation and Landfill';
j) Clause B8.5 - 'Construction and Demolition: Works in the Public Domain';
k) Clause B8.6 - 'Construction and Demolition: Construction Traffic Management Plan';
l) Clause C1.1 - 'Landscaping';
m) Clause C1.3 – 'View Sharing';
n) Clause C1.5 – 'Visual Privacy';
o) Clause D3.1 - 'Character as Viewed from a Public Place';
p) Clause D3.6 - 'Front Building Line';
q) Clause D3.9 - 'Building Envelope';
r) Clause D3.11 - 'Landscape Area - Environmental Sensitive Land';
s) Clause D3.13 - 'Fences - Flora and Fauna Conservation Areas';
t) Clause D3.14 - 'Construction, Retaining Walls, Terracing and Undercroft Area'; and
u) Clause D3.15 – 'Scenic Protection Category One Areas'.

8) Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the application.

9) Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not in the public interest. In particular:

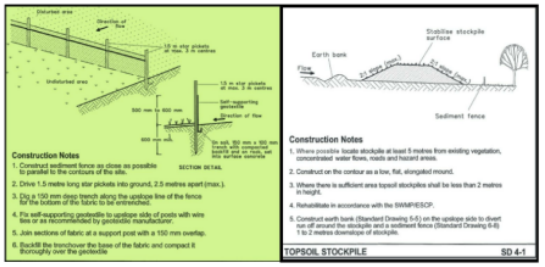
a) The development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective zoning.
b) Having regard to the public submissions and the adverse impacts of the proposed developme

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.



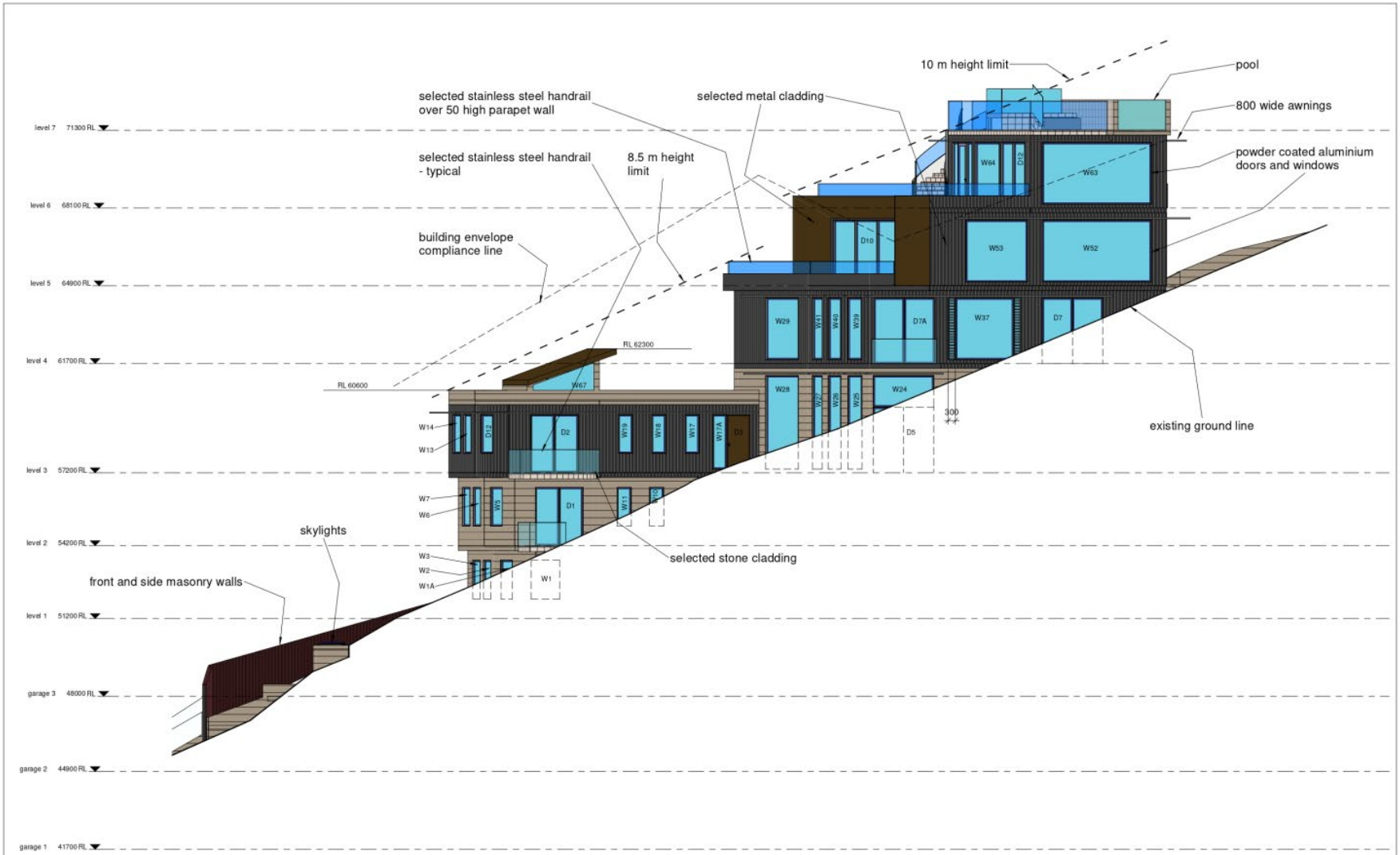
EROSION AND SEDIMENT CONTROL PLAN

1. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with industry standards.
2. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
3. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
4. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
5. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
6. Builder to confirm the locations of barrier fences and stockpiles onsite, see suggested main barrier fence location above.
7. Sediment fences and stockpiles to be constructed in arcordance with modern standards and the diagrams seen to the right.
8. Due to the steeply sloping site, special care will be taken to prevent sediment runoff into the roadway or stormwater system.
9. Note that due to the constraints of the site, barriers may need to be relocated during construction.
10. All ESCP measures are to be installed and managed in accordance with Landcom's Managing Urban Stormwater: ***Soils and Construction*** 2004.

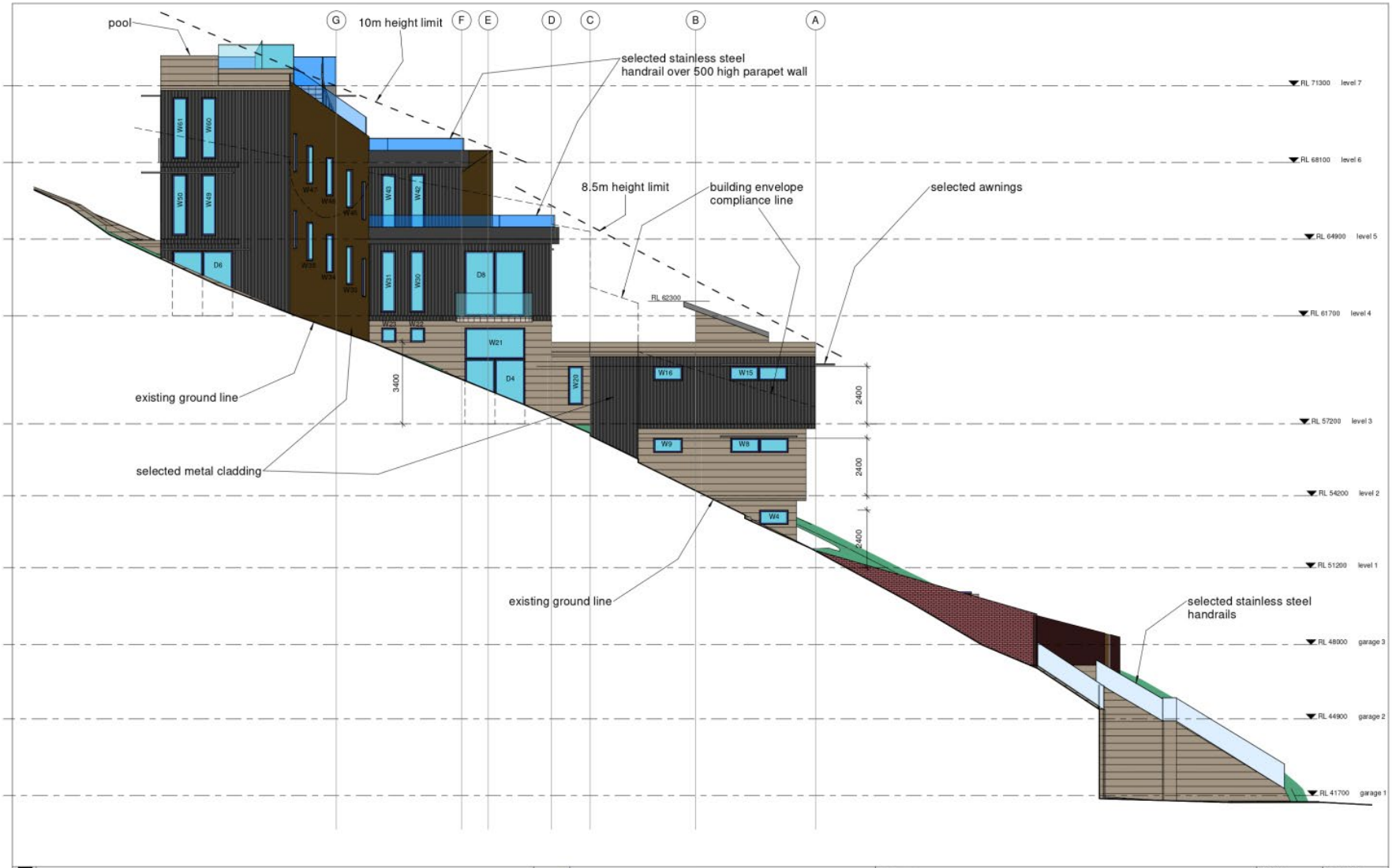


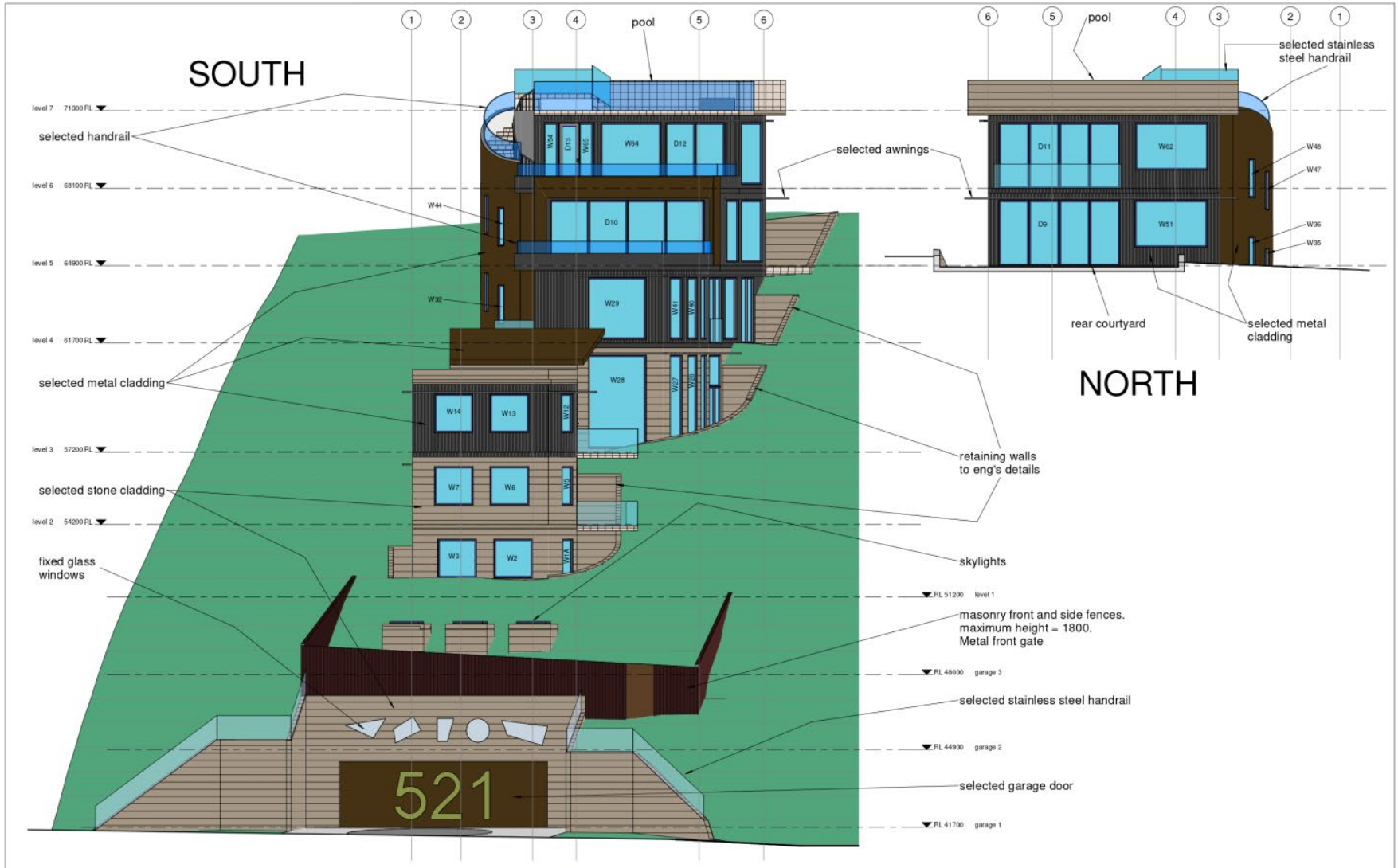
REVISION			
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		DRAWIN	site plan and ESCP

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1 : 200	17/06/21
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pool
G
10m height limit
F
E
D
C
B
A
selected stainless steel handrail over 500 high parapet wall
8.5m height limit
building envelope compliance line
selected awnings
RL 71300 level 7
RL 68100 level 6
RL 64900 level 5
RL 61700 level 4
RL 57200 level 3
RL 54200 level 2
RL 51200 level 1
RL 48000 garage 3
RL 44900 garage 2
RL 41700 garage 1
RL 62300
existing ground line
selected metal cladding
existing ground line
selected stainless steel handrails
3400
2400
2400
2400
D6
D8
D4
W21
W16
W15
W9
W8
W4
REVISION
peterdownes
multi-award winner designs
address 77 Riviera rd, Avalon 2017
phone 0466 662 445 www.peterdownes.com.au
PROJEC
Proposed new dwelling at 521 Barrenjoey rd Bilgola Beach NSW 2107 for Peter Madew
DRAWIN
west elevation
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CHECKE PD
SCAL 1 : 100
DAT 17/06/21
DRG. A2 2004 10



REVISION	peterdownes multi-award winner designs address 77 Riviera rd, Avalon 2017 phone 0488 662 445 www.peterdownes.com.au	PROJEC: Proposed new dwelling at 521 Barrenjoey rd Bilgola Beach NSW 2107 for Peter Madew DRAWIN: north and south elevations	DRAW PD / CHECKE PD SCAL 1:100 / DAT 17/06/21 DRG. A2 2004 11

ITEM 4.4	**DA2021/0669 - 1191-1193 BARRENJOEY ROAD, PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A NEW RESTAURANT, CARPARKING AND ASSOCIATED USES, INCLUDING A VOLUNTARY PLANNING AGREEMENT**
AUTHORISING MANAGER	**Tony Collier**
TRIM FILE REF	**2021/849771**
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 PLEP 2014 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 grants **deferred commencement approval** Application No. DA2021/0669 for demolition works and construction of a new restaurant, carparking and associated uses, including a Voluntary Planning Agreement at Lot 298 DP 721522 & Lot 7002 DP 1117592 & Lot 7005 DP 1117451, 1191-1193 Barrenjoey Road, Palm Beach subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0669

Responsible Officer:	Danielle Deegan (Independent Planning Consultant)
Land to be developed (Address):	Lot 7005 DP 1117451, 1193 Barrenjoey Road, Palm Beach Lot 7002 DP 1117592, 1193 Barrenjoey Road, Pam Beach Lot 298 DP 721522, 1191 Barrenjoey Road, Palm Beach
Proposed Development:	Demolition works and construction of a new restaurant, car parking, and associated uses, including a Voluntary Planning Agreement
Zoning:	• E2 Environmental Conservation • RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Government - Department of Industry - Lands
Applicant:	London Lakes Partnership

Application Lodged:	31 May 2021
Integrated Development:	Yes (DPI Water & Fisheries)
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	9 June 2021 to 9 July 2021
Advertised:	9 June 2021
Submissions Received:	21
Clause 4.6 Variation:	4.3 – Height of Buildings (99%)
Recommendation:	**Deferred Commencement Approval**

Estimated Cost of Works:	$4,056,729.00

Executive Summary

The application seeks to demolish existing buildings and construct a new two storey building and ancillary structure for use as a café, boat hire business and seaplane charter business, with associated car parking and landscaping.

The application is 'Integrated Development' as approval is required under Section 201 of the *Fisheries Management Act 1994*. The application has been referred to the Department of Primary Industries – Fisheries and General Terms of Approval have been granted for the proposal and are to be included as conditions in any consent issued.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the development proposes a departure from the building height development standard of more than 10%, the application has received more than 10 unique submissions objecting to the proposal, and the site is Crown land with a portion managed by the Northern Beaches Council.

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* (EP&A Act), the provisions relevant Environmental Planning Instruments including *Pittwater Local Environment Plan 2014* (PLEP), *Pittwater Development Control Plan 2014* (PDCP), the *Governor Phillip Plan of Management* (POM), the *Draft Governor Phillip Park Conservation Management Plan* (Draft CMP) and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration the development is:

- Consistent with the objects specified in Section 1.3 of the EP&A Act.
- Consistent with the relevant EPI's.
- Consistent with the zone objectives of the PLEP 2014.
- Consistent with the aims of the PLEP.
- Consistent with the objectives of the P21DCP.
- Consistent with the objectives of the Governor Phillip Park Plan of Management.
- Consistent with the objectives of the Draft Governor Phillip Park Conservation Management Plan.

The public exhibition of the proposed development resulted in twenty-two unique submissions, consisting 14 letters of objection and seven (7) letters of support. The issues raised in the submissions are addressed in the "Public Notification" section of this report.

The proposed demolition of the existing building and replacement with a building of similar design, scale and use is supported. While the proposed building is 1.7 metres higher than the existing building, the additional height is needed to satisfy the required flood levels and BCA requirements. While the new building is higher, it remains confined to the existing building footprint and lower than surrounding vegetation. The building height non-compliance is therefore supported.

The proposed development will maintain the existing historic uses on the site and does not propose to increase the current capacity of the restaurant or hours of operation. The proposal is acceptable subject to the recommended conditions of consent.

PROPOSED DEVELOPMENT IN DETAIL

The development is for the demolition and reconstruction of the existing premises known as The Boathouse Palm Beach (the Boathouse) as well as external works on adjoining public land.

Specifically, the proposed development comprises:

- Demolition of the existing structures on Lot 298 (excluding the existing wharf).
- Replacement of existing piles with taller supporting piles.
- Construction of a two-storey building, with a raised floor level, for continued use of a café, boat hire and seaplane office. The café and boat hire business will be accommodated on the ground floor, with the seaplane booking office and café staff amenities located on the first floor.

- Four (4) x building identification signage as follows:

Elevation	Dimensions	Wording
North	2.4 x 0.8m	Alf's Bait Shop
North	1 x 0.9m	Barrenjoey Boating Services
East	1 x 0.8m	The Boathouse
East	1.4 x 0.3m	Sydney by Seaplane Harbour & Beaches Scenic Flights

- Construction of a new ancillary building, replacing the existing outbuildings south-east of the Boathouse building, for use as bathroom amenities (open to the public), store room and waste storage room.
- Raise the upper level of the seaward decking.
- Landscaping and associated works within the adjacent leased land within Governor Phillip Park.
- Addition of further landscaping south of loading bay and north of parking bays, including dune stabilisation works.
- Enlargement of parking bays to the north of the building to achieve compliance with the relevant Australian standards.
- Install a pedestrian path running north from eastern side of Boat House to the Barrenjoey Beach.

The proposed hours of operation for in-house dining, takeaway meals and refreshments are 7.00am to 4.00pm, 7 days a week.

The proposed hours of operation for functions are 4.00pm to 10.00pm on Fridays and Saturdays during summer periods.

The proposed maximum number of patrons is 152.

A separate Voluntary Planning Agreement (VPA) for the refurbishment of 10 existing public car parking spaces within Governor Phillip Park is also proposed.

Figure 1 below shows a photomontage of the proposed development as viewed from the public wharf.



***Figure 1**. Photomontage of the proposal as viewed from the public wharf (source: Deneb design)*

Figures 2 and 3 assist in the identification of the location of the proposed works within the site.

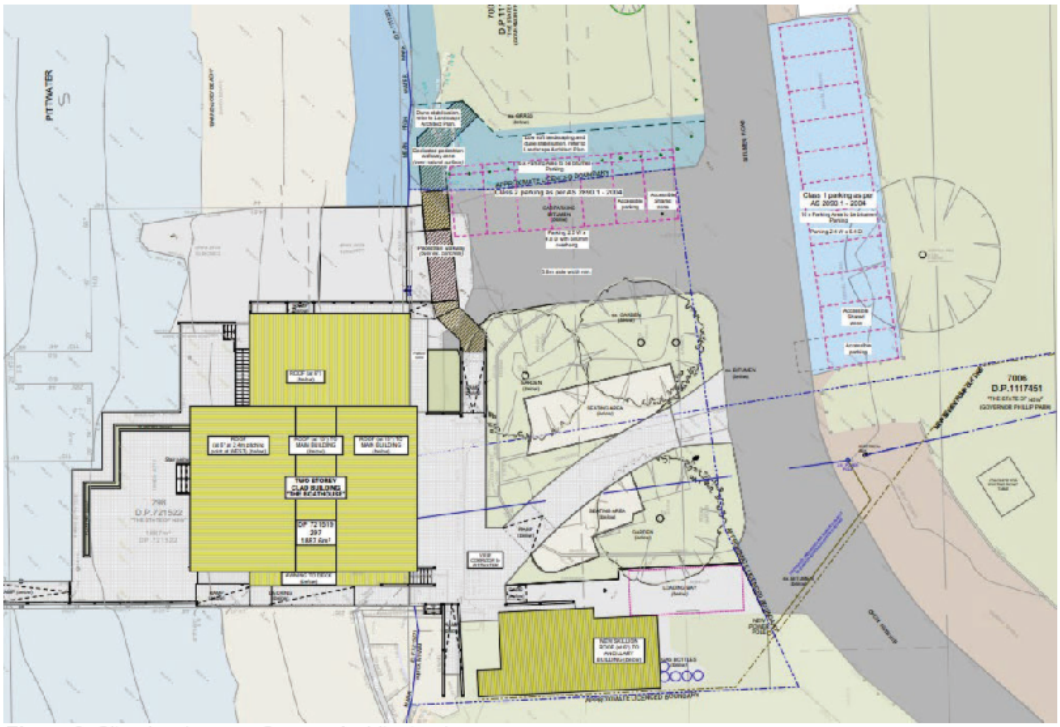


***Figure 2**. Site plan (source: Canvas Architecture)*

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 Act1979, 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 referralto 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 interestgroups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers,State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Assessment - Integrated Development – DPI Fisheries - Fisheries Management Act (s201 Circumstances in which a person (other than a public or local government authority) may carry outdredging or reclamation)
- Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to Development Standards.
- Pittwater Local Environmental Plan 2014 – 5.10 Heritage Conservation.
- Pittwater Local Environmental Plan 2014 - 7.1 Acid Sulfate Soils.
- Pittwater Local Environmental Plan 2014 - 7.2 Earthworks.

- Pittwater Local Environmental Plan 2014 - 7.3 Flood Planning.
- Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity Protection.

SITE DESCRIPTION

Property Description:	• Lot 298 in DP 721522, No. 1191 Barrenjoey Road, Palm Beach. • Lot 7005 in DP 1117451, No. 1193 Barrenjoey Road, Palm Beach. • Lot 7002 in DP 1117592, No. 1193 Barrenjoey Road, Palm Beach.
Detailed Site Description:	The site containing the existing Boathouse Café structure is located adjacent to Governor Phillip Park, at Nos. 1191 to 1193 Barrenjoey Road, Palm Beach on Station Beach and fronts Pittwater on the isthmus that links the Barrenjoey Headland and Palm Beach. The site of the proposed works extends over the following three (3) allotments and is subject to a split zoning: Lot 298, in DP721522,(containing the existing Boathouse Café) is on the seaward side of Mean High Water Mark (MHWM) and is zoned E2 Environmental Conservation. Crown Land is managed by the Department of Industry – Crown Lands. Lot 7005, in DP1117451 (comprising the licenced area) extends from the MHWM easterly for approximately 25 metres, generally in line with Barrenjoey Beach and the foreshore and is zoned RE1 Public Recreation. Crown Land is part managed by the Department of Industry – Crown Lands and part managed by Council Lot 7002, in DP1117592 is the most eastern portion of the site and generally covers street frontage of the site, the street and the adjacent access road car park, and is zoned RE1 Public Recreation. Crown Land is managed by Northern Beaches Council. The existing two-storey building and deck structure on the site, accommodates three businesses including the predominant use on site (being the Boathouse café), a boat hire business and the offices of a seaplane charter operator, Sydney by Seaplane. Seating associated with the use of the café continues onto the outdoor rear deck and into the front Licenced Area. A two bedroom caretakers unit occupies the first floor. A wharf extends from the Boathouse building into Pittwater and is publicly accessible from Governor Phillip Park with mooring facilities for multiple boats and sea planes. Vehicular access to the site is via the Governor Phillip Park loop road extending from Barrenjoey Road. The site is predominantly flat with a slight fall from the east

	to the west. There is a landscaped area to the east of the Boatshed including 3 x Norfolk Pines. **Description of Surrounding Development** Directly to the west of the site is Pittwater, to the east of the site is the Barrenjoey Road accessway, providing vehicular access to Barrenjoey Head, and to Governor Phillip Park. To the north of the site is Station Beach which leads to Barrenjoey Head. To the south of the site Station Beach continues leading to Observation Point. Governor Phillip Park is characterised by natural areas, pathways, parking areas, cafes, recreational uses and community facilities.

Map:



***Figure 3**. Aerial photograph showing site location*

SITE HISTORY

The land has been used for boat hire, sea plane charter and café use for an extended period of time. A search of Council's records has revealed the following relevant history:

- On 25 November 2008, the ground floor of the building was partly used as a café called 'Carmel's by the Sea'. The café had indoor seating for 16 people and outdoor seating for 60 people.
- On 15 January 2009, Council's Food Premises Inspection Notes indicate that the premises was renamed '*The Boathouse Palm Beach*'.
- On 11 February 2015, a Pre-Lodgement meeting was held with Council staff with regard to the re-development of the site to provide for an enlarged café with an open plan function space upstairs and a kiosk within the Licenced Area.
- On 27 April 2015, Council's Compliance Department investigated alleged unauthorised pop-up stalls and other structures within the Licenced Area.

- On 7 March 2018, Development Application N0302/17 for alterations and additions to 'The Boathouse' including change of use of first floor to a restaurant office, demolition of ancillary buildings, new external services building, seawall protection measures and an altered carpark with associated landscaping was refused by Council. The reasons for refusal were:

  1. *The proposal is not in the public's interest, as it is inconsistent with the adopted Plan of Management for Governor Phillip Park, the Draft Conservation Management Plan for Governor Phillip Park, and Crown Lands 'Food and Beverage Outlets on Crown Reserves – Policy Position'.*

  2. *The proposal facilitates an increase in the GFA and capacity of the café, attributing to a significant intensification on the demand for parking that has not been adequately considered and is not satisfied by the proposed development. The proposal is non-compliant with the numerical requirements and outcomes of clause B6.3 (Off-street Parking Facilities) of P21 DCP and places an unreasonable level of reliance upon parking within the adjacent public reserve.*

  3. *The proposal is supported by conflicting and insufficient information, particularly with respect to:*

     a) *All necessary works within the Licenced Area and the potential impacts upon the significant Norfolk Island Pines to the east of the Boathouse building,*
     b) *The existing capacity of the building, in consideration of the provision of on-site amenities,*
     c) *The capacity of the proposal in consideration of wastewater management,*
     d) *The design and management of the facility with respect to the estuarine hazard,*
     e) *The design of car parking within the Licenced Area and compliance with AS2890.1 and AS2890.6,*
     f) *Acoustic impacts associated with an intensified capacity, extended trading hours and the use of the site for functions and events, and*
     g) *The design of the front Licenced Area and the adopted Landscape Plan, referenced in the Licence and the adopted Plan of Management for Governor Phillip Park.*

  4. *Until the Draft Pittwater Local Environment Plan 2014 is gazette, the Panel in not satisfied that it can issue a consent in relation to the sea plane and boat hire businesses.*

APPLICATION HISTORY

On 31 March 2020, a Pre-Lodgement meeting (PLM2020/0137) was held with Council officers to discuss key issues associated with the proposed development of the site.

On 31 May 2021 the subject development application was lodged with Council.

On 27 August 2021, a letter was sent to the applicant requesting additional information to address deficiencies in the plans, flood levels, work outside the licenced area, urban design issues and the voluntary planning agreement.

On 16 September 2021, amended plans and additional information were submitted to Council.

The additional information was subsequently assessed by the relevant Council experts and consultant planner engaged to carry out this assessment. The proposed development was not required to be re notified as the changed did not result in additional environmental impacts and the development remained substantially the same as original notified.

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 thisreport.
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 recreational and commercial purposes for an extended period of time. The proposed development retains the use of the site and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any developmentcontrol 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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent.These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requestedon 27 August 2021. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including firesafety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia(BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and builtenvironment 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 LEP section inthis report. (ii) Social Impact The proposed development will not have a detrimental socialimpact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economicimpact on the locality considering the nature of the existing and proposed land use.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for thedevelopment	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Actor EPA Regs	See discussion on "Notification & Submissions Received" in thisreport.
Section 4.15 (1) (e) – the publicinterest	No matters have arisen in this assessment that would justify therefusal of the application in the public interest.

CROWN LAND MANAGEMENT ACT 2016 AND LOCAL GOVERNMENT ACT 1993

The land is owned by the Crown and is part managed by Council and part managed by the Department of Industries - Crown Lands.

Under section 3.21 of the *Crown Land Management Act 2016*, Council, as Crown Land Manager, is authorised to classify and manage the land as if it were public land within the meaning of the Local Government Act 1993.

Section 35 of the *Local Government Act 1993* identifies that Community land is required to be used and managed in accordance with:

- The plan of management applying to the land;
- Any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land; and
- Division 2 of the *Local Government Act 1993*.

The *Governor Phillip Park Plan of Management* ('the POM') and the *Draft Governor Phillip Park Conservation Management Plan* ('Draft CMP') apply to the RE1 zoned land.

While the Boathouse building is on land zoned E2 Environmental Conservation and not within the Governor Phillip Park boundary, the Boathouse activities and operations extend into the RE1 Public Recreation zone. Access to the Boatshed building is over public Reserve land. The POM includes the key objective to "*conserve and enhance the Park's natural, historical and cultural environment whilst providing a diverse range of quality informal passive recreational opportunities in a unique and relatively undeveloped setting*."

The POM requires future uses within Governor Phillip Park to satisfy Section 2.8.1 'Permissible uses', which include to: *encourage public use and enjoyment of appropriate Crown land; encourage public use and enjoyment of appropriate Crown land; optimise public access and use of coastal Crown lands; and encourage the rehabilitation of degraded coastal Crown lands*.

The POM provides recommendations for the lower western picnic and parking area where the external areas are adjacent to the existing Boathouse, and these are also interpreted in the Concept Masterplan referenced as Landscape Master Plan within the *Governor Phillip Park Plan of Management*. The recommendations for this area include a series of small defined car parking areas to cater for the needs for the adjoining picnic areas and protect existing trees and turfed areas, and picnic and recreation upgrades.

The proposal comprises works within Governor Phillip Park, including access pathways, outdoor furniture, car parking, landscaped gardens, and dune stabilisation works. The area will remain accessible and useable to the general public. The proposed works will benefit the general public. Subject to recommended conditions of consent, the proposed development satisfies the key objective and principles of the POM.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited between 9 June 2021 and 9 July 2021 in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning andAssessment Regulation 2000*, and Council's *Community Participation Plan*.

As a result of the public exhibition, council received 21 submissions from:

Name:	Address:
Mr Peter Eric Giblin	7 Beach Road, Palm Beach
Mr Mark Richard Phillips Ms Caroyln Louise Darragh	69 Binburra Avenue , Avalon Beach
India Turner	6 Joseph Street, Avalon Beach
Mr Michael Anthony Henry	59 Dress Circle Road, Avalon Beach
Mr Dennis Leslie Wright	12 Park Avenue, Avalon Beach
Mr Mark Francis Horton	2 Elwyn Close, Mona Vale
Suzanne Richards	Address Unknown
Mr Jacqueline Susan Rees	1 Boanbong Road, Palm Beach
Anonymous	Address unknown
Michael Gibson Mills	1167 Barrenjoey Road, Palm Beach
Joyce Parker	79 Cabarita Road, Avalon Beach
Steve Jacobs	Address Unknown
Stephen Jones	3 Waratah Road, Palm Beach
Mr Rodger Alan Morton	1041 Barrenjoey Road, Palm Beach
Peter Brockhoff Mr John Oatley Brockhoff	14 Waratah Road, Palm Beach
Mr Robert William Gerard Johnson	296 Hudson Parade, Clareville
Mr Mark Richard Willcocks	PO Box 1332, Mona Vale
Mr Simon Olding	PO Box 375, Wahroonga
Mr Nicholas Burton-Taylor	Hillgrove Young Road, Boorowa
Mr Shane Douglas Oxenham	2 Livistona Lane, Palm Beach
Mr Nicholas Kenneth Martin Allen	20 Bishops Avenue, Randwick

Fourteen (14) submissions objected to the proposal raising the following issues:

- ***Demolition of existing small scale historic building and construction of a large car park is detrimental to the character of Palm Beach.***

  Comment
  The proposed works are within the existing building footprint. Subject to conditions, Council's Heritage Officer is supportive of the proposal concluding that the proposed development will ensure the continuation of the long-established café use and the water based recreational uses (boat hire and see plane charter), both of which contribute to the significance of the building to the context and historical use of Governor Philip Park. The proposed enlargement to the car parking area to the north of the building brings the parking area into compliance with AS 2890.1 – 2004 as part of the site improvements and is considered a reasonable response to address site parking. The improvements to the existing public parking spaces to the east of the site are not considered detrimental to the character of the area and the surface treatment is subject to the requirements of Council's Heritage Officer and Parks and Reserves team to ensure the works a sympathetic to the locality.

  On balance, it is considered that the proposed increase in height is acceptable from a heritage

point of view and is consistent with the character of Palm Beach.

- ***The proposed enlargement of the restaurant to cater to 300 diners is excessive and does not benefit the public.***

  Comment
  The proposal does not propose to increase the capacity of the restaurant. Recommended conditions of consent will impose a cap of 152 patrons and will prohibit the use of the first floor for function or restaurant dining use.

- ***The site is Crown land and commercial uses should be restricted.***

  Comment
  The Boathouse has a lease for the building and the adjacent licenced area within Governor Phillip Park. The proposal will result in an overall increase in the areas accessible to the public. The proposed development and the lease is consistent with the Governor Phillip Park POM.

- ***Public access to Station Beach is blocked by this proposal.***

  Comment
  The proposed development maintains public access through the site, to the public wharf and to Station Beach.

- ***Environmental impacts arising from expanded restaurant, car parking and encroachment on public land, specifically:***
  - ***Objection to more car parking in public open space.***
  - ***The loss of a strip of public space to the north of the boat ramp driveway resulting from the extension of the seven (7) parking spaces.***
  - ***The bitumen parking spaces (as per VPA) should be accommodated entirely inside the subject lands (within the licenced area) south of the existing timber bollards.***

  Comment
  The overall site coverage is not increasing. The recommended deferred commencement condition of consent will require that the proposed refurbishment of the ten (10) existing parking spaces to the east of the Boatshed building (the subject of the VPA) be constructed from pervious material, thereby minimising stormwater run-off. These ten (10) car spaces will be available for public use.

  The extension of the seven car spaces to the north will enable these car spaces to comply with the minimum dimensions for car spaces. The expanded area will be subject to a recommended condition of consent requiring an extension to the lease area.

  The proposal will result in a net increase in both landscaped area and land accessible to the public. The environmental impacts arising from the proposal have been assessed by Council's technical staff. Subject to conditions to mitigate any environmental effects, the proposal is satisfactory.

- ***Noise impacts on residents at No. 3 Waratah Road.***

  Comment
  The Environmental Noise Impact Assessment, prepared by Day Design Pty Ltd, concludes that the proposed operation of the site will meet the Liquor and Gaming NSW and EPA's noise level requirements at all nearby residential, active recreation and commercial locations, and will therefore be acceptable.

  A Operational Plan of Management for the restaurant has also been submitted in support of the proposed development. This document details hours of operation and noise management procedures. In the event of approval, this document will form part of the approval documents. The

administrative noise controls include the following:

- No amplified music between 10.00pm and 7.00am.
- Amplified music restricted to a maximum of L10 level 94dBA at 1m from any speaker between 7.00am and 10.00pm.
- Noise monitoring or use of a noise limiter while using amplified music or an in-house sound system.
- Orientation of speakers towards Pittwater.

Given the spatial separation of the site (approximately 600m) from the nearest residential properties and recommended noise management conditions, the proposal is assessed as satisfactory concerning noise impacts.

The seven letters of support include the following comments:

- *The existing building is in very poor condition and needs renovation or rebuilding. The proposal is a sympathetic solution.*
- *The proposal represents a tasteful redevelopment embodying the heritage qualities that the existing building possesses.*
- *The proposal reflects the style of the existing building while bringing the facilities up to a better standard.*
- *While the proposed building envelope is higher than the existing building, this is necessary to increase the floor levels.*
- *The patron numbers have been scaled back from a previous proposal and are less than the existing seating numbers.*

REFERRALS

Internal Referral Body	Comments
Building Assessment (Fire and Disability upgrades)	**Supported subject to conditions** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to the approval of the development subject to inclusion of the attached conditions of approval and consideration ofthe notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such asthis however may be determined at Construction Certificate Stage.
Environmental Health (Acid Sulphate)	**Supported without conditions** No objection was raised by Council's Environmental Health (Acid Sulfate) team. No conditions were imposed.
Environmental Health (Industrial)	**Supported subject to conditions** No objection was raised by Council's Environmental Health (Industrial) team subject conditions to control noise, waste and chemicals on the site.
Environmental Health (Commercial Use)	**Supported subject to conditions** No objection was raised by Council's Environmental Health (Commercial Use) team subject conditions.
Environmental Health (Unsewered Lands)	**Supported subject to conditions** No objection was raised by Council's Environmental Health (Unsewered Lands) team subject conditions.
Environmental Health	**Supported subject to conditions**

Internal Referral Body	Comments
(Contaminated Lands)	No objection was raised by Council's Environmental Health (Contaminated Lands) team subject conditions.
Landscape	**Supported subject to conditions** Council's Landscape Referral is assessed against the adopted Plan of Management for Governor Phillip Park, the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP Controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation. • C1.1 Landscaping. The development application includes a Landscape Plan for areas to the east of the Boathouse premises that are proposed to remain in public use. It is noted that the existing landscape setting of this area has been significantly altered such that is appears as land that is occupied and managed by the Boathouse, with elements such as signage, enclosed landscaped areas, and furniture styled to match the interiors of the Boathouse but located within the public domain. To any visitor it is obvious that the existing arrangement is perceived to be that the area is part of the Boathouse, and any visitor may feel uncomfortable in utilising the area for recreational activities such as a picnic or sitting. The landscape works, as shown on the proposed Landscape Plan removes much of the landscape elements typically installed to style the landscape open space to match the theme of the Boathouse, whilst retaining some elements. Concern is raised in regard to the planting scheme that simply is replacing the existing exotic planting with native planting that includes planting able to achieve a screening height to re-establish enclosure of open space areas to appear to be part of the Boathouse. The proposal does not refer to the intent of the existing signage (x 2) placed at the junction of the roadway and the Boathouse lease alignment, and removal of the signage to the building face would better represent that the open space area within the Reserve belongs to the public and is useable by the public, without fear of encroaching. The planting scheme is recommended to be of a low height to allow for clear visual interpretation and connection of the open space area with the public to enable unhesitating use, and the proposed tall shrubs (Leptospermum) and small trees (Banksia) along the roadway should be removed from the scheme, and conditions of consent shall be imposed requiring an Amended Landscape Plan to be approved at Construction Certificate stage, should the development application be approved. Foreshore native planting for dune stabilisation is included in the Landscape Plan and is supported. If the development is approved, the biodiversity management and mitigation measures as recommended in the Ecological Assessment and Biodiversity Management Plan shall be implemented in association with the proposed landscape works that will assist in mitigating the erosion to the foreshore north of the existing building / boat ramp and north of the existing unmarked car parking spaces. An Arboricultural Impact Assessment is provided with the application and includes specific tree protection measures to preserve the existing three (3) Norfolk Island Pines within the current Boathouse lease area, including tree protection fencing, removal of non-porous surfaces in the structural root zone of the trees and planting of native species with non-invasive roots. All three appear to be vigorous with no apparent setbacks or decline in crown cover and branch structure, and based on the relatively medium to long Useful Life Expectancy and high visual prominence and cultural landscape

Internal Referral Body	Comments
	significance of each tree, each is accorded a high retention value and shall be protected and preserved. The Arboricultural Impact Assessment concludes that provided the recommendations of the report are adopted, adverse impacts on tree vigor and structural condition of the Norfolk Island Pines will not decline as a result of the development proposal, and subject to adherence to the strict tree protection guidelines and protocols as recommended to ensure disturbance to the trees is avoided or minimised. As recommended in the report an experienced and qualified arboriculturist is to be engaged should the development application be approved, with acceptance from the developer and builder that a high level of supervisory and advisory input is maintained during all stages of the development, including the demolition of existing pavers and structures, excavations and construction. The recommendations of the Arboricultural Impact Assessment can be supported subject to conditions of consent. Landscape (subject to conditions of consent for an amended Landscape Plan) raise no objection to the proposed landscape works.
NECC (Bushland and Biodiversity)	**Supported subject to conditions** Council's Natural Environment Unit - Biodiversity team have reviewed the application for consistency against the relevant environmental legislation and controls, including: • Biodiversity Conservation Act 2016 (BC Act). • State Environmental Planning Policy (Coastal Management). • Coastal Environment Area. • Pittwater Local Environmental Plan (PLEP): ○ Clause 7.6 Biodiversity Protection. The application seeks approval for the proposed demolition and reconstruction of the existing premises. The following documents relating to biodiversity impact are noted within the submission: • Ecological Assessment and Biodiversity Management Plan (Kingfisher 2021). • Arboricultural Impact Assessment (Urban Forestry Australia 2021). • Landscape Plan (Selena Hannon Landscape Design 2021). • Bushfire Hazard Assessment Report (Firstfield Environmental 2020). A review of the Aquatic Ecology Report (Cardno 2021) was also undertaken however NEU-Biodiversity defer to Council's Coast & Catchments referral team for comment on possible seagrass impacts. To facilitate the construction of the proposal, no tree removal is proposed or required (Urban Forestry Australia 2021). Native, terrestrial vegetation is absent from within the construction footprint, and nearby biodiversity values are unlikely to be impacted by the proposal (Kingfisher 2021). Additionally, proposed native landscaping (Selena Hannon Landscape Design 2021) intends to reinstate locally native species. The submitted Bushfire Hazard Assessment is noted (Firstfield

Internal Referral Body	Comments
	Environmental 2020). No native vegetation is present within the subject lot, and therefore no clearing would be proposed to establish Asset Protection Zones (APZ). As the site (Lot 298) is located outside of Bushfire Prone Land, no clearing for APZ establishment would be supported by NEU-Biodiversity, however is irrelevant in this case. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	**Supported Subject to conditions** The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The application has been assessed in consideration approval/supportof: • Consent to lodge DA from the Department of Crown Lands underthe NSW Planning, Industries & Environment dated 01 April 2021. • No Objection from the DPI-Fisheries under the Department ofPrimary Industries dated 16 April 2021. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with theobjects, as set out under Clause 3 of the *Coastal Management Act 2016*. Further, the applicant has proposed construction of wave baffle wall, replacement of existing piles with taller piles. Hence the proposed development has been assessed also against the requirements of the Section 27 of the *Coastal Management Act 2016*. As required, the impact & risk associated with the construction/modification of the seawall has been assessed in the submitted Coastal Engineering andEstuary Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021. Based on the impact and risk identified, Council applies maintenance condition as per Section 27(b)(ii) in approving this DA. **State Environmental Planning Policy (Coastal Management) 2018** The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for thisDA. <u>Comment</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Doyle Consulting Group Pty. Ltd dated April 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered thatthe application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Pittwater LEP 2014 and Pittwater 21 DCP** <u>Estuarine Risk Management</u> The subject property has also been identified as affected by estuarinewave 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-B3.10 Estuarine

Internal Referral Body	Comments
	Hazard Controls will apply to any proposed development of the site. In accordance with an analysis, presented through the Coastal Engineering and Estuary Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021, a site-specific estuarine planning level (EPL) of RL 2.75m AHD has been recommended and applied at the subject site for a design life of 50 years. On internal assessment and as assessed in the submitted Coastal Engineering and Estuary Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021 and Flooding and Estuarine Risk Management Report prepared by Cardno (NSW/ACT)Pty. Ltd. dated May 2021, the floor level for the proposed additions and alterations sites are at one place below and at others above the recommended EPL for the site. The proposed development is therefore subject to conditions to satisfythe relevant estuarine risk management requirements of P21 DCP. <u>Development seaward of Mean High Water Mark (MHWM)</u> A number of proposed development works are located on Crown land below the MHWM. Hence, Section D15.12: Development seaward of mean high-water mark of the Pittwater 21 DCP applies to proposed development. <u>Comment</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Doyle Consulting Group Pty. Ltd dated April 2021 and Coastal Engineering and EstuaryRisk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021, the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenityof the foreshore or water quality or estuarine habitat of the Pittwater waterway The applicant has also submitted Aquatic Ecology Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 30 August 2021. The report has assessed the impacts of proposed developments and recommended elaborate measures. These measures will be conditioned in the granting of an approval.
NECC (Development Engineering)	**Supported subject to conditions** The proposed development does not require OSD. The proposed stormwater outlet to the proposed new seawall must be assessed and approved by Council's Coast and Catchment Team. The VPA for the proposed parking area is to include the construction approvals required from Council's Parks and Reserves Team. No objection to approval, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	**Supported subject to conditions** Subject to conditions, the development is compliant with Council's riparian lands requirements. Note that Development Engineering have conditioned that the applicant is to submit Stormwater Engineering Plans indicating all details relevant to the collection anddisposal of stormwater and that Stormwater shall be conveyed from the site to a slotted pipe suspended under the existing jetty to disperse stormwater into Pittwater. This is

Internal Referral Body	Comments
	supported by the Riparian referral, as stormwater would bypass the beach to Pittwater and reduced risk of erosion of sand.
NECC (Flood)	**Supported subject to conditions** A detailed site specific Flood Impact Assessment has been undertaken for the site prepared by Cardno (NSW/ACT) Pty Ltd dated16 August 2021. The Flood Study identifies that the floor levels for the proposed ground floor of the Boathouse, sewer tank/grease arrestor and male and female toilets have an appropriate freeboard ina Probable Maximum Flood event. The Boat Hire General Storage and Bin Room are located marginally below the Probable Maximum Flood level and conditions are included to ensure that these buildingsare flood proofed to reduce potential flood damages.
NECC (Water Management)	**Supported subject to conditions** The extension of the car park adjacent to the boat ramp will result in additional impervious area, however, this has been offset with the use of permeable pavers in the outdoor dining/sitting areas as shown in the landscape plan. Permeable surfaces or Water Sensitive Urban Design (WSUD) are recommended for the extension of the parking areas to encourage more natural hydrology and reduce water pollutants entering Pittwater and seagrass habitats. Subject to conditions, the development is compliant with Council's water management requirements.
Parks, Reserves, Beaches, Foreshore	**Supported subject to conditions** The Development Application is for the demolition and reconstruction of the existing premises known as the Boathouse Palm Beach as well as external works east of the Boathouse upon public Reserve land. A separate Voluntary Planning Agreement (VPA) for the refurbishment of 10 existing public car parking spaces within Governor Phillip Park isproposed and the works are documented as part of the Development Application. Amended plans and reports are provided for consideration to address the concerns raised in the previous Parks Referral. The previous concerns were as follows: • lack of information on the public access and use of the proposed ancillary amenities structure/building with toilets upon Reserve land beyond operating hours; • lack of informationon the intent of the existing signage that maintains a territorial barrier for the general public; and • exclusion of the public from the 10 existingcar parking spaces that are currently utilised by the public to access the recreational facilities of Governor Phillip Park. Council's Parks Referral is assessed against the adopted Plan of Management for Governor Phillip Park and the Pittwater Local Environmental Plan under RE1 Public Recreation. Although the Boathouse building is not within the park boundary, the Boathouse activities and operations extend into the RE1 Public Recreation zoneand access to the premise is over public Reserve land. The Plan of Management for Governor Phillip Park includes a key objective to "conserve and enhance the Park's natural, historical and cultural environment whilst providing a diverse range of quality informal passive recreational opportunities in a unique and relatively undeveloped setting. The adopted Plan of Management permits future uses within Governor Phillip Park to satisfy section 2.8.1 Permissible uses, which include to: encourage public use and enjoyment of appropriate Crownland; for a public

Internal Referral Body	Comments
	purpose, in public ownership; optimise public accessand use of coastal Crown lands; and encourage the rehabilitation of degraded coastal Crown lands. The objectives of LEP zone RE1 Public Recreation include to: enableland to be used for public open space or recreational purposes; protect and enhance the natural environment for recreational purposes; allow development that does not substantially diminish public use of, or access to, public open space resources; and provide passive and active public open space resources, and ancillary development, to meet the needs of the community. The Plan of Management provides recommendations for the lower western picnic and parking area where the external areas are adjacent to the existing Boathouse and these are also interpreted in the Concept Masterplan referenced as Landscape Master Plan within the Governor Phillip Park Plan of Management, and for this area recommendations include a series of small defined car parking areas to cater for the needs for the adjoining picnic areas and protect existing trees and turfed areas, that is now occupied within the lease for the Boathouse; and picnic and recreation upgrades. It is noted that the intent for small car parking areas under the Concept Masterplan exists as outdoor food services areas utilised by Boathouse within the current lease area. The Development Application proposal includes landscape works within the Reserve that is accessible and useable to the general public such as access pathways, outdoor settings containing picnic tables, table and chairs, and landscaped gardens, and includes dune stabilisation works as indicated in the Landscape Plan and the Biodiversity Management Plan, and these works benefit the general public and satisfy the intent of the Plan of Management and LEP clause RE1 Public Recreation zone. The following issues of concern have been resolved by the amended plans and reports, including: • The proposed amenities with toilet facilities is confirmed in the amended reports including the 'letter - Parks and Reserves response' to remain open to the public as required under the Plan of Management, during Boathouse operating times and as such provides a public benefit. • The existing signage placed at the junction of the roadway and the Boathouse lease alignment is confirmed in the amended reports including the 'letter - Parks and Reserves response' to be removed within the licence area of the Reserve and thus the proposed external works and character is able to be represented as public space useable by the public without fear of encroachment. Any Boathouse signage is to be part of the building facade. • The amended plans continue to note the ten (10) existing carparking spaces as a bitumen surface finish and this is not supported. The amended reports including the 'letter - Parks and Reserves response' nominates that the applicant shall adhere to the requirements as determined by Council, and as such a permeable surface finish shall be provided and designed to avoid ponding of water onto the existing roadway. • Additionally, the amended report 'letter - Parks and Reserves response' confirms that the existing ten (10) car parking spaces are not proposed for the exclusive use of the Boathouse workers, visitors or any other related party, as incorrectly stated in the Traffic Management and Car Parking Solutions report by GTK Consulting on page 15. As such public use of these spaces is not altered nor restricted and the intent of the Plan of Management and LEP clause RE1 Public Recreation zone for

Internal Referral Body	Comments
	public access is maintained. • The proposal to extend the alignment of the existing northern car parking spaces further into the Reserve and over the licence alignment is subject to the requirements to comply with Australian Standard / NZS 2890.1:2004 Parking facilities - Off street car parking, and spatial layout is restricted by the location of the heritage listed Norfolk Island Pines, and thus to comply the car parking is extended in alignment, and by a 34.2m2 area. It is noted that the proposal includes 'reclaimed landscape areas' within the licence area to compensate. The spatial extension shall not exceed the minimum requirement for car spaces and maneuvering area under the requirements for Class 2 parking as per AS / NZS 2890.1:2004, and the existing timber bollards shall be re-installed appropriately or replaced with like for like. It is noted that the proposal includes works beyond the current licence agreement boundary and this matter requires the granting of a licence to cover the extent of the proposal, and this part shall be in accordance with the directions, authorisation or otherwise from Council's Property Assets team. Parks Referral raise no further concerns and the proposal is able to satisfy the intent of the Plan of Management and LEP clause RE1 Public Recreation zone, subject to conditions of consent. The Development Application includes landscaped areas to the east of the Boathouse premises that are proposed to remain in public use. It is noted that the existing landscape setting of this area has been significantly altered such that is appears as land that is occupied and managed by the Boathouse, with elements such as signage, enclosed landscaped areas, and furniture styled to match the interiors of the Boathouse but located within the public domain. To any visitor it is obvious that the existing arrangement is perceived to be that the area is part of the Boathouse and not for public use. Parks Referral advise that this public land area shall clearly perceived as public land and that the landscape proposal submitted with the Development Application is to achieve this outcome, and Parks Referral defer to Landscape Referral on this matter.
Property Management and Commercial	The proposal seeks to marginally extend the existing car parking spaces at the northern end of the existing licenced area, in order to ensure compliance with the Australian Standards for car parking. As such, the applicant will be required to enter into an additional licence with Council for the use of this land and a condition has been includedto this effect.
Strategic and Place Planning (Urban Design)	**Supported** The amended proposal dated September 2021 has addressed the issues brought up previously: 1. The ground floor to ceiling height has been increased to 2.67m. 2. The entry corridor width to the jetty is restricted by the lease boundary. The proposed entry width is similar to the jetty corridor width and will be used mainly to access the jetty as the restaurant hasa separate entry point. As such, the proposed entry corridor width to the jetty is acceptable. <u>Previous Comments</u> The proposal seek consent for the demolition of the existing structures except for the existing wharf. A new two storey replacement structure will be built consisting of ground floor café, boat hire and seaplane booking office,

Internal Referral Body	Comments
	and on first floor, office and staff facilities. New toilets and store rooms will be relocated to a new ancillary structure. Provision of disabled access will be provided to the ground floor area. The new cafe' will have seating capacity, for 152 patrons, for both indoor and outdoor. A previous development application was refused due to concerns over the potential impact of traffic and parking generation figures based on the seating capacity of 300 persons for the café. The proposed built form is similar in bulk and scale to the existing Boathouse structure and the new ancillary block will consolidate and tidy up the series of existing sheds. The proposed structure will take into account of the potential sea level rise reflected in the Estuary Planning Level. As such the breach of building height control can be supported. However the following issues should be addressed to improve the proposal further: • The proposed ground floor area has a low ceiling height of about 2.4m. This should be increased to 2.7m clear to be more appropriate for a restaurant café by reducing the floor to ceiling height of the upper floor to ensure the overall height of the current built form is maintained. The additional ceiling height to the café will allow better natural ventilation and daylight access. The main entry corridor to the jetty should be made less constricted by relocating the new stairs to the upper floor.
Strategic and Place Planning (Heritage)	**Supported Subject to conditions** This application has been referred as the site is partly located within the C1 - Barrenjoey Heritage Conservation Area, which is listed within Schedule 5 of Pittwater Local Environmental Plan 2014. The conservation area covers Governor Phillip Park, Palm Beach Golf Course and Barrenjoey Headland. The Boathouse building itself is not listed as a heritage item however is located adjacent to the Golf Course and partly within Governor Phillip Park. It is also located within the vicinity of a number of local heritage items (Picnic Shelter Sheds, Memorial cairns) and State heritage items (Barrenjoey Headland light station and 2 cottages) and a number of local archaeological heritage sites (Grave, Stone Path (former access road, site of former customs house). Most of these are located some distance from the Boathouse building. <u>Consideration of application</u> This application proposes to demolish the existing Boathouse building and rebuild in a similar style and scale. It proposes to accommodate the existing uses (which are currently a cafe, boat hire business and sea plane business) into the new building. The cafe, boat hire business and seaplane booking office will be accommodated on the ground floor, with office and staff facilities on the first floor. An ancillary structure is also proposed south-east of the Boathouse building, to house toilets and storerooms, replacing existing outbuildings. The proposal also includes landscaping works in the front of the Boathouse building and the formalisation of existing parking spaces. 10 parking spaces within the adjacent Governor Phillip Park are proposed to be sealed with bitumen with another 7 spaces to the north of the building also sealed. It is noted that the 10 proposed sealed parking spaces within Governor Phillip Park are the subject of a VPA. The application is supported by a Heritage Impact Statement prepared by City Plan, dated February 2021, which has been reviewed. In addition, the proposal has been reviewed in relation to the draft Governor Phillip Park

Internal Referral Body	Comments
	Conservation Management Plan by Thompson Berrill Landscape Design Pty Ltd, dated November 2009. The Boathouse building has been part of the recreational community use of Governor Phillip Park since the building was first constructed in 1947. Boat hire and seaplane uses have been a feature of this building since 1975. The existing building has been altered and changed over time and is in need of maintenance. It is considered that the building is a contributory item within the Barrenjoey Heritage Conservation Area (which includes Governor Phillip Park), but the structure is not of enough significance to warrant retention as a heritage item. Its significance is embodied in its provision of recreational uses, and their continued provision for the users of Governor Phillip Park and Pittwater since 1947. Having reviewed all available documentation, from a heritage point of view, there is no objection to this building being demolished and replaced with a building of similar design, character and purpose. The proposed building, while of similar design, is 1.7 metres higher than the existing building, which will increase its scale within its setting. However, the new higher building will still remain lower than surrounding vegetation and will not interrupt any significant views to and from the water. The three mature Norfolk Island Pine trees largely screen the existing building from the park area to the east and the proposed increase in building height will not change this situation. The change in height will be more readily visible from the north and when viewed from the water, however the amount of increase is not considered to be out of character with its setting and can be supported at its current level. A large part of the significance of the Boathouse building is its provision of a range of water-based recreational uses, which are directly related to the context and historical use of Governor Phillip Park. These uses, including the long established cafe use, attract visitors to the Park, reinforcing and enhancing visitor experience of the heritage of the Park and its surrounds. Based on this, it is essential from a heritage point of view that the building and its uses are maintained. This proposal will therefore ensure the continuation of these uses, and a new building will ensure that this is secured for the future users of Governor Phillip Park. Therefore, on balance, an increase in height is acceptable from a heritage point of view and no objections are raised to the new building, subject to additional details of exterior materials and colours being submitted for approval. No heritage objections are raised to the new amenities building as it removes existing ad hoc structures and consolidates services into a more aesthetically pleasing structure in the context of the Conservation Area. Also, no heritage objections are raised to the proposed landscape works, however measures must be implemented to ensure that the three mature Norfolk Island Pine trees, immediately to the east of the building, are protected at all times during construction. Norfolk Island Pines are an important part of the landscape of Governor Phillip Park and Palm Beach more generally, and their health must not be affected by the proposed works. It is understood that Landscape conditions to this effect have been recommended and heritage supports the inclusion of these conditions in any consent. However, concerns are raised in relation to the proposal to formalise 10 parking spaces located within Governor Phillip Park, to be sealed with bitumen. The draft Governor Phillip Park Conservation Management Plan (2009) contains specific policies in relation to the road system and parking within the Park. These are contained within Inventory Sheet 06 and include that an asphalt surface should only be applied to the road and that the current informal character of the associated parking be retained. Further it recommends that roadside parking areas should remain as gravel in high

Internal Referral Body	Comments
	use areas, and reinforced grass in overflow/low use areas, to retain the important informal park character. On this basis it is considered that the hard paving of 10 car parking spaces would be out of character with the existing and historical, informal parking character of Governor Phillip Park and is not supported from a heritage point of view. Formalisation of these parking spaces would be acceptable if crushed gravel or some form of reinforced grass surface or similar treatment was used. Therefore, no objections are raised on heritage grounds to the new building, ancillary building and associated works/landscaping, subject to a number of conditions. However, heritage does not support the hard bitumen paving10 parking spaces within Governor Phillip Park. Alternative options should be considered to formalise these spaces, and a condition has been proposed to this effect. <u>Proposed conditions</u> • A photographic archival record of the existing building and context, be prepared and submitted to Council; • Details of all external materials and colours be submitted to Council's heritage advisor for approval; • Norfolk Island Pine trees adjacent to Boathouse are to be protected at all times during construction; • Formalisation of car parking areas with bitumen is not approved. Formalisation with crushed granite, reinforced grass surface or similar would be acceptable. Details to be submitted to Council for approval.
Strategic and Place Planning (Development Contributions)	**Supported subject to conditions** At its meeting of 7 September 2021, the Development Contributions Committee considered a report on the offer to enter into a planning agreement at 1191 and 1193 Barrenjoey Road Palm Beach. At this meeting the Committee resolved that: 1. The Development Contributions Committee support in-principle the Offer to Enter into a Planning Agreement, subject to following conditions: • The 10 parking spaces are to be paved with pervious materials. • The works are designed to avoid ponding of water in the roadway. • The works including the materials selection demonstrates that the informal character of the area is retained. 2. If Recommendation 1 is agreed, the applicant be requested to submit the following additional information: a) A Plan of the proposed works that: • detail the schedule of materials/finishes of the pervious pavers, • demonstrate that the works are designed to avoid ponding of water in the roadway, and • ensures the informal relaxed character of Governor Phillip Park is retained. b) A heritage assessment of the pervious paving to Council. This assessment must demonstrate that the works retain the informal character of the area and identify how they meet the objectives of the Conservation Management Plan. c) A heritage assessment of the pervious paving to Council. This

Internal Referral Body	Comments
	assessment must demonstrate that the works retain the informal character of the area and identify how they meet the objectives of theConservation Management Plan. d) A valuation of the works proposed provided by a Quantity Surveyor. 3. The Executive Manager Development Assessment be advisedof the Committee's decision. 4. When finalised, the updated Planning Agreement is circulated tothe Development Contributions Committee for their consideration before it is reported to Council with a request to place it on public exhibition. Should the application be approved, a Deferred Commencement condition is to be included that the applicant is to enter into a voluntaryplanning agreement pursuant to section 7.4 of the Environmental Planning and Assessment Act 1979. The condition as follows: Deferred Commencement Condition - Voluntary PlanningAgreement *The applicant shall enter into a Planning Agreement (PA) withNorthern Beaches Council pursuant to section 7.4 of the Environmental Planning and Assessment Act 1979. The PA isto be generally consistent with the offer made by the applicanton 26 May 2021 and the Decision of Council's Development Contributions Committee at its meeting of 7 September 2021.* *Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years ofthe date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning andAssessment Regulation 2000. This evidence is to be submittedalong with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.*
Traffic Engineer	**Supported subject to conditions** The proposal involves the demolition of existing structures and construction of replacement two storey structure with café, boat hire and seaplane booking office on ground floor, office and staff facilities. The existing car parking area on the north of the site accommodating (6 spaces including 1 space for persons with a disability) is proposed to be moved slightly to the north. The relocated parking spaces and 10 parking spaces within Governor Phillip Park are proposed to be sealed in accordance with a Voluntary Planning Agreement (VPA). Assessment Given that the proposal results in no increase in the size of the restaurant and offices, no concern is raised on the parking and trafficgeneration of the site. In view of the above, the proposal can be supported subject to conditions.

External Referral Body	Comments
Integrated Development (DPI Fisheries)	**Supported subject to General Terms of Approval** The application is 'Integrated Development' as approval is required under Section 201 of the *Fisheries Management Act 1994*. The application has

External Referral Body	Comments
	been referred to the Department of Primary Industries – Fisheries and General Terms of Approval have been granted for the proposal and are to be included as conditions in any consent issued.
Ausgrid (SEPP Infrastructure)	**Supported subject to conditions** Ausgrid has no objection to this development application. Advice has been provided relating to work near overhead powerlines and special care should be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath.
Aboriginal Heritage Office	**Supported subject to conditions** Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Under the *National Parks and Wildlife Act 1974* (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must be contacted. Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, NSW Heritage, and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.
Transport for NSW – Maritime Division for comment	**Supported** The application has provided correspondence from Transport for NSW (Formally Roads and Maritime Services) which advises that the local Boating Safety Officer has no navigation concerns regarding the proposed development. In this regard, the proposal is acceptable from a marine navigation perspective.
Concurrence - Relevant Crown Department or Authority (Crown Development)	**Supported** The application is accompanied by owners consent from Crown Lands to lodge the development application. The applicant has provided a copy of the owner's consent to lodge the development application with the letter dated 1 April 2021.

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 and State Regional Environmental Plans

SEPP 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 recreational and restaurant purposes for a significant period of time with no prior land uses. Adjacent to the Boatshed (adjacent to the southern boundary) are several ancillary buildings. A small central building is used to store petroleum products. A Stage 2 Detailed Site Investigation, prepared by EBG Environmental Geoscience has been prepared in support of the proposal. The report concludes that the site is suitable for the proposed development, subject to conditions.

Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as recommended conditions at the end of this report.

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 electricitypower line.

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

SEPP (Coastal Management) 2018

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

13. Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater)and ecological environment,
(b) coastal environmental values and natural coastal processes,
(c) the water quality of the marine estate (within the meaning of the Marine EstateManagement Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
(d) marine vegetation, native vegetation and fauna and their habitats, undevelopedheadlands and rock platforms,
(e) existing public open space and safe access to and along the foreshore,

beach,headland or rock platform for members of the public, including persons with a disability,
(f) Aboriginal cultural heritage, practices and places,
(g) the use of the surf zone.

Comment:
The proposal is supported by several expert reports relating to Coastal Engineering, Ecology and Landscape. The development is sited on the area occupied by the existing Boatshed building and ancillary buildings. The application has been reviewed by Council's technical officers with regards to biodiversity, coastal impacts, flooding, landscape and land contamination with no objections raised by these technical officers. In summary, the proposal satisfies this matter for consideration.

The proposal satisfies the requirements of Clause 13.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impactreferred to in sub-clause (1), or
(b) if that impact cannot be reasonably avoided - the development is designed, sited andwill be managed to minimise that impact, or
(c) if that impact cannot be minimized - the development will be managed to mitigate thatimpact.

Comment
The proposal will have no impacts referred to in sub-clause (1)

14. Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

a. has considered whether the proposed development is likely to cause an adverse impact on the following:
i. existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
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 minimized - the development will be managed to mitigate that impact, and
c. has taken into account the surrounding coastal and built environment and the bulk,scale and size of the proposed development.

Comment
The proposed development will maintain the existing foreshore access. Pedestrian access is currently available between the waterway and site by means of an informal walking path at the south of the existing building. The proposed development will not restrict pedestrian access along the foreshore. The realignment of the public path to the east of the Boatshed building will direct pedestrians to the public wharf access and the connection to Station Beach.

The proposal does not result in any overshadowing of residential properties or significant

overshadowing to adjoining public open space. Views from public places to the foreshore are maintained as the building is below the tree canopy and generally located within the same building footprint as the existing Boatshed and ancillary buildings.

The proposal satisfies the requirements of Clause 14.

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:
As identified above, the Ecology Report and Coastal Engineering report identifies that the proposed works will not have an adverse impact on the coastal process.

Palm Beach is an official Urban Dark Sky Place and has a committee assisting with projects in this area. The Dark Sky Lighting plan, prepared by Ecological Consultants Australia, dated 10 May 2021 concludes that the proposed lighting plan is consistent with the requirements for waterfront lighting.

Council's Natural Environment Unit officers have considered the likely impacts on drainage regimes and find the proposal acceptable.

The proposal satisfies the requirements of Clause 15.

State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64)

Clauses 8 and 13 of SEPP 64 states that a consent authority must not grant development consent to an application to display signage unless the advertisement of advertising structure:

a) Is consistent with the objectives of this policy as set out in clause 3(1)(a);
b) Has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impact; and
c) Satisfies any other relevant requirement of this Policy.

The application seeks approval for 4 x business identification signs. The details of the signs are listed in the table below:

Elevation	Dimensions	Wording
North	2.4 x 0.8m	Alf's Bait Shop
North	1 x 0.9m	Barrenjoey Boating Services
East	1 x 0.8m	The Boathouse
East	1.4 x 0.3m	Sydney by Seaplane Harbour & Beaches Scenic Flights

The proposed signs have been assessed using the assessment criteria in Schedule 1 as presented in the table below:

Control	Proposal	Compliance
1 Character of the Area		
• Is the proposal compatible with the character of the area or locality in which it is proposed to be located? • Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed building identification signage is compatible with the character of the boatshed building, which contains 3 businesses, and is compatible with the maritime theme of the site.	Yes

Control	Proposal	Compliance
	The proposed signs are classified as a 'building identification sign' and not advertising. The proposal is not located near surrounding advertisements.	
2 Special Areas		
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal is consistent with the visual characteristics of the site. They are located on the northern and eastern elevations.	Yes
3 Views and vistas		
• Does the proposal obscure or compromise important views? • Does the proposal dominate the skyline and reduce the quality of vistas? • Does the proposal respect the viewing rights of other advertisers?	No important views are impacted by the proposed signage.	Yes
4 Streetscape, Setting or Landscape		
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? Does the proposal require ongoing vegetation management?	The proposed signs are of a comparable scale, form and proportion to the walls on which they are to be installed. The proposed signs will contribute to the visual amenity of the site and surrounding area. The proposed signage does not protrude beyond the walls on which it is to be installed. The proposed low vegetation will not obscure the signage and therefore will not trigger the need for ongoing vegetation management.	Yes
5 Site and building		
Is the proposal compatible with the scale, proportion and other characteristics of the site or building or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is compatible with the scale and proportion of the building on which it is to be located. The signage is located close to the entry of each of the business. This is important to the function and features of the building. The signage is compatible with the maritime location.	Yes
6 Associated Devices and Logos with Advertisements and Advertising Structures		
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No, not required.	Yes
7 Illumination		

Control	Proposal	Compliance
Would illumination result in unacceptable glare?	There is no illumination of the signage proposed at this stage.	Yes
8 Safety		
• Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage will not be illuminated and is setback from the road. The signage will not be a risk to drivers, pedestrians or cyclists.	Yes

Overall, the proposed sign location and size is compatible with the desired amenity and visual character of the area.

The potential impacts are considered to be acceptable and consistent with the requirements and underlying objectives of the SEPP.

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
4.3 - Height of Buildings	4m + HAT* = RL 5.17m	RL 10.296 (or 5.126m above requirement)	99%	**No**

* Highest Astronomical Tide (HAT) = 1.17m AHD.

Compliance Assessment

Clause	Compliance with Requirements
1.9A - Suspension of covenants, agreements and instruments	Yes
2.5 - Additional permitted uses for particular land	Yes
2.7 - Demolition requires development consent	Yes
4.3 - Height of Buildings	**No**
4.6 Exceptions to development standards	Yes
5.10 - Heritage conservation	Yes
7.1 - Acid Sulfate Soils	Yes
7.2 - Earthworks	Yes
7.3 - Flood Planning	Yes
7.6 - Biodiversity Protection	Yes
7.10 - Essential Services	Yes
19 - Use of certain land at 1191 Barrenjoey Road, Palm Beach	Yes

Zoning and Permissibility

As shown in the extract of the Land Zoning Map in **Figure 4** below, the site is zoned part RE1 Public

Recreation and part E2 Environmental Conservation under PLEP 2014.



Figure 4. Extract of PLEP 2014 Zoning Map.

RE1 Public Recreation
The RE1 Public Recreation zone allows for the following uses:

> *Centre-based child care facilities; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Signage; Take away food and drink premises; Water recreation structures*

The proposal includes the construction of a separate building (for storage and amenities) on the RE1 zoned land. These uses are 'ancillary' facilities for the café and are therefore permissible with consent. Restaurants and cafes are permissible with consent in the RE1 zone. Similarly, the proposed car parking works are considered ancillary to the café use of the site and are therefore permissible with consent.

E2 Environmental Conservation
The proposed Boathouse building is below MHWM and within the E2 Environmental Conservation zone. The proposed uses, for a café, boat hire business and sea plane charter business are permissible with consent by virtue of Clause 2.5 (Additional permitted uses for particular land) and Clause 19 of Schedule 1 of PLEP.

Clause 4.3 - Height of Buildings

Clause 4.3 of the PLEP establishes a maximum building height of 4m above the highest astronomical tide (HAT). This equates to RL 5.17m for the E2 zoned land. The proposal has a maximum building height of RL 10.296 and therefore exceeds the building height development standard by 5.126m.

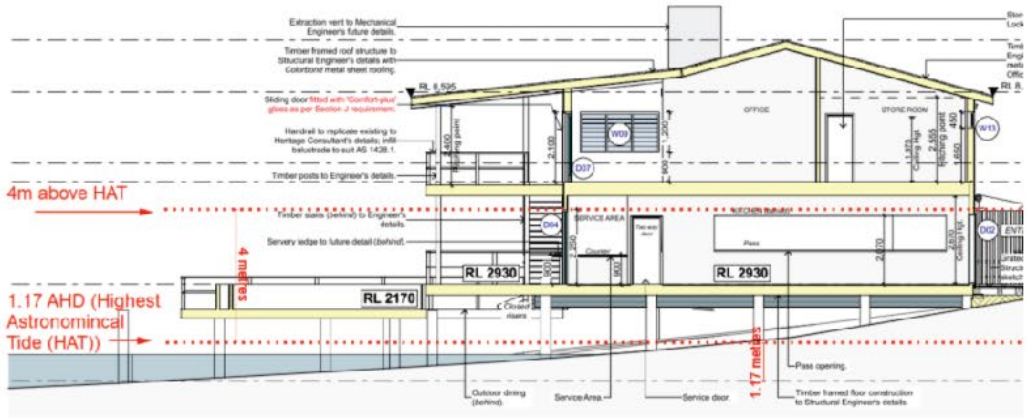
It is noted that the existing building breaches the height limit with a ridge height of RL 8.73m. The proposed replacement building seeks a further exceedance building height by an additional 1.57m representing a non-compliance with the maximum 4m + HAT building height development standard.

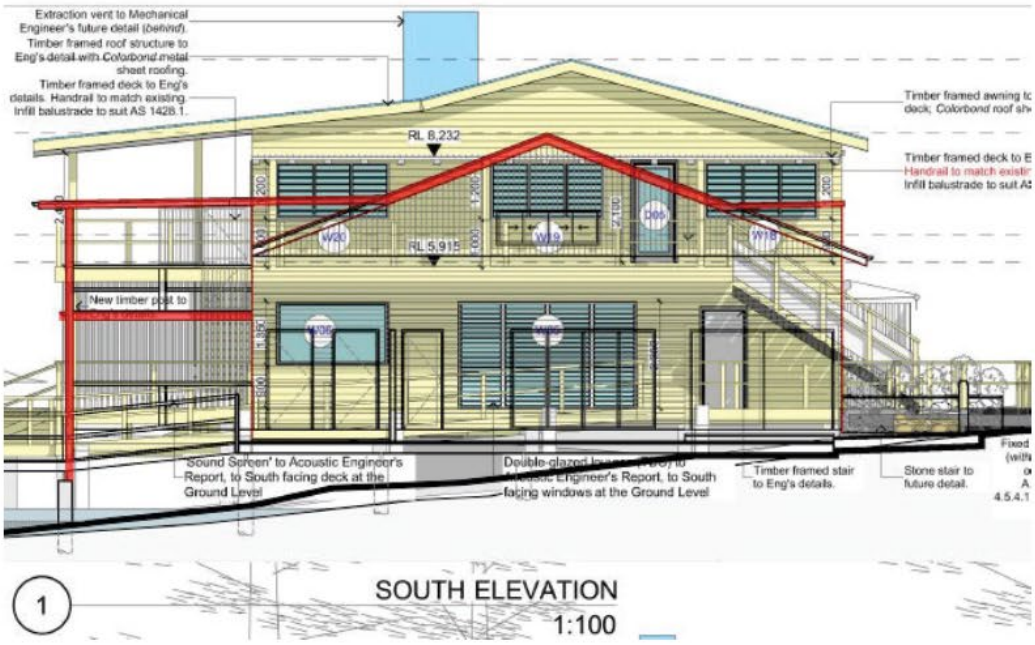
Clause 4.6 - Exceptions to development standards

Description of non-compliance

Development standard:	cl4.3 - Height of Buildings
Requirement:	4m + HAT* = 5.17m AHD
Proposed:	RL 10.296
Percentage variation to requirement:	5.126m or 99%

* Highest Astronomical Tide (HAT) = 1.17m AHD







Assessment of request to vary a development standard

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

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 sub-clause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives ofthe 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 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.'

Section 1.3 of the EP&A Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

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

The applicant's written request argues, in part:

- *The subject proposal is consistent with the objectives under the E2 Environmental Conservation zone due to its sensitive location being on the existing building footprint and the replication of the existing architectural form, which is respected due to its history and value to the community.*
- *The proposal seeks a replacement structure with a raised floor level to safeguard against future storm events and additional height to comply with the National Construction Code.*
- *The proposal is consistent with the Governor Phillip Park Plan of Management with no visual impact on the identified view toward Barrenjoey Headland from Station Beach.*
- *The proposal has no detrimental environmental impacts and provides a beneficial landscaping regime; the proposal provides sufficient environmental planning grounds for this Clause 4.6 request to be supported*

The applicant's written request has demonstrated sufficient environmental grounds to enable the Clause 4.6 request to be supported.

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

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

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

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

Clause 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 ofthe 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 E2 Environmental Conservation zone. An assessment against these objectives is provided below.

Objectives of the development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the PLEP 2014 are:

1) The objectives of this clause are as follows:

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

Comment:
The non-compliance is located solely within the Waterways Locality.

The desired future character for the Waterways Locality is prescribed by Clause A4.15 (Waterways Locality) of PDCP and aims to ensure that future development is maintained below the tree canopy, utilising façade modulation and shade elements to minimise bulk and scale. Whilst the height of the existing building is proposed to be increased by up to 1.7m, the scale of the existing building remains the same, with the balcony to the waterway retained.

The height and scale of the building is consistent with the existing built form, and the desired character of the locality.

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

Comment:
There are no other buildings within the visual catchment of the Boathouse building.

The proposed building is a similar scale to the existing development on the site, with the increase in height attributable to the need to comply with the appropriate flood planning level and minimum floor to ceiling heights. When viewed from a distance, the proposal is compatible with the height and scale of nearby development.

c) to minimise any overshadowing of neighbouring properties.

Comment:
The proposal does not result in any unreasonable overshadowing.

d) to allow for the reasonable sharing of views.

Comment:
The proposed development is below the tree canopy and will have a similar impact on public views towards Pittwater and Barrenjoey Headland as the existing building.

The proposal allows for the reasonable sharing of views.

e) to encourage buildings that are designed to respond sensitively to the natural topography.

Comment:
The proposed development has been designed to have a floor level higher than existing in order to comply with the required flood planning level.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment:
The existing building is located within Governor Phillip Park, which is located with the Barrenjoey Heritage Conservation Area and covered by the Draft CMP.

The building is also in the vicinity of individual items of heritage significance. The proposal has been reviewed by Council's Heritage Officer who is supportive of the proposal subject to conditions.

Zone objectives

The non-compliance is located solely within E2 Environmental Conservation zone. The underlying objectives of the E2 Environmental Conservation zone are:

- ***To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.***

  Comment:
  The proposal has been designed to protect the sensitive marine habitat below and around the existing building. Inappropriate landscape species will be replaced with locally endemic species to integrate with the objectives for Governor Phillip Park.

  The proposal is consistent with this objective, despite the non-compliance with the 4m building height development standard.

- ***To prevent development that could destroy, damage or otherwise have an adverse effect on those values.***

  Comment:
  The proposed height of the development will not unreasonably impact on the significance of the waterway or foreshore.

- ***To ensure the continued viability of ecological communities and threatened species.***

  Comment:
  The proposal will not impact ecological communities or threatened species. Subject to mitigation measures, there will be negligible impact on the aquatic environment. Beds of seagrass will remain unaffected by the proposal.

- ***To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant native vegetation and dependent ecosystems.***

  Comment:
  The Ecological Assessment Report submitted in support of the proposal concludes that there will be a net environmental benefit as a result of this proposal.

  Measures to improve the terrestrial environment include planting with native species and increased integration with surrounding native plant areas.

  Subject to conditions, the proposal will ensure the ecology, hydrology and scenic values of the waterway, and dependent ecosystems are maintained.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E2 Environmental Conservation zone.

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

Clause 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.

In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the

Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Clause 5.10 - Heritage Conservation

The site is within the C1 - Barrenjoey Heritage Conservation Area (Local Significance) which is listed within Schedule 5 of the *Pittwater Local Environmental Plan 2014*. The Boathouse is not a heritage listed item.

Subject to conditions, Council's Heritage Advisor supports the proposal (refer to detailed comments under 'Referrals').

Clause 7.1 - Acid Sulfate Soils

Clause 7.1 requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is mapped Class 1 and Class 3 on Council's Acid Sulfate Soils Map.

The report titled '*Geotechnical Investigation into Acid Sulfate Soils'* (prepared by Crozier Geotechnical Consultants, dated 19 April 2021) identified that no acid sulphate soils were discovered in the investigation despite being Classed 1 and 3 on Council's mapping.

The report was also reviewed by Council's Environmental Health team who did not raise any objection nor impose any conditions.

Therefore there is no requirement for an Acid Sulphate Management Plan.

Clause 7.2 - Earthworks

Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

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

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

e) the source of any fill material and the destination of any excavated material.

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

f) the likelihood of disturbing relics.

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

g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment orenvironmentally sensitive area.

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

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

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

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

Comment:
The proposed minor earthworks will have no impact on the significance of the heritage conservation area.

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

Accordingly, this assessment findsthat the proposal is supported, in this particular circumstance.

Clause 7.3 - Flood Planning

Clause 7.3 aims to minimise the flood risk to life and property associated with the use of land, allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, and avoid significant adverse impacts on flood behavior and the environment.

Clause 7.3 requires the consent authority to be satisfied of the following prior to granting consent for development:

a) is compatible with the flood hazard of the land, and

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

A detailed site-specific Flood Impact Assessment has been undertaken for the site prepared by Cardno (NSW/ACT) Pty Ltd dated 16 August 2021.

The Flood Study identifies that the floor levels for the proposed ground floor of the Boathouse, sewer tank/grease arrestor and male and female toilets have an appropriate freeboard in a Probable Maximum Flood event.

The Boat Hire General Storage and Bin Room are located marginally below the Probable Maximum Flood level and conditions are recommended to ensure that these buildings are flood proofed to reduce potential flood damages.

Clause 7.6 - Biodiversity Protection

The site is mapped as having biodiversity significance.

Clause 7.6 requires the consent authority to consider:

a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on theland, and
(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land.

Comment:
The proposed development has been assessed by Council's Biodiversity Team, who raise no objections to approval.

The development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council can also be satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:
The development has been assessed by Council's Biodiversity Team, who raise no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid,minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
b) if that impact cannot be reasonably avoided by adopting feasible alternatives - the development is designed, sited and will be managed to minimise that impact, or
c) if that impact cannot be minimized - the development will be managed to mitigate that impact.

Comment:
The development has been assessed by Council's Biodiversity Team, who raise no objections toapproval.

Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites orpotential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and OtherDevelopment	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased RainfallVolume)	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.7 Building Facades	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	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.14 Commercial Swimming Pools	N/A	N/A
C2.15 Car/Vehicle/Boat Wash Bays	N/A	N/A
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.24 Take-away Food Premises	Yes	Yes
C5.11 Third Party Signage	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.20 Liquor Licensing Applications	Yes	Yes
C5.22 Environmental Sustainability	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
watermark		
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes
D15.20 Commercial waterfront development - pollution prevention	Yes	Yes
D15.21 Charter boat facilities	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of **$40,567.29** is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of **$4,056,729**.

SUMMARISED CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan 2014;
- Pittwater 21 Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other expert technical reports supporting the application and public submissions. The proposed development does not result in any unreasonable impacts on the significance of the heritage conservation area, residential properties or the natural environment subject to the conditions contained within the recommendation.

The proposed development has been sited on the location of the existing building and therefore minimises potential impacts with regards to existing flora and fauna, drainage and visual impacts. The proposed materials and finishes replicate those of the existing building. While the exceeds the 4m building height limit, the additional height is necessary to satisfy the probable maximum flood event and minimum floor to ceiling requirements.

The proposal will provide a public benefit in the form of safe, functional building that maintains the historic uses on the site, provides additional native planting, additional public car parking and amenities for public use.

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 *Pittwater Local Environment Plan 2014*, *Pittwater 21 Development Control Plan*, the Governor Phillip Park Plan of Management and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration the development the proposal is:

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

- Consistent with the objects of the Environmental Planning and Assessment Act 1979.
- Consistent with the objectives of the relevant EPIs.
- Consistent with the aims of the LEP.
- Consistent with the zone objectives of the LEP.
- Consistent with the objectives of the DCP.
- Consistent with the Governor Phillip Park Plan of Management.
- Consistent with the Draft Governor Phillip Park Conservation Management Plan.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2021/0669 for demolition works and construction of a new restaurant, carparking and associated uses, including a Voluntary Planning Agreement on land at Lot 7005 DP 1117451,1193 Barrenjoey Road, PALM BEACH, Lot 7002 DP 1117592,1193 Barrenjoey Road, PALM BEACH, Lot 298 DP 721522,1191 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Deferred Commencement - Voluntary Planning Agreement**

   The applicant shall enter into a Planning Agreement (PA) with Northern Beaches Council pursuant to section 7.4 of the Environmental Planning and Assessment Act 1979. The PA is to be generally consistent with the offer made by the applicant on 26 May 2021 and the Decision of Council's Development Contributions Committee at its meeting of 7 September 2021.

   Evidence required to satisfy the deferred commencement condition must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

   Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **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(A) Sediment Control Plan	06/08/2021	Canvas Architecture and Design
DA02 Site Plan	06/08/2021	Canvas Architecture and Design
DA03 Demolition Plan	06/08/2021	Canvas Architecture and Design
DA04 Site and Ground Plan	06/08/2021	Canvas Architecture and Design
DA05 Site and Ground Plan 1:200	06/08/2021	Canvas Architecture and Design
DA06 Ground Floor Plan – A3	06/08/2021	Canvas Architecture and Design
DA07 Ancillary Buildings Ground Floor Plan	06/08/2021	Canvas Architecture and Design
DA08 First Floor Plan	06/08/2021	Canvas Architecture and Design
DA09 North/East Elevations	06/08/2021	Canvas Architecture and Design
DA10 South/West Elevations	06/08/2021	Canvas Architecture and Design
DA11 The Boathouse Long and Cross Section	06/08/2021	Canvas Architecture and Design
DA12 Public Access on Crown Lease Land	undated	Canvas Architecture and Design
DA13 Waste Management Plan	06/08/2021	Canvas Architecture and Design
DA14 New and Existing Services	06/08/2021	Canvas Architecture and Design

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Excavation, Sediment & Erosion Control Plan and detailing CIV2 DA-Rev C	01/09/2021	Barrenjoey Consulting Engineers
General Notes CIV1 DA-B	27/08/2021	Barrenjoey Consulting Engineers
Ground Floor Plan Drainage Services	03/08/2021	ADCAR Consulting
Structural Drawings S00, S01, S10, S20, S30, S40 and S50	04/03/2020	McKee & Associates Pty Ltd
Storm Erosion Protection Wall EPW01 and EPW02	21/02/20	McKee & Associates Pty Ltd
Hydraulic Services H-100C and H-101C,	20/03/2020	Adcar Consulting
Hydraulic Services H-101D	08/02/2021	Adcar Consulting
Hydraulic Services H-102B	09/02/2021	Adcar Consulting
Hydraulic Services 103A	24/01/2021	Adcar Consulting
Hydraulic Services H-300A	03/08/2020	Adcar Consulting

Reports / Documentation – All recommendations and requirements containedwithin:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Letter of Response to Council's Parks Reserves and Foreshores	10 September2021	Blue Pacific Constructions
Construction Environmental Management Plan	August 2021	Blue Pacific Constructions Pty Ltd and Ecological Consultants

Reports / Documentation – All recommendations and requirements containedwithin:		
		Australia Pty Ltd
Stage 2 Detailed Site Investigation	9 February 2021	EBG Environmental Science
Hydraulic Services Waste Water Management Report	16 April 2021	ADCAR Consulting Pty Ltd
Hydraulic Services Stormwater Report	16 April 2021	ADCAR Consulting Pty Ltd
Ecological Assessment and Biodiversity Management Plan	February 2021	Kingfisher
Aquatic Ecology Report	30 August 2021	Cardno
Flooding and Estuarine Risk Management Report	30 August 2021	Cardno
Flood Impact Assessment	16 August 2021	Cardno
Coastal Engineering Assessment and Estuarine Risk Management Report	26 August 2021	Cardno
Aquatic Ecology Report	30 August 2021	Cardno
Construction Noise and Vibration Management Plan	30 August 2021	Day Design Consulting Acoustical Engineers
Environmental Noise Impact Assessment	5 February 2021	Day Design Pty Ltd
Noise and Vibration Letter	August 2021	Lucus Maloy
Assessment Report – Dangerous Goods Advice	08/02/2021	TFA Project Group
BCA Assessment Report	17 February 2021	GRS Building Reports Pty Ltd
Access Review	17 February 2021	Morris Goding Access Consulting
Performance Solution Report Upper Level Access 1	10 February 2021	Morris Goding Access Consulting
Structural Plan Review	20 October 2020	Barrenjoey Consulting Engineers
Geotechnical Investigation Into Acid Sulfate Soils	25 September 2020	Crozier Geotechnical Consultants
Report on Geotechnical Site Investigation	19 April 2021	Crozier Geotechnical Consultants
Bushfire Hazard Assessment Report	3 April 2020	Firstfield Environmental
Heritage Impact Statement	10/02/2021	City Plan
Plan of Management	24 September 2020	ArtisanOz Consulting
Arboricultural Impact Assessment	February 2021	Urban Forestry
Dark Sky Lighting Plan	10 May 2021	Ecological Consultants Australia Pty Ltd
Fire Engineering Report	16 February 2021	Minerva
Memo – Fire Engineering Report Updates	16 February 2021	Minerva
National Construction Code (NCC) 2019 Section J – JV3 Assessment Report	18 February 2021	Eco Engineering Group
Car Parking Assessment	April 2020 (updated February 2021)	GTK Consulting

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**

Landscape Plan LP-01D	22 February 2021	Selena Hannan Landscape Design

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

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

3. **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
DPI Fisheries	General Terms of Approval - DPI Fisheries Ref: IDA21/68	22 June 2021
Aboriginal Heritage Office	Referral Response - Aboriginal Heritage Office	1 June 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.

4. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the uses identified in Schedule 1 'Additional Permitted Uses' of the Pittwater Local Environmental Plan 2014, being:

'***Business Premises*** *(but only those associated with use of the waterway), charter and tourism boating facilities, kiosks or restaurants or cafes'*

A ***Restaurant or Cafe*** being *"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 indicated on the approved plans the use of the first floor is restricted to offices, staff amenities and storage. The first floor is not to be used for functions or restaurant seating.

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

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

5. **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.

6. **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

7. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of **$40,567.29** 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 **$4,056,729.00**.

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.

8. **Security Bond**

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

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

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

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

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

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

9. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

(i) remove the nominated tree / tall shrub planting (Banksia integrifolia and Leptospermum laevigatum) under the existing Norfolk Island Pines, and replace with either low shrubs capableof attaining a maximum of 1 metre only or otherwise groundcovers,
(ii) all planting within the open space area occupied by the Norfolk Island Pines shall be limited toa natural growth height of 1 metres,
(iii) all landscape works and dune stabilisation works shall comply with the Amended LandscapePlan and the Biodiversity Management Plan.

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

Reason: Landscape amenity and maintain visual public access across open space areas.

10. **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 a slotted pipe suspended under the existing jetty to disperse stormwater into Pittwater.

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.

11. **Flooding**

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

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2
All new development must be designed to ensure structural integrity up to the Probable Maximum Flood level of 2.93m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Fencing – F1
New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1
Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Flood Proofing
The floor levels of the Boat Hire General Storage and Bin Room must be wet flood proofed up to the Probable Maximum Flood level of 2.93m AHD.

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

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

Government policy.

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

All pre-construction biodiversity-related measures specified in the Ecological Assessment and Biodiversity Management Plan (Kingfisher 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

13. **Waste Management Plan**

A Waste Management Plan (WMP) must be prepared in accordance with Northern Beaches Council, Waste Management Guidelines, dated October 2016, and must be kept in the site office.

The WMP must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To minimise waste and protect the environment.

14. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the Aquatic Ecology Report, Sediment and Erosion Plan and conditions of consent, and must be kept in the site office.

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

15. **Stormwater outlet revetment (Pittwater Waterway)**

If stormwater is discharged to an outlet on the foreshore, rip rap for the revetment must be sized to the following specifications and laid in an interlocking pattern:

D90 =	250mm
D50 =	100mm
D10 =	40mm

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

Reason: Improve stability of the revetment to high flows and wave action.

16. **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.

17. **Photographic Archival Record**

A photographic archival record of the site is to made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the NSW Office of Environment & Heritage (OEH).

This record must be submitted and approved by the Certifying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

18. **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 and Development 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 or in allocated zones, atall

times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and
- type of temporary vehicular crossing for the purpose of minimising traffic congestion andnoise 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 structurewithin the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinityof 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 Seven(7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones aroundCouncil street trees
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition forthe 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.

19. **Treatment of parking areas**

Prior to the issue of a Construction Certificate, details demonstrating the treatment of the car parking spaces to the east of the subject site are in accordance with the requirements of the Voluntary Planning Agreement.

The car parking spaces to the north the site are to consist of "open graded asphalt to provide a semi-permeable surface”. Details shall be provided to Council’s Traffic Team for approval, prior to the issue of a construction certificate.

Evidence of written approval from Council's traffic team is to be provided to the Principle Certifying Authority with the construction certificate application.

Reason: To ensure the finishes of parking areas are suitable and consistent with the character of the area.

20. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire safety measures as detailed and recommended in the Building Code of Australia Assessment Report prepared by GRS Building Reports Pty Ltd, dated 17/2/2021, are to be considered as part of the assessment of the Construction Certificate, with particular reference to the need for Building (Alternative Solutions) and Fire Engineering Reports.

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

21. **Access and Facilities for Persons with a Disability**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1.

In this regard the AccessReview DA6 Report prepared by Morris Goding Access Consulting, dated 17/2/2021 is to be considered as part of the assessment of the Construction Certificate.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

22. **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.

23. **Minimum Permeable Area**

The area of permeable paving and gardens must not be less than as shown in the Landscape Plan dated 22/02/21 (or subsequent plan approved by Council). Pavers in the area must be

permeable with an infiltration rate equal or greater than the underlying natural sand/soils. These permeable areas must not be lined so as to allow stormwater to infiltrate to the below natural sands and groundwater.

Reason: The protection of the catchment's receiving aquatic environment.

24. **Groundwater Dewatering**

An assessment must be undertaken by a suitably qualified professional to determine if the excavation for the septic tank will require dewatering.

You may be required to submit a dewatering management plan and make an application for interference with an aquifer to the Natural Resources Access Regulator. A permit from WaterNSW may be required if large quantities of groundwater are to be removed.

If dewatering is expected, a Dewater Management Plan must be prepared to ensure compliance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy, legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997 and any General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable).

Reason: Protection of the environment.

25. **External materials and colours**

Details of external materials and colours are to be submitted to Council's Heritage Advisor forapproval, prior to the issue of a Construction Certificate.

Reason: To ensure that the exterior of the building will not have an adverse visual impact on the Heritage Conservation Area.

26. **Formalisation of parking spaces - Governor Phillip Park**

The formalisation of 10 parking spaces within Governor Phillip Park must be in accordance with the requirements of the voluntary planning agreement. Details to be submitted to Council for approval.

Reason: To ensure that the historical informal nature of parking areas within Governor Phillip Park is maintained.

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

Prior to any Construction Certificate 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 beprepared by a suitably qualified person.

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

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

28. **Plans of Mechanical Ventilation**

Prior to any Construction Certificate being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioningin buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

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

29. **Approval to Install an On-site Sewage Management System**

Prior to the release of the Construction Certificate, the applicant must receive an 'Approvalto 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

30. **Environmental Management Plan**

An Environmental Management Plan (EMP) shall be prepared for the approved development. The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties

The impacts must at minimum consider the following areas:

- Hazardous Substances.
- Water.
- Air.
- Noise.
- Vibration.
- Waste & Litter.
- Land.
- Community.
- Environmental Protection objectives and control strategies.
- Environmental conditions using measurable indicators and standards.
- Emergency Response Plan.
- Environmental monitoring and reporting plan.

Reason: To ensure the appropriate operation and management of the approved use.

31. **Estuarine Hazard Design Requirements**

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

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

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

32. **Estuarine Planning Level Requirements**

A site-specific Estuarine Planning Level (EPL) of 2.75m AHD has been recommended and accepted by Council for the proposed development and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.75m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.75m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.75m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.75m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.75m AHD to avoid the likelihood of contact with splashing waves and spray.

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

33. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Engineering and Estuarine Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021 and Flooding & Estuarine Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 30 August 2021 and these recommendations are to be incorporated into construction plans.

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

34. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 50 years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Coastal Engineering and Estuary Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021 and Flooding and Estuarine Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 30 August 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

35. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

36. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Ecological Assessment

and Biodiversity Management Plan (Kingfisher 2021).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (https://www.ecansw.org.au/find-a-consultant/); or
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

37. **Compliance with the recommendations of the approved Aquatic Ecology Report**

The development is to comply with all recommendations of the approved Aquatic Ecology Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 30 August 2021 and these recommendationsare to be incorporated into construction plans.

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

38. **Compliance and Certification of Piling Design**

Certification that the piling works have been designed in accordance with the approved Coastal Risk Management Report (Amended) prepared by Cardno (NSW/ACT) Pty.

Ltd. dated 26 August 2021 shall be provided to the Principal Certifying Authority (Form No. 2 of the Coastline Risk Management Policy for Development in Pittwater – Appendix 6 of P21 DCP) and shall be prepared and signed by a structural engineer who is a registered professional engineer with chartered professional status (CP Eng) and who has an appropriate level of professional indemnity insurance.

Reason: To ensure deep foundation piling is designed in accordance with the Coastal Risk Management Report and by an appropriately qualified professional

39. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

40. **Project Arborist**

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

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.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment including:

- section 3.4 Analysis of Proposed Works within the Tree Protection Zones, 3.4.1 Tree 1, 3.4.2Tree 2, and 3.4.3 Tree 3,
- section 3.5 Landscaping Works within the Tree Protection Zones,
- section 5 Recommendations,
- section 5.1 Tree Protection,
- section 5.1.1 Minimising Impacts on Trees 1-3,
- section 5.1.2 General Tree Protection Recommendations,
- section 5.1.3 Breaking up and/or removal of bitumen surfaces in Tree Protection Zone,
- section 5.1.4 Breaking up and/or removal of concrete surfaces in Tree Protection Zone,
- section 5.2 Post Construction Tree Care,
- Appendix E - Tree Protection Plan.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) listed above 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.

Reason: Norfolk Island Pines tree protection.

41. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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

No works are to be carried out on land owned or managed by Council without owners consent.

Works (undertaken by principal contractors working without Council supervision) on land owned or managed by Council require a “Working and Access on Reserves” permit prior to commencement. Applications can be obtained from Council’s website or the Parks and Recreation business unit.

Details demonstrating Permit approval are to be submitted to the Certifying Authority.

Reason: Public safety and the protection of Council infrastructure.

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 byCouncil.

43. **Construction Management Plan - Council Assets**

Prior to commencement of works on site, appropriate environmental site management measures must be in place and incorporate the following throughout demolition and construction:

i) access to and from the site during construction and demolition,
ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting,
iii) methods of loading and unloading machinery and building materials,
iv) location of storage materials, excavation and waste materials,
v) methods to prevent material being tracked off the site onto surrounding roadways,
vi) erosion, sediment and dust control measures, and
vii) protection of existing trees and vegetation including the tree protection zone, in accordance with AS 4970-2009 Protection of Trees on Development Sites.

During works the site management measures set out in the above must remain in place and be maintained until the completion of works.

Construction materials must not be stored on land owned or managed by Council. Safe pedestrian access, free of trip hazards, must be maintained at all times on or adjacent to any public access routes connected to land owned or managed by Council.

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

44. **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.

45. **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 the adjacent car park 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

46. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
   (i) all trees and vegetation within the site (licenced area),
   (ii) all trees and vegetation located on adjoining open space areas within Governor Phillip Park,
   (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 Treeson 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 beretained, 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 consultationwith an Arborist with minimum AQF Level 5 in arboriculture,
   (iv) no excavated material, building material storage, site facilities, nor landscape materials are tobe 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 Arboristwith 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, anArborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
   (viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
   (ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees onDevelopment Sites shall not occur within the tree protection zone of any tree on the lot or anytree on an adjoining site,
   (x) tree pruning from within the site to enable approved works shall not exceed 10% of any treecanopy, 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.

c) Tree protection shall specifically be undertaken in accordance with the recommendations inthe Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.

e) 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 temporaryaccess 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.

47. **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.

48. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

49. **Dredging works**

A permit from Council and the Department of Primary Industries (Fisheries) is required prior to conducting any dredging.

Reason: Protection of the environment.

50. **Installation and Maintenance of Sediment and Erosion Controls**

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.

51. **Storage of Materials on Land Owned or Managed by Council Prohibited**

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

Reason: Public safety and environmental protection.

52. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as

furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

53. **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.

54. **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.

55. **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.

56. **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 withlevels 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.

57. **Protection of Norfolk Island Pine trees**

The three mature Norfolk Island pine trees immediately to the east of the proposed building, are to be protected at all times during demolition and construction.

Reason: To ensure that works do not have any impact upon the health of these Norfolk Island Pine trees.

58. **Recommendations of Aquatic Ecology Report**

The following recommendations of the Aquatic Ecology Report dated 30 August 2021 by Cardno Pty Ltd, must be complied with:

- Land based piling must be completed on the lowest possible tide (i.e. piling areas not inundated) and during dry weather to avoid potential run-off of excavated material.
- Piling via barge is only to be completed on high tide and in suitable weather conditions. The barge must be only moved into position upon a high tide of at least 1.6m allowing sufficient water above the shallower areas adjacent to the northern pontoon. The boundaries of mapped areas of Posidonia shall be marked clearly at the water's surfacewithout harm to the seagrass (i.e. Exclusion Zones) so that all vessels would avoided these areas during the barge escort. A minimum of 0.5 m above the seabed in any areais required as a precaution to avoid damage to the seabed or any marine flora or fauna occurring at the time of mobilisation. Once into proximity (near the four existing berthingpiles) the barge can then be maneuvered into position during the high tide by ropes.
    - Once in position the barge must be securely tied off and can remain over the bare sediment while the works progress. On completion of the works, the barge must only bemoved out at high tide.
- During the installation of the piles by barge (approx. seven piles), continuous visual monitoring of turbidity must be conducted. If water with higher turbidity than the surrounding existing water body reaches the nearby seagrass patches, then pilling activities must cease and adjustments made to ensure turbid water does not reach theseagrass.

Reason: Protection of the aquatic environment.

59. **Dewatering Management**

Discharge of any groundwater or tailwater must achieve the following water quality targets in addition to any conditions/ documentation of this consent, any requirements of 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.

- Water Quality (<one hour of planned discharge)
- Oil and grease, not visible

- pH, 6.5-8.5
- Total Suspended Solids (TSS), <50mg/L NTU from a meter/grab sample

NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

All records of 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

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

60. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plan.

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.

61. **Condition of Retained Norfolk Island Pines - Project Arborist**

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

(i) compliance to any Arborist recommendations for tree protection generally and duringexcavation works,
(ii) extent of damage sustained by vegetation as a result of the construction works,
(iii) any subsequent remedial works required to ensure the long term retention of the NorfolkIsland Pines.

Reason: Tree protection.

62. **Stormwater Disposal**

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

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

63. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the Biodiversity Management Plan (Kingfisher 2021).

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

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

64. **Protection of Habitat Features – Certified by Ecologist**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

65. **Certification of Ongoing Work**

A bushland management contract for implementation of all post-occupation biodiversity-related measures, as specified in these conditions of consent and the approved ecological report and Biodiversity Management Plan (Kingfisher 2021), is to be entered into.

Evidence of engagement in accordance with this condition is to be certified by the Project Ecologist and provided to Principal Certifying Authority and Councils Biodiversity Manager prior to issue of any Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat.

66. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Selena Hannon Landscape Design 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

67. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority priorto issue of any Occupation Certificate.

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

68. **Removal of All Temporary Structures/Materials and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.

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

Reason: To protect reserve amenity and public safety.

69. **Installation of Fuel Tanks**

Certification shall be provided from a suitably qualified professional that the fuel tanks have been installed in accordance with Australian Standard 1940. A copy of the Workcover NSW Dangerous Goods Licence must be submitted.

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

Reason: To ensure the proper installation of fuel tanks.

70. **Waste Water System**

Prior to the issuing of any interim / final occupation certificate, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifying Authority.

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

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

71. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

72. **Licence for use of carparking**

Prior to the issue of the Occupation Certificate, the applicant shall enter into a licence with Council for the proposed extension of the existing carparking spaces.

Reason: To ensure management of the land in accordance with the Crown Lands Management Act 2016.

73. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

74. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

75. **Kitchen Design, construction and fit out of food premises**

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

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

76. **Mechanical Ventilation certification**

Prior to the issuing of any Occupation Certificate, certification is to be provided fromthe installer of the mechanical ventilation system that the design, construction and installation ofthe mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

77. **Waste Water System**

Prior to the issuing of any interim / final occupation certificate, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifying Authority.

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

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

78. **Mechanical ventilation**

Where Mechanical ventilation is required to be installed in the food premises it 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 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.

79. **Certification of adequate bunding of oils, fuels and chemicals**

Prior to Occupation certificate being issued, certification is to be provided that the bunded area for oils, fuels and chemicals on this site has been correctly installed to hold all fluids without leaks and complies with AS1940-2017

Reason: To ensure correct storage of oils, fuels and chemicals can be managed once in operation.

80. **Chemical Spills**

A spill kit must be kept onsite. A spill prevention and clean up procedure in accordance with industry standards must be prepared and kept on site.

Reason: Protection of the Environment.

81. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

82. **Car parking areas to be sealed and signposted**

The car parking areas to the east of the subject site accommodating the total of 10 parking spaces are to be completed in accordance with the requirements of the Voluntary Planning Agreement. Also, 4 Hour parking limit is to be signposted for the 10 public parking spaces on the eastern side of the premises.

The car parking spaces to the north the site are to consist of "open graded asphalt to provide a semi-permeable surface" and in accordance with the details approved by Council's traffic team as part of the construction certificate.

Details demonstrating compliance are to be submitted to Council prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards and agreed arrangements.

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

83. **Fuel-Filling Area**

The fuel filling area shall be operated in accordance with all relevant Codes and Manuals including the Australian Institute of Petroleum's Code of Practice for the Design, Installation Operation of Underground Petroleum storage systems (CP22-1994).

Reason: To provide for the correct disposal of liquid wastes.

84. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

If any planting required 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 Amended Landscape Plan and any conditions of consent.

A Landscape Maintenance schedule shall become an operational requirement under any licence within the licence area and the landscape works shall be maintained at regular intervals.

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

Reason: To maintain local environmental amenity.

85. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

86. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within Lot 298 DP721522. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.

87. **Pervious Area Restriction**

Pervious areas including permeable pavers and gardens as shown in the Landscape Plan dated 22/02/21 (or subsequent plan approved by Council) must be maintained for the life of the development. This includes reinstating new permeable pavers with an infiltration rate equal or greater than the underlying natural sand/soils if/when the pavers become clogged overtime.

Reason: The protection of the catchment's receiving aquatic environment.

88. **Environmental Audit**

Within 12 months after the submission the Notice of Commencement being forwarded to Council, the person entitled to act upon this development consent shall carry out a comprehensive Environmental Audit of the premises.

This audit shall be carried out in accordance with the appropriate standards at the company's expense by a duly qualified independent person or team. Further, the company shall, at its own expense, comply with any reasonable requests of Council in respect of the implementation of any measures arising from the approval, within such time as Council may agree. Further audits will be required every 12 months from the due date or such longer period as may be agreed by Council.

Reason: Protection of the Environment.

89. **Tanker Delivery**

Delivery tankers shall be parked wholly within the site during unloading. Tankers shall enter and exit the site in a forward direction and tankers shall only remain on-site during unloading operations. All tanker deliveries shall only be made during the approved hours of operation outside peak usage periods.

Reason: To protect the amenity of the surrounding neighbourhood.

90. **Food business to comply with Food Safety Standard 3.2.2 and 3.2.3**

The food business is to maintain the premises and any area used by the food business in a condition that complies with Food Safety Standards 3.2.2 and 3.2.3.

Reason: To ensure food is stored, processed and serviced in a safe manner to ensure safety and healthof customers.

91. **Plant and other equipment noise**

No noise from plant equipment and other motors on this premises are to be audible within any habitable rooms in any residential premises (regardless of if the window and doors are open) in the area at any time of the day.

Reason: To ensure noise from plant equipment and other motors from the business or premises do not have a negative impact on surrounding residents.

92. **Amplified music**

Music and any amplified equipment including microphones are to be restricted to the conditions as set out in the "Environmental Noise Impact Assessment Reconstruction of the Station Beach Boat House Palm Beach 1191 Barrenjoey Road, Palm Beach, NSW" report number 6953-1.1R Rev B including restriction of music to between 7am and 4pm, 7 days and only Friday and Saturday nights between 4pm and 10pm between the months of October and March. No music is to be audible within any habitable rooms in any residential premises in the area.

Reason: To ensure music and use of microphones used within the business does not have a negative impact on surrounding residents.

93. **Waste management**

All waste material generated by the business are to be maintained within the bin room in bins that have the lids maintained closed and pest control measures are maintained for both rodents and insects within this room. A spill kit is to be maintained within access of the bin room to contain spills.

Reason: To ensure waste is correctly contained within closed containers within the bin room to reduce issues of smell and pests.

94. **Pontoons**

As per plans and the Aquatic Ecology Report, pontoons north of the jetty cannot be reinstated without approval of the relevant authority.

Reason: Protection of the aquatic environment.

95. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Engineering and Estuary Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 26 August 2021 and Flooding and Estuarine Risk Management Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 30 August 2021 and these recommendations are to be maintained over the life of thedevelopment.

Reason: To ensure preservation of the development and the estuarine environment
To fulfil the obligations and requirement under maintenance condition as per Section 27(b)(ii) of the Coastal Management Act 2016

96. **Hours of Operation**

The hours of operation outside of daylight saving are to be restricted to:

- Monday to Saturday – 7.00am to 4.00pm
- Sunday and Public Holidays – 7.00am to 4.00pm

The hours of operation during daylight saving are to be restricted to:

- Monday to Thursday – 7.00am to 4.00pm
- Friday and Saturday – 7.00am to 10.00pm
- Sunday – 7.00am 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.

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

97. **Capacity**

The maximum capacity of the restaurant is 152 patrons.

Reason: To maintain the amenity of the adjoining parkland and nearby residential properties

98. **Amenities building**

The proposed amenities building with toilet facilities is to remain open to the public as required under the Plan of Management, during the restaurant operating times.

Reason: To provide a public benefit consistent with the Governor Phillip Park Plan of Management.

99. **Removal of signage**

The existing signage placed at the junction of the roadway and the Boathouse lease alignment is confirmed in the amended reports including the 'letter - Parks and Reserves response' to be removed within the licence area of the Reserve and thus the proposed external works and character is able to be represented as public space useable by the public without fear of encroachment.

Reason: To maintain the perception of public accessibility to the area landscaped garden east of the restaurant.

100. **Washing of vehicles**

Washing of vehicles/boats/trucks/buses etc is to be conducted in a car wash bay, which is roofed and bunded to exclude rainwater. All wastewater from car washing is to be discharged to the sewer under a Trade Waste Agreement from Sydney Water. Alternative water management and disposal options may be possible where water is recycled, minimised or re-used on the site. Any such alternative option is to comply with all relevant Standards.

Note: The following Standards applied at the time of determination:

- Environment Protection Authority's Environment Protection Manual for Authorised Officers: Technical Section Small Business (Car Washing Waste)
- Environment Protection Authority's Environment Protection Manual for Authorised Officers -

Technical Section Water (Bunding and Spill Management)

Reason: To ensure that wastewater is disposed of in a manner that is not harmful to the environment

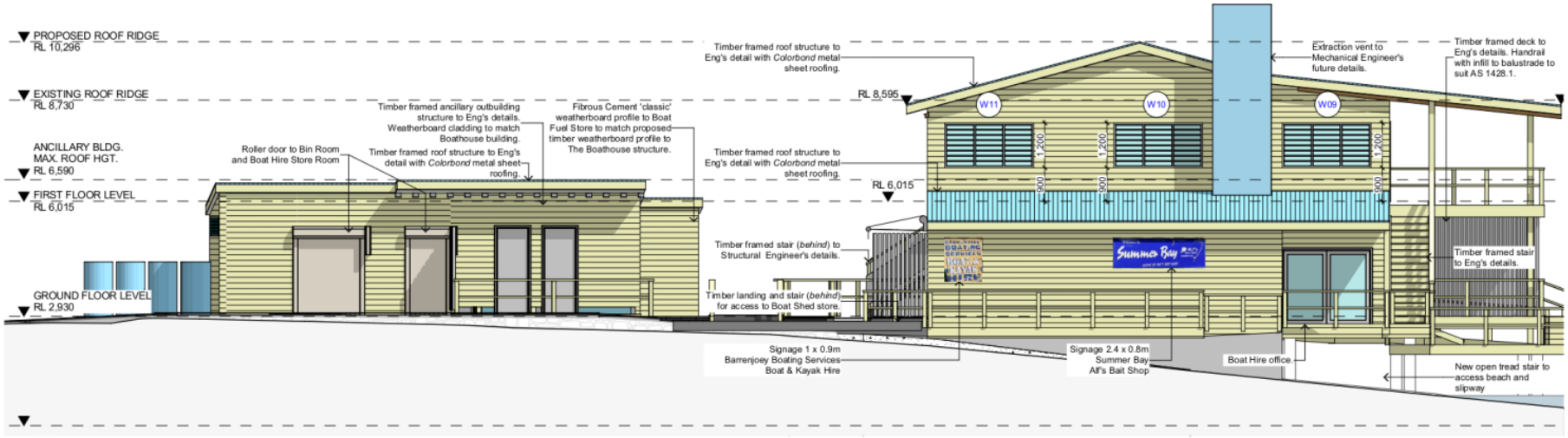


NOTES (NOT FOR CONSTRUCTION)

CLIENT: LONDON LAKES PARTNERSHIP
THE BOATHOUSE
PALM BEACH

Canvas Architecture & Design
21 Endeavour Drive
BEACON HILL NSW 2100

Drawing Name: SITE PLAN
Drawing Scale: 1:200
Drawn: AM
Layout ID: DA02
30/01/2021 DEVELOPMENT APPLICATION
05/02/2021 PRELIM LEVELS CHANGES
09/06/2021 REV. PRELIM LEVELS CHANGES



1 NORTH ELEVATION
1:100



2 EAST ELEVATION
1:100

NOTES **(NOT FOR CONSTRUCTION)**

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All levels and dimensions are to be checked and verified on site prior to the commencement of any work.
All new and altered works to relevant BCA and AS/NZ standards.

CLIENT: LONDON LAKES PARTNERSHIP

THE BOATHOUSE
PALM BEACH

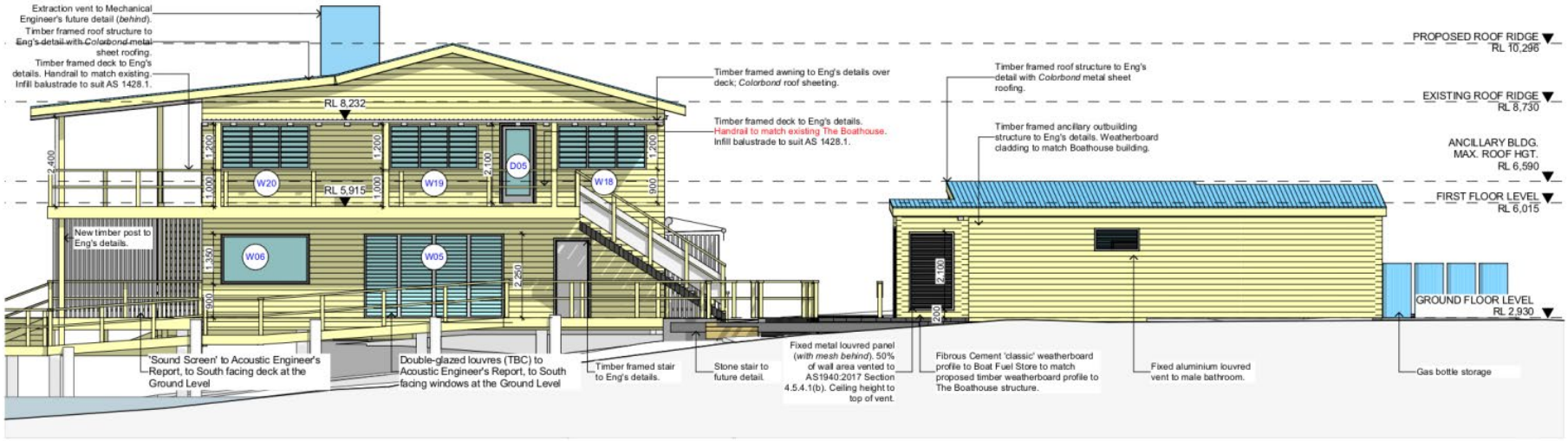
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Drawing Name
NORTH / EAST ELEVATIONS

Drawing Scale
1:100

Drawn
RM

Layout ID
DA09
30/01/2021 DEVELOPMENT APPLICATION
09/07/2021 PRELIM LEVELS CHANGES
06/08/2021 REV. PRELIM LEVELS CHANGES



1 SOUTH ELEVATION
1:100



2 WEST ELEVATION
1:100

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CLIENT: LONDON LAKES PARTNERSHIP

THE BOATHOUSE
PALM BEACH

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SOUTH / WEST ELEVATIONS

Drawing Scale
1:100

Drawn
RM

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09/07/2021 PRELIM LEVELS CHANGES
06/08/2021 REV. PRELIM LEVELS CHANGES

CLAUSE 4.6 – VARIATION REQUEST TO MAXIMUM HEIGHT OF BUIDINGS DEVELOPMENT STANDARD UNDER CLAUSE 4.3 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 FOR DEMOLITION OF EXISTING STRUCTURES AND ERECTION OF NEW STRUCTURES AT 1191-1193 BARRENJOEY ROAD, PALM BEACH

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REGISTERED PLANNER
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TABLE OF CONTENTS

1.0 INTRODUCTION 3

2.0 DEVELOPMENT STANDARD AND THE VARIATION SOUGHT 6

3.0 THE OBJECTIVES OF THE PROPOSED DEVELOPMENT 8

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? 13

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? 13

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST? 15

7.0 IS THE EXCEPTION TO THE DEVELOPMENT STANDARD WELL FOUNDED? .. 17

CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.3(2) MAXIMUM BUILDING HEIGHT OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.3(2)of the Pittwater Local Environmental Plan 2014 for the erection of a new building to accommodate Boathouse Café, boat hire and seaplane charter at 1191-1193 Barrenjoey Road, Palm Beach

Clause 4.6 – Exceptions to Development Standards

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.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.
(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

RESPONSE

Clause 4.3(2) Height of Buildings, of the Pittwater Local Environmental Plan 2014 is a development standard that is not subject to any of the specified exclusions from the operation of Clause 4.6.

This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] *NSWLEC 1386, Moskovich v*

Waverley Council [2016] NSWLEC 1015 and *Wehbe v Pittwater Council [2007] NSWLEC 827*. The submission addresses the requirements of Clause 4.6.

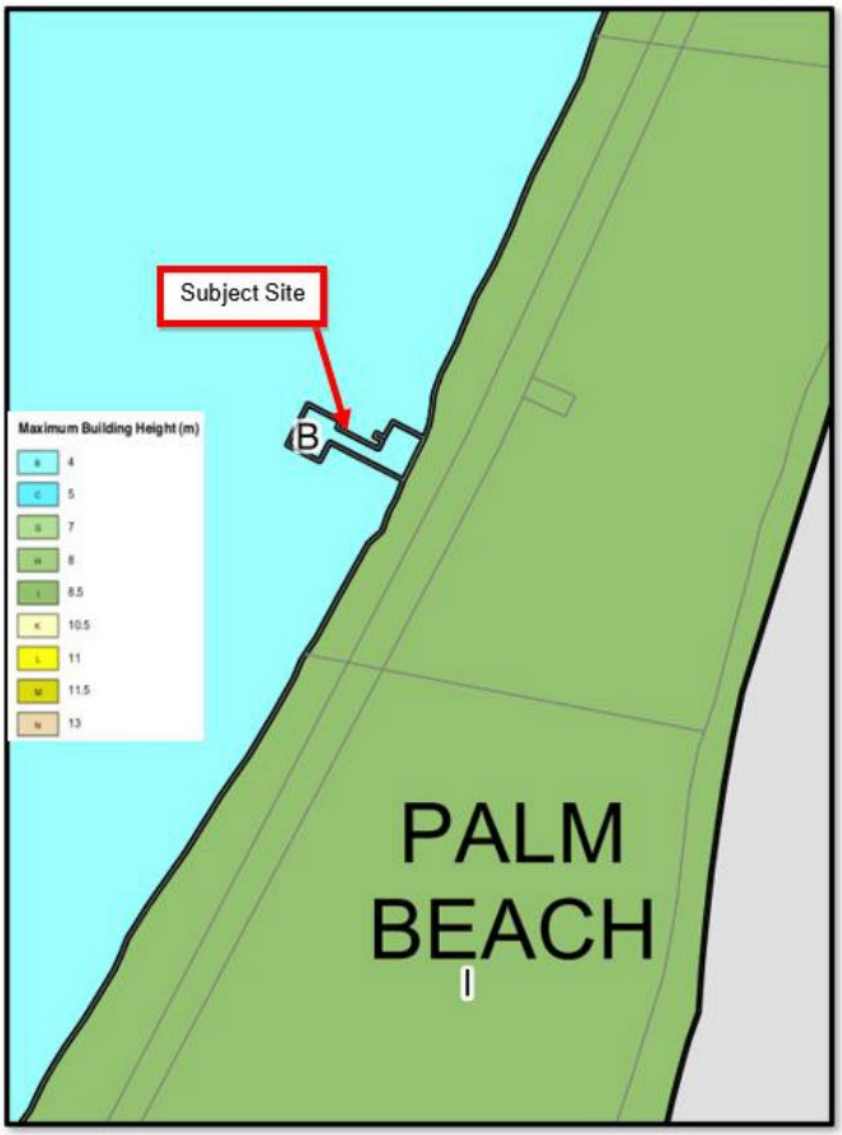
This written application seeks an exception to a development standard as the proposal will breach the development standard as prescribed within the Maps component of the Pittwater Local Environmental Plan 2014 as illustrated in the following Section 2.0.

The existing Boathouse structure, with a ridge height of RL 8.73 is being raised as a consequence of the requirements for an increase in the ground floor levels to RL 2.93 to address flood inundation and wave action and the requirements fo ceiling heights to satisfy the required standards of the BCA.

The resultant ridge height and its comparison against the existing ridge height is illustrated in the accompanying Elevations in Plans DA09 and DA10 containing overlays of the existing Elevations.

The proposal has been assessed by the applicants Heritage consultant, City Plan who have advised that the proposal is a suitable architectural element for the locality and the proximity of items of Environmental Heritage.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT



EXTRACT FROM PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 – HEIGHT OF BUILDINGS MAP PRESCRIBING A 4M MAXIMUM BUILDING HEIGHT

COMMENT

The subject site as identified within the Maps incorporated within the Pittwater Local Environmental Plan 2014 prescribe a development standard of a maximum building height of 4 metres.

The subject proposal with a proposed ridge height of RL10.296M AHD exceeds the maximum building height applicable to development below MHWM limited to 4m above Highest Astronomical Tide (HAT) (1.17mAHD), a resultant maximum building height of 5.17M.

The variation sought under this request is 5.126 metres (RL 10.296m minus RL 5.17m).

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

4.3 *Height of buildings*

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

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

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

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

RESPONSE

The proposal addresses the above Objectives as follows-

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The desired character of the locality, being adjacent to the Governor Phillip Park Conservation Area endorses the Plan of Management in terms of the following objectives-

5.3.7 Additional building locations in the site

(a) Additional buildings

• No additional buildings are to be constructed in locations outside of existing or former building footprints.

The proposal is to be constructed on the existing building footprint.

5.5 View Sheds

(b) Views from Station Beach adjacent to Palm Beach Golf Club.

• Open views of the headland are important from the beach, as this is generally the former approach/alignment to the headland. Any future built form or modifications associated with the Barrenjoey Boathouse to be designed with sympathetic architectural form and not present an obtrusive visual form or bulk in the site, be no higher than the existing structure and use colour sympathetic to the site character.

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

The Boathouse Café is a singular structure along Station Beach and does not share the location with any structures in this location.

(c) to minimise any overshadowing of neighbouring properties,

The only neighbouring property in proximity to the subject site is the Governor Phillip Park located to the east of the Mean High Water Mark and, due to the fact that the proposed building is located to the west of the park, overshadowing is minimal.

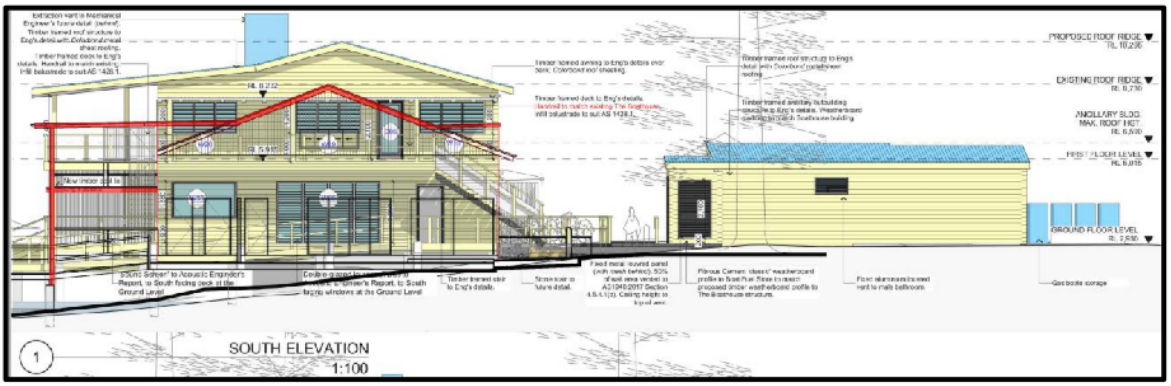
(d) to allow for the reasonable sharing of views,



VIEW TOWARDS BARRENJOEY HEADLAND FROM STATION BEACH SOUTH OF EXISTING BOATHOUSE



EXISTING BUILDING VIEWED FROM THE SOUTH



SOUTH ELEVATION OF PROPOSED BUILDINGS

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The overall height of the subject proposal is required to be raised from the existing height to allow for the subject building to withstand the impact of storms and to ensure that the building when completed at the required FFPL (Future Flood Planning Level) will require a minimum floor level of 2.93 m AHD. This necessity to raise the floor is fully described in the submitted Flood Impact Assessment document by Cardno dated 16 August 2021.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The subject proposal and its surrounding context constraints and relevant plans of Management have been considered by CityPlan Heritage who have provided the following conclusion extracted from the accompanying Heritage Impact Statement by the same author.

> ***In conclusion, it is considered by City Plan Heritage that the proposed works, including the demolition and reconstruction of the existing boathouse building with associated landscaping will result in little to no impact on the heritage significance of the Barrenjoey Heritage Conservation Area and the Governor Phillip Park.***
> ***The proposed new building replacing the existing boathouse has been designed to interpret and reflect the weatherboard design of the existing Boathouse structure, while ensuring that through contemporary materials and detailing, the work is easily identifiable as new and not a copy of the original. The configuration and fabric of the existing boathouse have been modified and replaced over time due to its beachside location and its operational requirements.***
> ***Therefore, its replacement with essentially a similar structure will not impact on its contributory values within the HCA. Additionally, the proposed landscape works to the site including change to the configuration of front of site landscaping, the addition of a seawall section, and proposed addition of new native vegetation will help to effectively integrate the site into the significant surrounding environment.***
> ***The proposed works provide a necessary upgrade to the Boathouse building which will assist in continuing the sustainable operation of the site in its current location for the future avoiding impact of raising sea and flood levels.***
> ***The proposal demonstrates compliance with the existing controls regarding heritage conservation and is therefore recommended to Council for approval.***

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The subject proposal seeks to construct a replacement structure that allows for the building to have a serviceable life of at least 50 years and to be designed to safeguard against structural damage by storm events. The level is primarily dictated by the necessity to raise the lowest floor level to a level of RL2.93 m AHD with a subsequent overall building height of RL 10.296 m AHD. Ceiling heights are minimised however due to the commercial nature of the use of the building the ceiling heights are greater than ceiling heights likely to be found within residential buildings.

In order to achieve compliance with the development standard, a 4 m overall building height would result in a structure that is 1.2 m higher than the 2.8 m minimum Future Flood Planning Level and as such would not be satisfactory.

The proposal is a reproduction of the existing building on the site although taller and in conformity with the National Construction Code and is built to the minimum height able to be achieved under the site constraints.

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The subject proposal does not offend any of the objectives under the E2 Environmental Conservation zone due to its sensitive location being on the existing footprint and the replication of the existing architectural form which is respected due to its history and value it offers to the community at large.

Given the fact that there is no building to benchmark the proposal against, the following extracts from the Governor Phillip Park Plan of Management are being adopted by this proposal as the parameters within the proposal is fashioned.

The extracts from the Plan of Management are as follows –

5.5 View sheds

5.5.1 Barrenjoey Headland

(a) Views from the north-west area of the park towards the headland.

• Any future planting and built form is not to impede the open expansive views of the headland when viewed from Station Beach and the grassed area adjacent to the beach and the car park.

(b) Views from Station Beach adjacent to Palm Beach Golf Club.

• *Open views of the headland are important from the beach, as this is generally the former approach/alignment to the headland. Any future built form or modifications associated with the Barrenjoey Boathouse to be designed with sympathetic architectural form and not present an obtrusive visual form or bulk in the site, be no higher than the existing structure and use colour sympathetic to the site character.*



VIEW TO THE NORTH TOWARDS BARRENJOEY HEADLAND FROM THE SOUTHERN END OF STATION BEACH ADJACENT TO PALM BEACH GOLF CLUB

RESPONSE

The preceding photograph indicates the important view corridor sought to be preserved within the Plan of Management.
As can be seen from the above photograph and the fact that the existing Boathouse Café building, although currently breaching the height of buildings development standard is not materially impacting upon the expansive views and it is reasonable to deduce that the requisite increase in overall height in response to safeguarding against damage from future storm events will have no material, and little discernible, impact upon the above view.
This lack of visual impact along with its lack of environmental impact and beneficial landscaping regime provides sufficient environmental planning grounds for this Clause 4.6 request to be supported.

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

(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.

RESPONSE

The replacement of the existing building upon the existing footprint will serve the public interest as the following extract from the Plan of Management of Governor Phillip Park states the following and emphasises the importance of the facility within the periphery of the park –

Barrenjoey Boathouse and the jetty are well-used features within Governor Phillip Park. The Barrenjoey Boathouse building, constructed at the start of the jetty, includes a daytime cafe providing outdoor seating overlooking Pittwater.

In terms of the Objectives of the standard, these are addressed in Part 3 of this request.

In terms of the Objectives within the zone, the Objectives of the E2 Environmental Conservation zone are as follows;

Zone E2 Environmental Conservation

1 Objectives of zone

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an*

adverse effect on those values.

- *To ensure the continued viability of ecological communities and threatened species.*
- *To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant native vegetation and dependent ecosystems.*

The subject proposal endorses the above objectives as it responds in a positive manner to the area below and around the subject structure as the proposal is designed to maintain a sensitive marine habitat below the structure whilst removing inappropriate landscape species around the subject locality and replacing the species with locally endemic species to integrate with the desired outcomes of the adjacent Governor Phillip Park.

The proposal will not destroy, damage or otherwise have an adverse impact on the values of these ecological communities and will maintain and in some instances enhance the continued viability of these communities and will not dominate the sensitive land and water interface of Station Beach.

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the proposal is well founded and makes it clear that the additional building height is a necessary outcome due to the necessity for the proposal to satisfy the requirements of the future flood planning level in order to ensure the ongoing safety and structural stability of the subject building.

The application has been crafted to provide a replacement building that can be termed a "replica" of the existing building on the subject site which contributes to the landscape of this part of Palm Beach and is reflected in the relevant Plans of Management as making a valuable contribution to the locality. The proposal is endorsed within the accompanying Heritage Impact Statement prepared by City Plan, endorses the relevant objectives of the zone and development standard and respects the desired character expressed within the Plan of Management for the adjacent Governor Phillip Park.

Should the subject site not have been identified as prone to impacts from future storm events, the replacement building could be lower however this is not the case as the subject proposal must respond positively to these potential impacts.



LANCE DOYLE
REGISTERED PLANNER
M. PLAN (UTS) B. APP SC. (UWS) RPIA

Dated: September 2021

ITEM 4.5	**DA2021/0735 - 137A SEAFORTH CRESCENT, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
AUTHORISING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2021/849797**
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. DA2021/0735 for alterations and additions to a dwelling house at Lot 102 DP 882515, 137A Seaforth Crescent, Seaforth subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0735

Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 102 DP 882515, 137 A Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Cheryl Forrester-Babcock
Applicant:	Cheryl Forrester-Babcock

Application Lodged:	02/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/06/2021 to 22/06/2021
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 300,000.00

Executive Summary

This report involves consideration of a proposal for the construction of an upper floor within the existing dwelling house on the subject site.

The application received ten (10) public submissions and accordingly, the application is referred to the Northern Beaches Local Planning Panel for determination.

The new upper floor will comprise of a study area, WIR, bathroom and associated balcony.

The site is a large (2,993m²) waterfront parcel of land, which is densely vegetated for the majority of the site and steeply sloping, having a fall of over 18m from the top to bottom, where the site is bordered by



Middle Harbour, Sailors Bay and Sugarloaf Bay.

The proposal is permissible with consent in the E3 Environmental Management zone under Manly Local Environmental Plan 2013 (MLEP). The proposal complies with the building height development standard of 8.5m and the Floor Space Ratio (FSR) under the MLEP. There is a minor area of the first floor balcony and associated roofing within the foreshore area which has been addressed under clause 6.10 Limited Development in the Foreshore area of the MLEP.

The proposal involves minor variations to the built form controls under the Manly Development Control Plan 2013 in relation to wall height, number of storeys, and the foreshore building line. The variations were found to be generally consistent with the relevant objectives and requirements. In this regard, the design response displays a minimisation of impact of natural features of the site and first floor will not detrimentally impact on the amenity of neighbouring properties, the presentation from the water, or the character of the foreshore.

A view loss assessment was undertaken with the finding that the proposal constitutes view sharing, with the view loss being determined as minor in accordance with the four planning principals outlined within the Land and Environment Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.*

The main concerns raised in the submissions were in regards to the heritage significance of the dwelling, and issues relating to impacts upon the privacy levels, and overshadowing to the southern adjoining neighbour.

The heritage significance has been assessed by Council Heritage advisors and the proposal has been found to be satisfactory.

The application is recommended for **approval** subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is submitted as alterations and additions to an existing dwelling house.

The works are as follows:

- Creation of an upper floor within the existing attic space to consist of study, WIR, bathroom and associated covered balcony.
- New colorbond roof to replace the terracotta tiles.
- Three new skylights.

During the assessment process specific planning concerns were raised with the proposed design. In order to resolve these matters an amended design was submitted to Council.

The revised plans demonstrate a complying building height, therefore a variation under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard is no longer required.

Consistent with the Northern Beaches Council Community Participation Plan the amended design displayed a lesser environmental impact, and as a result was not required to be re-notified to the surrounding properties.

The amended design has been utilised for the assessment undertaken in the report below.



ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone E3 Environmental Management
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 102 DP 882515, 137 A Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site is legally identified as Lot 102 within DP 882515137, and known as 141A Seaforth Crescent, Seaforth. The site is located within the E3 Environmental Management zone as mapped within the Manly Local

	Environment Plan 2013. The site is situated on the western side of Seaforth Crescent with the rear adjoining Middle Harbour. The site has an area of 2993 sqm with access via an inclinator or staircase from Seaforth Crescent due to the battle-axe allotment. The site is accessible between No.141 and No.143A Seaforth Crescent. The northern side boundary measures approximately 82.6m, with the southern boundary (adjoining No.135A Seaforth) measuring approximately 46.5m and eastern side boundaries measuring 65.5m and 41.2m respectively. The width of the front setback to Seaforth Crescent is approximately 3.8m. The site slopes steeply down to the rear of the site with a fall of over 30m from east to the rear mean high water mark. The subject site has large areas of landscaping with a mixture of canopy trees, shrubs, bushes and extensive landscaped plantings. The subject site has views west towards Middle Harbour, Sailors Bay and Sugarloaf Bay. The site currently consists of a two storey (with a habitable attic space) sandstone and rendered dwelling, with a boat shed and jetty, paved terrace, inclinator and retaining wall structures. Surrounding structures consist of multi-level properties, of varying ages, within landscaped settings.

Map:



SITE HISTORY

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

- Development Application **10.2005.494.1** for the erection of a fence was refused on the 01/03/2006.
- Development Application **5.1998.191.1** for a minor boundary alteration was approved on the 10/08/1998.
- Development Application **5.1997.252.1** for a new inclinator was approved on the 4/09/1997.
- Building Application **BA146/93** for the enclosure of the staircase to the verandah was approved on the 23/04/1993.
- Development Application **5.1989.3124.1** for land subdivision was approved on the 3 July1990.

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 with no excavation proposed is not considered a contamination risk.

northern beaches council

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to design amendments to provide greater compliance with the Planning controls. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability	The site is considered suitable for the proposed development.

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Section 4.15 Matters for Consideration	Comments
of the site for the 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 08/06/2021 to 22/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Peter John Nicholson	135 A Seaforth Crescent SEAFORTH NSW 2092
Peter Desmond Miller Jannette Miller	48 Castle Circuit SEAFORTH NSW 2092
Garth Nicholson	369 Edinburgh Road CASTLECRAG NSW 2068
Mrs Trudy Ann Box Mr Ian Box	179 A Seaforth Crescent SEAFORTH NSW 2092
Catherine Bligh Hugh Bligh	Address Unknown
Ms Deidre Margaret Hyslop	Address Unknown
Norbert Wyzenbeek	Address Unknown
Maureen Williams-Barrow	Address Unknown
Michael Bligh	Address Unknown
Mrs Rachel Merylin Lee Mr Christopher Andrew Lee	165 A Seaforth Crescent SEAFORTH NSW 2092

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

- ***Heritage***
- ***Building Height***
- ***Number of storeys***
- ***Solar Access***
- ***Views***



- ***Foreshore building line***
- ***Presentation to the waterways***
- ***Consistency with the area***

The matters raised within the submissions are addressed as follows:

- ***Concern has been raised with the Heritage significance of the property dwelling houses "Cabeethon".***

  Comment:
  Councils Heritage advisor has assessed the proposal and inspected the existing dwelling onsite. The Heritage advisor states that "*Cabeethon is not a heritage listed item in the Manly Local Environmental Plan 2013. As such the provisions of 5.10 in the MLEP currently only apply to the extent of the adjoining listed heritage item and the proposal is without impact on that item.*"

  It is acknowledged that the exiting dwelling has a distinct character when viewed from the waterway. However, the dwelling has been significantly reconstructed after a fire destroyed most of the property in 1978. Given the property is not listed as a heritage item, it is instead proposed that a full photographic archival recording of the property be undertaken to capture the unique property in its current state.

  On balance the proposal is consistent with the objectives of clause 5.10 Heritage Conservation within the MLEP and does not warrant refusal of the application.

- ***Concern that the height is above the 8.5m control height for the LEP, has an non-compliant third storey element and the height impacts of the first floor create overshadowing.***

  Comment:
  Height is measured from an extrapolated existing ground line which is consistent with the practical approach used in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. The amended design reduced the overall building height from RL18.37 to RL18.07 - RL17.17 in order to comply with the height of building standard of 8.5m, and as a result, a variation to the height of building control under a Clause 4.6 is no longer required.

  Additional consideration is also provided under clause 4.1.2 Height of Buildings (Incorporating wall height, number of storeys and roof height) within this report. In summary the variation to the number of storeys is consistent with the pattern of dwelling houses along the Seaforth Crescent escarpment where multi dwelling houses are prevalent.

  Overall, the proposal maintains consistency with the MDCP for overshadowing. The amended shadow diagrams (SK15 - B) display reduced overshadowing along the side setback area and side elevation of No.135A Seaforth Crescent due to the reduction in building height. Detailed assessment of the objectives for solar access are also provided under clause 3.4.1 Sunlight Access and Overshadowing.

  In summary, this issue has been considered under the MLEP and MDCP and does not warrant refusal of the application.

- ***There is concern that the proposed development will continue to result in the adverse loss of views to No.135A Seaforth Crescent.***

  Comment:

A discussion on the view loss impacts to adjoining properties is provided in this report. In summary, the proposed first floor addition will result in a minor and acceptable view loss impact due to the retention of all primary views from the No.135A Seaforth Crescent and consequently the proposal is supported.

This view loss concern does not warrant refusal of the application.

- ***There is concern that the bulk and scale of the proposal will have a negative impact on the adjoining neighbours and to the Harbour waterways.***

Comment:
The amended proposal includes design changes that address the previous non-compliance with the Height of Building development standard and continues to be compliant with the required Floor Space Ration (FSR). The wall height non-compliance is minor and reflects a typical residential dwelling house of this area. The amended proposal minimises the visual impacts and the review concludes that the bulk and scale of the first floor proposal is reasonable and will not have a negative impact on the character of the immediate area.

The proposal has been amended to sufficiently minimise bulk and scale, and lessen the visual impact of the proposed development as viewed from the waterway and adjoining properties.

On balance the proposal is consistent with the objectives of the MDCP and MLEP to ensure the bulk and scale of the building is consistent with the planning controls and does not create unreasonable impacts on surrounding land.

Therefore, the bulk and scale concern does not warrant the refusal of the application.

- ***There is concern in regard to the overlooking from the first floor into the southern neighbouring dwelling.***

Comment:
As discussed within this assessment report, there is no window/door/balcony areas within the design that cause unreasonable impacts associated with visual privacy between the proposed development and the existing neighbouring properties.

The privacy concerns are not concurred with and the matter does not warrant refusal of the application.

- ***Concern that the proposal does not fully comply with various aspects of Councils development controls, clauses, objectives, aims or requirements, including Part 1 to Part 4 within the Manly DCP and Part 1 to Part 6 within the Manly LEP (as listed in written submissions).***

Comment:
The proposal has been assessed in accordance with the MDCP and MLEP development controls and consideration has been given to the submission including, but not limited to building height, FSR, wall height, storeys, setbacks, streetscape, amenity, bulk, envelope, privacy, noise, slope, sunlight, open space, foreshore areas, materials, and landscaping.

While there are non-compliances, these are assessed on merit and overall the proposal is considered to be consistent with the objectives of those controls and has provided reasonable areas and quality of landscaping.

In further addressing those matters, the applicant has responded and accommodated the submission concerns with an amendment to the plans to reduce building bulk, height and

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improve amenity (privacy, views and the like). As those changes are of a lesser impact no re-notification of the revised plans was required as they materially improve amenity considerations by further reducing impacts on surrounding land.

The development controls assist to ensure appropriate design response is provided and minimise amenity impacts of development on the natural and surrounding environment. Variation to the development controls is considered on merit and enables site constraints and other influencing factors to be accommodated, without unreasonable or unnecessary strict compliance.

Manly DCP and Manly LEP controls are permitted to be varied with appropriate considerations. In this case, subject to conditions, the proposal does not create an unreasonable precedent or impact against the planning controls or to the amenity of surrounding land and the natural environment whereby appropriate changes were made to the plans to reduce building bulk, and respond to amenity concerns.

In summary, this objection issue is not considered to warrant refusal of the application, and has been the subject of detailed consideration within this report and conditions where appropriate.

- ***Concern is raised that the proposed first floor is within the foreshore area.***

Comment:
A discussion on the location of the additional minor area of built form in the foreshore building area is provided in this report. The additional area of the first floor that sites within the foreshore area is minor (a 1m section of the balcony) and will not be visually dominate as the majority of the existing dwelling house and boatshed is located forward of the Foreshore Building Line.

In summary, the proposed balcony of the first floor is supported as the footprint of the development remains consistent with that currently on site, the proposed works are not visually dominant, and are consistent with the design criteria of the control.

This concern does not warrant refusal of the application.

- ***Concern has been raised that the proposal is not consistent with the characteristics of the area.***

Comment:
The subject site for the proposed dwelling house development is within the E3 Environmental Management zone and dwelling houses are "*Permitted with Consent*" in the E3 zone under the Manly Local Environment Plan (MLEP) 2013. Therefore, there is no inconsistency between the proposed development and the MLEP in this case.

The proposal is limited to a single dwelling house, that generally complies with the requirements of the Manly Development Control Plan to ensure it is of a scale and intensity that is compatible with the surrounding land use pattern of development.

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

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



REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to an existing dwelling. Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan zone E3 Environmental Management, and against the following landscape controls of Manly DCP 2013: • *section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,* • *section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.* The site is within zone E3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore; ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation; encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality; and ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses. The existing site is occupied by existing native trees and vegetation to the upper slopes, and a managed landscaped setting around the existing dwelling on the lower foreshore slopes. The proposed alterations and additions are wholly contained within the existing building footprint, and as such the landscape outcome of the proposed development is not impacted upon and the objectives of zone E3 Environmental Management are satisfied. Landscape Referral raise no objections subject to protection of existing trees and vegetation.
NECC (Bushland and Biodiversity)	Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions: - Manly LEP cl. 6.5 Terrestrial Biodiversity The proposed development is situated entirely within the existing development footprint. No prescribed trees or native vegetation is



Internal Referral Body	Comments
	proposed for removal and there will be no impacts to nearby biodiversity. As such, Council's Biodiversity referrals team raise no objection to the proposed development.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA. *Comment:* As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by MHDP ARCHITECTS dated April 2021, Council accepts the assessment that the DA satisfies the requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 The subject site is located within the W1 (Maritime Water) Zone. As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by MHDP ARCHITECTS dated April 2021,



Internal Referral Body	Comments
	Council accepts that the objectives and assessment criteria of the zone have been met. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 *Landscape character Assessment:* The subject site is located within the Landscape Character Type 3. As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by MHDP ARCHITECTS dated April 2021, Council accepts that assessment that the proposed development within the landscape satisfies the relevant criteria.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal was first referred to Heritage as the subject property adjoined a heritage item. However during the assessment the subject property was raised as a potential heritage item - 'Cabeethon' **I1 Harbour Foreshores** Details of heritage items affected Details of the item as contained within the Manly inventory is as follows: **Harbour Foreshores** Statement of significance: Natural landscape type - Aesthetic. Physical description: Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures. Other relevant heritage listings

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register		
RAIA Register of 20th Century Buildings of Significance	No	

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Internal Referral Body	Comments		
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for a rooftop addition to the existing dwelling comprising of a study, bathroom and balcony as well as replacing the rest of the tiled roof with metal sheets. The existing heritage item runs along the waterfront boundary of the property and is unaffected by the proposed works. However, the dwelling itself was raised as a potential heritage item through public submissions. The dwelling is not listed as a heritage item in the Manly Local Environmental Plan 2013. <u>Cabeethon</u> The subject property contains a dwelling house known as 'Cabeethon'. It is located in the south western portion of the site, close to the water and the boundary with 135A Seaforth Crescent. The property is not seen from the street due to the subdivision pattern and steep descent from the road. Primary views of the house are gained from Middle Harbour. Cabeethon is thought to have been originally constructed c1909 on Lots 165 and 166 in the Seaforth Estate subdivision of 1906. Research from Northern Beaches Local Studies indicates the property suffered a major fire in October 1978 with the owner at the time indicating they would rebuild the house ('Helpless couple watch historic home go in blaze' *Manly Daily*, 26 October 1987). Aerial imagery indicates the property was rebuilt by the early 1980s. The current dwelling is comprised of two distinct sections. The first is the main section of the house comprising at ground level a kitchen, dining room, lounge room, hall, laundry, bedroom and an entertainment room. There is a small attic room upstairs under the topmost roof and a bedroom, bathroom and living room on the lower ground floor. There is a large projecting gable to the western elevation with deep verandahs to the ground and lower ground level. The columns are constructed in sandstone and there are arches to the lower ground floor verandah. The upper level verandah has glass balustrades and the gable end has timber batten detailing. The roof is clad in Marseille pattern tile and the walls are sandstone. This part of the dwelling could be considered to be mostly within in the Federation style although with sandstone walls rather than the more common red face brick. The large gable end with columns and lower roof profile however tends to the Inter-War Californian Bungalow style (based on *A Pictoral Guide to Identifying Australia Architecture,* Applerly, Irving and Reynolds 1989). There is also a more recently constructed glazed gable at ground level which stretches out to the north away from the kitchen. The roof on this gable end was recently changed from tile to metal sheets.		



Internal Referral Body	Comments
	The second section is the 1980/90s bedroom wing. It comprises three bedrooms and a bathroom at the lower ground level and a small lawn and terrace section at ground level. This section is distinct from the main dwelling with multiple curves, extensive glazing, rendered walls and screening vegetation. This section has a made a decent attempt at differentiating itself from the main section of the house. Assessment Cabeethon is not a heritage listed item in the Manly Local Environmental Plan 2013. As such the provisions of 5.10 in the MLEP currently only apply to the extent of the adjoining listed heritage item and the proposal is without impact on that item. The dwelling itself has a distinct character when viewed from the waterway which externally appears to some degree as a example of a late Federation period dwelling. However it appears to have been significantly reconstructed after the fire in 1978. Internally some features have been reconstructed to various degrees but it would not be considered significant internal fabric. Given the property is not listed as a heritage item, it is instead proposed that a full photographic archival recording of the property be undertaken to capture the property in its current state. Therefore Heritage raises no objections and subject to a condition. Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A response was received on the 16 June 2021 that raised no objections 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. A414389 dated 19 May 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A414389 dated 19 May 2021).

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

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

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

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid. A response was received on the 16 June 2021 that raised no objections 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.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is considered to satisfy Clause 2,
- The proposal is considered to satisfy Clauses 13 & 14,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in Clause 21 (a) to (i),
- The proposal is considered to satisfy Clause 22(a) to (e),
- The proposal has been designed and appropriately sited on the matters listed in Clause 25 (a), (b) and (c), and
- The proposal has been designed and appropriately sited to ensure protection of the matters listed in Clause 26(a),(b) and (c) (relating to maintenance, protection and enhancement



of views).

SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by 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 propose
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 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 is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

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	7.8m - 8.1m	-	Yes
Floor Space Ratio	FSR: 0.4:1 1197m2	FSR: 0.15:1 433sqm	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes

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Clause	Compliance with Requirements
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	No

Detailed Assessment

Zone E3 Environmental Management

The development proposed is found to be consistent with the following outcomes and objectives of the E3 Environmental Management zone.

The proposal for a new first floor is compliant with the numerical requirement for Floor Space Ratio and Build Height under the Manly LEP 2013. The development will not be out of character to surrounding multi-level dwellings.

Landscaping is to be retained and will continue to screen and soften the proposed built form. The design has open feel with high quality natural finishes responding to the natural natural vegetated context in which the site is located.

The development will retain the existing foreshore vegetation and continue to maintain the existing trees for the wildlife corridors meaning the development will not dominate the existing bushland environment. Significant rock outcrops on the site are to be retained as part of this proposal.

Privacy, amenity and solar access are provided for within the proposed development.

Therefore, the proposed development will have a reasonable impact on surrounding residences.

As such, the development is consistent with the objectives of the zone.

4.3 Height of Buildings

The proposal was initially lodged with a overall building height that did not comply with the development standard for maximum building height of 8.5m.

Whilst it was recognised that the subject site is located within the 'Special Height Provisions' (Clause 4.3A), and technically complies with the 'Special Height Provisions', the design did not demonstrate consistency with the objectives of the building height development control or that there was sufficient environmental planning grounds to justify contravention of the height limit prescribed by clause 4.3 of MLEP 2013.

As a result, amended plans were received that reduced the overall building height from RL18.37 to RL18.07 - RL17.17 to comply with the height of building standard of 8.5m. See figure below.

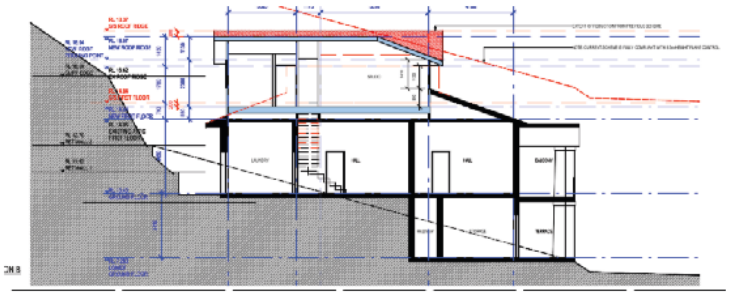


Figure 1: *Reduction in building height shown in red.*

Due to the amended design displaying a compliant building height, a variation to the height of building control under a Clause 4.6 is no longer required.

5.10 Heritage conservation

The proposal seeks consent for a first floor addition to an existing dwelling house which is located along the Harbour foreshore area.

The existing heritage item located adjoining the subject site is the harbour foreshore area. This heritage item consists of "the length of foreshore including natural and built elements of the landscape, rocky sandstone ledgers, beaches, mud flats, sandstone retaining walls and timber structures" and runs along the waterfront boundary of the property.

This area is unaffected by the proposed works.

The dwelling house "*Cabeethon*" is not a heritage listed item in the Manly Local Environmental Plan 2013. As such the provisions of clause 5.10 in the MLEP currently only apply to the extent of the adjoining listed heritage item.

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Council's Heritage Advisor has reviewed the design and has raised no concerns with the proposal.

The proposed development does not detract from the harbour foreshore, nor its heritage significance and will continue to allow views to the significant features of the foreshore area.

As a result, the proposal will not adversely affect the heritage significance of the harbour foreshore area and can be supported.

6.4 Stormwater management

Subject to conditions, stormwater will be appropriately managed on the site.

6.5 Terrestrial biodiversity

Councils Landscaping and Biodiversity officers have assessed the proposal and consider as there is no tree removal, or alteration to the existing landscaping area onsite, the proposal will have no impact on the existing biodiversity currently on the subject site.

6.8 Landslide risk

A Preliminary Landslip Assessment, prepared by Crozier Geotechnical Consultants, Report No. 2021-107, dated 27 May 2021 was submitted with the application. This report and its recommendations are included within the draft conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
(b) measures to protect and improve scenic qualities of the coastline,
(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

The proposal for the construction of a new upper level and is generally appropriate in the context of the surrounding residential developments.

The proposed development is compliant with the floor space ratio and building height set by the MLEP 2013, which controls bulk and scale does not unreasonably conflict with the height and scale of surrounding and nearby development and is consistent with the design criteria of the control.

The proposal is designed to maintain the topographical features of the site by not excavating into the significant landscaped areas, or rock outcrops that exist on the site. The proposals design with high quality external finishes and open style balcony areas, provides a more "stepped" look when viewed from neighbouring properties and the waterway.

The proposal reflects the established built form character of the immediate Seaforth area where multi-level, variable stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

The extensive existing landscaping has been retained and will soften and filter the built form. Therefore, the proposal will be sufficiently softened by the existing landscaped setting.

Overall, the proposed development will achieve consistency with the provisions of this control.

6.10 Limited development on foreshore area

The application proposes minor works within the foreshore area, including:

- The balcony and associated roofing for the first floor.

It is important to note that a large portion of the existing dwelling house and boatshed is located forward of the Foreshore Building Line.

See Figure 2 and 3 below.

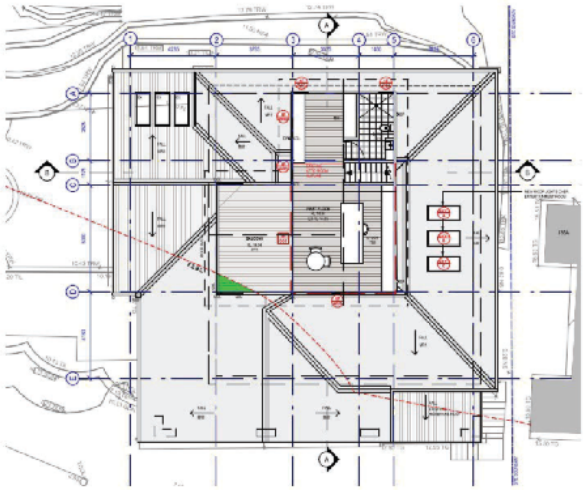


Figure 2: *The proposed works to be located in the area between the established Foreshore Building Line and the Mean High Water Mark shown in green.*

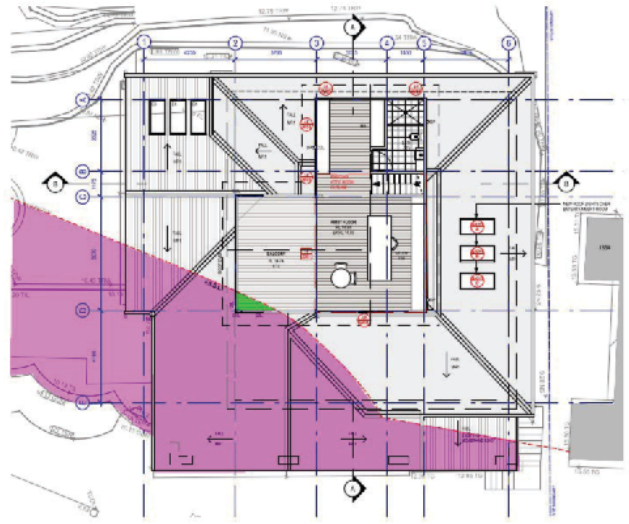


Figure 3: *The existing dwelling house located in the area between the established Foreshore Building Line and the Mean High Water Mark shown in pink.*

The applicant has not provided a statement to confirm that all proposed works are permissible within the foreshore area and consistent with the provision's clause 6.10 of MLEP 2013. However, it is considered that the proposed works are ancillary to the dwelling house which is located is located forward of the Foreshore Building Line and above the high water mark. Therefore, the works are appropriately covered by those items outlined in Part 2(a) of this clause, and are permitted within the foreshore area.

The proposed first floor is also supported by Councils' Landscaping, Biodiversity, and Coastal Officers as there is no impact on the landform or vegetation in the foreshore zone and no impact on natural foreshore processes or public access along the waterfront.

It is considered works are reasonable and necessary in this case, particularly given the slope and existing vegetated state of the site.

The works also satisfy the objectives of the clause as follows:

- The proposed works are located entirely on private land and will not negatively impact the natural foreshore processes or amenity of the foreshore area and public access along the waterfront will remain.
- The proposed development is consistent with the surrounding built form of the locality, with the additional area of the encroachment (up to 1m in length) not being visually identifiable from the waterways.
- There is no existing continuous public access along the foreshore, subsequently this clause does not apply.
- The proposed balcony of the first floor is supported as the footprint of the development remains consistent with that currently on site, the proposed works are not visually dominant, and are consistent with the design criteria of the control.

Overall, it is concluded that the proposed first floor balcony area will be consistent with the provisions of the control.

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Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 2993sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5m	6.5	-	Yes
	E: 7m	5.9m to 7.4m	2.8%	**No**
	S: 6.5m	6.7m	3.07%	**No**
4.1.2.2 Number of Storeys	2	3	1 Floor	**No**
4.1.2.3 Roof Height	Height: 2.5m	1.4m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	35m to 36m to boundary adjoining No.137 Seaforth Crescent	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East 2.33m	East 5.5m	-	Yes
4.1.4.4 Rear Setbacks (To the Mean High Water Mark)	8m	18.2m to 20.9m	-	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area		Encroaches the Foreshore Building Line	up to 1m	**No**
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (1796sqm)	90% (2696sqm)	-	Yes
	Open space above ground 25% of total open space (674sqm)	9.3% (250.8sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (1078sqm)	74% (1996sqm)	-	Yes
4.1.5.3 Private Open Space	> 18sqm	> 18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0	100*	No*

** Previously approved, no ability to provide vehicle access/parking on the subject site.*

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	No	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The upper floor addition will be located well below the street level and is not visually identifiable from the Seaforth Crescent streetscape.

The works will be visible from the Middle Harbour waterway, however the upper floor addition is built over the existing building, and is generally located within the bulk of the existing gable roof, and set back from the rear elevation (mean high watermark) which reduces the appearance of bulk from the water. See Photo 1 below.



Photo 1: *View from the water edge (pontoon) of the subject site.*



Photo 2: *Existing dwelling houses (circled in red) and its relationship with multi-level dwellings along the Seaforth Crescent foreshore. (source: Submitted SEE)*

When viewed from the water, the proposed upper floor will be screened by existing trees on site that will be retained. The setback from the rear (mean high watermark) provides a stepped look that recedes into the existing built form and landscaping. The removal of the terracotta roof serving to provide a more subtle colour to hide the development in the landscape. The building appears consistent with neighbouring buildings along the Seaforth Crescent foreshore

As a result, the proposed works demonstrate compliance with the objectives of the streetscape control.

3.4.1 Sunlight Access and Overshadowing

In relation to overshadowing of private open space of adjacent properties, clause 3.4.1.1 of MDCP 2013 prescribes that new development must not eliminate more than one third of the existing sunlight

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accessing the private open space of adjacent properties between 9am and 3pm in midwinter. Clause 3.4.1.2 also prescribes that the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 4 hours from 9am to 3pm in midwinter, with no reduction permitted if these windows/glazed areas currently enjoy less that the minimum amount prescribed.

The application was supported by shadow diagrams demonstrating that the proposal will result in additional overshadowing of adjoining property at 135A Seaforth Crescent (south) at varying times during midwinter.

In order to undertake a detailed assessment, the applicant provided revised shadow diagrams, inclusive of the entirety of the affected site (to quantify the proposed impact) at hourly intervals between 9am and 3pm in midwinter.

As a result, the following impacts are identified as follows:

- There is no impact to the northern elevation upper level windows servicing a bedroom.
- There is impact to the northern elevation mid-level windows servicing lounge and bathroom. Thethree window openings are completely overshadowed at 8.00am, however by 10.00am there is no overshadowing to these windows. See Figures below.





Figure 4: *Existing solar impact at 10am* ***Figure 5:*** *Proposed solar impact at 10am*

- There is an impact to the lower ground floor windows that service a lounge area. It is important to acknowledge these windows are particularly vulnerable to overshadowing due to their location on the sloping topography. The two windows are completely overshadowed from 8.00am, with sunlight increasing until noon, where solar access is to the entire window consistent with the existing situation on the site. The windows then are overshadowed by the dwelling itself. See Figures below.





Figure 6: *Existing solar impact at noon* ***Figure 7:*** *Proposed solar impact at 12 noon.*

Merit consideration:

As an objection was received by No. 135A Seaforth Crescent, the development is considered against the underlying Objectives of the Control as follows:

- ***To provide equitable access to light and sunshine.***

Comment:

The proposal provides for a design and bulk that is compliant with the required building height and Floor Space Ratio (FSR) and is similar in height and bulk to neighbouring properties. The upper setback of the first floor is sufficient to maintain compliance without eliminating required solar access to the private open space, or window areas of No. 135A Seaforth Crescent as detailed above.

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 appropriate siting, combined with compliant setbacks to be consistent with the neighbouring building lines, allows for adequate sunlight to penetrate the private open space areas across the neighbouring sites. In particular, the east-west orientation of the lot and the compliant setbacks ensure that each neighbouring dwelling receives appropriate solar access with an appropriate design to maximise the penetration of sunlight to windows, livings rooms and principal outdoor areas of adjoining properties.

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 lot has an east west orientation so that much of the overshadowing is directed toward adjacent land in the morning periods. For No.135A the layout of that dwelling has two covered POS balcony areas, and a rear yard setback of which solar access is consistent with the objectives of the control.

The southern side of the proposed first floor has been stepped to follow the fall of the land, and the first floor has been further recessed to ensure greater compliance with the relevant built form controls than what currently exists onsite.

Whilst the impact to the adjoining property is acknowledged, it is not considered to be unreasonable noting that the impacting portion of the proposed development is generally compliant with the prescribed built form controls and that the affected living areas on the lower ground floor are somewhat vulnerable as they are located on the northern side of an east-west oriented site.

Overall, Council can be satisfied that the extent of impact associated with the proposed development is consistent with the requirements and objectives of this control.

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

3.4.2 Privacy and Security

3.4.2.1 Window Design and Orientation

The provisions of this development control prescribe that when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

The proposed first floor has no additional window openings on the southern elevation (closest to No.135A Seaforth Crescent). As a result, there is no ability to directly overlook the southern adjoining property.

The window/door openings on the northern elevation are located well over 43m from No.143 Seaforth Crescent, with landscaping obstructing any line of site. As a result of the side boundary spatial separation no direct overlooking is able to be undertaken.

Due to the location of the existing dwelling low on the sloping topography of the subject site, the window openings on the eastern elevation face directly into the rock face and vegetated areas of the subject site (see photo below), with no ability for direct overlooking.



Photo 3. *Existing vegetated outlook to the east from the existing attic room, location of the new first floor.*

Windows proposed for the western elevation are orientated towards the substantial views of Middle Harbour, Sailors Bay and Sugarloaf Bay.

3.4.2.2 Balconies and Terraces

The proposed new first floor comprises an elevated balcony on the northern side elevation, immediately adjacent to the study. The balcony is unscreened, however, the lack of a screen is not considered to be unreasonable in these circumstances. The balcony is not situated forward of the dwelling, is located well over 41m from the nearest boundary, and enables an outdoor space that obtains available views to the west.



Figure 8. *Distance of the first floor balcony to the northern neighbour No. 143 Seaforth Crescent.*

There is no ability for an individual to stand and look forwards towards the adjoining residential dwelling of No.135A Seaforth Crescent, and the spatial separation to No.143 Seaforth Crescent is reasonable to eliminant unreasonable direct overlooking.

The proposed development is considered to be consistent with the objectives of this development control, as follows:

- ***To minimise loss of privacy to adjacent and nearby development by appropriate design for privacy including screening between closely spaces buildings and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.***

Comment:

The proposed development will not unreasonably alter the current amenity of adjoining dwellings. The impacts of the proposal upon the privacy of adjoining dwellings are considered to be reasonably minimised to a degree that is acceptable within a mixed density residential environment.

- ***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 development is considered to achieve an appropriate balance between privacy and the obtainment light and air to the rooms along the side elevations. The inclusion of windows along the upper floor north, east and west elevations is not unreasonable, and the proposal is considered to be a reasonable design response that maximises privacy between adjoining dwellings.

- ***To encourage awareness of neighbourhood security.***

Comment:
The proposed development has no impact on casual surveillance of the street.

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

3.4.3 Maintenance of Views

The development is considered against the underlying Objectives of the Control as follows:

Objective 1 To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

A submission was received in relation to view loss from the property to the south No.135A Seaforth Crescent.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:
The existing views are of Middle Harbour, Sailors Bay and Sugarloaf Bay. These views are largely

unobstructed, with some vegetation creating obstruction when observing the view from the dwelling. See photos below.







Photos 4, 5 & 6: *Existing views from the rear upper balcony of No. 135A Seaforth Crescent to the south-west, west and north-west.*

2. What part of the affected property are the views obtained

"*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 to Principle 2:

The view lines to be obstructed are over the northern side boundary of No. 135A Seaforth Crescent. All views over the western (rear) boundary from the three (3) levels of the dwelling will be unaffected from the proposed first floor.

The ground floor main lounge area and the first floor bedroom & ensuite views are currently obstructed by the existing dwelling house on the subject site. There is no further impact from these windows as a result of the proposed first floor.

The bedroom on the upper floor on the northern side of No.135A will be the only room impacted by the proposal. The views are obtained from a sitting and standing position.

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Photos 7 & 8: *Existing views from the windows from the upper floor bedroom of No. 135A Seaforth Crescent.*

3. Extent of impact

"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% 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 to Principle 3:

From the bedroom of the upper floor of No.135A, the first floor proposal will obstruct district views (Seaforth Crescent escarpment) and portions of the water views over the side boundary. See Below.

The view corridor to the south-west, west and north east will be retained. Given the expansive views that will remain unaffected to the north of No.135A Seaforth Crescent, the impact on the side view of the portion of water views and district outlook is considered to be **minor** in the context of these principles.



Photo 9: *Views impacted from the windows from the upper floor bedroom of No.135A Seaforth Crescent (source: SEE).*

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 dwelling continues to be under the maximum height of buildings development standard. The building height was amended during the course of the assessment to provide for greater view corridors in order for greater view sharing to be achieved. The proposed works do not comply with the required wall height control by 0.2m for the southern elevation. However, this area is very minor with furtherdesign change of the proposed works to create full compliance would result in a negligible view gain.

While the proposal will result in some loss of view from No.135A Seaforth Crescent from certain positions, the primary views of views of Middle Harbour remain and the view of Middle Harbour, Sailors Bay and Sugarloaf Bay are retained from other positions on the property. The non-compliant side boundary setback on the north-western elevations is consistent with the existing north-western setback. As a result, the proposal is considered to be reasonable in this context and will allow for the reasonable sharing of views.

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.

Comment:

Overall, the design makes attempts to minimise the loss of views from adjoining properties, and as such, the proposed development is considered to be reasonable and consistent with the objectives and

requirements of the MDCP.

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

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

Clause 4.1.2.1 - Wall Height

The development does not comply with the requirements of Clause 4.1.2.1 Wall Height which, given the uneven slope of the site, permits the following maximum variable maximum wall heights:

- The development proposes a wall height of 7.6 - 6.2m (variation of up to 17%) on the northern elevation and 7.4m (variation of 3%) at the western corner of the southern elevation.

Clause 4.1.2.2 - Number of Storeys

Clause 4.1.2.2 permits a maximum of 2 storeys.

The dwelling includes three (3) storeys which are partial due to the cross slope of the site and location of existing levels of the dwelling.

The figure below shows the wall height variations (indicated in pink) and the storey non-compliances (indicated in red).

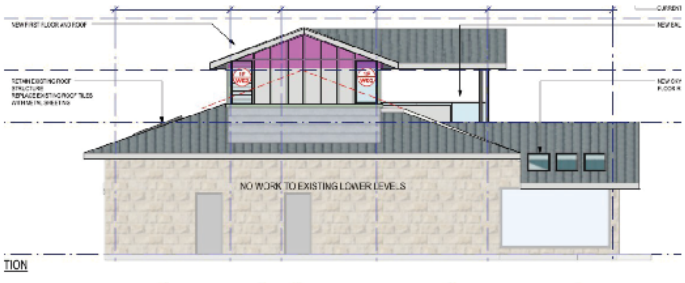


Figure 9: *North Elevation wall height non- compliance shown in pink (additional wall height due to gable roof design).*

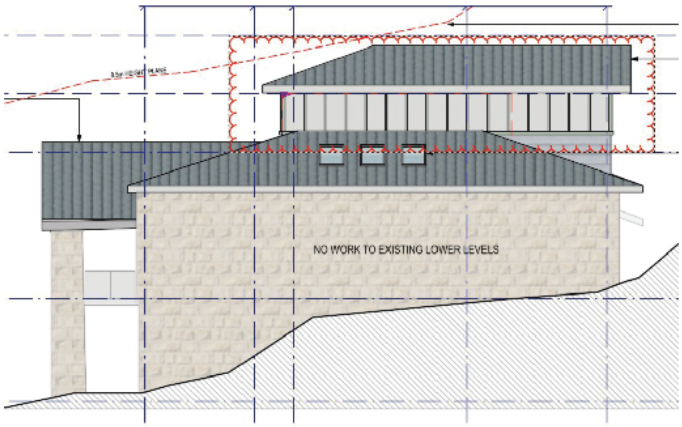


Figure 10. *Wall height non-compliance shown in pink, third storey indicated in red.*

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of Clause 4.3 - Height of Buildings as contained under the MLEP 2013, as follows:

- ***To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.***

Comment
The proposed development provides a detached dwelling house with a gable roof form. This gable roof form, with minor wall height variations due to the topography of the property, are the breaching elements of the proposed development.

Many of the properties along the Seaforth Crescent escarpment and within the immediate vicinity include similar roof forms and building heights variations, including the adjacent property at No 135A, which reaches a higher reduced level.

As such, the proposal complies with the Height of Building development standard, and is consistent with existing development in the locality, particularly in relation to height, roof form and character.

The development satisfies this objective.

- ***To control the bulk and scale of buildings.***

Comment
The proposed upper floor involves a non-compliance with the maximum wall height for the northern and southern elevation. However, this variation is heavily influenced by the topography of the site, and the need to not adversely impact, excavate or remove the existing natural features on the site such as the rock faces, rock outcrops and canopy trees.

It is also important to note that the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale.



The upper floor is sufficiently set back from all boundaries and the wall height breach is not unreasonable. The proposal retains extensive landscaped areas and canopy trees. The noncompliance with the wall height will have a negligible impact on view sharing from nearby public land or surrounding private property, and will not result in any unreasonable amenity impacts on the subject site or adjacent sites.

As such, the bulk and scale of the development is satisfactory.

The development satisfies this objective.

- ***To minimise disruption to the following:***
  views to nearby residential development from public spaces (including the harbour and foreshores).
  views from nearby residential development to public spaces (including the harbour and foreshores).
  views between public spaces (including the harbour and foreshores).

Comment
Due to the topography of the area and the siting of the proposed works, it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, the proposed development is adequately designed and sited so as not to result in unreasonable impacts upon views to, from, or between public or private spaces.

The development satisfies this objective.

- ***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 has been designed in a manner that does not unreasonably nor detrimentally create additional overshadowing to adjoining and nearby properties. The design of the first floor is such that it does not impact on sunlight to neighbouring properties.

The shadow diagrams that accompany the application demonstrate consistency with Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

The development satisfies this objective.

- ***To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.***

Comment
The development satisfactorily responds to the topography of the site thereby retaining its unique form when viewed from the neighbouring sites and the waterway. Similarly, because of the location within the existing dwelling house footprint, the development retains all trees and vegetation on the site.

The development satisfies this objective.

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

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

As detailed under the Manly Local Environmental Plan 2013 (Clause 6.9) section of this report, the proposed upper floor is considered to be consistent with the objectives and requirements of this Clause.

However, an assessment has been undertaken below in reference to clause. 5.4.1 Foreshore Scenic Protection Area and the addition considerations under clause 5.4.1.1 Additional matters for consideration to ensure the proposal demonstrates compliance with the objectives of the controls.

- ***To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.***

Comment
The proposed upper floor is consistent with the Foreshore Building Line and foreshore area setback control and will not have a dominate appearance when viewed from the waterway. There are several examples of existing built form of neighbouring houses along the Seaforth Crescent water's edge located within the foreshore area. Therefore, the proposal is consistent with the control.

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

Comment
The proposed upper floor will maintain a reasonable level of amenity to the residents of the subject site and to the adjoining and surrounding properties. The upper floor has a proposed setback of 18.2m to 20.9m to the mean high water mark which will minimise impacts on available views. The proposal allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties.

- ***To promote flexibility in the siting of buildings.***

Comment
The reduced foreshore setback will not unreasonably impact upon the adjoining property of No.135 A Seaforth Crescent.

Due to the topography of the area and the siting of the proposed works within the existing dwelling footprint, it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss or overshadowing to surrounding properties.



The proposed works are located entirely on private land and will not negatively impact the natural foreshore processes or amenity of the foreshore area and public access along the waterfront will remain.

The proposed development is consistent with the surrounding built form of the locality, with the additional area of the encroachment not being visually identifiable from the waterways.

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

Comment
There is no removal of any significant trees or existing vegetation. There are more than sufficient opportunities throughout the site to support a variety of plantings.

- ***To assist in appropriate bush fire asset protection zones.***

Comment
N/A the site is not bushfire effected.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposal does not meet the parking requirements of Schedule 3. However, due to the width and slope of the subject site from Seaforth Crescent, there is no ability to provide a compliant number of spaces. As such, car parking is not considered necessary or appropriate in the context of the site.

4.1.7 First Floor and Roof Additions

Clause 4.1.7 requires first floor additions to complement the architectural style of the ground floor, and where possible, retain existing roof forms.

The proposal is compliant with this requirement as the application seeks to retain the existing design of the roof form where possible with the first floor addition continuing the gable roof design style of the dwelling. Whilst the first floor provides a more modern look, the incorporation of the existing roof style, and the re-cladding will provide a visual consistency.

The proposal does not unreasonable degrade the amenity of surrounding residences, therefore demonstrating compliance with the control.



5.4.1 Foreshore Scenic Protection Area

As detailed under the Manly Local Environmental Plan 2013 (Clause 6.9) section of this report, the proposed first floor is considered to be consistent with the objectives and requirements of this Clause.

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 $3,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $300,000.

CONCLUSION

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

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

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

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

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

This development application has been assessed having regard to the MLEP 2013, MDCP 2013 and the relevant codes and policies of Council.



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

The amendments to the proposal and have resolved the built form, character and site suitability issues.

The critical concerns relating to the building height, wall height, view loss, privacy and overshadowing have been addressed by amended design, such that the proposal is acceptable and reasonable in regards to the privacy, amenity and view impacts to the adjoining properties and the public view from the waterway.

Ten (10) submissions were received in response to the notification of the review application.
The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and do not result in further design amendments. The item is not of Heritage significance due to a fire in the 1980s and as a result aerial imagery indicates the property was rebuilt in the early 1980s.

The proposal displays reasonable scale and density compatible with the surrounding development.

Accordingly, the application is referred to the NBLPP with a recommendation for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0735 for Alterations and additions to a dwelling house on land at Lot 102 DP 882515, 137 A Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Site Plan A001 Rev C	Feb 2021	MHDP Architects
Demolition Plan A002 Rev B	January 2020	MHDP Architects
Lower Ground Floor Plan A101 Rev B	January 2020	MHDP Architects
Ground Floor Plan A102 Rev B	January 2020	MHDP Architects
First Floor Plan A103 Rev C	January 2020	MHDP Architects
Roof Plan A104 Rev C	January 2020	MHDP Architects
North & West Elevation A201 Rev C	January 2020	MHDP Architects
East & South Elevation A202 Rev D	January 2020	MHDP Architects
Sections A221 Rev C	January 2020	MHDP Architects



Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Preliminary Landslip Assessment	27 May 2021	Crozier Geotechnical Consultants

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

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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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.

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 $3,000.00 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 $300,000.00.

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.

5. **Security Bond**

A bond (determined from cost of works) of $1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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.

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

Reason: To protect native vegetation.

7. **Photographic Archival Record**
A photographic archival recording of the site is to made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by Heritage NSW (Photographic Recording of Heritage Items Using Film or Digital Capture, 2006) This record must be submitted to Council's Heritage Officer for approval prior to the commencement of works on site

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

The photographic record should be made using digital technology, and should include:
- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

8. **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.

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9. **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.

10. **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.

11. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **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.

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b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

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.

14. **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.



15. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

16. **Stormwater Drainage Disposal Certification**
Certification from an appropriately qualified and practicing 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 Authorization 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 Authorization 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.

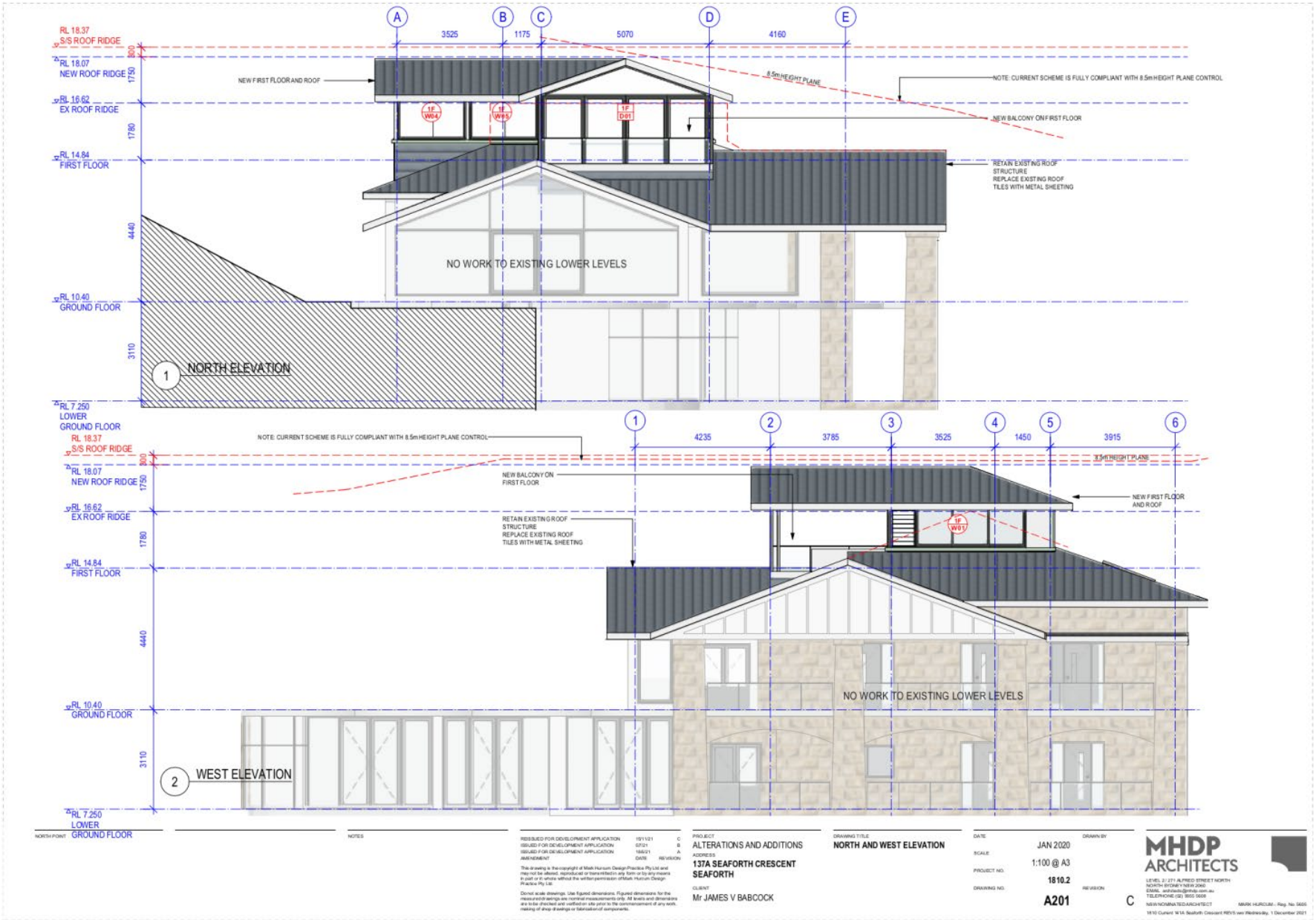


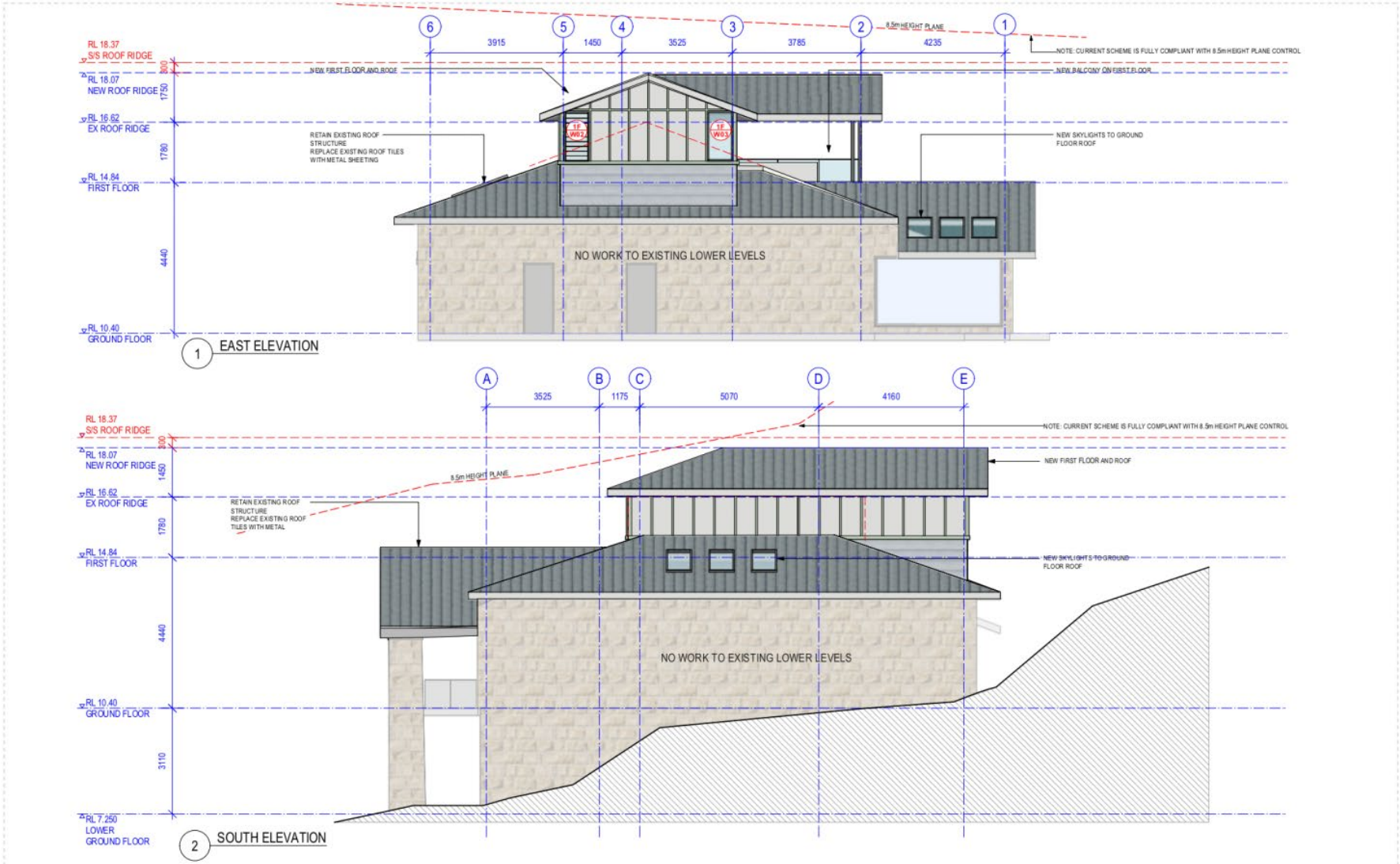
ALTERATIONS AND ADDITIONS
137A SEAFORTH CRESCENT
SEAFORTH
MR J. BABCOCK

SITE PLAN & SITE ANALYSIS

FEBRUARY 2021
1:400
1810.2
A001
C

MHDP ARCHITECTS


A
B
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D
E
3525
1175
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RL 18.37
S/S ROOF RIDGE
RL 18.07
NEW ROOF RIDGE
RL 16.62
EX ROOF RIDGE
RL 14.84
FIRST FLOOR
RL 10.40
GROUND FLOOR
RL 7.250
LOWER GROUND FLOOR
300
1750
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4440
3110
NEW FIRST FLOOR AND ROOF
8.5m HEIGHT PLANE
NOTE: CURRENT SCHEME IS FULLY COMPLIANT WITH 8.5m HEIGHT PLANE CONTROL
NEW BALCONY ON FIRST FLOOR
RETAIN EXISTING ROOF STRUCTURE
REPLACE EXISTING ROOF TILES WITH METAL SHEETING
1F W04
1F W05
1F D01
NO WORK TO EXISTING LOWER LEVELS
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NORTH ELEVATION
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NOTE: CURRENT SCHEME IS FULLY COMPLIANT WITH 8.5m HEIGHT PLANE CONTROL
NEW BALCONY ON FIRST FLOOR
RETAIN EXISTING ROOF STRUCTURE
REPLACE EXISTING ROOF TILES WITH METAL SHEETING
NEW FIRST FLOOR AND ROOF
1F W01
NO WORK TO EXISTING LOWER LEVELS
2
WEST ELEVATION
NORTH POINT
NOTES
ISSUED FOR DEVELOPMENT APPLICATION 15/11/21 C
ISSUED FOR DEVELOPMENT APPLICATION 5/7/21 B
ISSUED FOR DEVELOPMENT APPLICATION 18/6/21 A
AMENDMENT DATE REVISION
PROJECT
ALTERATIONS AND ADDITIONS
ADDRESS
137A SEAFORTH CRESCENT SEAFORTH
CLIENT
Mr JAMES V BABCOCK
DRAWING TITLE
NORTH AND WEST ELEVATION
DATE JAN 2020
SCALE 1:100 @ A3
PROJECT NO. 1810.2
DRAWING NO. A201
REVISION C
DRAWN BY
MHDP ARCHITECTS
LEVEL 2/ 271 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
EMAIL architects@mhdp.com.au
TELEPHONE (02) 9955 5606
NSW NOMINATED ARCHITECT MARK HURCUM - Reg. No. 5606
1810 Current 137A Seaforth Crescent REVS rev Wednesday, 1 December 2021


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8.5m HEIGHT PLANE
NOTE: CURRENT SCHEME IS FULLY COMPLIANT WITH 8.5m HEIGHT PLANE CONTROL
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NEW BALCONY ON FIRST FLOOR
RL 18.37
S/S ROOF RIDGE
RL 18.07
NEW ROOF RIDGE
RL 16.62
EX ROOF RIDGE
RL 14.84
FIRST FLOOR
RL 10.40
GROUND FLOOR
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REPLACE EXISTING ROOF TILES WITH METAL SHEETING
NEW SKYLIGHTS TO GROUND FLOOR ROOF
NO WORK TO EXISTING LOWER LEVELS
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EAST ELEVATION
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NOTE: CURRENT SCHEME IS FULLY COMPLIANT WITH 8.5m HEIGHT PLANE CONTROL
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RETAIN EXISTING ROOF STRUCTURE
REPLACE EXISTING ROOF TILES WITH METAL
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RL 18.07
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FIRST FLOOR
RL 10.40
GROUND FLOOR
RL 7.250
LOWER GROUND FLOOR
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2
SOUTH ELEVATION
NORTH POINT
NOTES
ISSUED FOR DEVELOPMENT APPLICATION 23/11/21 D
ISSUED FOR DEVELOPMENT APPLICATION 15/11/21 C
ISSUED FOR DEVELOPMENT APPLICATION 5/7/21 B
AMENDMENT DATE REVISION
This drawing is the copyright of Mark Hurcum Design Practice Pty Ltd and may not be altered, reproduced or transmitted in any form or by any means in part or in whole without the written permission of Mark Hurcum Design Practice Pty Ltd.
Do not scale drawings. Use figured dimensions. Figured dimensions for the measured drawings are nominal measurements only. All levels and dimensions are to be checked and verified on site prior to the commencement of any work, making of shop drawings or fabrication of components.
PROJECT
ALTERATIONS AND ADDITIONS
ADDRESS
137A SEAFORTH CRESCENT SEAFORTH
CLIENT
Mr JAMES V BABCOCK
DRAWING TITLE
SOUTH AND EAST ELEVATION
DATE
JAN 2020
DRAWN BY
SCALE
1:100 @ A3
PROJECT NO.
1810.2
DRAWING NO.
A202
REVISION
D
MHDP ARCHITECTS
LEVEL 2 / 271 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
EMAIL architects@mhdp.com.au
TELEPHONE (02) 9955 9606
NSW NOMINATED ARCHITECT MARK HURCUM – Reg. No. 5908
1810 Current 137A Seaforth Crescent REVS.vwx Wednesday, 1 December 2021

ITEM 4.6	**DA2021/1166 - 142 OCEAN STREET, NARRABEEN - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING**
AUTHORISING MANAGER	**Tony Collier**
TRIM FILE REF	**2021/849818**
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 / Floor Space Ratio Development Standard 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. DA2021/1166 for demolition works and construction of a Residential Flat Building at Lot 12 Sec 47 DP 111254, 142 Ocean Street, Narrabeen subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1166

Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 12 DP 111254, 142 Ocean Street NARRABEEN NSW 2101
Proposed Development:	Demolition works and construction of a Residential Flat Building
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Trio Industries Pty Ltd
Applicant:	Trio Industries Pty Ltd

Application Lodged:	26/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	29/11/2021 to 06/12/2021
Advertised:	29/11/2021
Submissions Received:	10
Clause 4.6 Variation:	4.3 Height of buildings: 5.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 4,939,000.00

Development application no. DA2021/1166 is referred to the Northern Beaches Local Planning Panel as the application constitutes Contentious Development by having ten unique objections and Sensitive Development by way of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development applying.

The proposed part-two/part-three storey residential flat building housing which will contain four apartments has been the subject of two rounds of notification following the receipt of amended plans to address commentary from Council's Design and Sustainability Advisory Panel and other internal referral departments.

The ten objections received raise concern regarding the proportions and built form of the building and the subsequent amenity impacts that the development may have on surrounding land. The majority of objections have come from the adjoining residential flat building at number 144 Ocean Street to the northeast, of which a number of units have their only outlook directly onto the development site.

The assessment of the proposal and revised plans has resulted in the considered conclusion that the development will not have any unacceptable impacts on the amenity of neighbouring properties

notwithstanding the variations sought to several built form controls. The proposal is a high quality and generously proportioned building which includes the largest living green roof in Narrabeen, if not the whole of the Northern Beaches.

Council's independent design panel has described the proposal as well-considered, architecturally sophisticated, spatially rich and an excellent proposal.

On balance of all factors this report recommends that the Northern Beaches Local Planning Panel as the consent authority **approves** development application no. DA2021/1166 subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works, excavation and the construction of a part-two / part-three storey residential flat building comprising of four x three bedroom units, a roof terrace, a swimming pool and associated landscape works.

During the course of the assessment amended plans were received and re-notified to adjoining and nearby properties.

The proposal, as revised, incorporates the following key elements:

- excavation of approximately 1,183.24m^3 to accommodate a basement level.
- basement car parking for nine vehicles inclusive of one visitor space.
- excavation and construction of a 28.2kl in-ground swimming pool.
- construction of a detached waste storage room and entry portal to the front of the site.
- construction of one part-two / part-three storey building comprising of four x three bedroom / two bathroom units with a central open-air lobby.
- construction of a roof terrace.
- landscape works including six new canopy trees capable of reaching heights of up to 25m, 29 other exotic trees and hundreds of shrubs and ground covers. Construction of a 240sqm non-trafficable roof garden.

Herein this report these works are described as the 'development'.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D11 Roofs
Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone

SITE DESCRIPTION

Property Description:	Lot 12 DP 111254, 142 Ocean Street NARRABEEN NSW 2101
Detailed Site Description:	The subject site is legally identified as Lot 12 Sec 47 in Deposited Plan 111254 and is known as 142 Ocean Street, Narrabeen. The site falls within the R3 Medium Density Residential zone pursuant to the Warringah Local Environmental Plan 2011. The site is rectangular in shape with a width of 15m, depth of 60m and an overall surveyed area of 932.9m^2. The site presently accommodates a detached one and two storey dwelling house with a secondary dwelling. Topographically the site slopes from front to rear (east to west) by approximately 2.5m via a gradual slope. There are no rock outcrops or significant topographical features present on the site. The site accommodates landscaping throughout including several large palm trees and strelitzias. Surrounding developments generally consist of residential flat buildings and single dwelling houses. Immediately northwards of the site is an elevated three storey brick flat building with windows and balconies looking into the subject site. South of the site is a small cottage that has recently obtained development consent to be redeveloped as three flats.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – 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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This 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 2011 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 04/08/2021 to 23/08/2021 and again on 29/11/2021 to 06/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning andAssessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Miss Rebecca Beth Caves	10 / 144 Ocean Street NARRABEEN NSW 2101
Rachel Elizabeth Lack	22 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Gregory Mark Luckman	7 / 144 Ocean Street NARRABEEN NSW 2101
Ms Oriane Henriette Bernadette Perrin	Address Unknown
Withheld	NARRABEEN NSW 2101
Nicholas Murdocca	C/- LJ Hooker Collaroy Shop 1/1020 Pittwater Road COLLAROY NSW 2097
David Matthew Corbett	15 / 144 Ocean Street NARRABEEN NSW 2101
Mr Patrick John McDonnell	14 / 53 - 55 Lagoon Street NARRABEEN NSW 2101
Withheld	TURRAMURRA NSW 2074
John Russo	Address Unknown

The development application was publicly notified twice, once being between 04 August and 23 August 2021 and the second time being between 29 November and 06 December 2021. The first exhibition of the application generated unique submissions from ten individual households and the second generated a further five secondary submissions from previous submitters.

The matters raised in the submissions have been categorised into the following groups (below) and, where appropriate, expanded upon in the latter half of this report.

- Built Form (height, setbacks, envelope, landscape, storeys)
- Amenity (solar access, visual privacy/overlooking, acoustic privacy, views)
- Traffic safety and car parking
- Construction impacts (noise and potential impacts)
- Trees (removal/species selection/quantum)
- Property values

The matters raised within the submissions are addressed as follows:

- **Built Form (height, setbacks, envelope, landscape, storeys)**
  Comment
  Submissions received note the built form non-compliances sought by the development including height, setbacks, envelope, landscaping and storeys control. These matters are each discussed under their respective headings in the Warringah Local Environmental Plan 2011 (WLEP) or Warringah Development Control Plan 2011 (WDCP) sections of this report. In summary it is found that despite the variations sought the building provides an acceptable built form and amenity outcome.

In preface to reading this report it should be noted that the aforementioned revised plans included the modification of the flat concrete roof to a non-trafficable green living roof designed by a landscape designer with low-lying species. That living roof is (to the author's knowledge) the largest in Narrabeen if not the Northern Beaches. The outlook provided by the living roof commensurate to the concrete roof is considered to be a significant improvement and one which provides a superior visual outcome compared to a development that would comply with the relevantbuilt form controls. This is discussed in more detail throughout this report.

- **Amenity (solar access, visual privacy/overlooking, acoustic privacy, views)**
  Comment
  Submissions received raise concern about a loss of solar access, visual and acoustic privacy and a loss of views / outlook caused by the development.

  These matters are discussed under their relevant WDCP or Apartment Design Guideline headings later in this report. In summary, the matters do not warrant the refusal of the application impacts have been lessened by the revised plans, and can be further lessened by appropriate conditions.

- **Traffic safety and car parking**
  Comment
  Concern is raised that the development will lead to parking and traffic congestion on Ocean Street and raise concern that the proposal could impact on pedestrian safety.

  The development provides a compliant level of car parking with nine spaces for four units - this ratio exceeds that on other nearby developments. The development is not found to unreasonably exacerbate existing issues and these matters do not warrant the refusal of the application.

- **Construction impacts (noise and potential impacts)**
  Comment
  Concern is raised regarding the potential construction impacts including noise and potential damages caused by excavation. Noise from a construction site is an inevitability that is, in some instances, difficult to limit. Conditions pertaining to construction hours can be enforced by way in the recommendation of this consent. A further condition can be imposed requiring the completion of pre and post dilapidation reports of surrounding structures to ensure that the development (particularly the excavation) impacts on surrounding buildings can be appropriately documented.

- **Trees (removal/species selection/quantum)**
  Comment
  Submissions received requested that an existing row of palm trees and strelitizias be maintained along the rear boundary. Concerns were raised regarding the species selection of the roof top planter box including a 10m high tree.

  The trees to the rear of the site are proposed to be replaced by fast-growing syzigium resilience (lilly pilly) trees along with low-level plantings. The revised plans provided a widened strip of landscaping to the rear of the site. This planting selection will provide a denser vegetation screening between the subject development site and the flat building to the rear.

  The revised plans deleted the proposed 10m high tree from the roof terrace and reduced the area of the terrace by nearly 40sqm. The plans also added the non-traffic green living roof to the remainder of the roof that consists of groundcovers (i.e.low-lying) plants.

  The revised plans are deemed to provide a satisfactory landscape outcome on the site.

- **Property values**
  Comment
  A number of submissions received raise concern that the development may decrease existing property values. The valuation of a property is not a head of consideration pursuant to the Environmental Planning and Assessment Act 1979 and no further assessment on this matter is required.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	***Supported*** Council's Design and Sustainability Advisory Panel (DSAP) provided a 3 page report on various aspects of the design and many of their comments have been adopted into the aforementioned revised plans (including a green roof, modification to the entry pathway etc). That report is available for public viewing online. Their report summary and conclusion reads as follows: *The proposal seeks approval for four residential apartments above a basement car park.* *The site is 15.1m wide with a depth of 60.9m, located with a single south-east facing street frontage to Ocean Street, between an existing 3-4 story multi-unit residential building to the north and an approved 2 story multi-unit residential building to the south. The neighbouring northerly building is setback only [2.7m from the shared boundary] and has numerous windows and balconies looking directly into the subject site. These site conditions present challenges with dwelling orientation for solar access and privacy. The architect has skillfully worked with these constraints to create a place and site responsive design which respects its neighbours and the future residents of the development.* *The overall design approach is a well-considered response to a site with difficult constraints it is architecturally sophisticated and spatially rich. The following are suggestions to further enhance the already excellent proposal.* *The Panel supports the proposal with the consideration of the recommendations above to further enhance the already well-considered design response. The Panel commended the design overall, the quality of the presentation, the depth and clarity of thinking and ingenuity in the planning of the apartments.*
Environmental Health (Acid Sulphate)	***Supported without conditions*** The geotechnical site investigation dated April 2021 prepared by Crozier Geotechnical Consultants concludes '*the laboratory test results indicate that acid sulfate soils are not present within the soils onsite'.* Therefore Council will not be requiring an acid sulfate soils management plan.

Internal Referral Body	Comments
Landscape Officer	***Supported with conditions*** The proposal seeks consent for demolition of existing structures and construction of a residential flat building with associated landscaping and a swimming pool. Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan (R3 Zone), and the following Warringah DCP 2011 controls: • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation The Arborist's Report prepared by Rain Tree Consulting and Landscape Plans prepared by Jane Britt Design are noted. The Arborist's Report indicates that 12 exempt tree species are to be removed from the site to accommodate the proposed works. One street tree is to be retained. The Landscape Plans indicate replanting of 30 non-exempt trees in addition to other palms, shrubs and groundcovers. No objections are raised to approval subject to conditions as recommended.
NECC (Coast and Catchments)	***Supported without conditions*** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this application. As assessed in the submitted Statement of Environmental Effects (SEE) report, the application satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP.

Internal Referral Body	Comments
NECC (Development Engineering)	***Supported, with conditions*** **Updated Comments 7/12/2021** The amended stormwater drainage plans now address the previous RFI request . No objections to the proposed development subject to conditions. **Original Comments 15/09/2021** The stormwater management plan has been reviewed and whilst on site absorption is supported given the underlying geology the following additional information is required in accordance with appendix 3 of Councils water management policy for development. A consulting geotechnical engineer must submit a geotechnical report providing the following details (where applicable) for the proposed location of the absorption/dispersal trench: i) Depth to rock ii) Depth to the water table iii) Measured infiltration rate (in litres/square metres/second) iv) Infiltration rate that can be maintained in the long term v) Minimum distance any infiltration system should be located clear of property boundaries vi) Whether the use of infiltration is likely to cause seepage problems to the proposed structure or to any adjoining properties . The above information must be submitted to Council to determine whether any absorption system is permitted for the site. The absorption pit is to be designed for a 2% AEP storm using DRAINS computer software based on the infiltration rate that can be maintained in the long term. An overflow mechanism in the form of a level spreader must be provided for all storms greater than the 2% AEP storm, up to and including the 1% AEP storm. The overflow mechanism is required to minimise overland impacts on adjoining properties. The roof guttering and downpipe system should be designed to collect the 2% AEP design rainfall and pipe it to the absorption system, or alternatively provide for surface collection of guttering overflows into the absorption system. Drainage calculations must be submitted with the plans. Where a high water table is encountered and a gravel filled trench design is proposed, the base of the trench should be at least 500mm above the water table to accommodate fluctuations of the groundwater. When considering available storage volumes for the storage design methods, a maximum of 20% voids in the base aggregate may be used. The absorption pit should not be located within three metres of the side or rear boundary, or three metres from any on-site building or neighbouring buildings.

NECC (Water Management)	***Supported with conditions*** The proposal has been assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Protection of Waterways and Riparian Lands Policy . The supplied reports and plans were considered. The supplied documentation has been assessed satisfactory. An erosion and sediment control plan is required. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. Should the applicant demonstrate that this is achieved, the application can be supported, and on this basis conditions of consent are provided.

Internal Referral Body	Comments
Traffic Engineer	***Supported with conditions*** The development is for demolition of the existing house at 142 Ocean Street, Narrabeen and construction of a two storey residential flat building for 4 x 3 bedroom units with basement parking for 9 vehicles. Traffic Generation: The proposed development has been estimated to generate 3 vehicle trips during weekday peak hours. This is an acceptable level of traffic and is unlikely to impact upon traffic conditions on the surrounding road network. Parking: The Warringah DCP 2011 requires 1.5 car spaces per unit for 3 bedroom units and 1 visitor space per 5 units or part thereof. The development therefore has a parking requirement of 7 parking spaces. The development proposes 9 parking spaces which exceeds requirements and is acceptable. The development also requires 5 bicycle parking spaces which are being provided within the storeroom accessed off the basement carpark Access: Access to the development is via a single width driveway of 3.6m in width. This means there is potential for vehicles to meet head-on on the driveway and may result in entering vehicles having to reverse back across the footpath and onto the road. The driveway is however on a straight alignment and as it only serves a small number of spaces and is less than 30m in length the chances of head on encounters are minimal and vehicles should be able to see each other approaching and reverse to take evasive action. To minimise the chances of head on encounters occurring signage requiring exiting vehicles to Give Way to entering traffic and traffic light or flashing light controls in the basement carpark to warn of entering vehicles will be required as a condition of consent. Pedestrian Sight Line Splay: AS2890.1 section 3.2.4 requires that a pedestrian sight line splay of 2.5m x 2.0m be provided at the point where the driveway meets the property boundary. The plans show pedestrian sight line triangles but these are shown at the point where the driveway meet the footpath and not at the property alignment. Amended plans showing the sight line triangle at the boundary will be required as a condition of consent.

Internal Referral Body	Comments
Waste Officer	***Supported, with conditions*** The waste storage arrangements are suitable for servicing the waste facilities.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	*The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions as 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 65 - Design Quality of Residential Apartment Development

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a part-two / part-three storey residential flat housing development plus basement car parking for the provisions of four self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed SEPP 65 Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

Comment

The context and neighbourhood character of the immediate vicinity is varied both in terms of its legal zoning and the proportionality of existing structures. The development of the site for the purpose of a residential flat building is consistent with the WLEP 2011 and the design of the building is generally of a character and appearance that would be reasonably expected to be developed on the site.

The building itself is a high quality and interesting design situated within a landscaped setting that achieves a high level of amenity for future occupants. The impact of the building upon neighbouring developments is generally consistent with the level of impact that could reasonably be expected on the site by virtue of both the prevailing planning controls and by the scales of neighbouring buildings.

On balance the development is a well designed building that enhances the qualities of the area and the landscape presentation of the site to the street. The development is deemed to appropriately satisfy Principle 1.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
Good design also achieves an appropriate built form for a site and the building's purpose in terms of building 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 development does not comply with all the relevant built form controls which has been a point of contention with objectors as discussed earlier in this report. Notwithstanding the numerical variations (that are discussed in detail later in this report) the built form outcome is considered to be of a high quality that enhances the overall streetscape without giving rise to unreasonable impacts to the amenity of adjacent land. Materially the built form non-compliances do not create an impact that would otherwise be non-existent by a compliant design, indeed a 100% compliant development on the site could have a more significant impact to neighbours and the environment commensurate to that of the proposed.

On balance the built form and scale of the development is appropriate and satisfies Principle 2.

Principle 3: Density

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

Comment

The proposal provides four units that are well appointed and proportioned providing a high level of amenity for residents. The density of the development is considered appropriate and satisfies Principle 3.

Principle 4: Sustainability

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

Comment

The development incorporates a number of passive and technological sustainable features including natural cross ventilation, solar access and rooftop solar hot water collectors. The development also includes a 240sqm green roof that will thermally benefit occupants of the development and will significantly enhance the availability of habitat for wildlife within the locale.

The development satisfies Principle 4.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable

system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

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

Comment

The proposal results in a superior landscape outcome compared to existing and surrounding development and includes the largest known green rooftop on the Northern Beaches. The landscape solution of the site is integrated into the form of the building and greenery can be found at all levels contributing to both an improved biodiversity outcome and an enhanced visual outcome for neighbours.

The development satisfies Principle 5.

Principle 6: Amenity

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

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

Comment

Internally the development provides generous internal and external spaces that shall influence a positive amenity for occupants enhanced by the sites location across the road from Narrabeen Beach. The proposal has not been found to unreasonably prejudice the amenity of neighbouring land and overall contributes to a positive living environment and resident well being.

The development satisfies Principle 6.

Principle 7: Safety

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

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

Comment

The proposal appropriately optimises safety and security for occupants of the development itself and for users of the public domain by way of passive surveillance. The proposal satisfies Principle 7.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

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

amongst residents.

Comment

The proposal provides four units that are generally more generously proportioned than the majority of units within the locale, thereby providing market diversity and housing choice for different demographics, living needs and household budgets.

The proposal satisfies Principle 8.

Principle 9: Aesthetics

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

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

Comment

The proposed built form is considered to be high quality in its form, massing, materiality and landscape outcome which shall contribute to enhancing the wider locale. Council's independent design panel have commended the design overall and the depth and clarity of thinking and ingenuity in the planning of the apartments.

The proposal satisfies Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	**Consistent** The proposal is appropriately sited in its context commensurate to its adjoining neighbours, one of which is a large elevated three storey flat building with minimal articulation, and the other is a smaller two storey pavilion type multi-dwelling housing development that is yet to be built. This proposal blends appropriately with the proportions and general footprints of surrounding buildings and provides an improved landscaped outcome.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	**Consistent** The proposal is appropriately responsive to the streetscape and will present

		as a well-designed building. The proposal will cast shadow to no. 140 Ocean Street to the south however that shadowing is minimised by the buildings setbacks and is compliant with solar access controls.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	**Consistent** The development appropriately transitions between the private and public domain by using a fence and does not compromise safety and security. The development does not prejudice the amenity of the public domain and enhances the visual appearance of the site and wider locale.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	**Not Consistent** The proposal does not provide any communal open space, however the location of the site combined with the proportions of the proposed private open spaces negate the need for any communal open space. The site is opposite Narrabeen Beach which provides appropriate opportunities for outdoor recreational activities. Each of the four units is afforded multiple outdoor living areas / spaces which shall benefit the amenity of occupants. In light of the above, the absence of communal open space does not warrant the refusal of the application.
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: **Site area** / **Minimum dimensions** / **Deep soil zone (% of site area)** Less than $650m^2$ / - / 7% $650m^2$ – $1,500m^2$ / 3m / Greater than / 6m /	**Consistent** The proposal provides a deep soil area of approximately 9% of the total site area.

1,500m^2		
Greater than 1,500m^2 with significant existing tree cover	6m	

Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: Building height / Habitable rooms and balconies / Non-habitable rooms Up to 12m (4 storeys) / 6m / 3m Up to 25m (5-8 storeys) / 9m / 4.5m Over 25m (9+ storeys) / 12m / 6m ***Note:*** *Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.* *Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.*	**Not Consistent** The width of the site at 15.44m severely impedes the ability the site to be developed in a manner that provides 6m setbacks to the northern and southern elevation as that would leave a buildable area of only 3.44m in width. The intent of part 3F of the ADG goes towards visual privacy with the key built mechanism to achieve appropriate privacy being a physical spatial separation. It is considered that, despite not achieving numerical compliance with Objective 3F-1 the architectural response and fenestration detailing to the flank facades of the building provide an appropriate level of privacy. The building incorporates raised planters and breeze-block privacy screening supported by deep soil boundary plantings which will ameliorate any actual overlooking, and the perception of being overlooked. This solution, in conjunction with the redevelopment of the site to the south and its privacy treatments, will allow for an acceptable visual privacy outcome. To the north, some level of impact is inevitable given the existing building at 144 Ocean Street and the fact that is is built close to the boundary with no perimeter landscaping and has single-aspect units looking directly	

		at the site. Insofar as it is possible to minimise impacts on this building, it is considered that the proposal is sympathetic to the constraints created by that building and the amenity of its occupants and achieves an acceptable visual privacy outcome.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	**Consistent** Pedestrian access to the building is accessible and easily identifiable.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	**Consistent** The proposed vehicular crossing is appropriate designed and located to minimise hazards to pedestrians and other vehicles.
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	**Consistent** Dedicated cycle parking is provided in the basement car park, and each units storage area is sufficiently dimensioned to accommodate a bicycle.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct	**Consistent** The development achieves a compliant level of solar access and does not unreasonably prejudice the level of solar access currently enjoyed by no. 140 Ocean Street, nor does the

	sunlight between 9 am and 3 pm at mid winter.	proposal prejudice or jeopardise the approved development of that site.
	• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	**Consistent** All apartments receive direct sunlight between 9am and 3pm at mid-winter.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: • At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	**Consistent** All apartments achieve cross ventilation.
	• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	**Consistent** The maximum width of the building is 8.8m.
Ceiling Heights	Measured from finished floor level to finished ceiling level (FFL-CL), minimum ceiling heights are: **Minimum ceiling height** Habitable rooms: 2.7m Non-habitable: 2.4m For 2 storey apartments: 2.7m for main living area floor; 2.4m for second floor, where its area does not exceed 50% of the apartment area Attic spaces: 1.8m at edge of room with a 30 degree minimum ceiling slope If located in mixed used areas: 3.3m for ground and first floor to promote future flexibility of use	**Consistent** Units 1, 3 and 4 achieve a FFL-CL of 2700mm. Unit 2 at its main level achieves a FFL-CL of 2700mm. The basement level of that unit achieves a FFL-CL of 2600mm which is satisfactory for a basement (and generally aligns with the 'second floor' intent of Objective 4C-1.
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: **Apartment type** / **Minimum internal area** Studio: $35m^2$ 1 bedroom: $50m^2$ 2 bedroom: $70m^2$	**Consistent** The development necessitates internal areas of between 95sqm and 100sqm and proposes the following compliant internal areas: Unit 1 (3 bed / 2 bath) - 139sqm Unit 2 (3 bed / 3 bath) -

	3 bedroom | 90m^2 The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each.	185sqm Unit 3 (3 bed / 2 bath) - 139sqm Unit 4 (3 bed / 2 bath) - 139sqm
	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.	**Consistent**
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	**Consistent**
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	**Consistent**
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	**Consistent**
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	**Consistent**
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	**Consistent**
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	**Consistent**
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: **Dwelling Type** | **Minimum Area** | **Minimum Depth** Studio apartments | 4m^2 | - 1 bedroom apartments | 8m^2 | 2m 2 bedroom apartments | 10m^2 | 2m 3+ bedroom apartments | 12m^2 | 2.4m The minimum balcony depth to be counted as contributing to the balcony area is 1m	**Inconsistent** Units 1, 2 and 3 each have private open spaces significantly above the required proportions. Unit 4 has three balconies - two are smaller secondary balconies that function for ventilation and clothes drying more than anything else, and the third balcony has an area of 10.64sqm thereby falling short of the required space by 1.3sqm. This shortfall is not considered to unreasonably prejudice the amenity of occupants given the two other balconies, the ample

		internal living space and the proximity of the site to the beach. In this instance the variation to Objective 4E-1 can be supported.
	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.	**Consistent**
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	**Consistent**
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	**N/A**
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments / 4m^2 1 bedroom apartments / 6m^2 2 bedroom apartments / 8m^2 3+ bedroom apartments / 10m^2 At least 50% of the required storage is to be located within the apartment.	**Consistent**
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	**Consistent** Noise sources from the proposed driveway and two voids are abutting solid flank walls that are not shared with bedrooms.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	**Consistent**
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	**Consistent** Whilst the development provides four new three-bedroom units with no other mix (i.e. one or two bedroom units) this is considered acceptable in the circumstance as the proportions of the units are more like small houses rather than a traditional apartment, and therefore provide a market option that meets the demands of the

<table>
<tr><td></td><td></td><td>community both now and in the future.</td></tr>
<tr><td>Ground Floor Apartments</td><td>Do the ground floor apartments deliver amenity and safety for their residents?</td><td>Consistent
Both ground floor apartments are buffered by landscaping and benefit from their own private gardens. The safety of the apartments are not compromised by the fact that they are on the ground floor by virtue of being setback from the street and reasonably screened by plantings.</td></tr>
<tr><td>Facades</td><td>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</td><td>Consistent</td></tr>
<tr><td>Roof Design</td><td>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.
Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</td><td>Consistent
The proposed roof design is interesting and sustainable by incorporating private open space and landscaping.

The use of the roof top for private open space is not considered to result in any unreasonable amenity impacts upon adjoining properties. The application is accompanied by an acoustic report which includes recommendations to limit acoustic impacts from this space.</td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</td><td>Consistent</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small</td><td>6-8m</td><td></td><td>800mm</td><td>3.5m x</td></tr>
</table></td><td>Consistent
The proposed on-structure planters have a depth of between 600-900mm and the rooftop garden, to be planted with ground covers has a soil depth of approximately 400mm.</td></tr>
</table>

	trees	high, up to 4m crown spread at maturity	$9m^3$		3.5m or equivalent	
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features					**Consistent**
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.					**N/A**
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					**N/A** The development is not mixed-use and is residential only.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.					**N/A** The development does not propose any awnings or signage.
Performance						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?					**Consistent**
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?					**Consistent**
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?					**Consistent**
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?					**Consistent**

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment

The development application is not recommended for refusal on the criterion specified in Clause 30(1) of SEPP 65.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and
(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment

An assessment of the proposal against the objectives and design quality principles specified in the ADG has been carried out and finds that the development demonstrates adequate regard to those matters and succeeds when tested against the underlying principles.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1210378M dated 22 June 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006139530 dated 22 June 2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:
The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions as recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment
The proposed development is not considered to cause an adverse impact on the criterion specified within Cl. 13(1)(a) to (g) of the SEPP Coastal Management Act (2018) as above.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment
The proposed development is considered to be appropriately design, sited and can be managed in a way to avoid an adverse impact as referenced above.

14 Development on land within the coastal use area

(1)

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and

(b) is satisfied that:
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment
The proposed development is not beach front and is separated from the primary coastal use area (i.e. the sand and the water) by a road and a row of buildings. The development does not prejudice any existing access to the foreshore and given the proportions of the building and the spatial separation, does not result in any overshadowing or unreasonable impacts to the beach. The consent authority may be satisfied that this assessment has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development, and can be satisfied that the development is designed, sited and can be managed to avoid adverse impacts as referenced above.

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

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

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

Comment
The consent authority may be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the site itself or surrounding lands.

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:	8.5m	Roof: 8.623m Screen: 9.0m	Roof: 1.44% Screen: 5.88%	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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

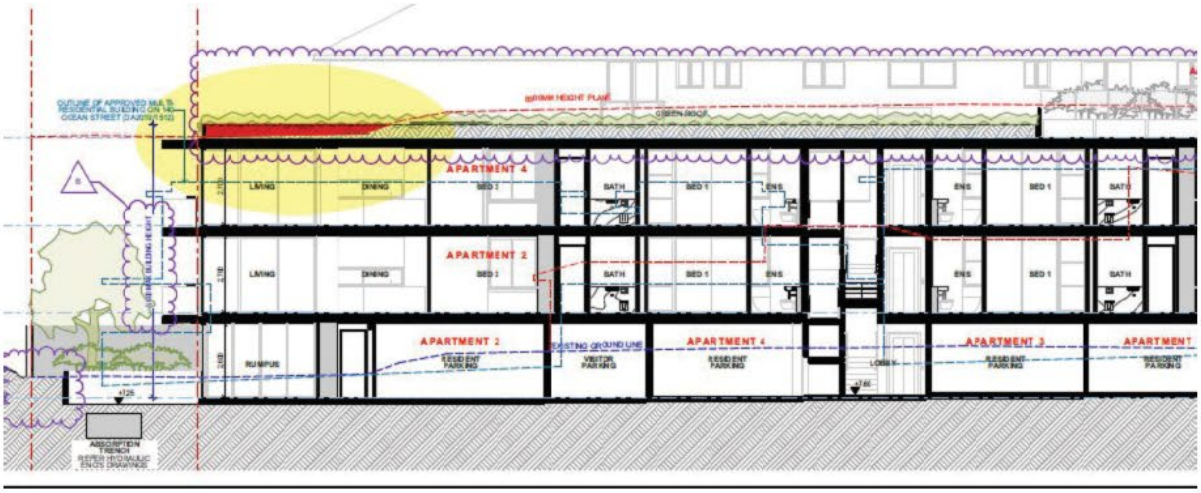
4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	Max. 9.0m
Percentage variation to requirement:	Max. 5.88%

The Applicant contends that the non-complying building height proposed is resultant of a request by Council to modify the roof form from a concrete roof to a living green roof that is non-trafficable by occupants (with the exception of periodical maintenance). This ascertain is correct and was specifically requested to both increase the sustainability credentials of the development, but to also enhance the outlook towards the building from neighbouring properties (i.e. looking at a garden as opposed to a concrete slab).

The requested amendment resulted in what was a height compliant development to now exceed the prescribed height by 123mm. The extent of that exceedance is hatched in red on the below diagram (note: the yellow circle is to highlight the area only and is not reflective of any encroachment itself):


APARTMENT 4
APARTMENT 2
APARTMENT 2
APARTMENT 4
APARTMENT 3
LIVING
DINING
BED 1
BATH
ENS
RUMPUS
EXISTING GROUND LINE
RESIDENT PARKING
VISITOR PARKING
LOBBY
ABSORPTION TRENCH

It is additionally noted that the proposed transparent acoustic screen on the northern side of the proposed roof terrace exceeds the maximum height of buildings by up to 0.5m or 5.88%.

Assessment of request to vary a development standard

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

Clause 4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the

objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment

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

- the variation was requested by Council.
- the variation contributes to a high quality residential flat building in a medium density zone.
- the non-compliance derives from incorporating sustainable building practices into the development.
- the non-compliance and overall development does not result in any unreasonable visual impact, disruption of views, loss of privacy or loss of solar access.

It is considered that the applicant's written justification to varying the Height of Buildings development standard is well-founded, encompassing of a wide-range of environmental grounds and is accurate. It is concurred that, in this particular circumstance and noting that the variation relates to a living green roof and an acoustic transparent screen,that there is no particular benefit in maintaining the standard and that a compliant development (i.e. removalof the green roof) would result in a worse landscaped and amenity outcome.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly

and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment

A comparative analysis of building heights along Ocean Street as a whole is not considered a useful exercise in this instance given the discordant proportions of structures varying from one storey to four storeys with parapet roof features. Rather, a more practical and revealing exercise is a comparison of the proposed building height to that that already exists on the site and the heights of those buildings immediately adjoining the site (both existing and approved but unbuilt). The assessment of building height pertains to Reduced Levels (RL) which in surveying refers to equating elevations of survey points with reference to a common assumed datum.

The proposal has a roof slab height of RL 16.70. That slab is topped by soil with surrounding retaining walls that takes the height to be RL 16.83. For the purpose of this assessment the building height is deemed to be RL 16.83.

a) The existing buildings roof ridge achieves a maximum RL of 15.65 - that is 1.18m lower than the proposed building height.
b) The existing building to the north at 144 Ocean Street achieves an eave height of RL 19.55 and a ridge height of RL 21.65 - that is 4.82m higher than the proposed building height.
c) The approved building to the south at 140 Ocean Street achieves a roof height of RL 16.10 - that is 0.73m lower than the proposed building height.

The transparent acoustic screen does not materially change the bulk or proportions of the building and it is therefore considered that the building is of a height and scale compatible with surrounding andnearby development.

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

Comment

The building height has not been found to result in any unreasonable visual impact, disruption of views, loss of privacy or loss of solar access. Where appropriate, these matters are discussed in detailed later in this report under their respective headings in the Warringah Development Control Plan 2011 section of this report.

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

Comment

The development as a whole and the non-complying building height is not considered to cause an adverse impact on the scenic quality of Warringah's coastal or bushland environment.

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

Comment

When viewed from the public domain the non-compliant height of the building will not be visible and, even if it were visible, the extent of variation is such that is would be non-discernible to a compliant height. The addition of a green roof will be visible from the public domain though, and this will significantly enhance the visual impact of the development and contribute to softening resultant building bulk from neighbouring developments.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

  Comment

  The development provides four units of residential accommodation.

- *To provide a variety of housing types within a medium density residential environment.*

  Comment

  The development proposes four units that are proportioned in excess of minimum standards and are generally larger than other units within the immediate vicinity, thereby providing a variety of housing types to the market.

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

  Comment

  The building is residential only in its use and is not required to provide facilities or services to external residents.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

  Comment

The provision of landscaping is discussed in detail earlier in this report under the SEPP 65 ADG and below under Clause D1 of the Warringah Development Control Plan 2011. In summary the development significantly enhances the landscape presentation of the site and the wider locale and is therefore in harmony with the natural environment of Warringah.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

  Comment

  On balance of all relevant factors it is found that the development is a high-quality design that enhances the visual quality of the streetscape.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

6.1 Acid sulfate soils

The submitted geotechnical site investigation concludes that *"the laboratory test results indicate that acid sulfate soils are not present within the soils onsite"* and therefore Council's Environmental Health officer has deemed that no acid sulfate management plan is required to accompany the development.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Max. % Variation	Complies
B2 Number of storeys	2	Part 2 / Part 3 (Unit 2 Rumpus Room)	50%	No
B3 Side Boundary Envelope	(north) 4m	One encroachment in the form of a gradually diminishing triangle at a maximum height of 1m and for a length of 5.2m	25%	No
	(south) 4m	Two encroachments in the form of rectangles both at a length of 3.4m and for a maximum height of 0.9m	22.5%	No
B5 Side Boundary Setbacks	(north) above-ground: 4.5m	Bin Room - 2.1m	53.4%	No
		Building - 2m to 3.2m	50%	No
	(north) below-ground: 2m	1.4m to 3.2m	30%	No
	(south)	3.5m to 4.5m	23%	No

	above-ground: 4.5m	Unit 2 Pool - 0.9m	55%	No
	(south) below-ground: 2m	0.71m	64.5%	No
B7 Front Boundary Setbacks	6.5m	Bin Room - Nil	100%	No
		Basement / Building - 6.5m	-	Yes
		Unit 1 Terrace - 5.7m	12.4%	No
B9 Rear Boundary Setbacks	6m	Building / Basement - 6m	-	Yes
		Unit 2 Pool - 1.3m	78.4%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50% (465.3m^2)	30.4% (282.6m^2)	39%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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

Detailed Assessment

B2 Number of Storeys

Description of non-compliance
Clause B2 Number of Storeys of the WDCP seeks to limit developments to two storeys. The proposal is, in part, three storeys and thereby exceeds the requirement of this clause by up to 50%.

The variation has been supported by recommendation from Council's Design and Sustainability Advisory Panel.

Merit consideration

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

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

  Comment

  The offending three-storey element of the building is located to the rear of the site and is not readily visible from the public domain, further that storey is below the predominant two storey building (i.e. it is an extension of the basement car park). Given these two factors the number of storeys does not visually dominate its surroundings.

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

  Comment

  Generally the development will present as a two storey building when viewed from surrounding properties and the public domain. The offending lower floor element has a ceiling height equivalent to the height of the boundary fence and is bound by perimeter landscaped screening.
  Commensurate to the design and proportions of surrounding buildings the visual impact of having a part three-storey element at the rear of the building is acceptable.

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

  Comment

  The three storey portion of the building is considered to provide an equitable sharing of views to and from public and private places.

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

  Comment

  The variation sought to the number of storeys control does not materially impact on the amenity provided to neighbouring properties, predominantly as the offending element is sunken below existing ground level.

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

  Comment

  As described later in this report under Section D11, the development is deemed to provide an innovative roof design.

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

  Comment

  The development requests a minor variation to the prescribes Height of Buildings control pursuant to Clause 4.3 of the WLEP as assessed earlier in this report.

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

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 Side Boundary Envelope of the WDCP prescribes the envelope of the building measured from a height of 4m at the side boundaries and inwards at 45 degree angles. The proposal has three areas of encroachment as described in the built form control table, or as shown in red on the below north (top) and south (bottom) elevations below:



The variation has been supported by recommendation from Council's Design and Sustainability Advisory Panel.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

  Comment

  The encroachments to the side boundary envelope as depicted above do not result in any excessive bulk or scale commensurate to a compliant development (i.e. if the encroaching red areas were deleted). The bulk and scale of the building is appropriate and acceptable.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

  Comment

  Solar access and privacy are discussed under the relevant SEPP 65 Apartment Design Guidelinecriterion earlier in this report. On the basis of that assessment and on review of the proposed envelope encroachments it is found that an adequate spatial separation between buildings is provided.

- *To ensure that development responds to the topography of the site.*

  Comment

  The development appropriately responds to the topography of the site and modifies the existing ground level to the rear to provide additional private open space for occupants of the development.

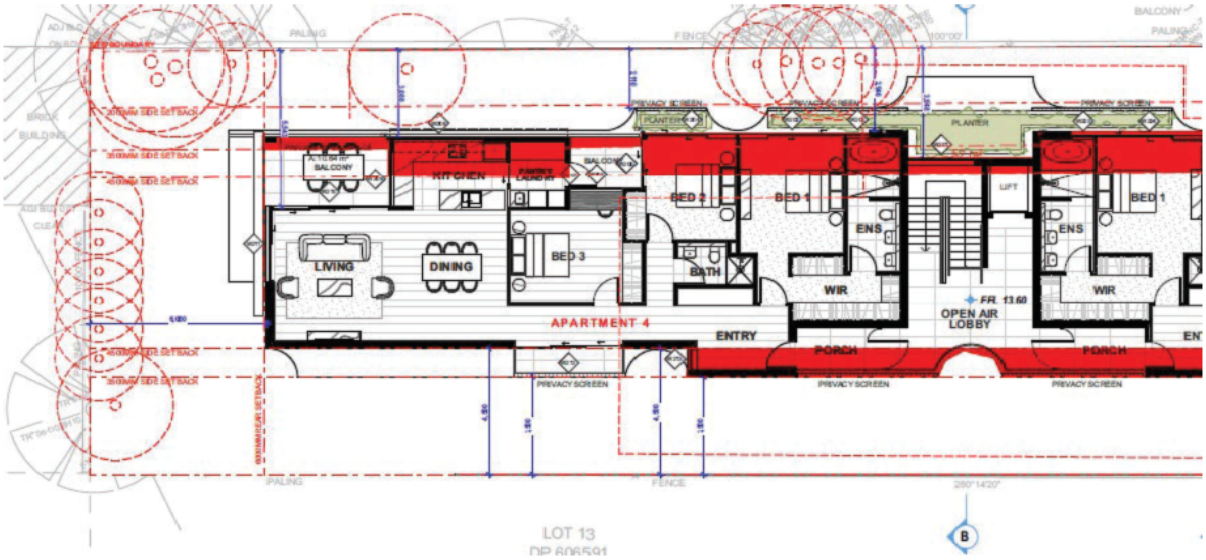
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this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

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 Side Boundary Setbacks of the WDCP stipulates 4.5m side boundary setbacks for structures but permits variations to entrance and stair lobbies at ground level (2m) and private open space (3.5m) in certain circumstances.

The building encroaches within the prescribed setback areas as detailed numerically in the built form control table earlier in this report, and as shown in red highlight on the below First Floor Plan:



One of the abovementioned variations to the clause permits private open space up to 3.5m from the side boundary (as opposed to the 4.5m requirement) subject to the site being *an existing narrow width allotment, where compliance is unreasonable....*

The width of the site at 15.44m and the combined setback requirement being 9m thus resulting in a 6.44m wide buildable area is considered to constitute a constrained and narrow width allotment whereby compliance is unreasonable and impractical. The variation clause therefore applies.

The variation has been supported by recommendation from Council's Design and Sustainability Advisory Panel.

Merit consideration

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

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

  Comment

  Deep soil landscaping and landscaped open space are discussed under their respective clauses in

the SEPP 65 and Clause D1 WDCP sections of this report. In summary sufficient opportunities for deep soil landscaping is provided.

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

  Comment

  Notwithstanding the variation sought to the side boundary setbacks, the development is not considered to be a visually dominant structure and it highly modulated and landscaped to mitigate any perceivable visual bulk.

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

  Comment

  As above and as described throughout this report, the bulk and scale of the development is reasonable.

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

  Comment

  This matter is discussed earlier in this report under Part 3F Visual Privacy of the SEPP 65's Apartment Design Guide.

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

  Comment

  A detailed discussion on view sharing can be found later in this report under Clause D7 of the WDCP whereby it is concluded that reasonable view sharing is achieved.

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

B7 Front Boundary Setbacks

Description of non-compliance

Clause B7 Front Boundary Setbacks of the WDCP requires structures to be setback a minimum distance of 6.5m from the front property boundary. Whilst the main building is compliant with this requirement the bin room and a portion of Unit 1's terrace (being concrete/paving at ground level) encroaches within this setback area (by 100% and 12.4% respectively).

Merit consideration

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

- *To create a sense of openness.*

  Comment

  The development as a whole does not prejudice the existing sense of openness felt on Ocean Street. The bin room is required to be in proximity to the front boundary to permit Council's waste collectors ease of access to collect the bins. Notwithstanding this requirement and subsequent non-compliance the development is attractive and appropriately open.

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

  Comment

  The main building maintains the visual continuity and pattern of buildings and landscape elements along Ocean Street.

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

  Comment

  The non-complying bin room has been designed as integral to the front entry pathway and fencing to avoid appearing discordant with the development. The development as a whole is considered to protect and enhance the visual quality of the streetscape by virtue of the architectural design itself, the quality of materials selected and the landscape treatment.

- *To achieve reasonable view sharing.*

  Comment

  The non-compliance to the front boundary setback control is not considered to unreasonably impact on any existing public or private views.

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

B9 Rear Boundary Setbacks

Description of non-compliance

Clause B9 Rear Boundary Setbacks of the WDCP requires that structures be setback a minimum distance from the rear property boundary. The proposed swimming pool for Unit 2 encroaches this setback area and provides a setback of 1.3m to the rear property boundary thus requiring a variation of 78.4% to the control requirements.

The variation has been supported by recommendation from Council's Design and Sustainability Advisory Panel.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

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

  Comment

  The provision of deep soil landscaping and landscaped open space is discussed in detail under the SEPP 65 and Clause D1 WDCP sections within this report.

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

  Comment

  The non-conforming element of the proposal is an in-ground swimming pool that sits within a garden that is sunken below existing ground level. There are no above-ground encroachments within the rear garden of the building. On this basis the presence of a swimming pool does not detract from a sense of openness.

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

  Comment

  The swimming pool and garden area for Unit 2 are sunken into the ground at the same elevation as the proposed basement car park. This means that it sits at RL 7.25 and is bound by a retaining wall reaching RL 8.45, essentially meaning that it is 1.2m lower than existing ground level and surrounded by plants. That dimension taken alongside a standard 1.8m boundary fence results in the non-complying swimming pool sitting 3m below the height of a boundary fence which not only provides privacy but also significantly screens the pool when viewed from the property to the rear. These factors result in the considered opinion that the proposal would have a lesser impact on neighbours than a garden at existing ground level.

  Concerns have also been raised with regards to the potential acoustic impact caused by the swimming pool equipment. A condition is imposed in the recommendations of this report which require the swimming pool equipment to be housed in a sound-attenuating box.

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

  Comment

  A recent aerial image (source: Nearmap) is below which shows the existing pattern of buildings, rear gardens and landscape elements in the vicinity):



From this map it can be seen that the adjoining property to the northeast and northwest have (generally) concreted rear setback areas accommodating car parking, drying courts and the like. The site to the south has a large rear garden and is approved to have a rear setback of 6m under their new development consent. Other surrounding sites generally maintain the 6m rear setback with a variety of terraces, patios and the like encroaching within. It can also be seen on the above image that a number of sites would benefit from the existing landscaping on the subject development site, as their own sites do not have landscaping.

Whilst this development proposal would change the existing site layout and remove existing vegetation, it would not materially change the existing pattern of buildings and structures within the rear setback area and thus maintains visual continuity.

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

  Comment

  As described above the development provides appropriate opportunities to maintain privacy between dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 of the WDCP 2011 requires that 50% (465.3m^2) of the site area of calculable landscaped open space (LOS) which is required to be at ground level, have a minimum width of 2m and have a minimum soil depth of 1m.

The site achieves a calculable LOS of 30.4% or 282.6m^2 however it is to be noted that if areas lesser than 2m in width and the roof garden were included, that the landscaped ratio would increase to 64.4% or

599.2m^2.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

  Comment

  The existing site has a number of exotic species planted within the front garden and benefits from a street tree. No. 140 Ocean Street to the south has a number of frangapanis in the front garden and also benefits from a street tree. No. 144 Ocean Street to the north has no landscaping.

  This development is accompanied by a detailed landscaped plan which details a wide variety of new plantings to be established both within the sites front setback area, but also throughout the site (to the sides, rear, first floor planter boxes and roof garden).

  Commensurate to the existing situation the development will enable planting to significantly enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

  Comment

  The development does not seek to remove any noteworthy indigenous vegetation, topographical features or habitat for wildlife. The landscape plan details six new locally native canopy trees to be planted on the site capable of reaching mature heights of up to 25m (including lillypilly, coastal banksia, flame tree and water gum) as well as an additional 29 non-native trees and several hundred new shrubs and ground cover plants.

  Both the variety and quantum of new plantings will enhance vegetation and habitat for wildlife. The establishment of a large roof garden (at 239.31m^2) also creates a significant new habitat for wildlife different to current offerings.

  It is worth reiterating that the proposed roof garden will be (to the best of the author's knowledge) the largest roof garden in Narrabeen and potentially on the Northern Beaches.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

  Comment

  The development provides areas of landscaping that are sufficient in dimension for the establishment of vegetation of varying heights and species which shall, over time, contribute to mitigating any perceived bulk and scale of the building.

- *To enhance privacy between buildings.*

  Comment

  The provision of landscaping proposed enhances the provision of privacy between buildings, particularly noting the lack of any landscaping on the southern boundary of no. 144 Ocean Street to

the north.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

  Comment

  The development provides appropriate outdoor recreational opportunities to meet the needs of occupants.

- *To provide space for service functions, including clothes drying.*

  Comment

  The development provides sufficient space for service functions, including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

  Comment

  The development provides sufficient soft-surface and ground surface to facilitate water management, as deemed acceptable by Council's Development Engineers.

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

D3 Noise

Concern has been raised by objectors in their submissions that the proposed rooftop terrace may result in unreasonable acoustic impacts to neighbours.

The application (as revised) includes a smaller terrace, a 1.6m high transparent acoustic screen along the northern edge of the terrace and an Acoustic Report. That report details that the terrace only serves one unit and is the equivalent to a back garden or any other balcony notwithstanding its larger than average proportions. The report details that general noise generated from the terrace would be acceptable.

The report does concede that if the terrace was filled to capacity during a party that the noise generated would be audible from surrounding properties, however such an event would be expected to be atypical of a single residential dwelling, and would be no different to noise generated from a backyard party.

On balance it is considered that the reduced size and provision of buffer landscaping and an acoustic screen is sufficient to mitigate general noise from day-to-day usage of the terrace.

D6 Access to Sunlight

The development achieves and provides a compliant level of solar access to its own units and to surrounding land (taking into account both the existing and approved development at no. 140 Ocean Street).

D7 Views

Several submissions received during the notification period of the application object to view loss and refer to a combination of sky views and wider district views - in the context of the land these views are better

described as an outlook. It is also noted that several neighbouring apartments (to the northeast and northwest) have oblique and interrupted water views to the east.

The design of the neighbouring building to the northeast at 144 Ocean Street renders any development of this site as impactful on the existing outlook enjoyed by units in that building. The building is an elevated three storey structure with windows, doors and balconies looking side-on (south) at the proposed development. It is recognised that several units in this development are single aspect only.

Photomontages provided by the architect depict the relationship between the two buildings as follows:





For the lower two levels of south-facing units at no. 144 Ocean Street it is considered that any development of the subject site will result in an increased sense of enclosure and a lessened outlook - this is an inevitability. It has been considered in this assessment as to whether a development with compliant side boundary setbacks would have a lesser or more acceptable impact on the neighbouring units, and it is found that an increase in setbacks would not significantly or materially change the outcome. The building is designed in a fashion that the northern flank elevation is interesting with a mixed palette of materials and landscaping at all levels to soften the visual impact, along with at-grade boundary planting for the length of the site (noting that no. 144 Ocean Street has no boundary planting).

Therefore, whilst it is acknowledged that the development will result in an impact to the outlook of these two levels of units, that impact is generally unavoidable and in this case, is acceptable. The top floor units will generally look over the roof of the development and are considered to benefit from an enhanced outlook created by the green roof commensurate to the existing metal roof. Additionally it is noted that the 1.6m acoustic screen proposed in the aforementioned revised plans is transparent and does not impede on views above and beyond that of the main structure.

The on-going covid-19 pandemic has limited the ability for formal view loss assessments to occur but several objectors have provided photographs of their existing views/outlooks as a part of their submissions. Some units in no. 144 do have partial ocean views, however these views are oblique and obscured by existing vegetation and buildings on the opposite side of Ocean Street. The units that benefit from this view are generally at the top level.

The objecting properties at no. 144 Ocean Street faces southwest and are not orientated towards the water. From the balconies on this level some water views are visible. These balconies are best described as juliette balconies and are not proportioned to be living areas. The impact caused to the aforementioned oblique views is not resultant of any non-complying building height or setback, but is rather resultant of any development of the site. It is further considered that if a full view loss assessment against the relevant Planning Principles of *Tenacity Consulting v Warringah Council* were carried out that the assessment would consider the loss of views as minor and acceptable.

On balance the development is not found to result in any unreasonable view loss to neighbouring properties.

D8 Privacy

Part 3F Visual Privacy of the Apartment Design Guide as described in the SEPP 65 (Design Quality of Residential Apartment Development) prevails over a development control plan and Privacy has been assessed in that section of this report. That assessment considers the Objectives of Clause D8 Privacy of the WDCP and finds that they are appropriately achieved.

Specifically turning to the roof terrace - that space is not considered to result in any unreasonable loss of visual privacy to neighbouring properties consequent of the spatial separation and the provision of planter boxes. It is acknowledged that the solutions do not afford complete privacy, however such an expectation in a dense urban setting is an unreasonable one. Consideration has been given to frosting the 1.6m high glass acoustic screen on the roof terrace however that would create additional visual bulk which, on balance, is considered to be more impactful that it being transparent.

D11 Roofs

The roof of the proposed development is considered to be an innovative design commensurate to other surrounding buildings.

The rooftop consists of a private 69.63sqm terrace, lift overrun, solar hot water collectors and a 239.31sqm non-trafficable living green roof - the largest in the area.

This report has described that the private terrace will not give rise to any unreasonable amenity impacts to neighbours and is acceptable. The green roof will contribute to both an enhanced amenity for occupants and neighbours but will also provide vital habitat for wildlife in an increasingly urbanising area. The lift overrun has been incorporated into the wider design and is appropriately proportioned for the development.

The roof of the development is supported.

D19 Site Consolidation in the R3 and IN1 Zone

Assessment against the provisions of Clause D19 Site Consolidation and the applicable Land and Environment Court Planning Principles on site isolation is not required in this particular instance as all adjoining sites are all developed to their reasonable capacity, or have Development Consent for the construction of a new development (i.e. DA2019/1512 for the demolition and construction of a multi-dwelling housing development at the adjoining no. 140 Ocean Street, Narrabeen).

Given that approval and the satisfactory design of this proposal it has been demonstrated that the need for site amalgamation is not necessitated in this particular instance.

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 $49,390 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,939,000.

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

Council is satisfied that:

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

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

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.

This assessment has noted that the proposal requires a variation to a number of built form controls from Council's DCP and the Height of Buildings control pursuant to the LEP. The proposal has attracted 10 unique submissions objecting to various aspects of the proposal and raises concern as to the amenity implications the development may have on their properties.

This report considers the matters raised by objectors alongside the recommendations of Council's internal referral bodies and the Design and Sustainability Advisory Panel and concludes that the development is worthy of approval subject to conditions.

The site is constrained by position and layout of neighbouring buildings which inherently means that any development on this land will cause a level of impact. In this instance the impact to outlook and privacy is appropriately mitigated by a high quality architectural design and an improved landscaped outcome to what currently exists on the site. This report acknowledges that there is an impact but finds that the particular design ameliorates those impacts where possible.

The development is considered to be complementary to the Ocean Street streetscape and sets a new landscaped benchmark for residential flat buildings by way of providing landscaping on all levels and enhancing the biodiversity of the wider locale.

This reports recommends that the Northern Beaches Local Planning Panel **approves** the developmentapplication subject to conditions.
It is considered that the proposed development satisfies the appropriate controls and that all processes and
assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches 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 and is consistent with the objectives of the standard and the objectives for developmentwithin 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 DA2021/1166 for Demolition works and construction of aResidential Flat Building on land at Lot 12 DP 111254, 142 Ocean Street, NARRABEEN, 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**
0586-DA100 Rev. A	24 June 2021	PopovBass
0586-DA102 Rev. B	22 November 2021	PopovBass
0586-DA103 Rev. B	22 November 2021	PopovBass
0586-DA104 Rev. B	22 November 2021	PopovBass
0586-DA105 Rev. B	22 November 2021	PopovBass
0586-DA106 Rev. B	22 November 2021	PopovBass
0586-DA107 Rev. B	22 November 2021	PopovBass
0586-DA109 Rev. B	22 November 2021	PopovBass

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Accessibility Review Report (ref:21120)	15 June 2021	ABE Consulting Pty Ltd
Acoustic Report (ref:20211504.1/2211A/R0/AS)	22 November 2021	Acoustic Logic

Arboricultural Impact Assessment Report (ref:8821)	08 June 2021	Rain Tree Consulting
BASIX Certificate No. 1210378M	22 June 2021	Sustainable Thermal Solutions
Building Code of Australia Compliance Statement (ref:P210099)	18 June 2021	Anthony Protas Consulting Pty Ltd
Geotechnical Investigation (ref:2021-073)	27 April 2021	Crozier Geotechnical

		Consultants
NatHERS Certificate No. 0006139530	22 June 2021	Sustainable Thermal Solutions
Traffic Report (ref:21109)	12 May 2021	The Transport Planning Partnership

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**
DAL01 Rev. C	18 November 2021	Jane Britt Design
DAL02 Rev. C	18 November 2021	Jane Britt Design
DAL03 Rev. C	18 November 2021	Jane Britt Design
DAL04 Rev. C	18 November 2021	Jane Britt Design

Waste Management Plan		
Report Title	**Dated**	**Prepared By**
Waste Management Plan	15 June 2021	Trio Industries Pty Ltd

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

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

2. **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	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. **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 $49,390.00 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 $4,939,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Security Bond (Footpath works)**
The applicant is to lodge a bond with Council of $7000 as security against any damage or failure to complete the re construction of the concrete footpath 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

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

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

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. **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 Stormwater plan (CEC, REV C 08.07.2021) 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.

11. **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.

12. **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.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council 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.

13. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to Council's traffic engineer for review and approval prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

14. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention/absorption syystem in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY FOR DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by Capital Engineering Consultants, drawing number SW01,SW011,SW020 ,SW030 "issue D", dated 22/11/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) or Professionals Australia (RPENG) registered for civil engineering.

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.

15. **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.

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

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

Reason: To facilitate suitable vehicular access to private property.

17. **Pre-commencement Dilapidation Report**
The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

18. **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.

19. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- 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.

20. **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

21. **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 Control Plan for standing of construction vehicles in a trafficable lane.

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

22. **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:
- 144 Ocean Street, Narrabeen
- Garage block only to the rear of 59-59 Lagoon Street, Narrabeen

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Protection 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.

24. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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.

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

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.

25. **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 the approved plans, 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

c) The 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.

26. **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.

27. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

28. **Dewatering Management**
Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater 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.

29. **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.

30. **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.

31. **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.

32. **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.

33. **Footpath Construction**
The applicant shall reconstruct the existing concrete footpath to a width of 1.5m in accordance with Councils standard engineering details.
Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with the standard engineering details. 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.

34. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

36. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

37. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

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

38. **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

39. **Landscape Completion**
a) Landscaping is to be implemented in accordance with Landscape Plan Dwg Nos L01, L02, L03 and L04 Issue C dated 18 November 21 prepared by Jane Britt Design.

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.

40. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with Councils Water Management policy by the design engineer. 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.

41. **Post-Construction Road Reserve Dilapidation Report (Major Development)**
The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

42. **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 any interim / final 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.

43. **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.

44. **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.

45. **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 the base of the ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;
- be clearly visible from ramp entrances,
- is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- Incorporate linemarking to delineate a waiting bay location to allow vehicles to pass on 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.

46. **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.

47. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 for on-site storm water detention as to user 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 the on-site stormwater disposal system is maintained to an appropriate operational standard.

48. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

49. **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.

50. **Waste Management Confirmation**
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

51. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009;
(iii) Swimming Pools Regulation 2008
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life.

52. **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.

53. **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.

54. **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.

55. **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

56. **Landscape Maintenance**
a) Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

c) A maintenance activity schedule for on-going maintenance of planters on slab shall be

incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

57. **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 specificationsand as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achievean 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.

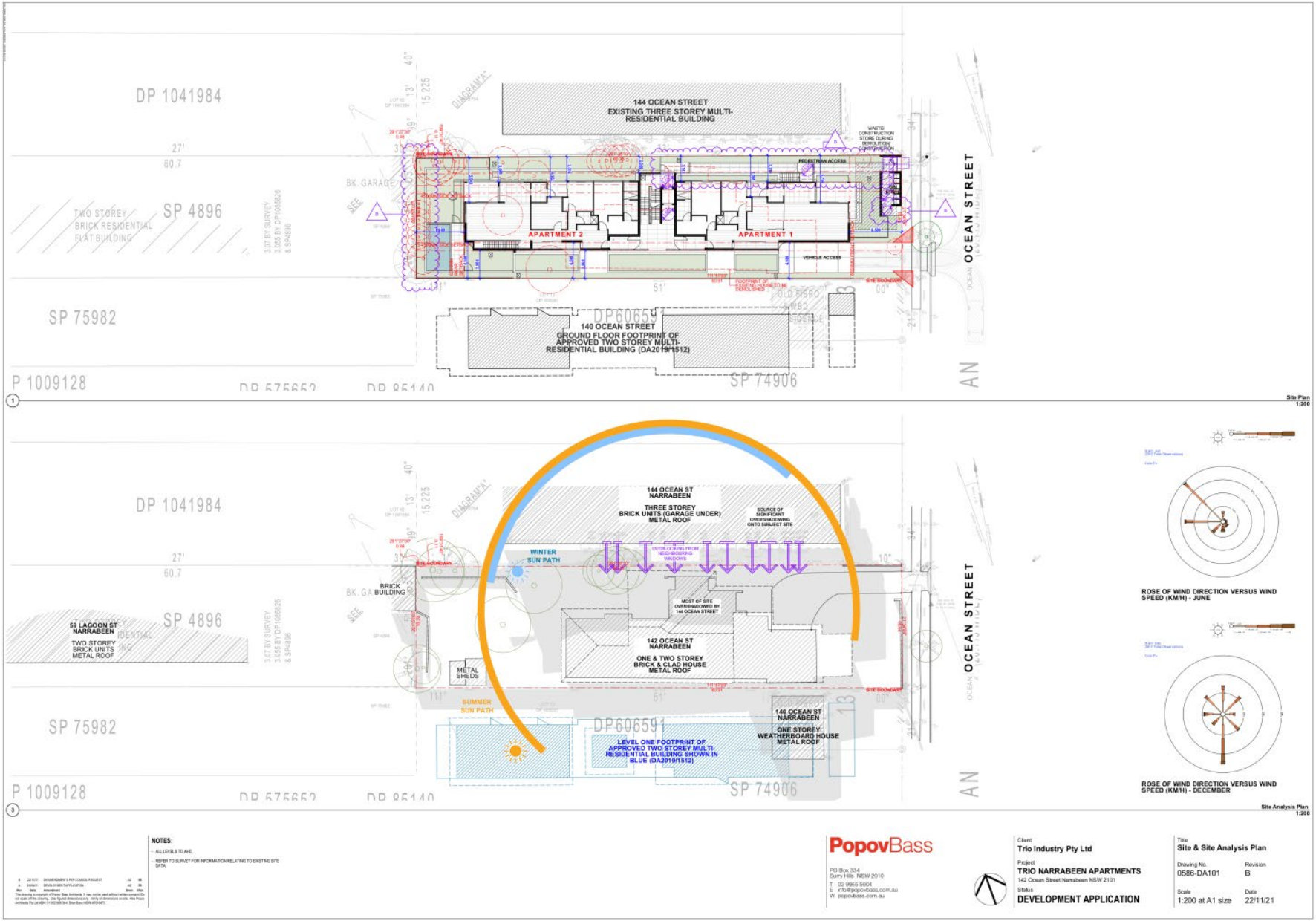
Reason: Protection of the receiving environment.

58. **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.

59. **Non-Trafficable Roof Garden**
The roof garden hereby approved is to remain non-trafficable to residents of the developmentand shall only be accessed for periodical maintenance when necessary.

Reason: Protection of neighbouring amenity.


144 OCEAN STREET
EXISTING THREE STOREY MULTI-RESIDENTIAL BUILDING
APARTMENT 2
APARTMENT 1
VEHICLE ACCESS
PEDESTRIAN ACCESS
SITE BOUNDARY
OCEAN STREET
140 OCEAN STREET
GROUND FLOOR FOOTPRINT OF APPROVED TWO STOREY MULTI-RESIDENTIAL BUILDING (DA2019/1512)
DP 1041984
SP 4896
SP 75982
P 1009128
SP 74906
TWO STOREY BRICK RESIDENTIAL FLAT BUILDING
BK. GARAGE
Site Plan
1:200
144 OCEAN ST NARRABEEN
THREE STOREY BRICK UNITS (GARAGE UNDER) METAL ROOF
SOURCE OF SIGNIFICANT OVERSHADOWING ONTO SUBJECT SITE
WINTER SUN PATH
SUMMER SUN PATH
OVERLOOKING FROM NEIGHBOURING WINDOWS
MOST OF SITE OVERSHADOWED BY 144 OCEAN STREET
142 OCEAN ST NARRABEEN
ONE & TWO STOREY BRICK & CLAD HOUSE METAL ROOF
140 OCEAN ST NARRABEEN
ONE STOREY WEATHERBOARD HOUSE METAL ROOF
LEVEL ONE FOOTPRINT OF APPROVED TWO STOREY MULTI-RESIDENTIAL BUILDING SHOWN IN BLUE (DA2019/1512)
59 LAGOON ST NARRABEEN
TWO STOREY BRICK UNITS METAL ROOF
BRICK
METAL SHEDS
ROSE OF WIND DIRECTION VERSUS WIND SPEED (KM/H) - JUNE
ROSE OF WIND DIRECTION VERSUS WIND SPEED (KM/H) - DECEMBER
Site Analysis Plan
1:200
NOTES:
- ALL LEVELS TO AHD.
- REFER TO SURVEY FOR INFORMATION RELATING TO EXISTING SITE DATA.
PopovBass
PO Box 334
Surry Hills NSW 2010
T 02 9955 5604
E info@popovbass.com.au
W popovbass.com.au
Client
Trio Industry Pty Ltd
Project
TRIO NARRABEEN APARTMENTS
142 Ocean Street Narrabeen NSW 2101
Status
DEVELOPMENT APPLICATION
Title
Site & Site Analysis Plan
Drawing No.
0586-DA101
Revision
B
Scale
1:200 at A1 size
Date
22/11/21


OCEAN STREET
NORTH ELEVATION
SOUTH ELEVATION
EAST ELEVATION
EAST (STREET) ELEVATION
WEST ELEVATION
NOTES:
PopovBass
Trio Industry Pty Ltd
TRIO NARRABEEN APARTMENTS
142 Ocean Street Narrabeen NSW 2101
DEVELOPMENT APPLICATION
Elevations
0586-DA106
B
1:100 at A1 size
22/11/21

Minto Planning Services
Town Planning Consultants

PROPOSED RESIDENTIAL FLAT BUILDING
142 OCEAN STREET, NARRABEEN

Clause 4.6 - Exceptions to development Standards
Variation to Clause 4.3 - Height of Building

The proposed development will result in a built form which has a height in excess of the maximum 8.5m height of building control as required by Clause 4.3 of the Warringah Local Environmental Plan 2011.

The proposal will result in a maximum building height of 8.623m measured to the top of the proposed planter box associated with the provision of a green roof as part of the proposed development. The provision of a green roof is in response to Council's Request for Information letter dated 27th October 2021 and wherein it was requested under the headings of "Sustainability" and Landscaped Area" that:

> *Green roofs should be used wherever possible. An exceedance of building height to accommodate a rooftop garden (not useable space) can be supported in principle).*

It is advised that the height non-compliance is wholly related to the provision of the proposed roof top garden.

The proposed height non-compliance equals 123mm or 1.44% of the maximum permitted height of building control.

Given that the proposal does not comply with the maximum height control of 8.5m as required by Clause 4.3 of the Warringah LEP 2011 and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

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abn 68 091 465 271

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. **What are the objectives of Clause 4.6 and is the proposal consistent with them.**

The objectives of Clause 4.6 of the LEP 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.

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this Clause as flexibility is required in order to improve the sustainability of the development and to provide a green roof in accordance with the request of the Council.

2. **Is the standard to be varied a Development Standard to which Clause 4.6 applies.**

Clause 4.3 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.3 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.

3. **Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.**

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or

- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

It is my opinion relevant to this matter that compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case for the reason that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

In addition to the above it is noted that the non-compliance is related to the provision of a green roof and which has been requested by the council in circumstances where the council have stated that *An exceedance of building height to accommodate a rooftop garden (not useable space) can be supported in principle).*

The proposal in my opinion will not result in any unreasonable impacts upon either adjoining properties or the streetscape as a result of the non-compliance.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified on environmental planning grounds given that the non-compliance is related to the provision of a green roof and which has been requested by the Council in circumstances where the council have stated that *An exceedance of building height to accommodate a rooftop garden (not useable space) can be supported in principle)..*

5. Is the proposed development 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.

The proposed development is in my opinion in the public interest because it is associated with the provision of a high quality residential flat building upon the site and which seeks to incorporate sustainable building practices including a green roof and which will make a positive contribution to the built form character of the locality in a manner which is otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

In this regard, it is submitted that in relation to the objectives for the R3 - Medium Density Residential zone that:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposal seeks to provide for four apartments upon the site as part of a residential flat building which otherwise complies with the requirements of the Council.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development includes apartments having differing levels of accommodation and ancillary features.

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

Not applicable.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposal is considered to provide for a landscape outcome for the site that is in harmony with the natural environment of Warringah.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

It is my opinion that the proposal will make a positive contribution to the character of the locality and includes a high quality design.

The proposal is also considered to be consistent with the objectives of Clause 4.3 - Height of Buildings in that:

1. The proposed development is considered to result in a development which is compatible with the height of surrounding and nearby development.
2. The proposal will not in my opinion result in any unreasonable visual impact, disruption of views, loss of privacy and loss of solar access.
3. The proposal will not in my opinion result in any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.
4. The proposal will not visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

6. **Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.**

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. **What is the public benefit of maintaining the development standard.**

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the high quality of the proposal including the sustainability measures proposed and the absence of any unreasonable detrimental impacts.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the height requirements of Clause 4.3 of the Warringah LEP 2011 is appropriate in this instance.



Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
23rd November 2021

Design + Sustainability Advisory Panel Meeting Report – Date 07 October 2021

2. DA2021/1166 - 142 Ocean Street NARRABEEN

PANEL COMMENT AND RECOMMENDATIONS

General

The proposal seeks approval for four residential apartments above a basement car park.

The site is 15.1m wide with a depth of 60.9m, located with a single sort east facing street frontage to Ocean Street, between an existing 3-4 story multi-unit residential building to the north and an approved 2 story multi-unit residential building to the south. The neighbouring northerly building is setback only has numerous windows and balconies looking directly into the subject site. These site conditions present challenges with dwelling orientation for solar access and privacy. The architect has skillfully worked with these constraints to create a place and site responsive design which respects its neighbours and the future residents of the development.

The overall design approach is a well-considered response to a site with difficult constraints it is architecturally sophisticated and spatially rich. The following are suggestions to further enhance the already excellent proposal.

Strategic context, urban context: surrounding area character

The proposal is a complying use and a well-considered response to a modest scale, high quality, multi-unit development suitable for its context.

Scale, built form and articulation

The scale of the proposal is suitable within its context, aiming to comply with the site height limit.

It is noted that the building exceeds the maximum number of stories by 50% however the introduction of the third level utilising the slope of the land to create a lower level with connection to private open space has negligible impact and significantly enhances amenity. As such this non-compliance is supported on merit.

The reduced setbacks are acknowledged however the quality and amenity created in the dwelling units, careful consideration of privacy and outlook and the inclusion of landscape treatments mean that the benefits are considered worthwhile to support the reduced setbacks.

Access, vehicular movement and car parking

The basement car park is well laid out, naturally ventilated, providing natural light and views to the garden beyond. These are all desirable and aspirational design features.

Recommendations

1. The avoidance of mechanical ventilation should be further explored by way of openings to the western end of the garage, the roof penetrations as well as the garage entry. Such a solution may involve perforated garage doors to the four apartment areas as well as strategic openings in the northern side of the car park including the escape door to the fire exit.

Landscape

The landscape treatments, including the species selections are generally appropriate and will be successful, however some minor adjustments may enhance an already sound proposal.

While the ground level landscape area proposed is under the DCP requirement of 50% the dwellings are provided with a range of private open spaces which will significantly enhance their amenity.

northern beaches council

The rooftop landscaped space is supported however it is suggested that this be enhanced by the reduction of the private terrace space and inclusion of a communal roof terrace area and additional planting areas for privacy and amenity. The breaching of the height limit to bring the lobby stair and lift (assuming a minimum overrun model) to the roof would have minimal impact on adjoining properties and is supported by the Panel on the basis of additional residential amenity.

The provision of a low profile green roof for the inaccessible portion would enhance visual amenity, reduce urban heat and increase the efficiency of co-located PV. Any minimal height breaches required to achieve the required depths of soil is supported by the Panel if the impacts on the adjacent property to the south are negligible.

A green roof to the entry pavilion/waste area would additionally enhance visual amenity.

The entry path is noted hard up against the eastern end of the northern boundary fence in order to achieve the 2m landscape zone. The amenity of units 1 and 3 would be improved by varying this control to get planting to both sides of the path.

Recommendations.

2. Suggest the reduction of the private roof terrace and inclusion of additional planters to the north to enhance privacy to the existing building to the north.
3. Suggest incorporating an accessible roof terrace for common use.
4. Review the species, mature size and number of trees provided, particularly to the northern boundary considering future impact on both the proposed dwellings and the neighbours. Smaller, deciduous and less trees may be required to maintain amenity.
5. Suggest the provision of low profile green roof to inaccessible roof areas and the waste / entry pavilion.
6. Recommend relocating the entry path to the lobby to allow for landscaping against the building and the fence sides.

Amenity

The apartment layouts are commendable with all bedrooms and living spaces facing north and all apartments appearing to achieve two hours of solar penetration in mid winter, although the eastern Apartments 1 and 3 may be just short of 2 hrs. The entry is skilfully managed to provide a casual feel to the development. Terraces to the northern side of the plan provide outdoor spaces and desirable relief to the large four story residential building to the north. The use of screened interstitial courtyards to the north and breezeway entries to the south is a particularly desirable nuance.

The Panel commended the exceptional attention intricate spatial configurations that make the most use of the balconies and inset planting that compensate for the reduced outlook to the north and south.

Recommendation.

7. It was noted that the waste storage area, with a potential green roof, maybe able to be relocated adjacent to the side wall of the apartment one living so as to provide a deeper courtyard associated with Apartment 1 and its external Terrace.

Façade treatment/Aesthetics

The architectural treatment is well considered. Materials selected for the project are rich and appropriate for its context. The use of stone, glazing, brick and screening materials is considered appropriate in its location.

Sustainability

The proposal considers passive design and provides good levels of natural light and ventilation to all dwellings. The provision of PV on the roof is supported with further expansion of this installation suggested.

The Panel commended the inclusion of lightwells to the car park that will not only reduce the amount of additional light and ventilation required for the basement, but also change it from a typically dingy dank space to a space that should manage to retain an open, breezy 'coastal' atmosphere.

Provision of a fully naturally ventilated basement is encouraged supported (see car parking notes above).

Recommendations

8. Suggest changing to heat pump hot water and PV on the roof instead of solar gas boost. There is significant space for PV on the roof and the efficiency of it will be supported by installing a green roof under the panels.
9. Suggest induction cooktops along with the hot water system change to enable removal of gas from the development.

PANEL CONCLUSION

The Panel supports the proposal with the consideration of the recommendations above to further enhance the already well-considered design response.

The Panel commended the design overall, the quality of the presentation, the depth and clarity of thinking and ingenuity in the planning of the apartments.

ITEM 4.7	**DA2021/1032 - 8 DELECTA AVENUE, CLAREVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
AUTHORISING MANAGER	**Tony Collier**
TRIM FILE REF	**2021/815878**
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. DA2021/1032 for alterations and additions to a dwelling house at Lot 20 DP 13291, 8 Delecta Avenue, Clareville subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1032

Responsible Officer:	Executive Manager Development Assessment
Land to be developed (Address):	Lot 20 DP 13291, 8 Delecta Avenue CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ewa Investments Pty Limited
Applicant:	Rama Architects Pty Ltd

Application Lodged:	16/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/07/2021 to 10/08/2021
Advertised:	Not Advertised
Submissions Received:	13
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 653,900.00

EXECUTIVE SUMMARY

Development Application (DA2021/1032) proposes demolition works with alterations and additions to the existing dwelling including a new module to the front of the site.

The application is referred to the Northern Beaches Local Planning (NBLPP) as 13 submissions have been received.

Amended plans were submitted on 11 October 2021 which included a number of changes to reduce building bulk and increase the landscaped area. These plans did not require re-notification as per the Community Participation Plan.

The 13 submissions received in response to the public exhibition of the application raise issues with

regard to loss of natural character, amenity impact, visual impact and construction impacts.

Amended plans have sufficiently addressed some of these issues by reducing building bulk (particularly at the south-western elevation), and by increasing landscaped area. Conditions have also been imposed to address concerns such as construction impacts, impact on natural vegetation, stormwater impact and increase the landscaped area of the site.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition and, alterations and additions to the existing dwelling with a new module extended to the front of the site. In detail, the proposal involves:

Ground Floor

- New entry.
- Lounge room.
- Bathroom.
- Storage.
- Powder room.
- Courtyard.
- Access stairs.
- Garage.

First Floor

- Three bedrooms.
- Ensuite.
- Outdoor Terrace.

External

- Landscaping.
- A green roof.

Amended Plans

Amended plans were provided on 11 October 2021. As the amended plans involved an overall reduction/lessening of impact, they were not required to be re-notified in accordance with Council's adopted Community Participation Plan. However, the amended plans were forwarded to the most affected neighbour at No. 6 Delecta Avenue as the increased setbacks at the south-western side of the development addressed, in part, issues raised in their submission.

In detail, the amended plans involved the following changes:

- Increased setback from south-western boundary (with the change marked in red on the amended plans).
- Change of material to façade of south-western elevation (timber sheet paneling).
- Reduction to south-western wall height by 300mm.
- Modification of footprint in attempt to retain Broad Leaf Paperbark.

- Increase of front setback to be 6.9m.
- Change of ground floor wall material (sandstone cladding).
- Removal of hard paved central courtyard.
- Removal of front balcony planter and replacement with balustrade.

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 - C1.3 View Sharing
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 20 DP 13291, 8 Delecta Avenue CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of an allotment located on the northern side of Delecta Avenue. The site is irregular in shape with a frontage of 15.24m along Delecta Avenue and a depth of 43.28m-50.04m. The site has a surveyed area of 632.3m². The site is located within the E4 Environmental Living zone and accommodates a dwelling house on the site. The site contains an existing dwelling toward the rear of the site, and a relatively large landscaped area and garage toward the front of the site.

	Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development of varying age, scale and design. **Site Inspection** The site was inspected on 10 September 2021.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

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

Section 4.15 Matters for Consideration	Comments
	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 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 92 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. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/07/2021 to 10/08/2021 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 13 submission/s from:

Name:	Address:
Ms Wendy Joan Johnston	4 Delecta Avenue CLAREVILLE NSW 2107
Ms Robyn Leonie Park	120 Hudson Parade CLAREVILLE NSW 2107
Mr Gregory Ian Coops Mr Sheonagh Jane Coops	1 Delecta Avenue CLAREVILLE NSW 2107
Caroline Chung	7 Delecta Avenue CLAREVILLE NSW 2107
Mr Richard Scott Barker	C/- Gartner Trovato Architects Po Box 1122 MONA VALE NSW 1660
Mr Geoffrey George Hicks	14 Delecta Avenue CLAREVILLE NSW 2107
Mr Bruce Peter Mackay Mrs Judith Ada Mackay	PO Box 289 AVALON BEACH NSW 2107
Mr Roger Vincent Gyles	28 The Serpentine BILGOLA BEACH NSW 2107
Mrs Margaret Joan Harris	126 Hudson Parade CLAREVILLE NSW 2107
Mr Mark James Wells	55 Hudson Parade CLAREVILLE NSW 2107
Mrs Eileen Janette Browne	12 Delecta Avenue CLAREVILLE NSW 2107
Mr David Castle	2 Delecta Avenue CLAREVILLE NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107

The matters raised within the submissions are addressed as follows:

- **Impact of natural environment and provision of landscaped area**

  Concerns were raised with regard to removal of trees and habitat and loss of garden. A specific concern was also raised regarding removal of Melaleuca tree adjacent to No. 6 Delecta Avenue.

Concern was also raised with the numerically non-compliant landscaped area and it was suggested calculations of landscaped area by the applicant were inaccurate. It was also suggested that the roof garden and driveway landscaped strips should not compensate for loss of landscaped area.

Comment:
Council's Landscape officer has reviewed the application and is supportive of the removal of the Melaleuca tree. However, the applicant has provided amended plans which provide greater opportunity for retention of the tree and has also stated an intention to retain the tree. As such, a condition is imposed to require root mapping and investigation to assist with protection of the tree.

The application is supported with a detailed landscaped plan which is supported by Council's Landscape officer.

The numerical non-compliance with landscaped area is considered to be reasonable as the outcomes of the clause are achieved (as further discussed in this report). It is noted that the roof garden is not included in calculations, and that the opportunity for planting in side and front setbacks contributes to the sufficiency of the landscaping outcome. It is further noted that a condition has been recommended (condition 19) that requires the deletion of floor space from the plans, being the ground floor powder room, laundry and watercraft storage room. The deletion of the floor area will result in additional landscaped area.

The landscaped area has been measured and calculated by the assessment officer. This area is provided in the "built form controls" table.

- **Construction traffic, congestion and noise.**

Concern is raised with respect to impacts from construction traffic regarding congestion and noise. Concern was also raised with regard to the impediment of access to the neighbouring driveway.

Comment:
The proposal does not involve any change to the number of dwellings or car parking spaces on site. As such, there will be no unreasonable intensification the use of the site. A condition is also imposed with regard to construction and traffic management.

A condition is imposed to require a Construction and Traffic management Plan. This includes a requirement for the imposition of measures which reduce potential for access to be restricted.

- **Bulk and scale**

Concern was raised with regard to the size and dominance of built form and the appearance akin to two dwellings. It is suggested this is Inappropriate design for desired character of Clareville and is an overdevelopment.

Comment:
The proposal involves two separate modules of the proposed dwelling which are adjoined by a narrow internal accessway. As such, the buildings are connected so as to no provide unreasonable opportunity for the site to act as two separate dwellings. A condition is also imposed to require that the site be used under this consent as a single dwelling only.

The proposed front extension is surrounded by landscaped area, complies with building height, complies with setbacks, and complies with building envelope. As a result of amended plans, the

extensions have also been further stepped in from the side boundary to ensure a reasonable

presentation of the overall building bulk on the site.

The two storey built form and good articulation of the additions will meet the desired future character, and will not constitute an overdevelopment of the site.

- **Unclear documents and plans submitted**

Concerns included missing elevations of the existing dwelling.

Comment:
The submitted information was sufficient to enable assessment of the application in accordance with the *Environmental Planning and Assessment Act 1979*. There is no proposed changes to existing elevations and these were not required to assess the application.

- **Overlooking on to front terrace**

Concerns were raised with regard to overlooking between the terrace and a property on the opposite side of Delecta Avenue. This concern was also raised from an adjoining property.

Comment:
The proposed front terrace is compliant with all numerical planning controls (setbacks, building envelope, and height), and is well separated from neighbouring living spaces. As such, the terrace does not cause any unreasonable privacy impact.

- **View loss**

Concerns were raised with regard to impacts on views.

Comment:
A view analysis (refer to Clause C1.3 of the PDCP) has been conducted in accordance with the planning principle established in the NSW Land and Environment Court case *Tenacity Consulting v Warringah Council* (see separate assessment later in this report).

In summary, the assessment fund that the development would maintain a reasonable level of view sharing to Pittwater and that this issue does not warrant the refusal of the application.

- **Driveway access and materials**

Concern was raised with the suitability of a single driveway access, and also with the suitability of the materials used for the driveway.

Comment:
Council's Engineer has reviewed the application (which does not involve any change to the existing crossover) and is satisfied with the proposed driveway subject to conditions.

- **Bulk and amenity impact at south western boundary**

Concern was raised with the Large wall on south-western boundary. In particular, concern was raised with the length of wall; unnecessary height of wall adjacent to green roof, and impact

cause by this wall on south-western neighbour (including impact on solar access).

Comment:
The proposed new wall along the south western boundary complies with controls for setback, building height, and building envelope. Further to this, the wall is articulated and the upper level is setback from the lower level.

This provides a situation in which the presentation of building bulk is sufficiently minimised. Adding to this, the proposal complies with requirements for Solar Access under the Pittwater DCP.

- **Request for compliance with all "2021 rules for building".**

A general request was made for compliance with planning and building rules.

Comment:
An assessment has been conducted with regard to the applicable Planning Instruments and Policies as required under the matters for consideration contained in the Environmental Planning and Assessment Act 1979, these include Pittwater LEP 2014 and Pittwater 21 DCP.

- **Impacts of overflow water.**

A general concern was made with regard to overflow water.

Comment:
The application has been reviewed by Council's Stormwater and Flood Engineers who are satisfied that there will not be an unreasonable impact on water systems (subject to conditions).

- **Bulk and scale of green roof.**

Concern was raised with the bulk and scale of the green roof area.

Comment:
The proposed green roof complies with building height as well as setback and envelope controls. Along with being confined to the centre of the site, this ensures the roof will not have an unreasonable visual impact.

- **Reflection of metal roof.**

Concern was raised with the potential for reflection to neighboring properties from the metal roof.

Comment:
A condition is imposed to require a medium to dark coloured roof in order to minimise impact caused by reflection.

- **Existing building**

It was suggested retention of existing building does not result in an acceptable outcome. Concern was also raised with regard to extension of building which has an existing non-

compliance with Foreshore building line.

Comment:
This application proposes extensions to the existing dwelling. There is no reasonable scope for council to request removal of the existing dwelling in order to redevelop the site. As such, an assessment of the overall impact of the exiting building and proposed extensions is made. This assessment has found that the overall bulk, and visual impact of the dwelling is sufficiently controlled through extensions which are well setback, articulated, modulated, and surrounded by landscaped area.

- **Use of Building**

Concern was raised at a site inspection regarding the use of the building as a multiple occupancy.

Comment
The building is designed to accommodate a single occupancy only (i.e. a dwelling house as defined in the PLEP Dictionary). Notwithstanding, a condition has been included to ensure that the dwelling is used for the purposes of a 'dwelling house' only.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	This application is for the alterations and additions to an existing residential dwelling. Alterations include the minor demolition of existing structures including both the garage and carport, as well as modification to the existing dwelling in order facilitate additions. Additions are inclusive of a new entry way, garage, lounge room, three bedrooms, as well as additional storage. Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls: - B4.22 Preservation of Trees and Bushland Vegetation. - C1.1 Landscaping. - D1.14 Landscaped Area - Environmentally Sensitive Land. The Statement of Environmental Effects provided with the application notes that the proposal will not require the removal of any significant vegetation. This statement is not supported by the Architectural Plans as it is clear one canopy tree is proposed for removal. For this reason, an Arboricultural Impact Assessment has been provided with the application. The Arboricultural Impact Assessment has identified a total of fourteen trees, eight of which are located within the site, with the remaining six trees located in adjoining properties. These trees

Internal Referral Body	Comments
	located in the adjoining properties, identified as Trees No. 9, 10, 11, 12, 13 and 14, are protected under the Pittwater 21 DCP, and are required to be protected and retained as no negative impacts to both the short-term and long-term health of these trees would be supported. All trees located within the site that have been identified in the Arboricultural Impact Assessment are located adjacent to the western boundary at the front of the site. Of these eight trees, two trees, Tree No. 5 and 8, are proposed to be removed. Tree No. 5 is a significant native tree that is located within close proximity to proposed works. The Arboricultural Impact Assessment has noted that Tree No. 5 may possibly be retained, however due to the proximity to proposed works, and likelihood of structural roots being impacted, it should be removed and replaced elsewhere on site. Upon review of the Landscape Plan provided, it is clear compensatory tree planting has been proposed, with a number of new, native tree plantings evident. For this reason, the removal of Tree No. 5 is supported. Tree No. 8 has been identified as an exempt species, and therefore may be removed without Councils approval. The retention of all trees not approved for removal, including those in neighbouring properties, is essential to satisfy control B4.22 and D1.14, as key objectives of these controls include "to protect, enhance bushland that provides habitat for locally native plant and animal species, threatened populations and endangered ecological communities", "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as the "conservation of native vegetation and biodiversity". The completion of landscape works as proposed on the Landscape Plan is also necessary to satisfy control C1.1, as key outcomes of this control seek to ensure "landscaping enhances habitat and amenity value", "landscaping reflects the scale and form of development", as well as a built form that is softened and complemented by landscaping. The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as completion of landscape works as proposed on the Landscape Plan. <u>Planning Comment</u> Subsequent to the receipt of amended plans, Council's Landscape Officer reviewed the previous recommendation regarding the removal of Tree No. 5 and reassessed the matter as possible retention due to the increased side setback. The retention of Tree No. 5 is contingent upon root mapping which has been imposed as a condition prior to the issue of a Construction Certificate. The previously imposed condition "Tree Removal with the Property" (which related to Tree No. 5) was subsequently removed by Council's Landscape Officer.
NECC (Bushland and	Council's Biodiversity referrals team have assessed the Development

Internal Referral Body	Comments
Biodiversity)	Application for compliance against the following applicable biodiversity related controls: - Pittwater LEP cl. 7.6 Biodiversity Protection - Pittwater 21 DCP cl. 4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community - Coastal Management SEPP 2018 cl. 13 Development on land within the coastal environment area The Development Application seeks consent for alterations and additions to an existing dwelling including demolition of the existing garage and carport, as well as modification to the existing dwelling in order facilitate additions. An Arboricultural Assessment is provided with the application and recommends the removal of one (1) prescribed tree; a *Melaleuca quinquenervia* (Broad Leaf Paperbark). To compensate for the removal of this tree, two (2) new canopy trees must be planted elsewhere within the property to meet the objectives of B4.7 of the PDCP. The Landscape Plan submitted with the application provides a sufficient planting list that is comprised largely of native species. Within the planting list *Eucalyptus camaldulensis* is listed, however no individuals are assigned to the quantity proposed. As such, two (2) *Eucalyptus camaldulensis* (or similar) are to be planted within the site as replacement plantings. Subject to 2:1 tree replacement, Council's Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	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 requirements of the 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 the proposed development. The proposed development is 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 the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. On internal assessment and as assessed in the Statement of

Internal Referral Body	Comments
	Environmental Effects, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP and it is therefore considered that the application 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. An Estuarine Planning Level (EPL) of RL 2.1m AHD has been independently derived for the site by Pittwater Data Services Pty Ltd, in a report supporting the DA dated 25/06/2021. The derived EPL is consistent with the EPL adopted by Council for the site. As the minimum floor level (RL 2.60m AHD) for the proposed alterations and additions as well as the existing dwelling is above the applicable EPL for the site, the proposed development is able to satisfy the relevant estuarine risk management requirements of P21 DCP. Please note however that the Food Planning Level (FPL) is higher than the EPL and the applicable flood controls will therefore prevail for this development proposal. Development on Foreshore Area The subject property is affected by the foreshore building line and Part 7, Clause 7.8 – Limited Development on Foreshore Area of Pittwater LEP 2014 applies for any development within the foreshore area. A portion of the existing dwelling is within the foreshore area. The DA however, does not propose any new works within the foreshore area and as assessed in the Statement of Environmental Effects prepared by Vaughn Milligan Development Consulting Pty Ltd (June 2021), the development proposal is considered to satisfy the objectives and requirements of Part 7, Clause 7.8 of Pittwater LEP 2014.
NECC (Development Engineering)	The proposal is for alterations and addition to an existing dwelling. Stormwater The site is falling to the rear and the stormwater from the site is currently dispersed within the rear of the site. The proposal is for a level spreader at rear of site. Excavation The site do not fall under any Geotech Hazard area. Access Driveway access is available from Delecta Avenue via a shared

Internal Referral Body	Comments
	concrete driveway. Proposal is for a new double garage, the existing driveway will be retained and provides access to the proposed garage.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. This site is close to Clareville Beach Reserve and drains into the greater Pittwater waterway. The development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the creek or lagoon. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Clareville Beach and Pittwater if conditions are adhered to. The proposal is therefore supported.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development generally complies with the flood requirements of the DCP and LEP.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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. A414415 dated 22 June 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment
The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Coastal Management) 2018

An assessment is made in relation to SEPP (Coastal Management) 2018 as follows:

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

(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral

rainforest, or
(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
The alterations involve extensions toward the front of the site, away from the waterfront. This would not have an unreasonable impact on coastal wetlands or rainforest.

12 Development on land within the coastal vulnerability area

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

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

Comment:
The proposal will not have a detrimental impact on the above and is not likely to alter coastal processes. This is a result of the reasonable bulk proposed and the physical separation of the site from the coastal area.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
(b) coastal environmental values and natural coastal processes,
(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(f) Aboriginal cultural heritage, practices and places,
(g) the use of the surf zone.

Comment:
The proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could

cause an unreasonable impact on the coastal environment area.

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

Comment:
The proposal retains the siting of the existing dwelling and provides additions in front of the dwelling away from the waterfront. This physical separation from the coastline along with the proposed works being maintained within the existing siting, provides a circumstance in which potential impact is sufficiently minimised.

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

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
4.3 - Height of Buildings	8.5m	7.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Garage & Terrace: 6.5m to 10.4m Addition (Dwelling): 9.3m to 13.5m	N/A	Yes
Rear building line	6.5m	3.0m to 4.5m	N/A	**No** (existing non-compliance)
Side building line	North - 2.5m	Addition (Ground): 2.5m to 8.8m Addition (Upper): 2.5m Existing Building: 0.9m	N/A	Yes Yes **No** (existing non-compliance)
	South - 1.0m	Addition: 1.8m to 3.7m Addition (Upper): 2.8m to 3.4m Existing building: 0.9m to 1.5m	N/A	Yes Yes **No** (existing non-compliance)
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	60% (379.4sqm)	54.6% (345.5sqm) With 6% impervious area variation as allowed for in DCP control: 56.1% (354.9sqm) With condition imposed to delete floor space: 58% (366.9sqm)	8.9% (33.9m²) (24.5m^2) 3.2% (12.5m2)	**No** (see comments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes

B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
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	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.15 Fences - General	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

The development is considered against the underlying Outcomes of the Control as follows:

- ***A reasonable sharing of views amongst dwellings.***

  Comment:

122 Hudson Parade (also referred to as 1 Delecta Avenue)

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

"*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*".

Comment to Principle 1
The proposal involves alterations and additions to the front of the building. Views will be maintained over the existing site including the existing building which is to be retained in its current form. These include water views which are partly obscured by nearby vegetation.



Photo 1: Photo from 122 Hudson Parade of the subject site (centre of the photo)

2. What part of the affected property are the views obtained

"*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 to Principle 2
The views are obtained over a front boundary from a balcony area and adjacent kitchen and living area. Water views will be maintained from standing position but may be slightly affected from sitting position.

3. Extent of impact

"*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% 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 to Principle 3
Given the potentially slight impact on water view from a sitting position, the impact on views overall is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

"*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 to Principle 4
The compliant building height and negligible extent of impact on views leads to a situation in which the view sharing outcome is reasonable.

2 Delecta Avenue

1. Nature of the views affected

"*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*".

Comment to Principle 1
The proposal involves alterations and additions to the front of the building. Water views will be maintained to the side of the subject site.

2. What part of the affected property are the views obtained

"*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 to Principle 2
Views of the water to the side of the subject site are best obtained from the side and rear balconies at No. 2 Delecta Avenue.

3. Extent of impact

"*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% 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 to Principle 3
Due to the water views being available to the side of the subject site, the impact on views is considered negligible.

4. Reasonableness of the proposal that is causing the impact

"*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 to Principle 4
The compliant building height and negligible extent of impact on views leads to a situation in which the view sharing outcome is reasonable.



Photo 2: Photo from 2 Delecta Avenue (the subject site to the left of the grey roofed building)

- ***Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.***

  Comment
  The compliant building height and compliant side building line ensures a reasonable protection of views and vistas.

- ***Canopy trees take priority over views.***

  Comment:
  The compliant building height ensures that the building is generally below surrounding tree canopy.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.9 Side and rear building line

The original proposal involved additions which complied with the numerical control for side buildingline. However, the amended plans now provide an even further increased side setbacks to the addition in order to providea reasonable distribution of building bulk across the site (given the existing non-compliant setbacks of the existing building).

This outcome has provided significant landscaped strips along each side elevation, adjacent to the extensions.

As such, the proposal is consistent with the outcomes of the clause.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Clause D.1.14 requires that development provides 60% (i.e. 379.4m²) of the site as landscaped area. The development provides a landscaped area of 56% (345.5sqm) which equates to a variation of 8.9% (i.e. 33.9m²).

There is ability to further increase the area of the site that is landscaped. To give effect to this, condition 19 has been recommended which would require the proposed ground floor powder room, water-craft storage area, and laundry to be deleted and that the area be provided as landscaped area. These changes would result in a landscaped area of 58% (366.9sqm) being provided. It is considered that there is adequate space available for these rooms to be accommodated in the other approved floor area.

It is noted that the proposal involves a roof top garden which is not included in the numerical calculation of landscaped area.

Merit Consideration

With regards to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:
The proposal involves demolition of an existing garage at the front of the site, and the addition of an extension including a garage to the front of the existing dwelling. This extension to the front of the site involves setbacks in excess of the numerical control for side building line. This provides an opportunity for larger landscaped strips to the side of the site, adjacent to the proposed extension.

Along with the landscaped area in the compliant front setback, this area provides opportunity for substantial planting and natural features to surround the dwelling. As such, the two storey extensions are able to be sufficiently integrated with natural features to maintain an appropriate landscaped setting and built form for desire future character.

As such, the proposal will meet the desired character of the locality.

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

Comment:
The proposed development is sufficiently articulated and the two storey form is well setback from the street which, together with the afore-mentioned landscape treatments, reduces the bulk and scale of the proposal.

The proposal also involves a courtyard area toward the middle of the site and stepping in of the building to correspond with the narrowing of the allotment along the western boundary. These features provide articulation and modulation in the built form so as to minimise the presentation of built form on the site.

This provides a situation in which the bulk and scale of the built form is minimised.

- ***A reasonable level of amenity and solar access is provided and maintained***

Comment:
The proposed extensions are sufficiently separated from neighbouring living spaces and living areas. Furthermore, the compliant front and side setback ensures that a sufficient open corridor is provided for sunlight access. The proposal also complies with all requirements under the clause for Solar Access under the Pittwater DCP.

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

Comment:
The proposal maintains vegetation to surround the dwelling and visually reduce the presentation of the built form. In particular, areas of vegetation are maintained along the side boundaries and toward the front of the site.

- ***Conservation of natural vegetation and biodiversity.***

Comment:
The landscaping which surrounds the site provides sufficient opportunity for the provision of natural vegetation. Conditions are imposed to ensure protection of trees, and for completion of landscaping in accordance with the submitted Landscape Plan.

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

Comment:
The proposed planting and permeable surfaces on the site is suitable for the site will sufficiently prevent soil erosion and minimise stormwater runoff.

Council's Development Engineer has also reviewed the application and provided conditions to ensure an appropriate outcome for Stormwater runoff.

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

Comment:
Council's Landscape Officer has confirmed that the proposed development retains suitable numbers of native trees on site to ensure the densely vegetated character of the area is retained.

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

Comment:
The proposed alterations and additions are surrounded by soft surface to maximise opportunity for water infiltration and to minimise stormwater runoff. Further, Council's Engineer has imposed conditions to maximise opportunity to minimise stormwater impact.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of $6,539 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $653,900.

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

Conclusion

The application (DA2021/1032) has proposed alterations and additions to the existing dwelling.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council, the relevant provisions of the Manly DCP.

The proposal has minor numerical non-compliances with planning controls. However, these do not give rise to any unreasonable environmental impact, subject to conditions.

The public exhibition of the application resulted in 13 submissions which are addressed in this report.

It is recommended that the Northern Beaches Local Planning Panel approve the application subject to conditions.

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 DA2021/1032 for Alterations and additions to a dwelling house on land at Lot 20 DP 13291, 8 Delecta Avenue, CLAREVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA-001 - Site Plan	5.10.2021	Rama
DA-100 - Ground Floor - General Arrangement Plan	5.10.2021	Rama
DA-101 - First Floor - General Arrangement Plan	5.10.2021	Rama
DA-300 - Elevation Sheet 01	5.10.2021	Rama
DA-301 - Elevation Sheet 02	5.10.2021	Rama
DA-400 - Section Sheet 01	5.10.2021	Rama
DA-500 - Landscape Plan	4.06..2021	Rama
External Finishes Schedule	5.10.2021	Rama

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
DA-800 - Driveway & Vehicle Crossing Sheet	04.06.2021	Rama
DA-801 - Driveway Comparison	04.06.2021	Rama

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Construction Impact and Management Statement	May 2021	Growing my Way Tree Consultancy
Flood and Estuarine Risk Management Report	25.06.2021	Pittwater Data Services Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	16.06.2021	Rama

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	Ausgrid Referral Response	22/07/2021

(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**
Nothing in this consent shall authorise the use of site/on-site structures as detailed on the approved plans for any land use of the site beyond the definition of a **dwelling house**.

A **dwelling house** is defined under the Pittwater Local Environmental Plan 2014 as:

"a building containing only one dwelling".

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

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

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 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

6. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $6,539.00 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 $653,900.00.

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 $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

8. **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 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

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).

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

9. **Stormwater Disposal from Low Level Property**
The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy 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.

10. **Flooding**
In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level of 3.1m AHD shall be designed and constructed with flood compatible materials.

Building Components and Structural Soundness – B2
All new development must be designed to ensure structural integrity up to the Flood Planning Level of 3.1m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 3.1m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1
New internal floor levels within the development shall be set at or above the levels shown on Drawing DA-100 (4.06.2021)

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

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

11. **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.

12. **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.

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. **Tree Root Investigation and Tree root map**
Prior to the issue of a Construction Certificate, a tree root mapping investigation for Tree No. 5 along the south-west boundary, shall be undertaken, and a Tree Root Map shall be documented that will be the basis for determining construction methodology near existing Tree No. 5.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:

i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and

ii) mapping of the suitable location/alignment of proposed works.

The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifying Authority that the tree root investigation and clear distance recommendations have been adequately addressed in the Construction Certificate plans.

Reason: to ensure protection of vegetation proposed for retention or adjacent to the site.

15. **Estuarine Hazard Design Requirements**
The following applies to all development:

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

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

16. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

17. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- 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.

18. **Construction and traffic site management plan**
Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site

- provisions for public safety
- pedestrian and vehicular site access points and construction activity ones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- dust, noise and vibration control measures
- location of temporary toilets.
- measures to minimises obstruction of neighbouring access

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

19. **Deletion of Powder room, boat store and laundry**
The powder room, water craft storage and laundry are to be deleted from the plans and replaced with landscaped area.

These areas may be incorporated in to the remaining floor space of the proposed dwelling.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To increase Landscaped area.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

i) all demolition, excavation and construction works within the TPZ's and SRZ's of trees to be retained.

All tree protection measures specified must:

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

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.

21. **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.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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.

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

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

Reason: Tree protection.

24. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:

i) Section 4 - Observations (specifically 4.4 The Tree - Summary Table),
ii) Section 5 - Discussion,
iii) Appendix C - Tree Protection & Management.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

26. **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 RAMA Architects Pty Ltd, 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.

27. **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

28. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan.

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.

29. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

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

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

31. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (Rama Architects, June 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

32. **Replacement of Canopy Trees**
At least 2 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Plant Species Guide - Pittwater Ward (https://www.northernbeaches.nsw.gov.au/node/34932).

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

33. **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.

34. **Certification of the Structural Stability of the Building (B2)**
A suitably qualified structural engineer is to certify the structural stability of the new development considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact of the Flood Planning Level of 3.1m AHD.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

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

35. **Certification of Services (B3)**
A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level of 3.1m AHD and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

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

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

36. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

For all new on-slab landscape works, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

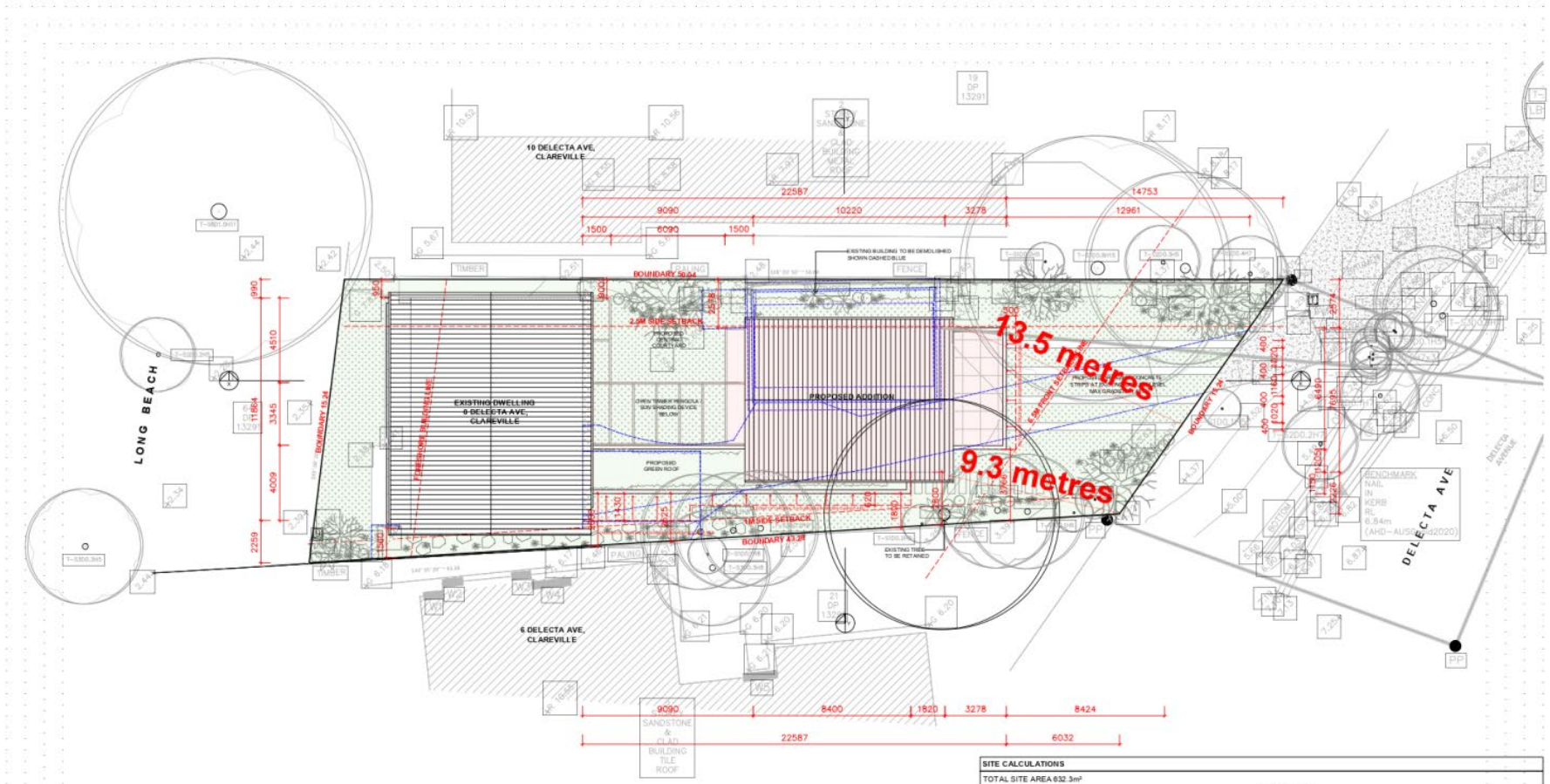
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

37. **Replacement of Canopy Trees**
Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.



SITE CALCULATIONS			
TOTAL SITE AREA 632.3m²			
EXISTING		**PROPOSED**	
GROUND FLOOR GROSS FLOOR AREA	108m²	GROUND FLOOR GROSS FLOOR AREA	187m²
FIRST FLOOR GROSS FLOOR AREA	101m²	FIRST FLOOR GROSS FLOOR AREA	163.8m²
TOTAL GROSS FLOOR AREA	209m²	TOTAL GROSS FLOOR AREA	350.8
GARAGE / WORKSHOP GROSS FLOOR AREA	90.3m²	GARAGE GROSS FLOOR AREA	41.5m²
TOTAL GROSS FLOOR AREA INCL. GARAGE	299.3	TOTAL GROSS FLOOR AREA INCL. GARAGE	392.3m²
		GREEN ROOF AREA	21.0m²
TOTAL ROOF AREA	218.5m²	TOTAL ROOF AREA (INCL. GREEN ROOF)	271.7m²
TOTAL EXTERNAL DECK AREA	16.9m²	TOTAL EXTERNAL DECK AREA	35.6m²
HARD SURFACE AREA	334.6m² (52.9%)	HARD SURFACE AREA	261.03m² (41.3%)
SOFT LANDSCAPE AREA	297.7m² (47.1%)	SOFT LANDSCAPE AREA	371.27m² (58.7%)

SITE PLAN 1:100 @ A1 OR 1:200 @A 3

NORTH

LEGEND:

203 DENOTES EXISTING SPOT LEVEL

RL 7.10 DENOTES PROPOSED LEVEL

NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION. FOR DA APPROVAL ONLY.
NOTE: DO NOT SCALE OFF THIS DRAWING.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIX REQUIREMENTS

KEY:

- DENOTES PROPOSED WALLS
- DENOTES OUTLINE OF EXISTING TO BE DEMOLISHED
- DENOTES AREA OF PROPOSED LANDSCAPING
- DENOTES PROPOSED ADDITIONS TO EXISTING DWELLING
- DENOTES AREA OF PROPOSED DEMOLITION

PROJECT: PROPOSED ALTERATIONS & ADDTIONS TO EXISTING DWELLING

CLIENT: DAVID, MATTHEW & KATE NORTON

LOCATION: 8 DELECTA AVE, CLAREVILLE,2107, NSW

PROJECT STAGE: ADDITIONAL INFORMATION

DRAWING TITLE: SITE PLAN

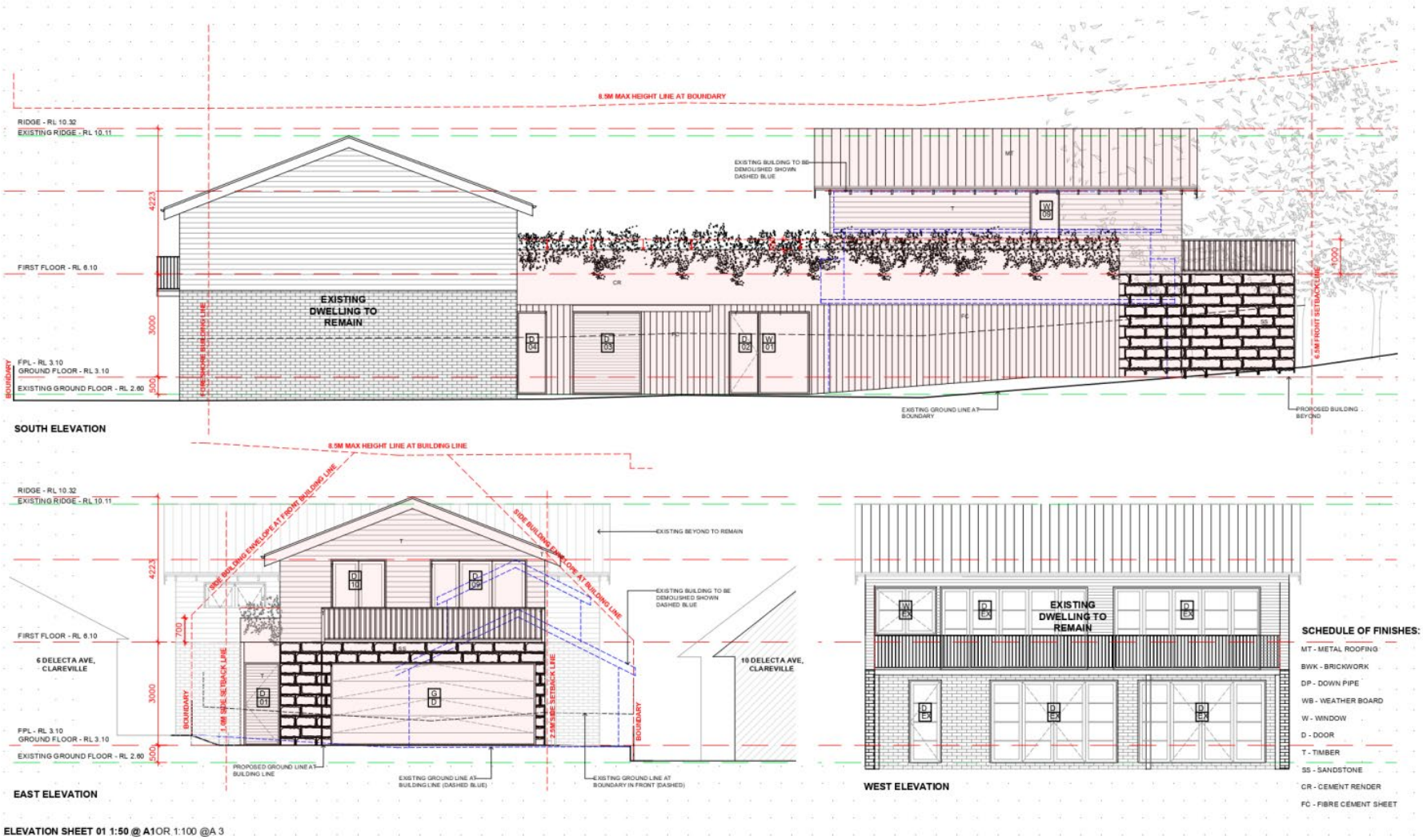
SCALE: 1:100 @ A3

DATE OF ISSUE: 05.10.2021

DRAWING NO. DA-001

REVISION: -

rama



ELEVATION SHEET 01 1:50 @ A1 OR 1:100 @ A 3

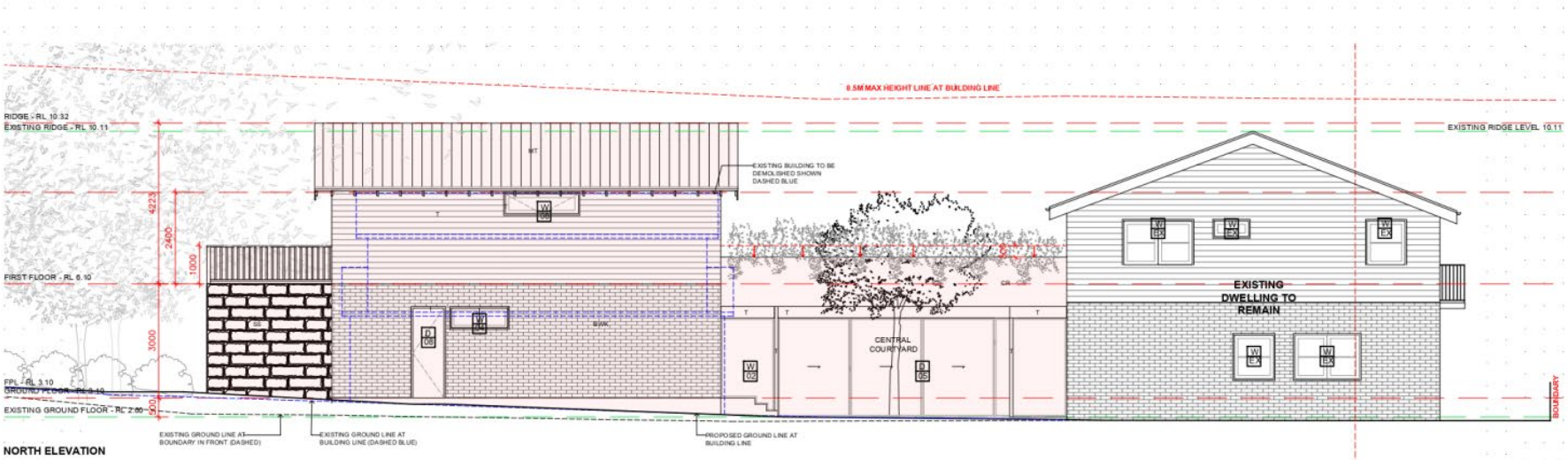
LEGEND:
- DENOTES EXISTING SPOT LEVEL
- RL 7.10 DENOTES PROPOSED LEVEL

NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION. FOR DA APPROVAL ONLY.
NOTE: DO NOT SCALE OFF THIS DRAWING.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIX REQUIREMENTS

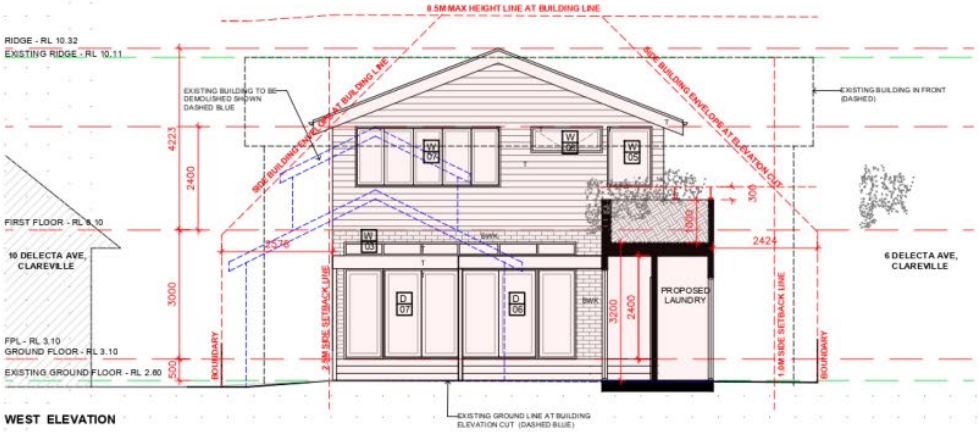
KEY:
- DENOTES PROPOSED WALLS
- DENOTES OUTLINE OF EXISTING TO BE DEMOLISHED
- DENOTES AREA OF PROPOSED LANDSCAPING
- DENOTES PROPOSED ADDITIONS TO EXISTING DWELLING
- DENOTES AREA OF PROPOSED DEMOLITION

PROJECT:	PROPOSED ALTERATIONS & ADDTIIONS TO EXISTING DWELLING
CLIENT:	DAVID, MATTHEW & KATE NORTON
LOCATION:	8 DELECTA AVE, CLAREVILLE,2107, NSW
PROJECT STAGE:	ADDITIONAL INFORMATION
DRAWING TITLE:	ELEVATION SHEET 01
SCALE:	1:100 @ A3
DATE OF ISSUE:	05.10.2021
DRAWING NO.	DA-300
REVISION:	-

rama



NORTH ELEVATION



WEST ELEVATION

SCHEDULE OF FINISHES:

MT - METAL ROOFING
BWK - BRICKWORK
DP - DOWN PIPE
WB - WEATHER BOARD
W - WINDOW
D - DOOR
T - TIMBER
SS - SANDSTONE
CR - CEMENT RENDER
FC - FIBRE CEMENT SHEET

ELEVATION SHEET 02 1:50 @ A1OR 1:100 @A 3

LEGEND:

203 DENOTES EXISTING SPOT LEVEL

RL 7.10 DENOTES PROPOSED LEVEL

NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION. FOR DA APPROVAL ONLY.
NOTE: DO NOT SCALE OFF THIS DRAWING.
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C.
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KEY:

- DENOTES PROPOSED WALLS
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PROJECT:
PROPOSED ALTERATIONS & ADDTIIONS TO EXISTING DWELLING

CLIENT:
DAVID, MATTHEW & KATE NORTON

LOCATION:
8 DELECTA AVE, CLAREVILLE,2107, NSW

PROJECT STAGE:
ADDITIONAL INFORMATION

DRAWING TITLE:
ELEVATION SHEET 02

SCALE:
1:100 @ A3

DATE OF ISSUE:
05.10.2021

DRAWING NO.
DA-301

REVISION:
-

rama

ITEM 4.8	**DA2021/0960 - 27 OLIVER STREET, FRESHWATER - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE**
AUTHORISING MANAGER	**Rebecca Englund**
TRIM FILE REF	**2021/849836**
ATTACHMENTS	**1 Assessment Report** **2 Site Plan & Elevations** **3 Design & Sustainability Advisory Panel Report**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, grants **deferred commencement approval** to Application No. DA2021/0960 for demolition works and construction of a Boarding House at Lot A DP 443739, 27 Oliver Street, Freshwater subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0960

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot A DP 443739, 27 Oliver Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a Boarding House
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Angelo Evangelatos
Applicant:	Scott Miner

Application Lodged:	01/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	10/11/2021 to 24/11/2021
Advertised:	10/11/2021
Submissions Received:	27
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 2,998,148.00

EXECUTIVE SUMMARY

The proposed boarding house comprises 11 boarding rooms (inclusive of one manager's room) with a potential maximum occupancy of 22 people. The provisions of *State Environmental Planning Policy (Affordable Housing)* (**SEPP ARH**) are applicable to this application. As the application was lodged prior to 25 November 2021, the provisions of *State Environmental Planning Policy (Housing) 2021* do not apply. The proposal is reliant upon variations to *Warringah Development Control Plan 2011* (**WDCP 2011**) built form controls, including wall height, building envelope and rear setback . The WDCP 2011 variations are acceptable and supportable on merit.

27 objections were received in response to the proposal, with concern raised in regards to parking, suitability of the site, on-going management of the development, bulk and scale, amenity and built form

non-compliance and safety. A detailed assessment has been conducted and the matters raised in the submissions have been addressed in detail, and no matters were found to warrant the refusal of the subject application.

The application has been referred to the Northern Beaches Local Planning Panel due to having more than 10 unique submissions.

The application is recommended for approval, subject to a deferred commencement condition relating to stormwater management.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition and construction of a boarding house pursuant to SEPP ARH.

The proposal incorporates the following:

- Demolition of the existing dwelling house;
- Construction of a two (2) storey boarding house comprising:
  - 10 x double (2) person rooms;
  - 1 x Communal room and external communal open space; and
  - 1 x Boarding house manager room and private open space area.
- Basement parking compromising of:
  - 7 off-street parking space (6 standard, 1 accessible)
  - Motorbike and bike storage;
  - Communal laundry facilities'; and
  - Storage
- Associated landscaping; and
- New driveway crossover and access driveway.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D13 Front Fences and Front Walls

SITE DESCRIPTION

Property Description:	Lot A DP 443739 , 27 Oliver Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Oliver Street. The site is regular in shape with a frontage of 15.45m along Oliver Street and a depth of 42.67m. The site has a surveyed area of 663.3m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house The site slopes from the front to the rear, with a fall of approximately 2m. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development. A dwelling house adjoins the subject site to the north and residential flat buildings to the east and south.

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:

PLM2021/0106 - Construction of a Boarding House

Design and Sustainability Advisory Panel (DSAP)
Following the lodgment of the development application was referred to DSAP, who provided the following comment:

> ***Strategic context, urban context: surrounding area character***
> *The context is comprised of a number of 3 storey apartment buildings to the south and east of the site with dual occupancy and detached houses to the north and west across Oliver Street. The two storey proposal makes a transition of scale between the 3 storeys apartment buildings to the south of the site and the one to two storey dwellings to the north and west of the site.*
>
> ***Scale, built form and articulation***
> *The proposed built form is in scale with its context and the overall built form is compatible with the area. The location of the driveway to 25 Oliver Street separates the proposal from the existing balconies on the building at 25 Oliver Street, however the car drive is not a good aspect for apartments to open onto.*
> *The proposal is closer to the existing building and rear yard at 31 Oliver Street than the building at 25 Oliver Street. There are potential privacy issues regarding the overlooking of 31 Oliver Street, which have been partially addressed. The built form is irregular, with large setbacks to the north and little setback to the south due to the orientation of a number of apartments to the south and north.*
>
> *Recommendation.*
>
> > *1. The side setbacks should be made more regular with a re-consideration of the internal apartment planning.*

Planner comment: The balconies along the northern elevation have been deleted and replaced with narrow and high sill windows to offset privacy impacts.

Building separation/visual privacy
Visual privacy to the north is problematic. On the ground floor level, the provision of screens assists to some degree, however they reduce the amenity within the apartments. Room 6 on the ground floor suffers from having its only doors opening in close proximity to the fence and neighbouring driveway and receiving no direct sun. On the first level overlooking is reduced by the screens due to the large balconies oriented towards the neighbouring rear yard.

Recommendation.

> *2. Internal apartment planning on the ground level as recommended above should consider the deletion of one room (2 or 3) to provide a courtyard area that is open to the sky in part. This would be facilitated by the reduction in area of the room 8 balcony or the colorbond metal roof area above room 3.*

Planner comment: The proposal has been amended, reducing the proposal from 12 to 11 rooms. The communal private open space has been relocated to the front of the building to ensure, the private open space does not overlook the adjoining northern property.

Access, vehicular movement and car parking
The car ramp is well located, and it is recognised that the parking layout is restricted by the existing sewer.

Recommendation.

> *3. Increase the number of bicycle spaces*

Planner Comment: The number of bicycle spaces has been increased from 3 to 11 spaces.

Landscape
The proposed landscape design is appropriate for this constrained site.
Better access from the communal room to the garden would be desirable, possibly with wider tiered steps.
The inclusion of washing-lines is commended but would be better as a paved area.

Recommendations.

> *4. Redesign the stairs to the rear garden area*
> *5. Provide a paved path to the washing lines and pave beneath them.*

Planner Comment: The stair access has been deleted and the washing lines deleted.

Amenity
The amenity of many apartments is compromised by a highly irregular layout of apartments, creating narrow and wider spaces in hap-hazard arrangements. As a result of these layouts many apartments have access through the kitchen to the living area / room. This may be necessary in some instances, however it would be desirable to avoid walking between two kitchen benches, as in Room 10, preferably locating the kitchen bench to one side while walking past on the other

side.
Many apartments oriented to the side boundary have either no sun, on the south, or screened balconies on the north, reducing their amenity. It would be desirable to reduce the number of side boundary oriented apartments.
There is an imbalance in the relative open spaces for apartments, with those on the first floor to the north having unnecessarily large balconies and many on the ground floor having meagre amounts of open space.
The panel noted that the accessible room has the poorest amenity, has no balcony and is on the south side of the building.

Recommendations.

> *6. It is recommended that a new approach be taken to the first floor apartment layouts, with the great majority of apartments oriented with their balconies and living rooms facing east and west and no apartment balconies and living rooms facing south. More regular room layouts may be achievable. This may require moving the northern wall closer to the northern boundary. This may also require a performance solution to fire stair travel distances, however it may be possible to locate all doors to rooms within 6m of the fire stair door. This may require relocating the lift and fire stairs.*
> *7. It is recommended that Room 6 with a sole southern aspect be deleted from this layout.*
> *8. A communal laundry could be provided for all apartments which would free up space and also overcome any issues with the DDA.*
> *9. Locate and design the accessible room to have the best amenity*
> *10. If any units are to be provided with private laundry facilities, it may be best for this to be the accessible unit, with the arrangement specifically tailored to accessible standards; for example, having the drier within easy reach*

Planner comment: All balconies are orientated to the east and west and away from the side boundaries. All rooms now contain a washing machine. The accessible rooms are located on the ground floor and include a balcony oriented to the rear yard.

Façade treatment/Aesthetics
The proposed tall, relatively blank entry wall, that is a result of the location of the first floor bathroom, is a strong statement, however it may not be necessary, and may be overbearing in the local context.

Recommendation.

> *11. A more open elevation would be preferable, with balconies addressing the street to also improve passive surveillance and amenity*

Planner Comment: The entry wall proposed along the front elevation has been deleted. Balconies from Rooms 6 and 7 now address Oliver Street.

Sustainability
All dwellings have a washing machine and dryer. Consider a communal laundry. There are social and environmental benefits to communal laundries, and it will also save space in the apartments as well as reduce cost.

Recommendations.

12. Recommend the use of PV – the roof may need to pitch to the north or the PV will need to be on brackets,
13. Consider having a gable roof with generous eaves that would provide ample area for PV and that would also provide shade to the doors on the upper level in lieu of shading device. (note that the additional wall height to the north is a blank wall above door height in the current scheme).
14. Recommend an all electric approach – heat pump hot water, induction cooktops;
15. Provide more bike spaces. One per apartment would be preferable, although we note that this goes beyond mandatory requirements. Perhaps size the unit stages spaces so that they can fit a bike.

Planner Comment: As noted above, bicycle spaces have been increased from 3 to 11. The flat roof design remains.

PANEL CONCLUSION
The panel does not support the proposal in its current form.

A re-design is required.

Given the poor amenity of many of the rooms, and the single aspect and outlook to adjoining properties to the north and south (rooms 2, 3, 6) it is likely that the re-design will require a reduction in the number of rooms.
The Panel recommends a new layout of all apartments to enhance the equity between apartment sizes and layouts and balcony sizes. Internal amenity should be enhanced, external impacts reduced and the built form and elevational treatments amended accordingly.

Planner Comment: The comments made by DSAP on a whole have been satisfactory addressed by the applicant, and as such supported in this instance.

On 22 September 2021, additional information was requested in relation to:

- Privacy;
- DSAP comments.

On 25 October 2021, additional information was received, as follows:

- Amended plans including deletion of balcony along the northern elevation; deletion of room 12; amended room layout; relocation of communal open space.
- Updated BASIX, Access and Acoustic report.

On 5 November 2021, the application was re-notified and advertised to neighbouring properties in accordance with the Northern Beaches Community Participation Plan.

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 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. At the time of lodgement, Draft State Environmental Planning Policy (Housing) 2021 was on exhibition for comment. The policy was gazetted on 26 November 2021. Schedule 7 of the policy makes saving provisions for any development application made, but not yet determined, on or before the commencement date. Notwithstanding, the provisions of new policy have been considered in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah

Section 4.15 Matters for Consideration	Comments
on the natural and built environment and social and economic impacts in the locality	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 10/11/2021 to 24/11/2021 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 27 submission/s from:

Name:	Address:
Mr Mark William Messenger	119 Wyndora Avenue FRESHWATER NSW 2096
Mrs Skye Raco	2 / 104 - 106 Whistler Street MANLY NSW 2095
Leesa Forrest	Address Unknown
Stella Grose	Address Unknown
Salvatore Panetta	31 Oliver Street FRESHWATER NSW 2096
Mr Ian Trafford Allpass	186 Pittwater Road MANLY NSW 2095
Mr Jason Anthony Turton	26 A Soldiers Avenue FRESHWATER NSW 2096
Mrs Laura Jayne Murphy Mr Timothy Martin Murphy	2 / 24 Soldiers Avenue FRESHWATER NSW 2096
Ms Catherine Jane Brockbank	6 / 25 Oliver Street FRESHWATER NSW 2096

Name:	Address:
Mrs Lindsey Fiona Easton	1 Robert Street FRESHWATER NSW 2096
Lesley Ann Watson	15 / 25 Oliver Street FRESHWATER NSW 2096
Mr Adam Joseph Merhab	34 Oliver Street FRESHWATER NSW 2096
Ms Ruth McKenzie	11 Wyndora Avenue FRESHWATER NSW 2096
Miss Tracey Jane Corrick	53 Ryan Place BEACON HILL NSW 2100
Mr Sebastian Andreas Schultes	22 Oliver Street FRESHWATER NSW 2096
Mr Jovan Sarai	24 Oliver Street FRESHWATER NSW 2096
Michael James Fortescue	43 Johnson Street FRESHWATER NSW 2096
Mr Gary Frederick Parkinson	24 Ozone Street FRESHWATER NSW 2096
Stuart Mak	20 Oliver Street FRESHWATER NSW 2096
Ms Julie Maree Olzomer	1 / 3 Greenwood Place FRESHWATER NSW 2096
Clarke & Humel Property	1 / 17 Sydney Road MANLY NSW 2095
Marcia Hazel Ferris	5 Wilima Place FRENCHS FOREST NSW 2086
Mrs Piera Erica Thomas	162 Barrenjoey Road NEWPORT NSW 2106
Mr John Velthuys	12 / 13 Stuart Street MANLY NSW 2095
Mr Christopher David McNeil	55 Lawrence Street FRESHWATER NSW 2096
Ms Jasmine Emily Burns	16 / 66 Darley Road MANLY NSW 2095
Mr David Walter Warneford Mrs Kristy Kerry Warneford	18 Oliver Street FRESHWATER NSW 2096

The matters raised within the submissions are addressed as follows:

- **Parking**
  Comment: Submissions have been received in objection to the lack of off-street parking on the site and inconsistency with the provisions of WDCP 2011. The parking rate requirements under SEPP ARH require 6 parking spaces based on the 10 double rooms and boarding house manager room proposed. The development proposes 7 car spaces, compliant with and in excess of the numeric requirement. In accordance with clause 29(2)(e) of SEPP ARH, the consent authority cannot refuse the development on the grounds of parking, as the minimum requirements of SEPP ARH are achieved.

- **Overdevelopment**
  Comment: Submissions have been received suggesting that the proposal is an overdevelopment of the site. The proposed development is consistent with the development standards under the WLEP 2011 and requirements of SEPP ARH, the primary standards that control the bulk and scale of this type of development. Compliance with these controls indicates that the proposed development is suitable for this site. While there are areas of non-compliance with regard to wall height, rear setback and building envelope controls under the WDCP 2011, these breaches are minor and acceptable on merit when considered against the underlying objectives of each individual control.

- **Inappropriate use**
  Comment: Concern has been raised in regards to the the suitability of a boarding house within the Freshwater area and R2 Low Destiny Residential Zone generally. Boarding houses are a permitted use in the R2 Low Density Residential zone and the proposal meets the

requirements of SEPP ARH in terms of being within 400m of a regularly services bus stop and proposing no more than 12 rooms. Therefore, the proposal cannot be refused in this regard.

- **Stormwater (Drainage)**
  Comment: The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions have been recommended to ensure adequate stormwater management for the boarding house and adjoining properties.

- **Privacy (Visual)**
  Comment: Concern was raised by neighbouring properties in regards to the potential overlooking between the subject site and adjoining properties. The proposal has been assessed against the privacy provisions of Part D8 Privacy of the WDCP 2011. In summary, the amended plans have deleted all balconies along the northern elevation. The proposed windows and remaining balconies proposed allow for reasonable levels of privacy between properties, subject to conditions.

- **Noise**
  Comment: Concern is raised in regards to the noise impact associated with the density of the boarding house. The application was supported by an Acoustic Report which confirms that the use of the communal spaces can be managed to avoid adverse impacts to adjoining properties. The amended proposal has reduced the level of outdoor living spaces. Given the scale of the neighbouring properties to the east and south, the acoustic impact of the development is not deemed to be unreasonable or out of character with the locality. Council's Environmental Health Officer has imposed conditions of consent requiring an updated plan of management to Council's satisfaction, and for the development to be maintained.managed in accordance with the plan of management for the life of the development. The plan of management will be imposed for the life of the development. The contact information of the boarding house manager is also to be provided to neighbouring properties to ensure a direct contact line between the neighbours and the boarding house operator/manager.

- **Overshadowing**
  Comment: Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development will be excavated into the natural landform and the site has a east-west orientation. The revised shadow diagrams detail the shadowing impacts upon No. 25 Oliver Street. A detailed assessment has been undertaken against the solar access provisions within this report. In summary, the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining units. The proposal complies with the requisite provisions of Part D6 of the WDCP 2011.

- **Traffic and Safety**
  Comment: Concern is raised in regards to traffic and potential dangers in regards to pedestrian safety as a result of the proposed use of the subject site. A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development is consistent with the underlying objectives of Part C2 Traffic, Access and Safety as well as C3 Parking Facilities of the WDCP 2011, subject to recommended conditions of consent.

- **Impact on cycleway**
  Comment: Concern is raised in regards to the potential impact the development will have on the existing cycleway across Oliver Street and poential future cycleways. Cyclesways will not be unreasonably impacted by the proposed development. The proposed development indicates that all vehicles that access the basement parking will be able to enter and exit in a forward direction. This will ensure safety for road users, cyclist and pedestrians along Oliver Street. The

application has been reviewed and supported by Council's Traffic Engineer who raised no issue with the proposal, subject to conditions of consent.

- **Impact of excavation**
  Comment: Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered under Clause 6.2 of the WLEP 2011 (Earthworks). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical Report (prepared by White Geotechnical Group dated 17 May 2021) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction.

- **Built form non-compliance**
  Comment: This matter is addressed in detail elsewhere within this report (refer Part B of WDCP 2011 section of this report). In summary, the proposed building setbacks and resultant bulk and scale are considered to be appropriate in this residential context and satisfies the requirements and objectives of Part B of the WDCP 2011.

- **Boarding house management/ Plan of Management**
  Comment: A number of submissions have been received in objection to the absence of an on-site manager. In accordance with the provisions of clause 30 of SEPP ARH, a manager is required to oversee the operation of the boarding house and will be contactable by occupants and adjoining property owners at all times. Furthermore, occupants of the development will be required to abide by the Plan of Management.

  The development provides accommodation in the form of allocated room for the boarding house manager which ensures a full time manager presence on site.

- **Heritage value of existing dwelling house**
  Comment: Concern is raised in regards to the potential heritage value of the existing dwelling house. The existing dwelling house is not a listed heritage item under the WLEP 2011 and it is not located in a heritage conservation area. Therefore, the proposed demolition is considered satisfactory.

- **Loss of property value**
  Comment: Concern is raised that the development would have an adverse impact on property value. The issue of property value is not one which can be considered under the provisions of Section 4.15 (1) of the Environmental planning and Assessment Act 1979. This issue does not warrant the refusal of the application.

- **Affordability**
  Comment: Concern is raised in regards to the affordability of the proposed units. State Environmental Planning Policy (Housing) 2021, which came into effect on 26 November 2021 and requires boarding houses to used for affordable housing. However, as stated within the report the provisions of this policy do not apply in this instance.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire	**No objection, with conditions.**

Internal Referral Body	Comments
and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	**No objection, with conditions.** **General Comments** Environmental Health reviewed the proposal aspects of amenity impacts for surrounding residents, particularly analysing acoustic amenity with respect to location of mechanical plant such as centralised air conditioning system and external common areas. We found that the applicant has provided a suite of reasonable measures to mitigate acoustic concerns. These are to be adapted as conditions of Consent for regulatory purposes. In order to further protect amenity Environmental Health recommend that no amplified music is to be permitted at any time within the outdoor communal areas. **Recommendation** APPROVAL - subject to conditions
Landscape Officer	**No objection, with conditions.** The proposal seeks consent for : • Demolition of existing dwelling • Earthworks and site preparation including excavation of basement car park • Construction of new 2 storey boarding house comprised of 1 managers room, 11x2 person rooms, a communal room above basement parking for 7 cars Including an accessible space), 3 motorcycles, 3 bicycles and storage; • Provision of infrastructure and services; • Landscaping including communal open space as indicated on the landscape plans. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011, including but not limited to the following clauses: • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation No trees are currently located on the site. The Landscape Plan

Internal Referral Body	Comments
	indicate replanting of 5 advanced sized native trees over the site, 2 in the front yard and 3 in the rear yard, in addition to screen planting, shrubs and groundcovers. One street tree forward of the property is potentially affected by the proposed driveway. The Arborist's report submitted by Aura Tree Services is noted. The Report indicates that whilst there is potential for impacts, the works can be undertaken with an acceptable level of impact on the tree, subject to Arboricultural supervision and tree sensitive excavation. Conditions have been included requiring compliance with the recommendations of the report and the appointment of a Project Arborist to oversee tree protection and excavation works. Additional screen planting is recommended in the front of the site, adjacent to the southern boundary to assist in screening of water tanks and provide improved address to the streetscape and adjoining properties. In consideration of the above, no objections are raised to approval subject to conditions as recommended.
NECC (Development Engineering)	**No objection, with conditions - deferred commencement.** **Comments 2/12/21** Development assessments have requested that a deferred commencement condition be imposed in relation to the applicant obtaining a downstream drainage easement. Conditions to the effect will be provided. **Comments 23/11/2021** **T**he proposed boarding house is not supported for the following reasons: 1) The stormwater drainage plans as prepared by NB Consulting details drainage of the site to Soldiers Parade. As the discharge line will need to traverse several downstream properties evidence is to be provided to Council that inter allotment drainage easements have been created accordingly. To date no evidence has been provided in relation to the obtaining of downstream inter allotment drainage easements. **Previous comments** The proposed boarding house is not supported for the following reasons: 1) The stormwater drainage plans as prepared by NB Consulting details drainage of the site to Soldiers Parade. As the discharge line will need to traverse several downstream properties evidence is to be provided to Council that inter allotment drainage easements have been created accordingly.

Internal Referral Body	Comments
	2) A DRAINS model is to be submitted to Council for review to verify the On Site Storage requirements and Permitted site discharge in accordance with Councils Water management policy for development. Please note the pre developed impervious fraction is to be 0% and this requirement may change the OSD volume requirements.
Traffic Engineer	**No objection, with conditions.** Proposal description: The proposal is for demolition of existing dwelling and construction of new 2 storey boarding house comprised of 1 managers room, 11x2 person rooms, a communal room above basement parking for 7 cars Including an accessible space), 3 motorcycles, 3 bicycles and storage; Parking: The parking provision satisfies the SEPP requirements and considered satisfactory. Traffic: The traffic generating by the proposed development is minimal and will not have significant impact on the road network. Car park and driveway design: The car park design is compliant with Australian standards, however, the driveway and the waiting bay are to be modified to allow for a vehicle to exit the driveway while another vehicle is waiting in the passing bay. This is conditioned below. Conclusion: The proposal is supported by the Transport Team subject to conditions.
Waste Officer	**No objection, with conditions.** Waste Management Assessment Recommendation - Acceptable, subject to conditions Ray Creer Waste Services Officer

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 (Affordable Rental Housing) 2009

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "*a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room*".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	**Consistent** The site is located within the R2 Low Density Residential. The proposed use is permissible with consent under WLEP 2011 and SEPP ARH.

Clause 27: Development to which this Division applies

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

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

Clause 28: Development may be carried out with consent

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

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	**Not applicable**
	(b) if the development is on land within a zone in	Floor space ratios are not applied in WLEP	**Not applicable**

buildings when expressed as a floor space ratio are not more than:	which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	2011 or WDCP	
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	Residential flat buildings are not permitted on the land and floor space ratios are not applied in WLEP 2011 or WDCP 2011.	**Not applicable**
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The maximum building height complies with the 8.5m building height control under the WLEP 2011 (as per existing ground level).	**Compliant**
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The proposed landscaping is compatible with the existing character of the local area. The front setback has maintained deep soil planting in the	**Compliant**

		setback areas to adjacent neighbours and the street to soften / partly screen the proposed built form. The setback to Oliver street will be retained as deep soil planting (of 1m or more depth) as shown on the submitted landscape plan.	
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The proposed communal living room is located at ground floor level along the northern side of the site. The communal room will receive a minimum of 3 hours of sunlight between 9am and 3pm in mid winter.	**Compliant**
(d) private open space	if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,	(i) A private open space area of more than 20 sqm with minimum dimensions of more than 3.0m is provided to the rear of the site on top of the noted communal private open space area to the front of the building. (ii) A area of 9.9sqm along the northern side of the property at ground floor level is proposed adjacent to the managers boarding room.	**Compliant**
(e) parking	(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and	The development is not carried out for or on behalf of a social housing provider. The building contains 11 boarding rooms including an on-site manager room.	**Compliant**

	(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and (iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,	7 cars including an accessible space, 3 motorcycles, 11 bicycles and storage, compliant with the numeric control.	
(f) accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	Each of the boarding rooms have a gross floor area of at least 16m².	**Compliant**
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each boarding room has both private kitchen and bathroom facilities.	**Compliant**
	(4) A consent authority	N/A	N/A

	may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).		

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	One communal living room is provided	**Compliant**
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m²,	The gross floor area of the proposed boarding rooms range from 19.1m² to 24.8m², with no room exceeding 25m².	**Compliant**
(c) no boarding room will be occupied by more than 2 adult lodgers,	No boarding room will be occupied by more than two adults.	**Compliant**
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Private bathroom and kitchen facilities are provided within each room.	**Compliant**
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposed development included a site boarding room for the manager.	**Compliant**
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is zoned R2 Low Density Residential.	**Compliant**
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Required motorbike spaces: 3 spaces Proposed motorbike spaces: 3 spaces	**Compliant**

	The proposed development meets the minimum requirements of this clause.	
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	N/A	N/A

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment: The subject site is zoned R2 Low Density Residential and proposes 11 boarding houses. The proposal is compliant with this clause

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

  Comment: The proposal is primarily a three storey structure, but will be largely visible as two storey building when viewed from Oliver Street. The amount of storeys and the scale of the development is not incompatible with other development along Oliver Street which includes three and four storey residential flat buildings. DSAP commented on the proposal, noting the following in regards to scale and built form. *"The proposed built form is in scale with its context and the overall built form is compatible with the area. The location of the driveway to 25 Oliver Street separates the proposal from the existing balconies on the building at 25 Oliver Street, however the car drive is not a good aspect for apartments to open onto. The proposal is closer to the existing building and rear yard at 31 Oliver Street than the building at 25 Oliver Street. There are potential privacy issues regarding the overlooking of 31 Oliver Street, which have been partially addressed. The built form is irregular, with large setbacks to the north and little setback to the south due to the orientation of a number of apartments to the south and north."*

  In response to the comments, the application has been amended deleting the balconies along the northern elevation deleted from the proposal and the internal layout of the development amended to allow for a more regular room layout.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

  Comment: The size and scale of the proposed development is of a lesser scale then that of the adjacent three and four storey residential flat buildings. The bulk and scale of the development is well resolved, with recesses along both side elevations and increased setbacks at first floor level.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

  Comment: The proposed materials and finishes will be consistent with that of neighbouring development. The finishes proposed will help offset the visual impact of the development by breaking down the bulk and scale of the building.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

  Comment: The proposed development will result in additional overshadowing of adjoining dwellings, however the overshadowing is not unreasonable. The application has been designed to minimise acoustic impacts, and the Plan of Management provided includes further measures to ensure that the use of the development will not give rise to unreasonable noise levels. The proposed boarding rooms are oriented towards the front and the rear of the subject site to minimise overlooking of adjoining properties, with no unreasonable privacy impacts, subject to conditions. The proposal is compatible with the character of the local area and surrounding wider locality.

SEPP ARH Conclusion
The proposed boarding house is consistent with the relevant provisions of SEPP ARH.

State Environmental Planning Policy (Housing) 2021
State Environmental Planning Policy (Housing) 2021 was gazetted on 26 November 2021. Savings provisions apply for this application pursuant to Schedule 7 of the policy. Notwithstanding this the controls of this policy shall be considered.

The controls of the policy remain the same as that of SEPP ARH with the exception of Clause 25(2), Clause 26 and Clause 27. An assessment of the application against clauses 25(2), 26 and 27 is provided below:

Clause 25(2) Development consent must not be granted under this Division unless the consent authority considers whether:

a) the design of the boarding house will be compatible with—	**Compliant**

i. the desirable elements of the character of the local area, or ii. for precincts undergoing transition—the desired future character of the precinct, and	This has been addressed under clause 30A above.
b) The front, side and rear setbacks for the development are not less than: i. for development on land in Zone **R2 Low Density Residential** or Zone **R3 Medium Density Residential** - the minimum setback requirements for multi dwelling housing under a relevant planning instrument. ii. for development on land in Zone **R4 High Density Residential** – the minimum setback requirements for residential flat buildings under a relevant planning instrument.	**Acceptable on Merit** The site is zoned R2 Low Density Residential. There are no specific setbacks controls for multi dwelling houses under the Warringah LEP. The proposed development is compliant with the general front and side setback controls under the Warringah DCP The application proposes a minor variation to the rear setback at ground floor to the balconies. The remaining elements of the building are compliant with this control.
c) If the boarding house exceeds 3 storeys - the building will comply with the minimum building separation distances specified in the Apartment Design Guide (ADG).	**Complaint** The proposed development does not exceed 3 storeys.
d) At least 1 motorcycle parking space will be provided for every 5 boarding rooms, and	**Compliant as above.**
e) At least 1 bicycle parking space will be provided for each boarding room.	**Compliant as above.**

Clause 26 - Must be used for affordable housing in perpetuity

1) Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity:

a) the boarding house will be used for affordable housing, and

b) the boarding house will be managed by a registered community housing provider.

2) Subsection (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by a public authority.

Comment: N/A. The savings provisions apply in this instance.

Clause 27 - Subdivision of boarding houses not permitted

Development consent must not be granted for the subdivision of a boarding house permitted under this Division.

Comment: No subdivision is proposed under this application.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1198961M_02 dated 25 October 2021).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	concession
Energy	45	46

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. Standard conditions have been recommended and imposed within the conditions of consent.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

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

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

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

The consent authority can be satisfied that the matters listed in clause 6.2 of WLEP 2011 have been considered.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8m	10%	No
B3 Side Boundary Envelope	North - 5m	Outside envelope Length - 6.1m Height - 0m - 0.5m	10%	No
	South - 5m	Outside envelope Length - 2.7m Height - 0m - 0.2m	4%	No
B5 Side Boundary Setbacks	North- 0.9m	Ground - 1.2m First - 1.32m - 3.06m	-	Yes
	South- 0.9m	Ground - 0.92m First - 0.9m - 3.02m	-	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	-	Yes
B9 Rear Boundary Setbacks	6m	Balconies - 5m Rear wall - 6.5m	16.6% -	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (265.32sqm)	21.11% (140sqm)	47.25%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide

the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	No	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	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

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 of the WDCP 2011 stipulates that walls are not to exceed 7.2m from the existing ground level to the underside of the ceiling on the uppermost floor.

The proposed development would result in a maximum wall height of 8m above the existing ground level along the northern wall, non-compliant with the numeric control. This represents a 10% variation to the numeric control.

Merit consideration:

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

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

  Comment: The portion of development that protrudes above the prescribed wall height is located to the rear of the building and arises due to the sloping topography of the site. As such, the proposed non-compliance is not readily visible from the street, and the development does not result in an unreasonable visual impact in relation to bulk and scale, despite its non-compliance with this control.

- *To ensure development is generally beneath the existing tree canopy level*

  Comment: The overall height of the building is generally lower than the existing local tree canopy of the surrounding area and is consistent with this objective.

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

  Comment: The proposed boarding house will not give rise to any unreasonable view impacts to and from public and private properties.

- *To minimise the impact of development on adjoining or nearby properties.*

  Comment: The proposed wall height does not create any unreasonable impacts upon adjacent land in terms of overshadowing and the wall heights and the setbacks are consistent with development for the low density residential zone. The proposal largely complies with the side boundary envelope for the northern and southern elevation.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

  Comment: Excavation on the site has been minimised to provide for off-street parking and storage only. Landscape planting is incorporated into the proposal to offset the built from and changes to topography

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

  Comment: The proposed development proposes an innovative flat roof design to ensure the impact of the wall height non-compliance is minimised to reduce the bulk and scale of the

boarding house.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supportable in this particular instance.

B3 Side Boundary Envelope

Description of non-compliance

The control requires development to be sited within a building envelope which is determined by projecting planes at 45 degrees from a height of 5m above the existing ground level at side boundaries. The boarding house involves a minor breach to the envelope control on the northern and southern elevation.

The breach along the northern elevation occurs for a horizontal length of 6.1 m between a height of 0m - 0.5m. This represents a 10% variation from the numeric requirement.

The breach along the southern elevation occurs for a horizontal length of 2.7 m between a height of 0m - 0.2m. This represents a 4% variation from the numeric requirement.



Image 1 - Building envelope non-compliance (North top elevation, south bottom elevation)

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

  Comment: The building is highly articulated at the first floor level, with recessing and projecting features, articulated roof forms and a mixture of building materials. The building represents a high quality architectural design solution that is sufficiently articulated to break up the bulk and scale of the building.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

  Comment: The shadow diagrams submitted with this application indicate only minor overshadowing to the adjoining southern residential flat building on June 21 (winter solstice), with over 50% of adjoining private open space maintaining at least 3 hours of solar access. This is in compliance with the WDCP 2011 solar access provision. Furthermore, new windows on the southern and northern elevations of the first floor will not provide opportunities for direct overlooking of neighbouring private open space. For these reasons, it is considered that this objective is satisfied.

- *To ensure that development responds to the topography of the site.*

  Comment: The building has sufficiently responded to the moderate slope of the site with the floor levels slightly reducing following the topography of the land to comply with the maximum 8.5m height limit.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supportable in this particular instance.

B9 Rear Boundary Setbacks

Description of non-compliance

The control requires development be setback from the rear boundary a minimum distance of 6.0m. The application proposes the following:

Ground floor balconies- 5m (up to 16.6% variation to the numeric control)
First floor balconies - 6.5m
Rear wall - 6.5m

Merit consideration:

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

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

  Comment: The proposed development includes a variation with the landscaped area requirement of Clause D1 Landscaped Open Space and Bushland Setting of the WDCP 2011, which is demonstrated as acceptable on merit in the section of this report relating to that clause. However, the proposed development is compliant with the landscaped area requirement of

Clause the SEPP ARH, which prevails over the WDCP 2011. Notwithstanding this, the proposed development provides ample opportunity for deep soil planting, with generous areas at the front and rear yards. The proposed development is suitable in this regard.

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

  Comment: The proposed rear balconies allow ample landscaped area to the rear, thereby retaining a sense of openness in the rear yard.

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

  Comment: The proposed non-compliant balconies are located at ground floor level and do not allow for direct overlooking of adjoining properties to the rear.

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

  Comment: The proposed building proper is compliant with the rear setback requirement, with only the balconies encroaching into the rear setback area. As such, the predominant built form pattern is retained by the proposed development.

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

  Comment: As above, the proposed balconies do not allow for direct overlooking of adjoining properties to the rear.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supportable in this particular instance.

C3 Parking Facilities

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

Based on the minimum 'must not refuse' standards of SEPP ARH, the proposal generates demand for 6 carparking space, including 1 parking space for the manager. The proposed development is compliant with this requirement, as shown on the plans.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Part D1 of the WDCP 2011 requires a Landscaped Open Space (LOS) ratio of a minimum of 40% of the site area, equating to an area or 265.32m^2 for this site. The application proposes 21.11% (140m^2), non-compliant with the numeric control. This represents a 47.25% variation to the numeric control.

Clause 29(2)(b) of SEPP ARH states that Council cannot refuse the application if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located. The proposed landscaping within front setback is considered to be consistent with the streetscape of Oliver Street as discussed below.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

  Comment:

  Although the proposal does not meet the numerical requirement for landscaped open space under the WDCP, the proposal provides other landscaped areas to surround the site (that do not meet the minimum size requirements under the DCP) that allow for planting to enhance the streetscape. The site proposes 6.5m primary front boundary setback to Oliver Street which will be utilised for landscaping and the proposed driveway thus enhancing the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

  Comment:

  There is no significant indigenous vegetation, topographical features or habitat for wildlife identified on the site.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

  Comment:

  Despite the variation to the control, the proposed works and landscaping will provide dimensions that are sufficient to enable establishment of low lying shrubs, medium high shrubs and canopy trees of and a size and density to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

  Comment:

  The proposed development is not likely to give rise to any major privacy impacts to adjoining properties. It is considered that no additional planting for the purposes of enhancing privacy is required.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

  Comment:

  The proposed outdoor living area and landscaped rear yard will accommodate the outdoor recreational needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

Service functions are satisfactorily provided for on the site

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

  Comment:

  Service functions are satisfactorily provided for on the site

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supportable in this particular instance.

D6 Access to Sunlight

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

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

  Comment: The control requires that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The property to the south (no. 25 Oliver Street) is a three storey residential flat building. The proposed ground floor units will be the most impacted by the proposed development. The ground floor apartments have terraces/balconies along the northern elevations. It is these balconies and terraces that are the critical areas of private open space.

  The proposal will cast shadow to the balconies on the ground floor at all hours between 9am and 3pm on June 21, with the worst impact being at 9am. However, the proposed development will allow for at least 50% of private open space to receive at least 3 hours of sunlight on June 21. Any shadow cast to the first and second floor private open space areas is considered to be at worst minor. Occupants of the first and second floor units will continue to enjoy sunlight to these units on June 21.

  Certified shadow diagrams have been submitted that show that the proposed design will not unreasonably impact on the private open space areas of No. 25 Oliver Street. The access to sunlight is reasonable in this circumstance.

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

  Comment: The design elements incorporated into the proposal to minimise overshadowing are reasonably innovative and overall, the development will improve the urban environment.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

  Comment: The development has orientated the living areas to the northern side, thereby maximising the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas

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

Comment: The layout of the apartments will promote passive solar design and the use of solar energy.

- *To minimise the need for artificial lighting.*

  Comment: As above, the layout of the rooms will minimise the need for artificial lighting.

Having regard to the above assessment, the proposed development is consistent with the requirements and objectives of this clause and is supportable in this particular instance.

D8 Privacy

Clause D8 requires:

1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.
2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.
3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.
4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.
5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

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

  Comment: The amended proposal has deleted the first floor balconies orientated towards the northern side property boundary, with all remaining balconies orientated towards the front and rear of the subject site. The balconies orientated to Oliver Street (Rooms 6 and 7) will not directly overlook private open space of adjoining properties/dwellings. The balconies to the rear of the site are setback 5m - 6.5m from the rear property boundary. The ground floor balconies which are setback 5m from the rear property boundary will not have any direct sightlines to the private open space of the units of No. 29A Oliver Street, which are orientated towards the northern boundary. However, the windows along the western elevation of no. 29A Oliver Street will be visible from the proposed first floor balconies. The balconies are deemed reasonable given the following:
  - The first floor balconies achieve compliance with the 6m rear setback control.
  - The physical separation will sufficiently offset direct overlooking between properties.
  - The ground floor balconies will be screened by boundary fencing.
  - Proposed tree planting within the rear setback will offset direct sightlines between buildings.
  - The proposed first floor balconies are relatively small and provide a suitable level of private open space and sunlight for 3 rooms of the boarding house.

To further mitigate the visual privacy between the proposed balconies and adjoining property windows, the width of the first floor balconies are to be reduced to 1.5m. The reduced depth will increase spatial separation between the balconies and windows and reduce the overall usability. The reduced sized balconies will still be a reasonable size for occupants to utilise.

The northern and southern elevations windows have incorporated screening, narrow shaped windows and raised sill heights to ensure opportunities for overlooking of residential are mitigated. No further privacy mitigation measures are required to further increase privacy between properties.

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

  Comment: The development is constrained by setbacks of the neighbouring buildings, which reduces the building separation to the adjoining eastern property. Notwithstanding, in terms of the protection of privacy, the development has been designed to include appropriate treatments and small balconies to ensure reasonable levels of visual privacy.

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

  Comment: The proposal would provide an adequate level of personal and property security for occupants and visitors by providing balconies that front the street.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supportable in this particular instance.

D13 Front Fences and Front Walls

Description of non-compliance

The proposed development involves the construction of a 1.8m high fence and entrance gate along Oliver Street.

Merit consideration

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

- *To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*

  Comment: The proposed fence along part of the Oliver Street frontage is considered to detract from the streetscape character due to its height and solid design. A condition is included to require the fence to be reduced to be a maximum 1.5m above ground level. This is expected to soften the visual impact of the fence when viewed from the public domain.

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

  Comment: Subject to condition, the proposed front fence is acceptable within the context of the site and surrounds.

- *To avoid a 'walled in' streetscape.*

  Comment: Subject to condition, the proposed front fence will not contribute to a walled in streetscape.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supportable in this particular instance.

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 $29,981 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,998,148.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2021/0960 for Demolition works and construction of a Boarding House on land at Lot A DP 443739,27 Oliver Street, FRESHWATER, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Stormwater Drainage Easement**
Stormwater drainage plans detailing the on site detention drainage system and downstream drainage with connection to Council's stormwater system in Soldiers Avenue are to be submitted to Council for written approval. The stormwater drainage plans detailing disposal of stormwater from the site are to be in accordance with Council's Water Management Policy for Development.

   The stormwater drainage plans are to be prepared by a RPENG (Professionals Australia) or NER qualified civil engineer and certification provided accordingly.

   An easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919 on the title of any lot/s in relation to the downstream drainage connection to Council's stormwater system. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

   Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

   Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

   Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **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**
DA01D/ Site plan/ Revision D	25 October 2021	INTO Architecture
DA02D/ Basement plan/ Revision D	25 October 2021	INTO Architecture
DA03D/ Ground floor plan/ Revision D	25 October 2021	INTO Architecture
DA04D/ First floor plan/ Revision D	25 October 2021	INTO Architecture
DA05D/ Roof plan/ Revision D	25 October 2021	INTO Architecture
DA06D/ Elevations/ Revision D	25 October 2021	INTO Architecture
DA07D/ Elevations/ Revision D	25 October 2021	INTO Architecture
DA08D/ Sections/ Revision D	25 October 2021	INTO Architecture
DA09D/ Sections/ Revision D	25 October 2021	INTO Architecture
DA10D/ Sections/ Revision D	25 October 2021	INTO Architecture
DA12/ Demolition Plan	24 June 2021	INTO Architecture
DA13A/ Excavation Plan	25 October 2021	INTO Architecture
DA14A/ Construction Plan	25 October 2021	INTO Architecture
DA15A/ Colours and Materials	25 October 2021	INTO Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Traffic and Parking Impact Assessment	May 2021	Motion Traffic Engineers
Geotechnical Assessment Report	17 May 2021	White Geotechnical Group
Arboriculture Construction Impact Assessment	June 2021	Aura Tree Services
Statement of Compliance - BCA Access Provisions	15 October 2021	Accessible Building Solutions
Acoustic Assessment	20 October 2021	Acoustic Dynamics
BASIX Certificate No. 1198961M_02	25 October 2021	AGA Consultants
Plan of Management	25 October 2021	N/A

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L/01	26 May 2021	INTO Architecture

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	24 June 2021	Scott Miner

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.

3. **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	N/A

(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.

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 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

6. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $29,981.48 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $2,998,148.00.

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 Security Bond (Footpath works)**
The applicant is to lodge a bond with Council of $10000 as security against any damage or failure to complete the construction of a 1.5m wide concrete footpath 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 Bond (Drainage works)**
The applicant is to lodge a bond of $15000 as security against any damage or failure to complete the construction of stormwater drainage works within Councils road reserve 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. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

i) Include a minimum of 4 x *Syzygium australae* 'Straight and Narrow" on the southern boundary adjacent to the driveway, adjacent to the water tanks

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

Reason: Landscape amenity.

11. **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.

12. **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 and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council 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 Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

13. **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.

14. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

15. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The height of the proposed front fence shall be reduced to 1.5m above natural ground level.
- The depth of the balconies off rooms 9, 10 and 11 shall be reduced to 1.5m.

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.

16. **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.

17. **Building Code of Australia Report (Class 2-9)**
A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Registered Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the building does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the building / works required to ensure that the required fire safety measures and facilities including any modifications to be made to the development are appropriate for its intended use to:
i) restrict the spread of fire from the building to other buildings nearby, and
ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
iii) where appropriate, provide access for persons with a disability, and
iv) provide facilities and services appropriate for the development

*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.
The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for

building occupant health and safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

19. **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 stormwater discharge line located on the Soldiers Ave road reserve which are 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 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.

20. **Noise - Design of Mechanical Plant**

Prior to the issue of a Construction Certificate, the design, specifications and location of noise generating mechanical plant are to be provided to the Principal Certifying Authority. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments to control noise emissions from all mechanical plant noise in accordance with the recommendations within the Boarding House Development Acoustic Assessment by Acoustic Dynamics dated 20 October 2021 (Reference 5269R001.JC.211019).

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction 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.

21. **Plan of Management Update**

An updated Plan of Management is to be prepared to the satisfaction of Councils Environmental Health Team and the Principal Certifying Authority. Updates to the Plan of Management are to

include:

- Condition that no amplified music is permitted at any time within the outdoor communal areas.
- Measures to ensure that Northern Beaches Council is notified of any changes to the contact details of the onsite manger;
- That the contact number of the onsite manger is to be made available to neighbours who wish to register a complaint or comment about the premises; and
- Signage is to be posted on the outside of the building in an accessible location with the contact details of the boarding house manager.
- Outdoor Common Area shall not to be used between 10:00 pm and 7:00 am Monday to Saturdays and between 10:00 pm and 8:00 am Sundays and public holidays;
- The glass louvres and door of the Outdoor Common Area are to be closed between 10:00 pm and 7:00 am Monday to Saturdays and between 10:00 pm and 8:00 am Sundays and public holidays;
- No amplified music is permitted at any time within the outdoor communal areas;
- Consistency with any 'on-going conditions that must be complied with at all times" conditions of this consent.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team prior to the issue of the Construction Certificate.

Reason: To maintain amenity of the surrounding area.

22. **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.

23. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

24. **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:

- "Tap in" details - see http://www.sydneywater.com.au/tapin
- 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.

25. **Access Report Certification - Prior to Construction**
A suitably qualified access consultant is to provide confirmation that the plans forming part of the construction certificate application are consistent with the recommendations of the Approved Access Report referenced in Condition 2 of this consent.

Written certification is to be provided to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the development is appropriately accessible.

26. **Acoustic Report Certification - Prior to Construction**
A suitably qualified consultant is to provide confirmation that the plans forming part of the construction certificate application are consistent with the recommendations of the Approved Acoustic Report referenced in Condition 2 of this consent.

Written certification is to be provided to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the development is consistent with the relevant provisions of the Acoustic Report

27. **Geotechnical Report Certification - Prior to Construction**
The Geotechnical Engineer is to provide confirmation that the detail forming part of the construction certificate application is consistent with the recommendations of the Approved Geotechnical Report referenced in Condition 2 of this consent, including any additional measures arising from the subsurface investigations.

Written certification is to be provided to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the development is undertaken safely and to minimise risks.

28. **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

29. **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 Arboriculture Construction Impact Assessment dated June 2021 prepared by Aura Tree Services 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) The Project Arborist shall be in attendance and supervise all works as nominated in the the Arboriculture Construction Impact Assessment dated June 2021 prepared by Aura Tree Services

e) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

f) 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.

30. **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:
No. 24 Soldiers Avenue, Freshwater
No. 25 Oliver Street, Freshwater
No. 31 Oliver Street, Freshwater

No. 29A Oliver Street, Freshwater

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

31. **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 the Arboriculture Construction Impact Assessment dated June 2021 prepared by Aura Tree Services and Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

b) As a minimum, the tree protection fencing for street trees 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.

32. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation located on adjoining properties,
   ii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
   i) tree protection shall be in accordance with the Arboriculture Construction Impact Assessment dated June 2021 prepared by Aura Tree Services 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 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the the Arboriculture Construction Impact Assessment dated June 2021 prepared by Aura Tree Services.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.

e) 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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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

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.

40. **Footpath Construction**
The applicant shall reconstruct the existing concrete footpath fronting the site.

Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Councils standard engineering details . 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.

41. **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
(e) Prior to pouring concrete footpath

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.

42. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

43. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal Low and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

44. **Geotechnical Requirements During Construction**
The development is to be undertaken in accordance with the recommendations of the Approved Geotechnical Report referenced in Condition 2 of this consent.

Reason: To minimise risk and nuisance to neighbours.

45. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated24 June 2021.

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

46. **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

47. **Required Tree Planting**
a) Trees shall be planted in accordance with the following:
i) 2 x *Tristaniopsis laurina;* located in the front yard; minimum pot size 75 litre
ii) 3 x *Tristaniopsis laurina*; located in the rear yard; minimum pot size 75 litre

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

Reason: To maintain environmental amenity.

48. **Landscape Completion**
a) Landscaping is to be implemented in accordance with Landscape Plan Dwg No.L 01 Rev A dated 10.06.2021 prepared by A Total Concept, as amended by Conditions of Consent.

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.

49. **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.

50. **Stormwater Disposal**
The stormwater drainage works including the inter allotment drainage line shall be certified as compliant with Councils Water Management Policy for Development by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

51. **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.

52. **Acoustic Report Certification - Prior to Occupation**
A suitably qualified consultant is to provide confirmation that the as-built development is consistent with the recommendations of the Approved Acoustic Assessment Report referenced in Condition 2 of this consent.

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

Reason: To ensure the development is consistent with the relevant provisions of the acoustic report.

53. **Geotechnical Report Certification - Prior to Occupation**
A suitably qualified Geotechnical Engineer to provide confirmation that the as-built development was constructed in accordance with the recommendations of the Approved Geotechnical Report referenced in Condition 2 of this consent, as amended in accordance with the Detailed Investigation required by this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the development has been constructed safely and in accordance with relevant requirements.

54. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation

Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user 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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

55. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 for on-site storm water detention as to user 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 the on-site stormwater disposal system is maintained to an appropriate operational standard.

56. **Post-Construction Dilapidation Report (Major Development)**
The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

57. **Lighting**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided that any outdoor lighting does not detrimentally impact upon the amenity of other premises and complies with where relevant, Australia Standard AS 1158.3:2005 Lighting for roads and public spaces – Pedestrian Area (Category P) lighting – Performance and design requirements and Australian Standard AS 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect the amenity of adjoining properties.

58. **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.

59. **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.

60. **Fire Safety Matters**
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

61. **Access Report Certification - Prior to Occupation**
A suitably qualified access consultant is to provide confirmation that the as-built development is consistent with the recommendations of the Approved Access Report referenced in Condition 2 of this consent.

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

Reason: To ensure the development is appropriately accessible.

62. **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.

63. **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.

64. **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.

65. **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

66. **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.

67. **Undesirable Trees**
Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

68. **Occupancy of Boarding House**
The building is to contain a maximum of 22 persons, being no more than 2 persons per designated bedroom. In order to maintain this occupancy rate, a sign is to be erected immediately adjacent to the doorway accessing the building detailing the maximum sleeping capacity of the occupancy.

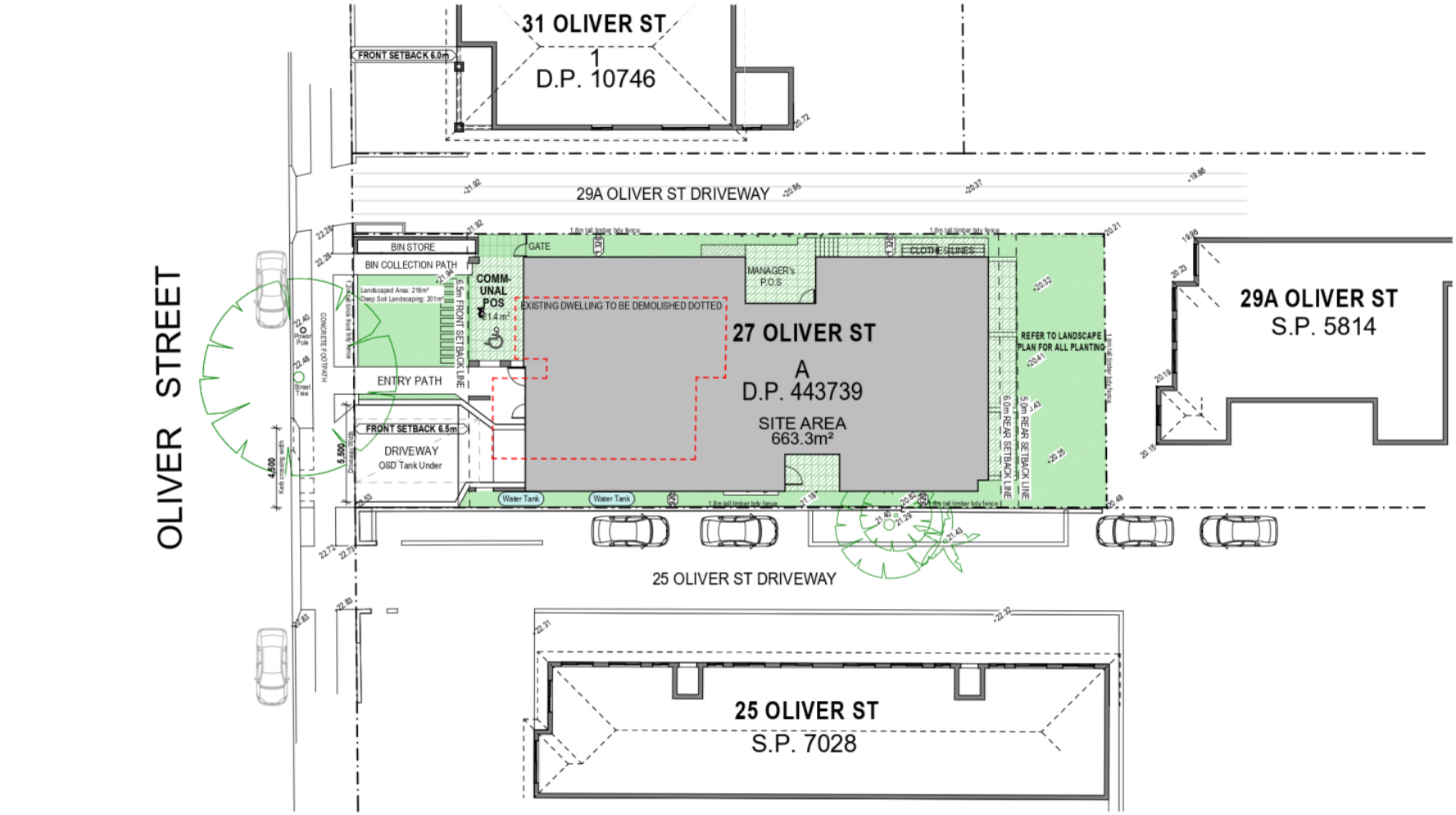
Reason: To ensure the amenity of occupants.

69. **Compliance with the Boarding House Plan of Management**
The boarding house is to be managed/maintained in accordance with the requirements of the Boarding House Plan of Management required by this consent.

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.

70. **Parking Permits Schemes**
The boarding house premises, any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title.

Reason: To ensure the tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).



INTO architecture
Scott Miner - Architect NSW Reg. #9100
mobile 0409 995 974
email scott@intoarchitecture.com.au

0 1 2 3 4 5cm
ON ORIGINAL @ A3

NOTE: THIS DRAWING IS FOR DEVELOPMENT APPLICATION AND APPROVAL PURPOSES ONLY AND SHALL NOT BE USED FOR CONSTRUCTION.

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PROJECT ADDRESS
27 Oliver St Freshwater NSW
LOT A D.P. 443739 SITE AREA: 663.3m²

CLIENT:
Angelo Evangelatos

N

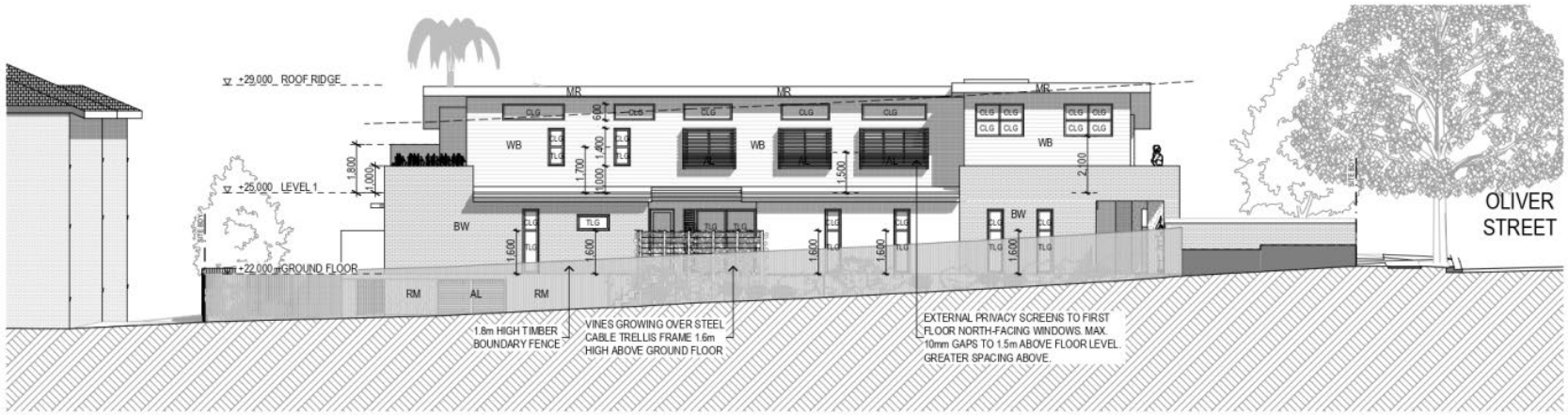
DRAWING TITLE
SITE PLAN

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	24/06/21
A	AMENDMENTS RE. COUNCIL & DSAP FEEDBACK	22/09/21
B	CHANGES RE. COUNCIL CONCERNS EMAIL 27/09/21	28/09/21
C	CHANGES RE. COUNCIL CONCERNS EMAIL 11/10/21	12/10/21
D	DEVELOPMENT APPLICATION 11 ROOM AMENDMENT	25/10/21

SCALE	DATE	DRAWN
1:200 @ A3	25/10/2021	SM

DRAWING NO. & REVISION
DA01D

STATUS DEVELOPMENT APPLICATION



N NORTH ELEVATION 1:150

BW	BRICKWORK
CLG	CLEAR GLASS
CT	CERAMIC TILE
MR	METAL ROOFING
RM	RENDERED MASONRY
WB	WEATHERBOARDS
TF	TIMBER FENCING
TLG	TRANSLUCENT GLASS
AL	ALUMINIUM LOUVRE



S SOUTH ELEVATION 1:150

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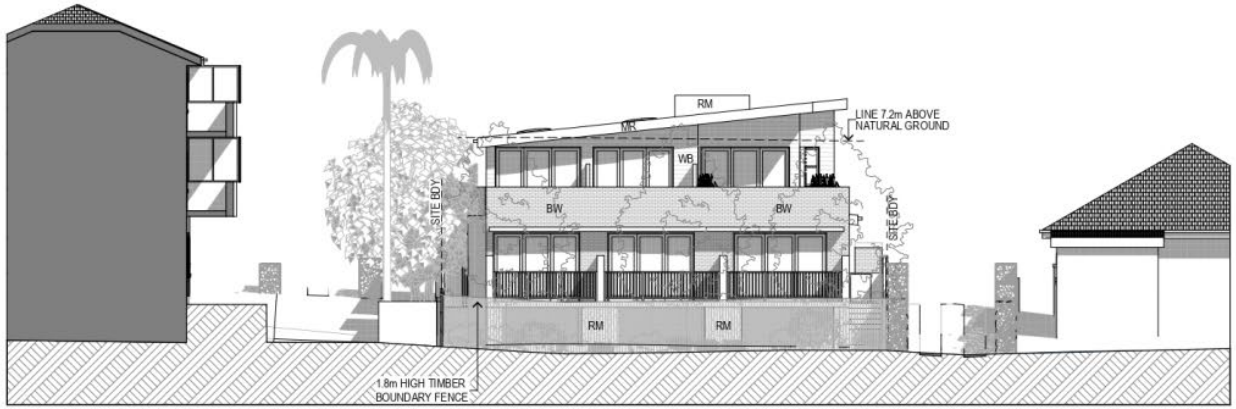
DRAWING TITLE
ELEVATIONS

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	24/06/21
A	AMENDMENTS RE. COUNCIL & DSAP FEEDBACK	22/09/21
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D	DEVELOPMENT APPLICATION 11 ROOM AMENDMENT	25/10/21

SCALE	DATE	DRAWN
1:150 @ A3	25/10/2021	SM

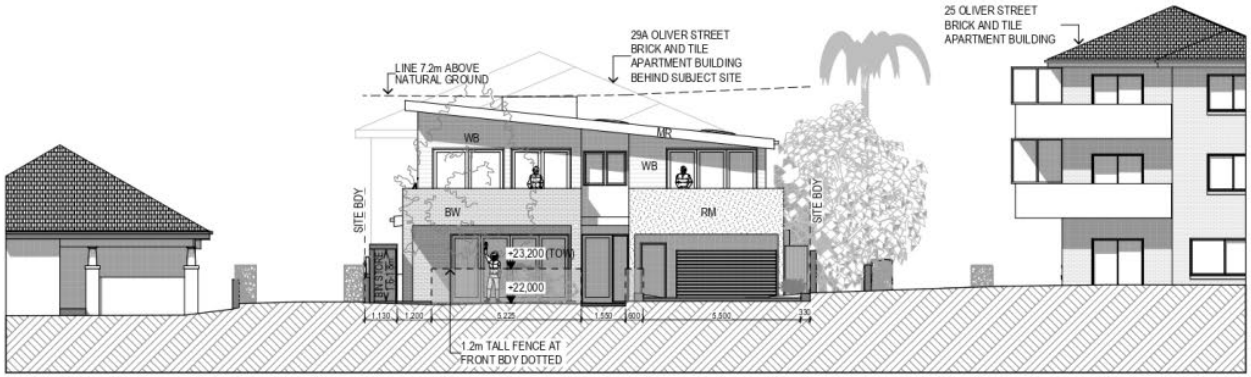
DRAWING NO. & REVISION
DA06D

STATUS DEVELOPMENT APPLICATION



E EAST ELEVATION
1:150

BW	BRICKWORK
CLG	CLEAR GLASS
CT	CERAMIC TILE
MR	METAL ROOFING
RM	RENDERED MASONRY
WB	WEATHERBOARDS
TF	TIMBER FENCING
TLG	TRANSLUCENT GLASS



W WEST ELEVATION
1:150

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PROJECT ADDRESS
27 Oliver St Freshwater NSW
LOT A D.P. 443739 SITE AREA: 663.3m²

CLIENT:
Angelo Evangelatos

DRAWING TITLE
ELEVATIONS

REV.	DESCRIPTION	DATE
-	DEVELOPMENT APPLICATION ISSUE	24/06/21
A	AMENDMENTS RE. COUNCIL & DSAP FEEDBACK	22/09/21
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D	DEVELOPMENT APPLICATION 11 ROOM AMENDMENT	25/10/21

SCALE	DATE	DRAWN
1:150 @ A3	25/10/2021	SM

DRAWING NO. & REVISION
DA07D

STATUS DEVELOPMENT APPLICATION

Design + Sustainability Advisory Panel Meeting Report – Date 26 August 2021

4. DA2021/0960 – 27 Oliver Street Freshwater.

PANEL COMMENT AND RECOMMENDATIONS

General

The site is zoned R2 Low Density Residential under Warringah LEP 2011 and the proposed development is permitted. The application seeks consent for a two storey boarding house including 11 double occupancy rooms, one communal room and one manger's room, plus basement parking for 7 cars, 3 motorcycles, 3 bicycles and storage.

A pre-lodgement meeting was conducted for the proposal PLM2021/0106 whereby the applicant was provided feedback from Council's planners, Urban Designer and relevant internal referral bodies.

Strategic context, urban context: surrounding area character

The context is comprised of a number of 3 storey apartment buildings to the south and east of the site with dual occupancy and detached houses to the north and west across Oliver Street. The two storey proposal makes a transition of scale between the 3 storeys apartment buildings to the south of the site and the one to two storey dwellings to the north and west of the site.

Scale, built form and articulation

The proposed built form is in scale with its context and the overall built form is compatible with the area. The location of the driveway to 25 Oliver Street separates the proposal from the existing balconies on the building at 25 Oliver Street, however the car drive is not a good aspect for apartments to open onto.

The proposal is closer to the existing building and rear yard at 31 Oliver Street than the building at 25 Oliver Street. There are potential privacy issues regarding the overlooking of 31 Oliver Street, which have been partially addressed. The built form is irregular, with large setbacks to the north and little setback to the south due to the orientation of a number of apartments to the south and north.

Recommendation.

1. The side setbacks should be made more regular with a re-consideration of the internal apartment planning.

Building separation/visual privacy

Visual privacy to the north is problematic. On the ground floor level, the provision of screens assists to some degree, however they reduce the amenity within the apartments. Room 6 on the ground floor suffers from having its only doors opening in close proximity to the fence and neighbouring driveway and receiving no direct sun.

On the first level overlooking is reduced by the screens due to the large balconies oriented towards the neighbouring rear yard.

Recommendation.

2. Internal apartment planning on the ground level as recommended above should consider the deletion of one room (2 or 3) to provide a courtyard area that is open to the sky in part. This

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would be facilitated by the reduction in area of the room 8 balcony or the colorbond metal roof area above room 3.

Access, vehicular movement and car parking

The car ramp is well located, and it is recognised that the parking layout is restricted by the existing sewer.

Recommendation.

3. Increase the number of bicycle spaces

Landscape

The proposed landscape design is appropriate for this constrained site.

Better access from the communal room to the garden would be desirable, possibly with wider tiered steps.

The inclusion of washing-lines is commended but would be better as a paved area.

Recommendations.

4. Redesign the stairs to the rear garden area
5. Provide a paved path to the washing lines and pave beneath them.

Amenity

The amenity of many apartments is compromised by a highly irregular layout of apartments, creating narrow and wider spaces in hap-hazard arrangements. As a result of these layouts many apartments have access through the kitchen to the living area / room. This may be necessary in some instances, however it would be desirable to avoid walking between two kitchen benches, as in Room 10, preferably locating the kitchen bench to one side while walking past on the other side.

Many apartments oriented to the side boundary have either no sun, on the south, or screened balconies on the north, reducing their amenity. It would be desirable to reduce the number of side boundary oriented apartments.

There is an imbalance in the relative open spaces for apartments, with those on the first floor to the north having unnecessarily large balconies and many on the ground floor having meagre amounts of open space.

The panel noted that the accessible room has the poorest amenity, has no balcony and is on the south side of the building.

Recommendations.

6. It is recommended that a new approach be taken to the first floor apartment layouts, with the great majority of apartments oriented with their balconies and living rooms facing east and west and no apartment balconies and living rooms facing south. More regular room layouts may be achievable. This may require moving the northern wall closer to the northern boundary. This may also require a performance solution to fire stair travel distances, however it may be possible to locate all doors to rooms within 6m of the fire stair door. This may require relocating the lift and fire stairs.
7. It is recommended that Room 6 with a sole southern aspect be deleted from this layout.
8. A communal laundry could be provided for all apartments which would free up space and also overcome any issues with the DDA.
9. Locate and design the accessible room to have the best amenity

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10. If any units are to be provided with private laundry facilities, it may be best for this to be the accessible unit, with the arrangement specifically tailored to accessible standards; for example, having the drier within easy reach

Façade treatment/Aesthetics

The proposed tall, relatively blank entry wall, that is a result of the location of the first floor bathroom, is a strong statement, however it may not be necessary, and may be overbearing in the local context.

Recommendation.

11. A more open elevation would be preferable, with balconies addressing the street to also improve passive surveillance and amenity

Sustainability

All dwellings have a washing machine and dryer. Consider a communal laundry. There are social and environmental benefits to communal laundries, and it will also save space in the apartments as well as reduce cost.

Recommendations.

12. Recommend the use of PV – the roof may need to pitch to the north or the PV will need to be on brackets,
13. Consider having a gable roof with generous eaves that would provide ample area for PV and that would also provide shade to the doors on the upper level in lieu of shading device. (note that the additional wall height to the north is a blank wall above door height in the current scheme).
14. Recommend an all electric approach – heat pump hot water, induction cooktops;
15. Provide more bike spaces. One per apartment would be preferable, although we note that this goes beyond mandatory requirements. Perhaps size the unit stages spaces so that they can fit a bike.

PANEL CONCLUSION

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

A re-design is required.

Given the poor amenity of many of the rooms, and the single aspect and outlook to adjoining properties to the north and south (rooms 2, 3, 6) it is likely that the re-design will require a reduction in the number of rooms.

The Panel recommends a new layout of all apartments to enhance the equity between apartment sizes and layouts and balcony sizes. Internal amenity should be enhanced, external impacts reduced and the built form and elevational treatments amended accordingly.

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	**DA2021/1329 - 89 STUART STREET, MANLY - DEMOLITION WORKS INCLUDING THE RETENTION OF A PORTION OF THE EXISTING BUILDING AND THE CONSTRUCTION OF A NEW DWELLING HOUSE INCLUDING A SWIMMING POOL**
AUTHORISING MANAGER	**Rebecca Englund**
TRIM FILE REF	**2021/849856**
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 development involving the demolition of a heritage item.

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. DA2021/1329 for demolition works including the retention of a portion of the existing building and the construction of a new dwelling house including a swimming pool at Lot 1 DP 72989, 89 Stuart Street, Manly subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1329

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 72989, 89 Stuart Street MANLY NSW 2095
Proposed Development:	Demolition works including the retention of a portion of the existing building and the construction of a new dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Melinda Louise Graetz
Applicant:	B And P Architects Pty Ltd

Application Lodged:	12/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	17/11/2021 to 01/12/2021
Advertised:	17/11/2021
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,593,506.79

EXECUTIVE SUMMARY

The proposal seeks consent for the construction of a new dwelling house, with the partial retention of the existing building. The existing building to be partially demolished forms part of Heritage Item No. I229 '*Group of houses*' located between 87-97 Stuart Street, Manly. The nature of the works are considered 'sensitive development' and such, the application is referred to the Northern Beaches Local Planning Panel for determination.

The proposed development complies with the Height of Building and Floor Space Ratio development standards of Manly LEP 2013.

Five (5) submissions were received during exhibition raising concerns that include bulk and scale, view

loss, overshadowing, visual privacy and excavation. Two of five submission were in support of the application. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and the construction of a dwelling house with tandem car garage, swimming pool, construction of a driveway and landscaping works.

Specifically, consent is sought for:

- Partial demolition of the existing dwelling;
- Raising the front of the existing dwelling by 550mm with pier supports and excavation below the dwelling to provide a two vehicle garage with storage;
- Construction of a dwelling house, including partial retention of the existing building, comprising:
  - 4 bedrooms;
  - 4 bathrooms;
  - Internal lift;
- Swimming pool;
- Front fence;
- Associated landscaping;

AMENDED PLANS

The applicant provided amended plans to Council 29 September 2021, which included an extended first floor and increased building height to the rear from RL25.98 to RL26.11. Given the nature of the changes proposed, the application was re-notified to neighbouring properties (17 November 2021 - 1 December 2021) and re-advertised in accordance with the Northern Beaches Community Participation Plan. As a result of the second exhibition of the application, two submissions were received by objectors reiterating concerns raised previously under the first exhibition of the application.

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 - 6.2 Earthworks
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 - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1 DP 72989 , 89 Stuart Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Stuart Street, Manly. The site is regular in shape with a frontage of 7.62m along Stuart Street with respective depths of 46.76m and 46.685m along the northern and southern side boundaries. The rear boundary is 7.62m in width, with the site having a surveyed area of 356sqm. The site is located within the E3 Environmental Management zone pursuant to the MLEP 2013 and accommodates a single storey timber clad dwelling with a tiled gable roof form. The subject dwelling forms part of Heritage Item No. I229 'Group of houses', which comprises five (5) dwellings located between 87-97 Stuart Street. Much of the landscaping is located in the rear yard, which includes a level lawn area, shrubs and numerous small to medium sized trees. The site experiences a fall of approximately 3.1m that slopes away from the north-eastern corner (rear) towards the south-western corner (front), which represents an approximate slope of 6.7%. The site is located within known habitat for the endangered Long-nosed Bandicoots at North Head. **Detailed Description of Adjoining and Surrounding Development** Adjoining and surrounding development generally consists of low density residential development. There are also examples of medium density development (residential flat buildings) within the vicinity of the site.

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:

DA2020/0846- Demolition works and construction of a dwelling house including swimming pool. (Refused 16 December 2020).

The application was refused by the NBLPP, with the following reasons for refusal:

1. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.*
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 5.10 Heritage conservation of the Manly Local Environmental Plan 2013.*
3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.2 Heritage Considerations of the Manly Development Control Plan.*
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 3.4.1 Sunlight Access and Overshadowing of the Manly 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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.*

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 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans, amended BASIX Certificate, amended Clause 4.6, memo to the Statement of Environmental Effects, Arborist Report, amended landscape plan and memo to the Heritage Report. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of

Section 4.15 Matters for Consideration'	Comments
	Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 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 17/11/2021 to 01/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Ms Virginia Macleod	2 / 22 Carey Street MANLY NSW 2095
Mr Anthony Lyon Wilkinson	19 Bower Street MANLY NSW 2095
Mrs Rachel Rutherfurd	95 Stuart Street MANLY NSW 2095

Name:	Address:
Simon McKenzie Rutherfurd	
Mr Adam Charles Achterstraat	53 Alexander Street MANLY NSW 2095
Turnbull Planning International Pty Ltd Mr Michael Anthony Foster Ms Noreen Teresa Foster	2301 / 4 Daydream Street WARRIEWOOD NSW 2102

The matters raised within the submissions are addressed as follows:

- **Privacy**
  Comment: Concern was raised about resulting privacy impacts from the proposed rear balcony. The proposal has been assessed against the privacy provisions of Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP.

- **Views**
  Comment: Concern was raised in regards to view loss to the Harbour and Store Beach. The proposal has been assessed against the view loss provisions of Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*' in this report. In summary, the proposed development does not cause unreasonable view loss to and from private and public open space. Adequate view sharing is achieved.

- **Site Coverage/Open Space**
  Comment: Concern is raised in regards to the level of landscaping proposed across the site. The development application proposes a variation to the total open space numeric control, but is consistent with the landscaped open space control. The proposal has been assessed in detail against the objectives of Clause 4.1.5 (Open Space and Landscaping) of the Manly DCP in this report. In summary, while non-compliant with the total open space control, the variation proposed under this application is considered consistent with the streetscape and satisfactory on merit.

- **Floor Space Ratio/ Bulk and Scale**
  Comment: Concern is raised from the adjoining northern property in regards to the impact of the overall bulk and scale of the proposal, particularly the ground floor extension to the rear. The proposed development is consistent with the both the Height of Buildings and Floor Space Ratio development standard, the primary standards that control bulk and scale. The proposed rear extension if consistent with the rear setback control being setback 9.17m. The proposed development is consistent with the bulk and scale of neighbouring properties, and is deemed reasonable in this residential setting.

- **Excavation**
  Comment: Concern is raised in regards to potential impacts from excavation works including vibration, soil stability and sandstone disposal. These matters have been considered under Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. The recommendations proposed under the Geotechnical Report (prepared by Geotechnics) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction. Further, two conditions of consent have

been imposed as part of this recommendation to ensure dilapidation reports for adjoining properties are undertaken by the applicant pre and post construction.

- **Determination**
  Concern: The application was requested to be determined by the NBLPP, given the previous application for this site was determined by the NBLPP. As stated elsewhere within this report, the proposal includes partial demolition of a heritage item and considered 'sensitive development', and as such the application is referred to the Northern Beaches Local Planning Panel for determination.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**No objection, with conditions.** The development application is for alterations and additions to a heritage listed workers cottage and associated external works. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping The site contains hedges and lawn within the front yard, and lawn, paving, walling with small trees and perimeter gardens. A Landscape Concept Plan accompanies the development application in accordance with the DA Lodgement Requirements and the landscape scheme is appropriate, and conditions shall be imposed for completion. A Arboricultural Impact Assessment accompanies the development application in accordance with the DA Lodgement Requirements, and the recommendations are accepted including the removal of all exempt species within the property. The proposed development works are located in close proximity to trees and vegetation within adjoining property No. 91 Stuart Street. The construction of the proposed fibre cement clad fence along the side boundary shall be constructed in accordance with the Arboricultural Impact Assessment recommendations and as imposed by conditions.
NECC (Bushland and Biodiversity)	**No objection, with conditions.** The proposal has been assessed against the following provisions: - NSW Biodiversity Conservation Act 2016 (BC Act) - Manly LEP Clause 6.5 (Terrestrial Biodiversity) - Manly DCP Clause 5.3.2.1 (Threatened Species and Critical Habitat Lands) - Manly DCP Clause Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat);

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>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.

The submitted Landscape Plan includes appropriate landscaping and maintains some access for bandicoots. The proposal therefore also complies with applicable DCP controls.</td></tr>
<tr><td>NECC (Development Engineering)</td><td>No objection, with conditions.

Development Engineering has no objection to the application subject to the following condition of consent.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>HERITAGE COMMENTS
Discussion of reason for referral
No objection, with conditions.

The proposal has been referred to Heritage as it is part of a heritage listed group of houses, listed in Manly Local Environmental Plan 2013.

Item I229 - Group of houses - 87–97 Stuart Street

Details of heritage items affected

Details of the item as contained within the Manly Heritage Inventory is as follows:

Item I229 - Group of houses
<u>Statement of significance:</u>
A good example of a small scale group of unified buildings with (possible) single historical theme (Gasworks).

<u>Physical description:</u>
Group of timber cottages, homogenous in scale and general style. Considerable original detail intact including gables, verandahs, fences and fenestrations. Alterations and additions (including one infill) have not yet affected impact of group in streetscape.

Other relevant heritage listings
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 — No
Australian Heritage Register — No</td></tr>
</table>

Internal Referral Body	Comments
	NSW State Heritage Register: No National Trust of Aust (NSW) Register: No RAIA Register of 20th Century Buildings of Significance: No Other: N/A **Consideration of Application** The proposal seeks consent for alterations and additions to the existing dwelling, which is part of a group of early 1900s workers cottages, which are listed as a group item. The proposal includes raising the front portion of the existing cottage and the insertion of a basement garage level, where the front of the original building and the front two rooms are to be retained. The proposal also includes the demolition of the rear section of the cottage with a rear extension to the ground floor and a rear first floor addition. A terrace from the upper level master bedroom has been proposed to replace the central section of the existing main roof. It is noted that, the proposal is consistent with the schemes that have been implemented across other houses in the group. However, considerations should be given to the details of the finishes and colours to preserve the significance of the cottage and to reduce the impact of the proposal upon the significance of the group listed heritage item. Therefore, no objections are raised on heritage grounds, subject to three conditions. Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes **Further Comments**

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.1114648S_06 dated 8 July 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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.

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	8.5m (RL27.02)	-	Yes
Floor Space Ratio	FSR: 0.6:1 (213.6sqm)	FSR: 0.65:1 (213.3sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The proposal includes significant cut and fill works across the property to provide basement parkin g. The proposed earthworks will not unreasonably impact the natural processes or future development of

the site, or the amenity of adjoining properties. Further, the works will not impact upon natural rock outcrops.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 356sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm of site area	1 dwelling	-	Yes
	Dwelling Size: minimum 112sqm GFA	230.2sqm GFA	-	Yes
4.1.2.1 Wall Height	North: 6.8m (based on gradient 1:22)	6.87m	1.03%	**No**
	South: 6.8m (based on gradient 1:22)	6.6m	-	Yes
4.1.2.2 Number of Storeys	2 storeys	2-3 storeys	up to 50%	**No**
4.1.2.3 Roof Height	Height: 2.5m	1.28m (new gable on upper floor)	-	Yes
	Pitch: maximum 35 degrees	36 degrees	2.86%	**No**
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing front building line of dwellings that form part of the subject heritage item	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.27m (1/3 of wall height)	Dwelling External Wall 405mm	82.16%	**No**
	South: 2.14m (1/3 of wall height)	Garage Level 915mm - 2.065m Ground Floor 915mm - 2.065m Level 1 600mm - 1.75m	3.5% - 71.96%	**No**
	Windows: No windows within 3m of side boundaries	3 windows setback 915mm from southern boundary and 4 windows setback 2.065m from southern boundary	31.17% - 69.5%	**No**
4.1.4.4 Rear Setbacks	8m	9.17m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space 55% (195.8sqm) of site area	24.66% (87.8sqm)	55.16%	**No**
	Open space above ground no more than 25% (21.95sqm) of proposed Total Open	12.53% (11sqm)	-	Yes

	Space			
4.1.5.2 Landscaped Area	Landscaped area 35% (30.73sqm) of open space	106.38% of TOS (93.4sqm)	-	Yes
	Minimum 1 native tree	1 tree	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% (3.81m) of frontage up to maximum 6.2m	Garage opening: 3.2m Garage width: 4.98m	30.71%	**No**
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Less than 1m above ground	-	Yes
	1m curtilage/1.5m water side/rear setback	Curtilage: 1.1m Water Line: 1.5m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

***Notes:**

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

2. The side boundary setback requirements equate to at least 1/3 of the proposed wall height.

3. To be included in Total Open Space proposed areas must be at least 3m x 3m in dimension with a minimum unbroken area of 12sqm.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	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
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Concern was raised with regard to the privacy impacts resulting from the proposed rear balcony. Clause 3.4.2.1 of the MDCP 2013 states the following:

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

The proposed first floor balcony is proposed off Bedroom 4. A privacy screen along the northern edge of the balcony has been incorporated into the design to mitigate potential overlooking between the subject site and adjoining northern property. The balcony extends a maximum 2.385m along the northern edge of the first floor and reduces to 0m along the southern edge to reduce the usability of the balcony to the south. The balcony is setback 2.06m from the southern boundary, centrally located and is unlikely to have a direct view of the private open space of No. 95 Stuart Street to the south. In consideration of minor size and scale of the balcony, physical separation and location off a bedroom, the privacy impacts are considered to be reasonable within this residential environment.

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received one submission from the occupants of No. 22 Carey Street, Manly raising view loss as a concern.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

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

  Comment: In determining the extent of potential view loss to adjoining and nearby properties, the four 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.

  1. Nature of the views affected

  "*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*".

  Comment to Principle 1:

  Views affected from this property are distant harbour and North Head views filtered through existing development as shown below.

  The existing dwelling on the subject site is not visible in the photos below. The existing dwelling sits below No 87 Stuart Street when viewed from the objecting property. When looking at the photos below, the subject site is located between the existing navy flat roof (No. 87 Stuart Street, Manly) and the dwelling with the shale grey corrugated metal roof with pop-up roof feature. For ease of reference the maximum ridge height of the proposed gable roof is highlighted in blue in the photos below.

  2. What part of the affected property are the views obtained

  "*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 to Principle 2:

  The views affected from this property are obtained over the side boundary from the ground floor private open space to the rear of the property from a standing position. It should be noted that the views obtained from the sitting position are of a lesser value then those obtained in the standing position.

  3. Extent of impact

  "*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% 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 to Principle 3:



Photo 1 - Ground floor deck



Photo 2- Ground floor deck

This property currently enjoys partial harbour views from the ground floor deck. The views are obtained to the west over the top of the ridge line of the existing dwelling house. The development will result in a moderate loss of water views currently enjoyed from the ground floor private open space. The view loss results from the front gable, which has been designed at RL27.02 to ensure the 36 degree pitch is consistent with existing cottage and neighbouring properties, which will retain the heritage significance of the dwelling. The architect has employed a flat roof at the rear addition behind the front gable to minimise the extent of the view loss. The proposed dwelling house will reduce existing views from the balcony over a side boundary. The land-water interface and North Head will be largely retained.

Qualitatively and in consideration of the existing views available from 22 Carey Street, the extent of view loss is minor, noting that other views listed above (i.e North Head and land-water interface) will be retained.

4. Reasonableness of the proposal that is causing the impact

"*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 to Principle 4:

The development proposes a compliant Height of Buildings development standard under Clause 4.3 of the WLEP. However, there are minor variations to the side setback and total open space controls under the MDCP 2013. Minor non-compliance in relation to the side setback and open space will not impact upon the view from the dwelling at No. 22 Carey Street.

The proposal responds appropriately to the available views through the provision of appropriate view corridors, setbacks and building articulation to ensure highly valued views are retained and the impact on properties in terms of view loss is at worst minor. In consideration of the existing view it is also noted that the view in question is severely vulnerable to vegetation growth, with vegetation growth and new planting between the No. 22 Carey Street likely to disrupt the existing water view. The total severity of impacts upon water views is not considered to be unreasonable. A more skilful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties.

Further as noted previously, the roof has been designed to ensure the heritage significance of the dwelling is retained. Further reducing or amending the roof would impact upon the heritage value of the site, that forms part of Heritage Item No. I229 '*Group of houses*'.

- *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).*

  Comment: The proposed development has been designed to maximise views to neighbouring properties, while still allowing for a reasonable development on site.

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

  Comment: The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

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

Description of non-compliance

Clause 4.1.2 of the MDCP 2013 limits buildings to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement. The 3 storey component occurs at the front of the structure over the footprint of the garage, with the rear half of the structure being a 2 storey building.

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control, as follows:

(1) (a) To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing height and desired future streetscape character in the locality.

Comment: The proposal complies with the Height of buildings development standard and therefore, meets the desired building height envisaged for the site. The dwelling follows the slope of the land.

(1) (b) To control the bulk and scale of buildings.

Comment: The proposal complies with the Height of buildings and Floor space ratio development standards, which are the key controls that govern the bulk and scale of buildings. The proposed development incorporates various building materials and is well articulated, which further minimises visual bulk. Overall, the resulting built form is considered to be appropriate in the context of the site.

(1) (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 harbour and foreshores).

Comment: The proposal has been assessed against the view loss provisions under Section 3.4.3-Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah [2004] NSWLEC 140* when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment: The solar impacts of this aspect of the development are acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

(1) (e) To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: The subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variation to the numeric requirement at the ground and first floor along both the northern and southern side elevations.

Clause 4.1.4.2 also requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed windows along the northern and southern elevation are setback 0.9m - 2m from the side property boundary, non-compliant with the numeric control.

Merit consideration:

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

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

Comment: The proposed side setbacks are consistent with the existing development within the immediate vicinity, and introduces an improved landscape treatment to the front setback area. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks.

Objective 2) To ensure and enhance local amenity by:

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

Comment: The side boundary non-compliance does not directly attribute to unreasonable privacy impacts. A detailed assessment of solar access is provided in this report which concludes a equitable level of sunlight is achieved as required by the DCP. No unreasonable view impacts arise from the proposal. The proposal maintains appropriate building separation that is consistent with the street and envisaged by the DCP.

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

Comment: Flexibility is provided in the circumstance as the proposed works will not create any unreasonable privacy impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment: The application proposes a compliant level of landscape open space. Landscaping is able to

be provided along both the front and rear of the dwelling to soften the built form and assist in offsetting privacy impacts. There are adequate deep soil zones in the front and rear setbacks to provide canopy trees as shown in the landscape plan.

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

Comment: The subject site is not located in a bush fire zone.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% (195.8m^2) of the site area be total open space. The proposed total open space is 24.66% (87.8m^2), resulting in non-compliance with the numeric control. This represents a 55.16% variation to the numeric control

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:The development does not result in the removal of significant canopy trees, which would result in the character of the site being compromised or impact populations of flora and fauna. The proposed development will improve the landscaping on the site, subject to conditions.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment: The proposed works propose a suitable level of landscaped open space, compliant with the landscaped open space control under Clause 4.1.5.2 of the Manly DCP.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment: Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to to be impacted by the proposed works.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment: Significant levels of deep soil areas are proposed around the site to ensure no unreasonable stormwater runoff, subject to conditions.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment: The proposed planting on site is suitable for the site, so as not to contribute to the spread of weeds and the degradation of nearby public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment: The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

Clause 4.1.6.1 of the Manly DCP prescribes that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent (3.81m) of the frontage, up to a maximum width of 6.2m.

The proposed garage has a width of 4.98m, non-compliant with the numeric control. This results in a 30.71% variation to the numeric control.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment: The proposed development will allow for two (2) spaces for the dwelling house, consistent with the numeric control.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment: Adequate on-site parking is provided, consistent with the numeric control.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment: The proposed parking arrangement is considered reasonable given its consistency with other neighbouring parking arrangement along Stuart Street. The proposal will not have a unreasonable impact on the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment: The proposed excavation is deemed reasonable, subject to compliance with the recommendations imposed by in the Geotechnical report (prepared by Morrow Geotechnics, dated 29

July 2021).

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment: The property will use a single driveway and cross over to reduce the disruption to the existing footpaths.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment: The proposed development will utilise the existing concrete driveway.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment: The subject site is not located within a established town centre noted within the Manly DCP.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

4.4.5 Earthworks (Excavation and Filling)

The proposal involves excavation below the existing building to allow for basement parking. The excavation is limited to the front of the site, such that the overall impact upon the topography site is minimised. The proposed excavation will also result in the positive outcome providing 2 off-street parking spaces on site, reducing pressure on on-street parking within the locality. The Geotechnical Investigation Report concludes that the proposal is suitable for the site and there will be no unreasonable impacts, provided that the works are carried out in accordance with the requirements of the report and good engineering and building practice. Additionally, a condition has been placed to require the production of pre and post construction Dilapidation Reports to further ensure protection for neighbouring 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 $15,935 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,593,507.

CONCLUSION

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

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

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

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

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

The proposed development involves demolition works and the construction of a new dwelling house including a swimming pool.

When assessed against the MLEP 2013 and MDCP 2013, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The new works are sympathetic of the heritage character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1329 for Demolition works including the retention of a portion of the existing building and the construction of a new dwelling house including a swimming pool on land at Lot 1 DP 72989, 89 Stuart 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**
1906-P-00 (Revision B)- Proposed Site Plan	7 September 2021	Benn + Penna
1906-P-01 (Revision B) - Proposed Basement Floor Plan	7 September 2021	Benn + Penna
1906-P-02 (Revision B) - Proposed Ground Floor Plan	7 September 2021	Benn + Penna
1906-P-03 (Revision B) - Proposed Level 01 Floor Plan	7 September 2021	Benn + Penna
1906-P-04 (Revision B) - Proposed Roof Plan	7 September 2021	Benn + Penna
1906-P-05 (Revision B) - Proposed North & South Elevations	7 September 2021	Benn + Penna
1906-P-06 (Revision B) - Proposed East & West Elevations	7 September 2021	Benn + Penna
1906-P-07 (Revision D) - Proposed Sections B & C	12 November 2021	Benn + Penna
1906-X-05 (Revision B) - Materials & Finishes Schedule	7 September 2021	Benn + Penna
1906-X-04 (Revision C) - Proposed Demolition Plan	25 October 2021	Benn + Penna

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
762-C-01 (Revision F) - Stormwater Drainage Concept Plan	30 June 2021	James Rose Consulting
762-C-02 (Revision F) - Stormwater Drainage Concept Plan	30 June 2021	James Rose Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. 1114648S_06	8 July 2021	Efficient Living Pty Ltd
Arboricultural Impact Assessment No. 1847_11A/ Revision B	23 June 2021	Arborliz
Terrestrial Biodiversity Report No. BS44TBR01	23 June 2021	GIS Environmental Consultants
Geotechnical Investigation Report Ref. P1898_02	29 July 2021	Morrow Geotechnics 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**
DALP01 - Landscape Concept Plan/ Revision B	23 June 2021	Arborliz

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 $15,935.07 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of $1,593,506.79.

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

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council

that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**
The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification 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 development.

7. **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 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.

8. **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.

9. **Tanking of Basement Level**
The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

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

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

Reason: To facilitate suitable vehicular access to private property.

11. **Heritage Photographic Survey**
A black and white photographic survey, in accordance with the guidelines of the Heritage Council, is to be submitted in an unbound report format. The report shall contain:

(a) A front cover marked with:
(i) the name/location of the property;
(ii) the date of the survey;
(iii) the name of the Company or persons responsible for the survey.

(b) A layout plan of the existing building; identifying rooms and features shown in the photographs.

(c) Photographs of the interior, exterior, and streetscape view of the building, labelled to indicate

their location in relation to the layout plan and elevations of the building; and a set of negatives. All photographs are to be mounted in acid-free photographic corner mountings and photographs are to be fixed into acid-free corner mounting.

(d) Where colour is a feature of the building (for example, the building features stained glass, leadlight or polychrome brickwork), additional colour photographs (with negatives) are to be included in the photographic survey report.

These documents are to be provided to Council's historical archives.

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

Reason: To provide a historical record of heritage significant works on the site for archival purposes.

12. **External colour scheme**
The external colour scheme to the street frontage (some articulation of the detailed elements of the house would be possible, even with a limited variation of colour in the scheme, and should be considered) with cross reference should be provided.

Details, demonstrating compliance with this condition, are to be submitted and approved by Council's Heritage Officer prior to the issue of the Construction Certificate.

Reason:To preserve the significance of the heritage item.

13. **Roof material**
The roof material should be of Custom Orb profile corrugated galvanised steel roofing, in a prevailing colour used within the group of houses.

Details, demonstrating compliance with this condition, are to be submitted and approved by Council's Heritage Officer prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the heritage item.

14. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree

protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, under sections:
i) section 3.4 Encroachments to trees to be retained,
ii) section 4 Tree Sensitive Demolition and Construction Methods within Tree Protection Zone (TPZ).

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed above 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 within adjoining property.

16. **Tree Removal Within the Property**
Tree removal within the property is contained to Exempt Species.

The following Exempt Species (by type or by height) do not require Council consent for removal, as identified in the Arboricultural Impact Assessment:
• T1, T3 and T5 Fraxinus griffithii (Himalayan ash); T2 a group of five (5) Pyrus sp. (Ornamental Pear); T4 Syagrus romanzoffiana (Cocos Palm); T6 Triadica sebifera (Chinese Tallow Tree); T7 Plumeria sp. (Frangipani); T8 Archontophoenix cunninghamiana (Bangalow Palm); and T9 Howea forsteriana (Kentia Palm).

Reason: to enable authorised building works.

17. **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.

- 87 Stuart Street, Manly.
- 91 Stuart 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 rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.
e) 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.

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. **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.

21. **Property Boundary Levels**
The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

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

22. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 2 NH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

23. **Site induction required**
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 prior to issue of any Occupation Certificate.

Reason: To prevent impacts to the endangered bandicoot population.

24. **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.

25. **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.

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

26. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan.

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/

27. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an 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:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

28. **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.

29. **Fencing for Wildlife Passage**
Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

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

Reason: To preserve wildlife corridors.

30. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

weeds.

31. **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.

32. **Geotechnical Certification Prior to Occupation Certificate**
A suitably qualified geotechnical consultant is to provide confirmation that the development is consistent with the recommendations of the Approved Geotechnical referenced in Condition 1 of this consent.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

33. **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.

34. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

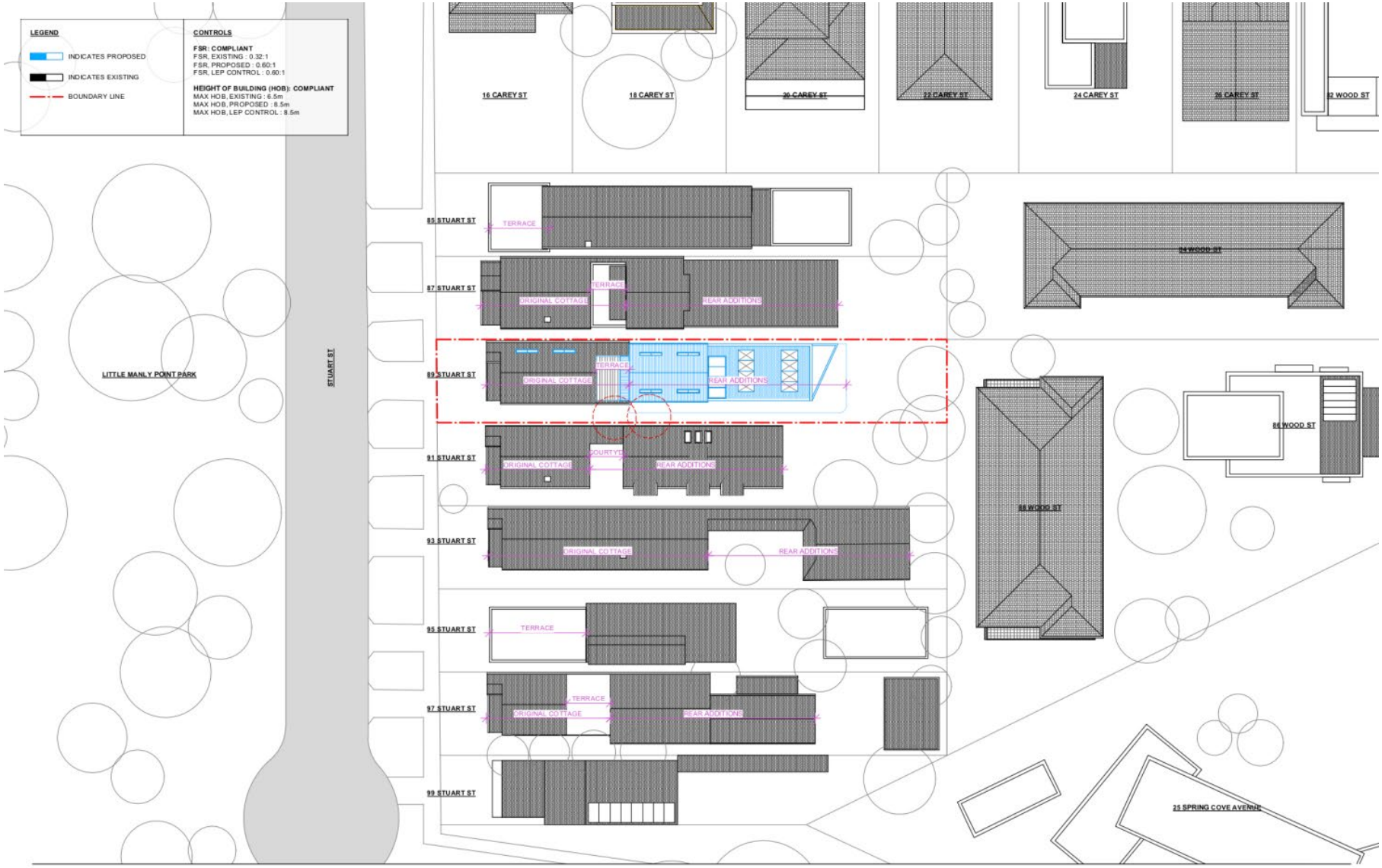
35. **Swimming Pool/Spa Motor Noise**

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.

36. **Wildlife Protection**
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.



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LEGEND

AC	AIR CONDITIONING	GZ-2	GLAZING (FROSTED)
BK-1	BRICK	MS-1	METAL SHEET ROOF
BK-2	BRICK (PAINTED)	MS-2	METAL SHEET WALL
BK-3	BLOCKWORK	RT-1	ROOF TILE
BK-4	RENDERED MASONRY	ST-1	STONE PAVING
CON-1	CONCRETE	SR-1	SCREEN (FIXED)
DP-1	DOWNPIPE	SR-2	SCREEN (ADJUSTABLE)
FC-1	FIBRECEMENT SHEET	WB-1	WEATHERBOARD
GZ-1	GLAZING (CLEAR)	TC-1	TIMBER CLADDING

REVISIONS

A	15.06.21	DEVELOPMENT APPLICATION
B	07.09.21	DEVELOPMENT APPLICATION AMENDMENTS
C		
D		
E		

PROPOSED SITE PLAN

1906-P-00

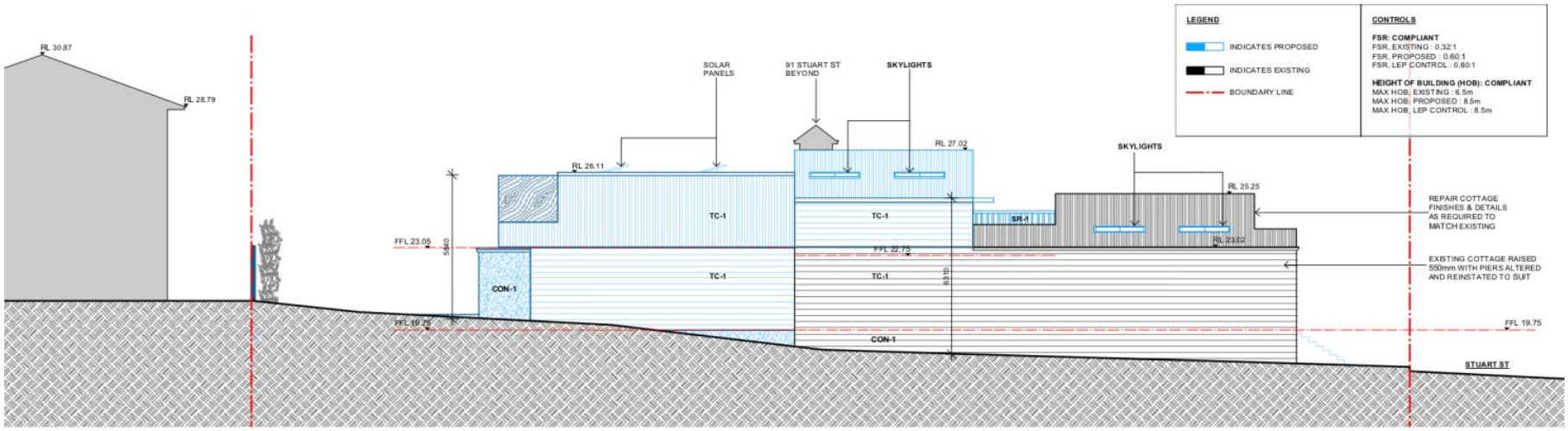
CLIENT: BEN & MELINDA GRAETZ

PROJECT: 89 STUART ST, MANLY

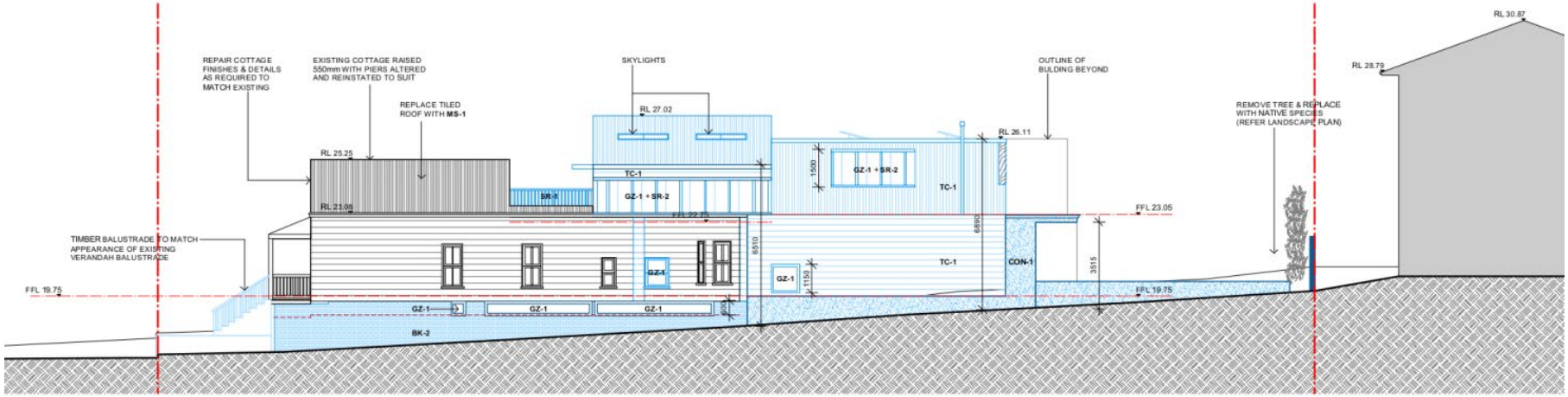
NORTH

SCALE: 1:300 @ A3

REVISION: B



NORTH ELEVATION



SOUTH ELEVATION

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GZ-1	GLAZING (CLEAR)	TC-1	TIMBER CLADDING

REVISIONS

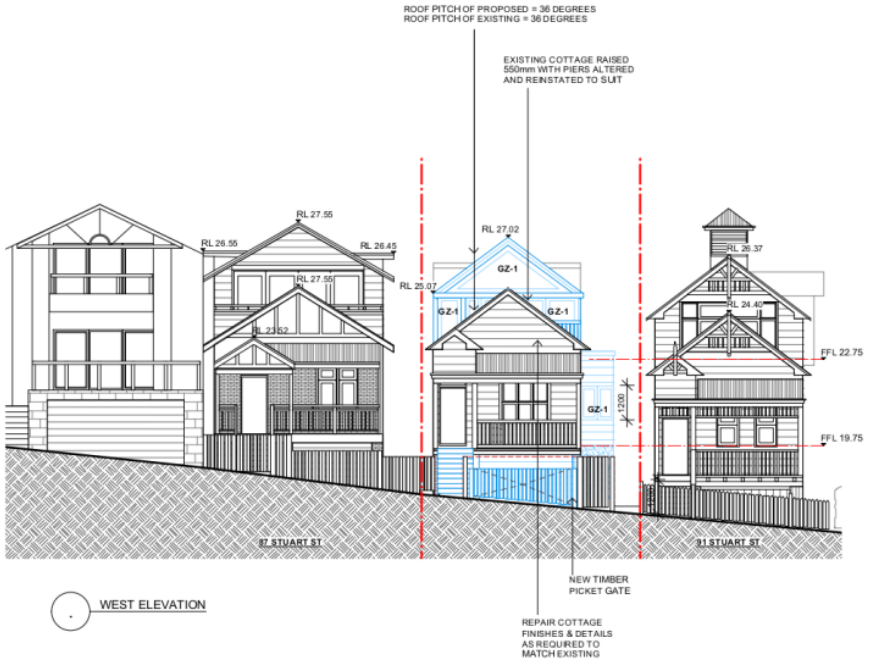
A	15.06.21	DEVELOPMENT APPLICATION
B	07.09.21	DEVELOPMENT APPLICATION AMENDMENTS
C		
D		
E		

PROPOSED NORTH & SOUTH ELEVATIONS

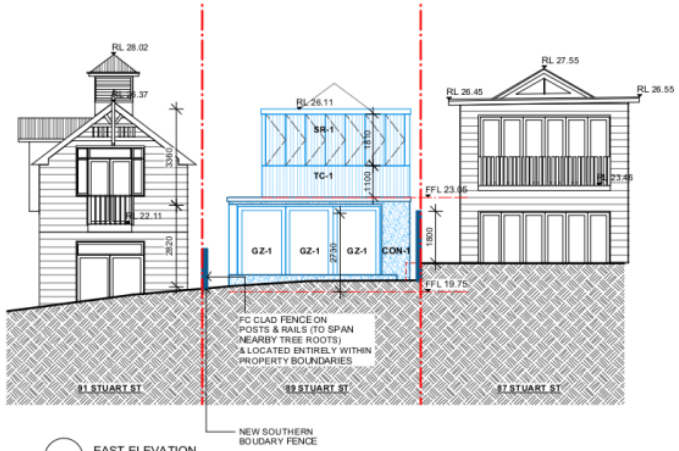
1906-P-05

CLIENT	PROJECT	NORTH	SCALE	REVISION
BEN & MELINDA GRAETZ	89 STUART ST, MANLY		1:150 @ A3	B

LEGEND	CONTROLS
INDICATES PROPOSED	**FSR: COMPLIANT** FSR, EXISTING : 0.32:1 FSR, PROPOSED : 0.60:1 FSR, LEP CONTROL : 0.60:1
INDICATES EXISTING	**HEIGHT OF BUILDING (HOB): COMPLIANT** MAX HOB, EXISTING : 6.5m MAX HOB, PROPOSED : 8.5m MAX HOB, LEP CONTROL : 8.5m
BOUNDARY LINE	



WEST ELEVATION



EAST ELEVATION

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LEGEND

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GZ-1	GLAZING (CLEAR)	TC-1	TIMBER CLADDING

REVISIONS

A	15.06.21	DEVELOPMENT APPLICATION
B	07.09.21	DEVELOPMENT APPLICATION AMENDMENTS
C		
D		
E		

PROPOSED EAST & WEST ELEVATIONS

1906-P-06

CLIENT	PROJECT	NORTH	SCALE	REVISION
BEN & MELINDA GRAETZ	89 STUART ST, MANLY		1:150 @ A3	B

ITEM 5.2	**MOD2021/0747 - 1 SURFVIEW ROAD, MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT DA2018/1771 GRANTED FOR THE DEMOLITION OF THE EXISTING SURF CLUB BUILDING AND CONSTRUCTION OF A NEW SURF CLUB BUILDING INCLUDING A CAFE, RESTAURANT AND FUNCTION SPACE**
AUTHORISING MANAGER	**Tony Collier**
TRIM FILE REF	**2021/849870**
ATTACHMENTS	**1 Assessment Report**
	2 Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0747 for Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building including a cafe, restaurant and function space at Lot 104 DP 1066371, 1 Surfview Road, Mona Vale subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0747

Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 104 DP 1066371, 1 Surfview Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building including a cafe, restaurant and function space
Zoning:	RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council

Application Lodged:	30/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Infrastructure
Notified:	15/10/2021 to 05/11/2021
Advertised:	15/10/2021
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This Section 4.55(1A) Modification Application to DA2018/1771 at the Mona Vale Surf Club is referred to the Northern Beaches Local Planning Panel as the subject site is owned by the Northern Beaches Council therefore constituting a Conflict of Interest which necessitates the Panel to be the determining authority of the proposal.

The works sought include modifications to the fenestration and detailing of the surf club building but do not alter its footprint, height or overall proportions.

The application seeks to modify the staging of approved conditions to enable part Occupation

Certificates to be issued for the surf club or the café and restaurant component without holding up the operation of the rest of the building. Operationally the proposal seeks to modify the approved hours of operation to permit later operating times throughout the year.

Two submissions have been received by surrounding residents requesting that a boardwalk be constructed within the vicinity of the site, however this matter is not relevant to the assessment of the proposal and does not hold determinative weight.

This report concludes that the modifications sought are all minor in nature and do not materially change the form, function or operation of the approved development. This report recommends that the Northern Beaches Local Planning Panel **approve** Modification Application MOD2021/0747.

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) Modification Application seeks to amend the approved DA2018/1771 and MOD2019/0454 in the following ways:

Ground Floor:

- Addition of two new trees.
- Addition of a wall café signage, consistent with the club entry signage.
- Addition of a gas meter louvre door on the western elevation.
- Addition of ventilation louvres on the eastern and western elevations.
- Deletion of one previously approved tree.
- Deletion of previously approved entry awnings located on the eastern and western elevations.
- Deletion of the previously approved external screening located on the eastern and western elevations.
- Re-configuration of selected rooms (store room, canteen and nippers store) located within the south-eastern portion of the building.
- Re-design of external pergola for café.

First Floor:

- Addition of fiber cement sheeting to match timber colour for previously approved balcony.
- Deletion of part of the previously approved external screening located on the southern members balcony.

Conditions:

- Amend conditions to enable part occupation certificates for the following uses:

  - Surf Life Saving Club;
  - Café; and
  - Restaurant.

- Amend Condition No. 39 Post-Dilapidation Report to change the requirements from "all truck routes to and from the site" to "potential impacts to road adjacent to site".

- Amend Condition No. 44 Hours of Operation for the Members Lounge, Restaurant and Function Room (Café to remain unchanged) to reflect the following changes:

- 7.00am to 10.00pm Sunday to Thursday;
- 7.00am to 12.00am Friday and Saturday; and
- 7.00am to 1.00am New Year's Eve.

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 - C5.10 Protection of Residential Amenity
Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place

SITE DESCRIPTION

Property Description:	Lot 104 DP 1066371, 1 Surfview Road MONA VALE NSW 2103
Detailed Site Description:	The subject allotment comprises a large area of public open space on Surfview Road and adjacent the northern end of Mona Vale Beach in Mona Vale. The irregularly shaped allotment has an area of 38,110m2 and is zoned RE1 Public Recreation. Surrounding allotments consist of further public open space to the north and south including sand dunes, parkland and the Mona Vale Golf Course. Residential properties are the primary use surrounding the open space area with both R2 and R3 zones to the west of the large lot. This application refers to the central area of the lot which is occupied by the two storey Mona Vale Surf Club building. The clubhouse sits fronting Surfview Road and Apex Park to

	the west and has immediate access to the beach to the east. It is surrounded by 319 existing time-restricted public parking spaces to the north and south. Significant Norfolk pine trees line the beachfront and parking area to the north.

Map:



SITE HISTORY

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

MOD2019/0454
Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building, including a café, restaurant and function space.
Approved on 27 November 2019.

PLM2019/0171
A formal pre-lodgment meeting was undertaken for the modification to approved SLSC building on 29 August 2019.

DA2018/1771
Development Application for the demolition of the existing surf club building and construction of a new surf club building including a café, restaurant and function space.
Approved on 13 February 2019.

PLM2018/0177
A formal pre-lodgment meeting was undertaken for the Demolition of the existing surf club and construction of a new surf club on 23 August 2018.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1771, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: - The built form amendments are considered to still be consistent with the originally approved application; - Hours of operation is likely to maintain a reasonable level of amenity to the surrounding residential area; and - The landscape area will continue to provide mitigation and soften the built form of the development.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1771 for the following reasons: - The modifications sought do not significantly alter the approved height of the building; - The modifications sought do not alter the existing use of the building and - The overall visual appearance of the building viewed from the adjoining properties and public domain will remain substantially similar to that of the already approved development.

Section 4.55(1A) - Other Modifications	Comments
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (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	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in

Section 4.15 'Matters for Consideration'	Comments
(EP&A Regulation 2000)	the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any	See discussion on “Notification & Submissions Received” in this

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 15/10/2021 to 05/11/2021 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 2 submission/s from:

Name:	Address:
Sue Stokes	Address Unknown
Mrs Jill Marie Gavin	2 / 8 Surfview Road MONA VALE NSW 2103

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

- **Provision of a boardwalk/walkway**

  "I would like to make an additional submission to this DA in the form of a Boardwalk for Pedestrians on the Dunes side of Surfview Road from the Cul-de-sac to the new Surf Life Saving Club... My submission to council would be to add this Greens community grant as part of the DA2018/1771 and include the boardwalk as part of this development plan. The completed surf club will increase significantly the amount of foot traffic on Surfview road."

  "I request that, as part of the plans for the new surf club, a walkway be built on the beachside of the cul-de-sac to the south of the clubhouse...The current footpath on the west of the road is too narrow for the number of pedestrians on the Coastal Walk, so many use the road instead. Designated as a shared zone, this area is dangerous because of the blind corner and the lack of vision from the beach paths onto the road. A boardwalk from the north end of the golf course straight along the eastern side of Surfview Road would deliver people safely to the clubhouse and the carpark, obviating the need for any road crossing at the end of Darley St."

  Comment:
  The application seeks to modify approved development consent DA2018/1771 for the construction of a surf club. That application did not approve any boardwalk from Darley Street to the surf club and therefore no appropriate nexus exists for that matter to be addressed as a part

of this modification application.

It is noted in the submissions that the objectors have previously made contact with Council Officers and State Members about their request.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	***Supported, no new 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.
Environmental Health (Industrial)	***Supported, no new conditions*** The proposed modifications and updated acoustic report have been reviewed. Environmental Investigations support the application subject to noise control measures recommended in the Noise Impact Assessment.
Landscape Officer	***Supported, no new conditions*** The application is for modification to development consent DA2018/1771 including deletion and additions, and request for amendment to development consent conditions as listed in the Statement of Modifications and as shown on modification plans. The Ground Level Plan A.DA.10.001 issue D submitted as part of the modification indicates the addition of three trees along Surfview Road and references the Landscape Plans for detail information on the proposed planting. The Landscape Plans are not provided with the modification plans. The Landscape Plans approved under the development application already include the 'larger screening trees, softening built form' referenced under this modification application, and thus no concerns are raised and no clarification is required. Landscape Referral raise no objections.
NECC (Bushland and Biodiversity)	***Supported, no new conditions*** The modification does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification.
NECC (Coast and Catchments)	***Supported without conditions*** The modification application has been assessed in consideration of the *Coastal Management Act 2016,* State Environmental Planning

Internal Referral Body	Comments
	Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Proposed modifications are minor in nature and mainly amendments to previously determined consent conditions. None of these relate to coastal issues. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed modifications are in line 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 the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Modifications report prepared by Mecone dated 25 August 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the modification application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Pittwater LEP 2014 and Pittwater 21 DCP** No other coastal related issues identified. As such, the modification application does not require to comply with the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
Parks, reserves, beaches, foreshore	***Supported, no new conditions*** The application is for modification to development consent DA2018/1771 including deletion and additions, and request for amendment to development consent conditions as listed in the Statement of Modifications and as depicted in the Proposed Site Plan DA.02.004 Rev C, dated 11.08.21.

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>The modification proposal includes: modification to Ground Floor, First Floor, Roof, Material Schedule changes, and additionally proposed amendments to conditions of development consent.

Parks and Reserves raise no concerns with the modification proposals.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>Supported, no new conditions
<table>
<tr><td>HERITAGE COMMENTS</td></tr>
<tr><td>Discussion of reason for referral</td></tr>
<tr><td>The proposal has been referred to heritage as the subject site contains a heritage item

Norfolk Island Pines (Araucaria heterophylla) - Surfview Road, Ocean Beach Reserve (within beach carpark)</td></tr>
<tr><td>Details of heritage items affected</td></tr>
<tr><td>Details of the item as contained within the Pittwater inventory is as follows:

<u>Statement of Significance</u>
The Norfolk Island Pines are a defining feature of our cultural landscape as it is associated with beach holidays and recreation and has provided a distinctive sense of place. The Norfolk Island Pines are a defining and iconic landscape element for Mona Vale Beach, but also for many ocean beaches in Pittwater and along the cost of NSW and southern QLD. The pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930s. The Pines have a high level of visual and aesthetic value.

<u>Physical Description</u>
The Norfolk Island Pines are located in and around the beach carpark between Seabeach Avenue and Surfview Road. The listed pines are located along the beach front, through the centre of the carpark and along its boundary with Surfview Road. There are in excess of 20 pines that range in size from approximately 2 to 10+ metres in height.</td></tr>
<tr><td>Other relevant heritage listings</td></tr>
<tr><td>
<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 (NSW) Register</td><td>No</td><td></td></tr>
<tr><td></td><td></td><td></td></tr>
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</td></tr>
</table>

Internal Referral Body	Comments
	RAIA Register of 20th Century Buildings of Significance: No Other: N/A **Consideration of Application** The proposal seeks consent for modifications to the approved new Mona Vale SLSC building and changes to the landscaping. The proposed works to the building and changes to the landscaping at the front of the building are not of concern to heritage and have no impact to the heritage item. However the two proposed plantings within the main car park to the north are of interest. Heritage supports additional plantings but the tree species have not been noted. Heritage recommends that they be Norfolk Island Pines to complement the existing pines. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No **Further Comments** COMPLETED BY: Brendan Gavin, Principal Planner DATE: 2 November 2011
Strategic and Place Planning (Urban Design)	***Supported, no new conditions*** The proposed modifications are minor in nature and will not affect the look and feel of the previously approved design.
Traffic Engineer	***Supported, no new conditions*** The modifications are minor in nature and do not impact the car park or traffic and transport provisions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A response has been received within the 21 day statutory period, no objections have been 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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:
The proposal was referred to Ausgrid. A response has been received within the 21 day statutory period, no objections have been raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

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

(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

(c) the carrying out of any of the following:
(i) earthworks (including the depositing of material on land),
(ii) constructing a levee,
(iii) draining the land,
(iv) environmental protection works,

(d) any other development.

Comment:
The subject site is not located on land identified as "coastal wetlands and littoral rainforests area". This clause does not apply.

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

(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
This clause has been assessed against the subject site and the proposed development. No issues have been raised, with the proposed development unlikely to cause any adverse impacts to the integrity of the littoral rainforest

12 Development on land within the coastal vulnerability area

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

(a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

(b) the proposed development:

(i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and

(ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and

(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

(c) measures are in place to ensure that there are appropriate

responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:
The subject site is not located on land identified as "coastal vulnerability area". This clause does not apply.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- *(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- *(b) coastal environmental values and natural coastal processes,*
- *(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- *(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- *(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- *(f) Aboriginal cultural heritage, practices and places,*
- *(g) the use of the surf zone.*

Comment:
This clause has been assessed against the subject site and the proposed development. The works are within the approved building envelope and will have no visual impact on the coastal area. The design retains majority of approved revegetation however includes the deletion of one tree and the planting of two new trees and has no impact on public foreshore access, coastal processes and is not within the vicinity of any known Aboriginal heritage sites.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- *(a)* the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- *(b)* if that impact cannot be reasonably avoided—the development is designed, sited and

will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
The proposed modifications are unlikely to cause a coastal impact over and above that of the approved development.

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:
This clause has been assessed against the subject site and the proposed development. The revised development is not considered to impact the visual amenity of the scenic coast, native foreshore vegetation or environmental heritage, other than what has been previously established by the approved development. Public access to the foreshore will not be affected. The revised development does not result in unreasonable overshadowing to the foreshore area or contributes to further loss of valued public domain views to the foreshore.

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

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

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

Comment:
This clause has been assessed against the subject site and the proposed development. The revised

development does not increase the scale or building footprint of the already approved development, and is considered unlikely to increase the risks of coastal hazards.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	7.973m	No Change	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	Merit	1.8m	No Change	Yes
Rear building line	3m	40m (MHWM)	No Change	Yes
Side building line	3m (Darley Street)	89m	No Change	Yes
	3m (Seabeach Avenue)	160m	No Change	Yes
Building envelope	N/A	N/A	N/A	N/A
Landscaped area	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.4 View Sharing	Yes	Yes
C5.5 Accessibility	Yes	Yes
C5.7 Energy and Water Conservation	Yes	Yes
C5.8 Waste and Recycling Facilities	Yes	Yes
C5.9 Signage	Yes	Yes
C5.10 Protection of Residential Amenity	Yes	Yes
C5.11 Third Party Signage	Yes	Yes
C5.15 Undergrounding of Utility Services	Yes	Yes
C5.16 Building Facades	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.18 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C5.19 Food Premises Design Standards	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes

Detailed Assessment

C5.10 Protection of Residential Amenity

The parent development consent granted the following hours of operation to the Members lounge / Restaurant / Function Room:

- 7:00am - 10:00pm - 7 days a week inclusive of public holidays.

This proposal seeks to extend those hours to be as follows:

- 7:00am - 10:00pm - Sunday to Thursday (inclusive of Public Holidays except New Years Eve)
- 7:00am - 12 midnight - Friday and Saturday
- 7:00am - 1:00am - New Year's Eve

A Noise Impact Assessment has been provided with the application which concludes that the proposed extended hours are unlikely to cause any detrimental impacts to the amenity of surrounding residential receivers.

It is considered that the spatial separation between the SLSC building and neighbouring residential properties (being approximately 90m to the southwest, 160m to the northeast and 100m to the northwest) minimises the likelihood of unreasonable impact. Further, the landscape buffer between the development and neighbouring properties combined with the sound of the ocean would contribute to ameliorating any acoustic impacts from the SLSC.

Accordingly, it is considered that the proposed extension of hours on Friday and Saturday night and on New Year's Eve is acceptable without causing unreasonable impact on neighbouring residential amenity.

D9.1 Character as viewed from a public place

The proposed modifications to the approved built form of the SLSC are considered to be contextually and proportionately appropriate and shall not materially change the character or appearance of the building when viewed from the public domain commensurate to that of the approved development. The works maintain the integrity of the architecture as approved.

Changes to Conditions

The modification application seeks, inter alia, to amend Conditions 30, 32, 33, 34 and 35 of the Parent Development Consent regarding the staging of the conditions to permit the partial operation of the building without that operation being contingent on all aspects of the building being finalised and having obtained an Occupation Certificate. For example, the modification seeks to allow for the SLSC to operate as soon as that portion of the building is complete and an Occupation Certificate is issued, rather than the operation of the SLSC be incumbered by the completion of the restaurant or café kitchen which may occur at a later date.

The wording of the current conditions requires an Occupation Certificate to be issued for all aspects of the development prior to operation.

The changes sought to the operational conditions do not result in any modification to the end product, but rather permit their independent occupation prior other facilities being completed.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the original Development Application.

CONCLUSION

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

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

- Codes and Policies of Council.

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

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

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

This report demonstrates that the physical changes sought to the building are appropriate in their design and proportions commensurate to the approved development and to the coastal location of the site.

The modification to the operational hours of the surf club and its associated components do not detract from nearby residential amenity but instead permit residents to enjoy the surf club amenities for an extended period of time throughout the week and on New Years Eve.

The modification to the staging of conditions results in no material difference to the end product of the development, but instead permits operation of various components of the building to occur whilst other parts of the building are being finalised.

This report demonstrates that there are no unreasonable impacts associated with the development and that the modification application is worthy of approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0747 for Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building including a cafe, restaurant and function space on land at Lot 104 DP 1066371,1 Surfview Road, MONA VALE, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A.DA.02.004 - Proposed Site Plan (Revision C)	13 September 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.10.001 - GA Plan - Ground Level (Revision D)	13 September 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.10.002 - GA Plan - Level 1 (Revision D)	13 September 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.11.001 - Roof Plan (Revision D)	11 August 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.20.001 - North & East Elevations (Revision D)	13 September 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.20.002 - South & West Elevations (Revision D)	13 September 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.30.001 - Sections (Revision D)	24 August 2021	Warren and Mahoney Architects Australia Pty Ltd.
A.DA.40.001 - Material Schedule Sheet 01 (Revision D)	11 August 2021	Warren and Mahoney Architects Australia Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**

Noise Impact Assessment	5 August 2021	JHA Services

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

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

B. Modify Condition 19. - Pre-Dilapidation Report to read as follows:

The applicant is to engage a suitably qualified person to prepare a pre-dilapidation report of the road immediately adjacent to the site (Surfview Road, Mona Vale). This is to be submitted to and approved by Council's Traffic Engineer prior to any works commencing.

Reason: To ensure the assets along the truck routes are assessed prior to any work related damage.

C. Modify Condition 30. - Geotechnical Certification Prior to Occupation Certificate to read as follows:

Prior to issue of an Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

D. Modify Condition 32. - Registration of Food Business to read as follows:

The food business must be registered with the Appropriate Regulatory Authority prior to an Occupation Certificate being issued (either in part or together) for the café and restaurant.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

E. Modify Condition 33. - Waste Agreement to read as follows:

Documentation supplied by Sydney Water regarding evidence of the trade waste agreement must be provided to the certifying authority prior to the issue of an Occupation Certificate (either in part or together) for the Café and Restaurant.

Reason: protect Public and Environmental Health values

F. Modify Condition 34. - Kitchen Design, construction and fit out of food premises certification to read as follows:

Prior to the issuing of any occupation certificate (either in part or together) for the Café and Restaurant, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

G. Modify Condition 35. - Mechanical Ventilation Certification to read as follows:

Prior to the issue of the relevant occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

H. Modify Condition 39. - Post-Dilapidation Report to read as follows:

The applicant is to engage a suitably qualified person to prepare a post-dilapidation report of the road immediately adjacent to the site (Surfview Road, Mona Vale). The report is to be submitted to and approved by Council's Traffic Engineer prior to the issue of any Occupation Certificate. The condition of the road is to be compared to the asset condition as noted in the pre-dilapidation report. Any noted damage is to be rectified by the applicant, to the satisfaction of Council, prior to the issue of any Occupation Certificate. The rectification works are to be undertaken by the applicant at no coast to Council.

Reason: To ensure all assets are left in a serviceable state or repaired to ensure ongoing serviceability of the asset.

I. Modify Condition 44. Hours of Operation to read as follows:

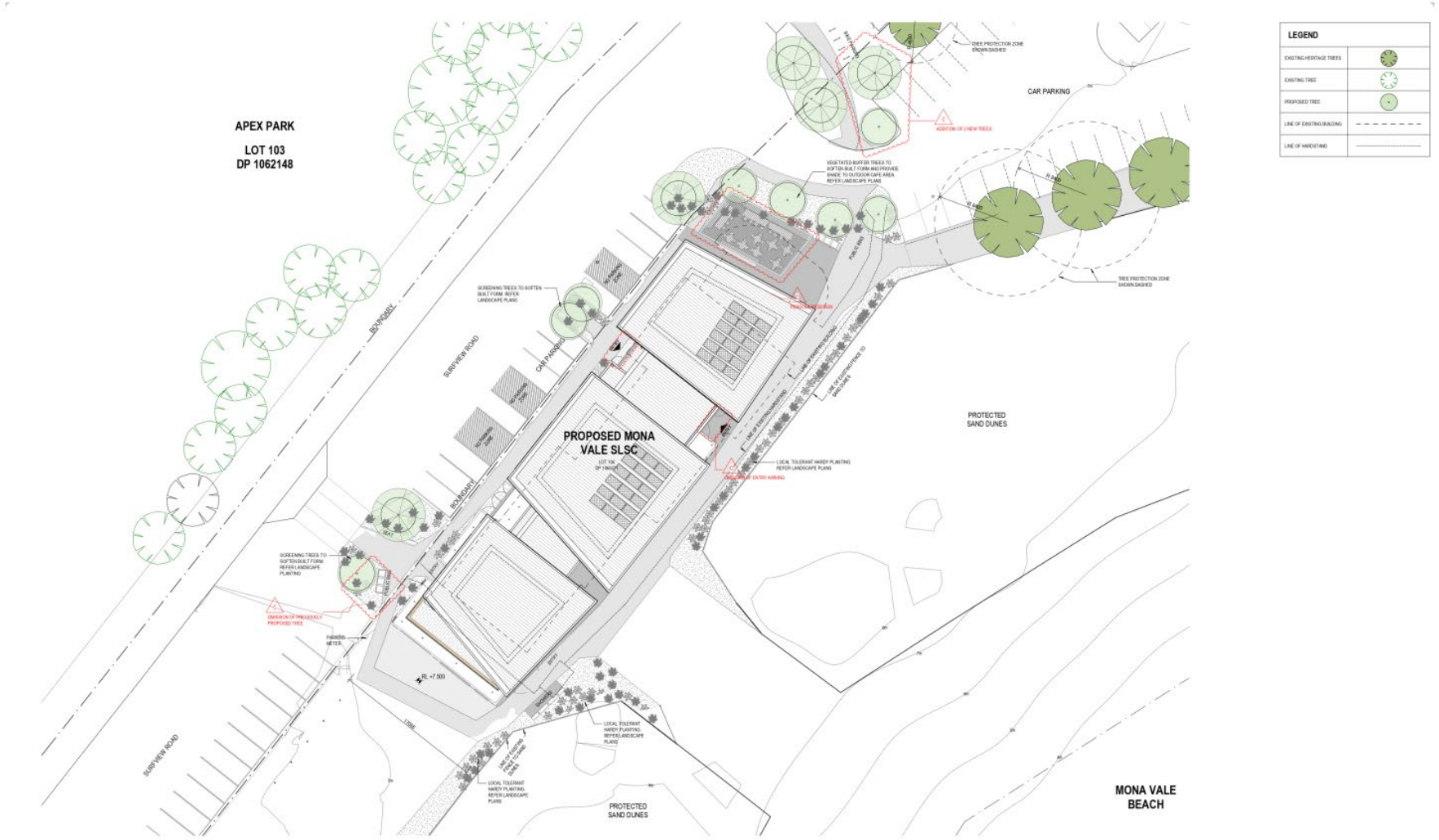
The hours of operation are to be restricted to:

Members Lounge/ Restaurant and Function Room: 7am to 10pm (Sunday to Thursday), 7am to midnight (Friday and Saturday), and 7am to 1am (New Year's Eve)

Café: 7am to 5pm (7 days, inclusive of public holidays)

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: To ensure that amenity of the surrounding locality is maintained.



1 PROPOSED SITE PLAN
A12-003 1 : 200

Warren and Mahoney Architects Australia Pty Ltd
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Australia Square, 95 Pitt Street
Sydney, NSW 2000
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Nominated Architect:
Sven Ollmann ARB NSW 11123
Registered Architects and Designers
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WARREN AND MAHONEY

Revisions

A	15/10/18	DEVELOPMENT APPLICATION
B	13/09/19	DA AMENDMENTS
C	11/08/21	DA AMENDMENTS

Notes
All drawings to be read in conjunction with Architectural schedules + specifications.
Architectural drawings are subject to further co-ordination with Structural, Civil, Building Services and relevant disciplines.

TRUE NORTH

Consultants
Project Manager
NORTHERN BEACHES COUNCIL
Planner
Structural Engineer
TTW
Mechanical Engineer
NORTHROP
Electrical Engineer
NORTHROP

Client
northern beaches council

Architect
WARREN AND MAHONEY

Project Title
Mona Vale Surf Club
Surf View Road, Mona Vale, NSW

All dimension to be verified on site before producing shop drawings or commencing any work. Do not scale. The copyright of this drawing remains with Warren and Mahoney Architects Ltd.

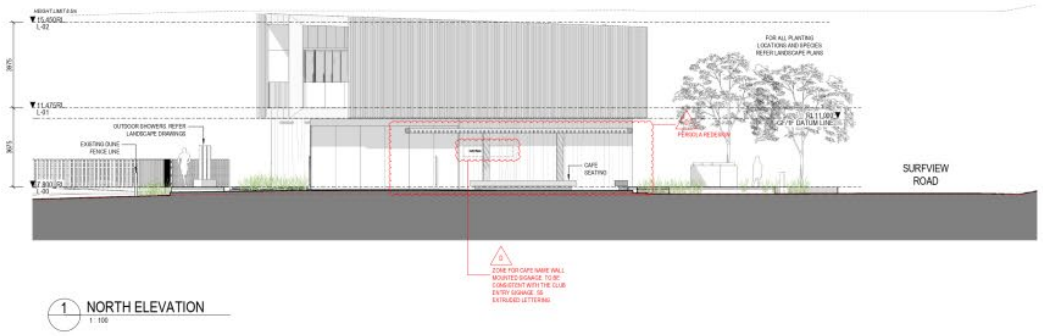
Drawing Title
PROPOSED SITE PLAN

Drawing Status
FOR CONSTRUCTION

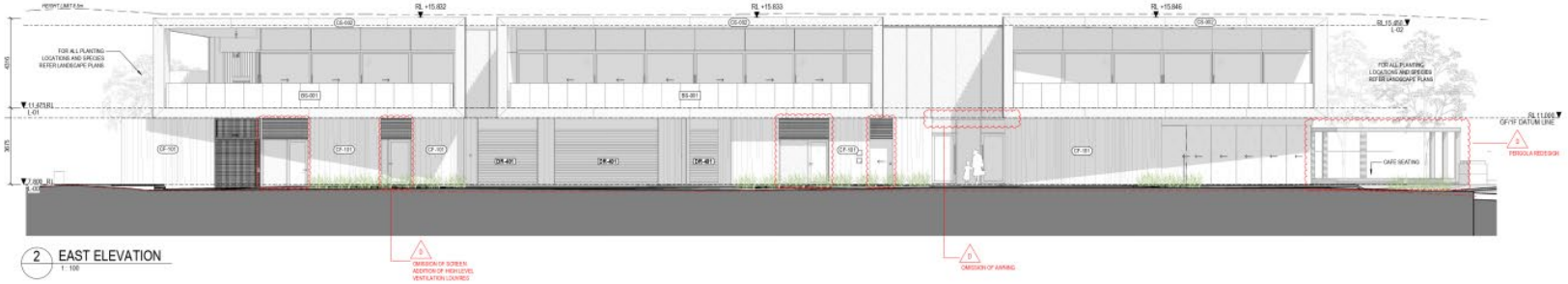
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Job No	8089
Drawn	Author
Checked	Checker

Drawing No A.DA.02.004
Revision C

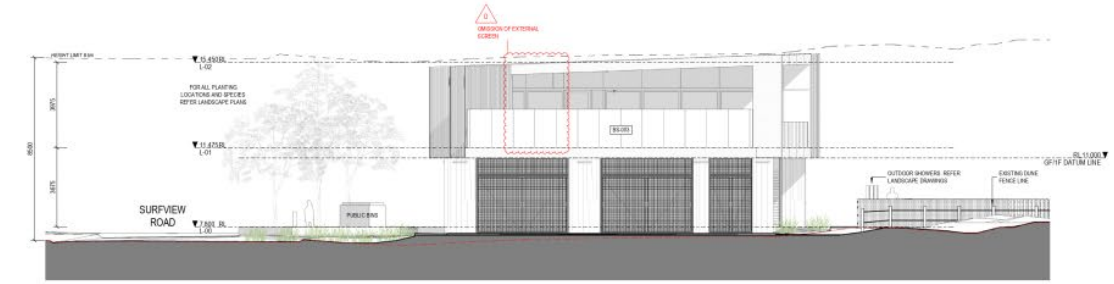


1 NORTH ELEVATION
1 : 100



2 EAST ELEVATION
1 : 100

Warren and Mahoney Architects Australia Pty Ltd Suite 13.03, Plaza Building Australia Square, 95 Pitt Street Sydney, NSW 2000 Australia Phone + 61 2 8021 9809 Nominated Architect: Sven Ollmann ARIB NSW 11123 Registered Architects and Designers www.warrenandmahoney.com WARREN AND MAHONEY	**Revisions** A 15/10/18 DEVELOPMENT APPLICATION B 13/09/19 DA AMENDMENTS C 15/10/19 DA AMENDMENTS D 11/08/21 DA AMENDMENTS	**Notes** All drawings to be read in conjunction with Architectural schedules + specifications. Architectural drawings are subject to further co-ordination with Structural, Civil, Building Services and relevant disciplines.	**Consultants** Project Manager NORTHERN BEACHES COUNCIL Planner Structural Engineer TTW Mechanical Engineer NORTHROP Electrical Engineer NORTHROP	**Client** northern beaches council **Architect** WARREN AND MAHONEY	**Project Title** Mona Vale Surf Club Surf View Road, Mona Vale, NSW All dimension to be verified on site before producing shop drawings or commencing any work. Do not scale. The copyright of this drawing remains with Warren and Mahoney Architects Ltd.	**Drawing Title** NORTH & EAST ELEVATIONS **Drawing Status** FOR CONSTRUCTION	**Drawing Details** Scale 1 : 100@ A1 Date 13/09/2021 3:49:36 PM Job No 8089 Drawn Author Checked Checker **Drawing No** A.DA.20.001 **Revision** D



1 SOUTH ELEVATION
1 : 100



2 WEST ELEVATION
1 : 100

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Revisions

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Project Manager
NORTHERN BEACHES COUNCIL
Planner
Structural Engineer
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Electrical Engineer
NORTHROP

Client
northern beaches council

Architect
WARREN AND MAHONEY

Project Title
Mona Vale Surf Club
Surf View Road, Mona Vale, NSW

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Drawing Title
SOUTH & WEST ELEVATIONS

Drawing Status
FOR CONSTRUCTION

Drawing Details

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Drawn	Author
Checked	Checker

Drawing No A.DA.20.002
Revision D