



northern  
beaches  
council

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 2 FEBRUARY 2022**

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

**Peter Robinson**  
**Executive Manager Development Assessment**

**Panel Members**

Peter Biscoe	Chair
Kara Krason	Town Planner
Graham Brown	Town Planner
Lloyd Graham	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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



## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 2 February 2022

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 15 December 2021	
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS</b>	<b>5</b>
4.1	DA2021/1522 - 189 Riverview Road, Avalon Beach - Demolition works and construction of a dwelling house	5
<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS</b>	<b>94</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
5.1	DA2021/1593 - 377 Sydney Road, Balgowlah - Construction of a advertising structure	94
5.2	Mod2021/0668 - 48A Queenscliff Road, Queenscliff - Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building	113
5.3	Mod2021/0761 - 9999 Pittwater Road, Brookvale - Modification of Development Consent DA2019/1190 for construction of a new grandstand and centre of excellence	151
5.4	DA2021/2093 - 20/31-35 Delmar Parade, Dee Why - Alterations and additions to a residential flat building	166
5.5	Mod2021/0647 - 96-97 North Steyne, Manly - Modification of Development Consent DA 272/2017 for Alterations and additions to an existing Residential Flat Building	200
5.6	Mod2021/0876 - 16 Grandview Drive, Newport - Modification of Development Consent DA2020/1260 granted for Construction of a secondary dwelling	232

## **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 15 DECEMBER 2021**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 15 December 2021 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/1522 - 189 RIVERVIEW ROAD, AVALON BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
AUTHORISING MANAGER	Tony Collier
TRIM FILE REF	2022/031095
ATTACHMENTS	1 Assessment Report 2 Site Plan and 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.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1522 for Demolition works and construction of a dwelling house at Lot C DP 381427 & LIC 567410, 189 Riverview Road, Avalon Beach subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1522
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<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot C DP 381427, 189 Riverview Road AVALON BEACH NSW 2107 Lot LIC 567410, 189 Riverview Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	James Paul Durie
<b>Applicant:</b>	James Paul Durie

<b>Application Lodged:</b>	30/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	02/12/2021 to 16/12/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	56
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 2,725,000.00
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### EXECUTIVE SUMMARY

This development application seeks consent for the demolition of existing structures on the site, preparation works and the construction of a new dwelling house with swimming pool.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to public interest as more than 50 objections to the proposal have been received.

Concerns raised in the objections relate to impact on biodiversity and particularly, the Pittwater Spotted Gum Endangered Ecological Community. Concerns were also raised about the scale of the building and consequent amenity impacts on both the public and private domain.

The applicant elected to redesign the proposal in response to the community and Council concerns that had been raised. The subsequent amended plans reduce the footprint of the building, redesign the facades and reduce the quantum of tree removal from 17 trees to 11 trees. Tree removal is the most contentious issue raised by the community and therefore, the following notes provided by Council's Landscape Officer are relevant with regards to the 11 trees to be removed:

- Tree T1, T2 and T3 - these are exempt species and can be removed without Council's approval.
- Trees 3b, 10, 11 and 20 - these trees are all identified as being in poor health with a low retention value as a result of being suppressed by more significant canopy trees, as well as the presence of borers and termites.
- Tree T18 - is identified as being in poor health with a number of dead limbs and a termite nest in the lower canopy.
- Tree T21 - is identified as being impacted by termites with visible decay present.
- Tree T28 - is identified as having a poor canopy development, likely a result of previous construction works that saw hard surfaces and retaining walls within its TPZ.
- Tree T38 - is identified as having visible decay and is in a period of decline.

The above refers to all of the trees that are proposed to be removed.

This report therefore considers that the proposed impacts on vegetation are acceptable and are appropriately compensated via conditions and new plantings. The impacts caused by the development upon adjoining land have been significantly lessened in the amended plans and, consequent of those, are considered to be acceptable subject to conditions.

The public interface of the development to Riverview Road and to the Pittwater waterway is considered to be acceptable and maintains the bushland character of the locality.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions as recommended.

## **PROPOSED DEVELOPMENT IN DETAIL**

Development Consent is sought for the demolition of the existing dwelling and for the construction of a new detached dwelling house inclusive of an elevated swimming pool.

Specifically, consent is sought for the following works:

- Demolition of existing two-storey dwelling, stone driveway and pathways on the eastern half of the lot.
- Excavation and fill works to the existing lower-ground floor level of the current dwelling (approx. 382m<sup>3</sup>).
- Removal of eleven (11) trees including three (3) exempt species that do not require Council approve to be removed (identified as Trees 1, 2 and 3), four (4) trees identified as being in poor health with a low retention value (Trees 3b, 10, 11, 20), two trees that are identified as being impacted by termites (Tree 18 and 21), and two (2) trees with poor development and/or decline (Tree 28, 38).
- Construction of a tiered dwelling house across six levels.
- Construction of an elevated swimming pool on 'Level - 2'.
- Construction of external timber stairs and inclinator to the northern edge of the dwelling.
- Associated landscaping works including the planting of sixteen (16) new canopy trees and 1,742 other plants as specified in the Planting Schedule.

The building proposed is to be finished with glazing, vertical gardens, sandstone cladding, semi-open breezeblock walls and timber batons. The building is to be topped with a 304m<sup>2</sup> living green roof.

## AMENDED PLANS

Council wrote to the applicant on 22 October 2021 outlining a number of concerns with the application that had been identified by Council and the community. The applicant responded to these concerns in late November by submitting a revised design and accompanying documentation. The revised plans (as described above) were re-exhibited and form the basis of this assessment.

Herein, these revised plans are referred to 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

Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality  
Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community  
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation  
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 - C1.19 Incline Passenger Lifts and Stairways  
Pittwater 21 Development Control Plan - D1.8 Front building line  
Pittwater 21 Development Control Plan - D1.9 Side and rear building line  
Pittwater 21 Development Control Plan - D1.11 Building envelope  
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

Pittwater 21 Development Control Plan - D1.16 Fences - Flora and Fauna Conservation Areas

**SITE DESCRIPTION**

<b>Property Description:</b>	<p>Lot C DP 381427 , 189 Riverview Road AVALON BEACH NSW 2107</p> <p>Lot LIC 567410 , 189 Riverview Road AVALON BEACH NSW 2107</p>
<b>Detailed Site Description:</b>	<p>The subject property is legally described as Lot C in Deposited Plan 381427 and is known as 189 Riverview Road, Avalon Beach.</p> <p>The site falls within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan. The very western edge of the site is bound by the W1 Natural Waterways zone.</p> <p>The site is generally trapezoidal in shape with a width to the street of 18.2m and depths of 60.35m and 59.13m.</p> <p>The site presently accommodates a stone driveway and parking platform to the front of the site. A one and two storey older dwelling sits centrally within the site. The western half of the site has been newly landscaped with a series of pathways and stairways leading to a timber jetty and slipway on the waters edge.</p> <p>Topographically the site slopes steeply from the street to the water (east to west) by 32m via a reasonable consistent slope. Several large rock outcrops and rock shelves, including a cave, exist on the site, generally in the western half of the site.</p> <p>The site accommodates mature vegetation throughout including numerous established native trees that form part of the wider Pittwater Spotted Gum endangered ecological community.</p> <p>Surrounding properties consist of other detached dwelling houses of varying age, size and construction.</p>

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of



Section 4.15 Matters for Consideration	Comments
(EP&A Regulation 2000)	<p>consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested and provided by the applicant in November 2021, and was re-notified to surrounding neighbours.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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 02/12/2021 to 16/12/2021 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 56 submission/s from:

Name:	Address:
Mr Christopher John Zonca Mrs Kylie Herbst	174 Riverview Road AVALON BEACH NSW 2107
Mr Anthony Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Henry Coleman	12 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Premananda Grace	Address Unknown
Mr Darren Joseph Drew	166 Riverview Road AVALON BEACH NSW 2107
Mr Keith James Woodward	182 Riverview Road AVALON BEACH NSW 2107
Mr Eric Leon Gumley	724 Barrenjoey Road AVALON BEACH NSW 2107
Ben Reay	4 Bilga Avenue BILGOLA PLATEAU NSW 2107
Harrison West	22 Coonanga Road AVALON BEACH NSW 2107
John Sheehan	Address Unknown
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Mrs Helen Jean Mackay	53 Hilltop Road AVALON BEACH NSW 2107
Mr Peter Allan L'Green Mrs Vicki Ann L'Green	1 Shore Brace AVALON BEACH NSW 2107
Ms P King	38 Riverview Road AVALON BEACH NSW 2107
Mrs Marita Ann Macrae	24 Catalina Crescent AVALON BEACH NSW 2107
Dr Rohan Thomas Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Mrs Michele Lillian Petrie	185 Riverview Road AVALON BEACH NSW 2107
Mrs Karen Lorraine Alchin	49 Riverview Road AVALON BEACH NSW 2107
Ms Linda Anita Jansen	4 Mariposa Road BILGOLA PLATEAU NSW 2107
Mr Mark Ernest Alchin	49 Riverview Road AVALON BEACH NSW 2107
Mr Mark Graham Pearsall	10 Beauty Drive WHALE BEACH NSW 2107
Mr Stuart Mackenzie Walker	28 Riviera Avenue AVALON BEACH NSW 2107
Pittwater Natural Heritage Association	PO Box 187 AVALON BEACH NSW 2107
Dr Kathrin Zeleny	24 Edward Street NORTH SYDNEY NSW 2060
Ms Danielle Janice	13 York Terrace BILGOLA PLATEAU NSW 2107

Name:	Address:
Bressington	
Mr Hubert Reinhold Habicht	1 B Urara Road AVALON BEACH NSW 2107
Mrs Debbie Anne Banham	29 Binburra Avenue AVALON BEACH NSW 2107
Ms Karin Locke Richards	PO Box 293 AVALON BEACH NSW 2107
Sylvia Saszczak	Address Unknown
Ms Beverley May Wilson	29 Elvina Avenue AVALON BEACH NSW 2107
Mrs Prudence Wawn	47 Riverview Road AVALON BEACH NSW 2107
Ms Susan Mary Holliday	16 Cabarita Road AVALON BEACH NSW 2107
Ms Maryse Dinusha Peiris	203 Riverview Road AVALON BEACH NSW 2107
Vanessa Louise Lenthall	67 Hastings Parade NORTH BONDI NSW 2026
Planning Progress	Po Box 213 AVALON NSW 2107
Mr Robert Harold Lawrenson	193 Riverview Road AVALON BEACH NSW 2107
Mr Robert Hamilton Reeves	176 Riverview Road AVALON BEACH NSW 2107
Ms Amanda Barton Maple-Brown	168 Riverview Road AVALON BEACH NSW 2107
Mr Brendan James Donoghue	168 Riverview Road AVALON BEACH NSW 2107
Ms Margaret Jean Richardson	15 Trappers Way AVALON BEACH NSW 2107
Nathalie Cuthbertson	4 Coonanga Road AVALON BEACH NSW 2107
Clareville & Bilgola Plateau Residents Association	PO Box 292 AVALON BEACH NSW 2107
Ms Miranda Maragret Korzy	80 Wandeen Road CLAREVILLE NSW 2107
Wendy Gleen	Address Unknown
Mrs Lillian Elaine Walter	30 Trappers Way CLAREVILLE NSW 2107
Ms Robin Anne Plumb	35 George Street AVALON BEACH NSW 2107
Ms Sandra Kay Tyson	27 Catalina Crescent AVALON BEACH NSW 2107
Councillor Kylie Ferguson (Former Councillor)	Address Unknown
Ms Diana Smythe	207 Riverview Road AVALON BEACH NSW 2107
Mr Michael Brian Hall	201 Riverview Road AVALON BEACH NSW 2107
Natalie Cuthbertson	4 Coonanga Road AVALON BEACH NSW 2107
Mrs Susan Christine Martin	19 Hudson Parade AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Francis Benjamin Welsh	33 Hilltop Road AVALON BEACH NSW 2107
Mrs Kirsten Anne Welsh	33 Hilltop Road AVALON BEACH NSW 2107
Mr Philip Cohen	15 Cabarita Road AVALON BEACH NSW 2107

The application was publicly exhibited twice (the second (and most recent) being consequent of the amended plans).

47 submissions were received in response to the first exhibition of the application (noting that several of

those are duplicates). 18 submissions were received in response to the second exhibition of the application regarding the revised plans. Of the total submissions received, two (2) were received in support. The content of the submissions between the first and second exhibition did not materially change and the objections received remain.

The issues raised in the submissions have generally been categorised under the following themes, and each are addressed below:

- **Impact on vegetation, tree removal, Pittwater Spotted Gum EEC**
- **Built form compliance, building bulk and size of dwelling**
- **Site frontage and views from Riverview Road**
- **View sharing from private properties**
- **Visual and acoustic privacy**
- **Overshadowing**
- **Land use**
- **Rainwater absorption and stormwater management**
  
- **Erection of height poles**
- **Impact on property value**
- **Creation of a precedent**
- **Floor Space Ratio and Desired Character**
- **Aims of the Plan (PLEP)**
- **Objectives of the zone**
- **Consideration of DA2020/1338 & DA2019/0380**
- **Traffic congestion and management of construction traffic**

The matters raised within the submissions are addressed as follows:

- **Impact on vegetation, tree removal, Pittwater Spotted Gum EEC**

Comment

Every submission received raised concern to the removal of vegetation, particularly the Pittwater Spotted Gum Endangered Ecological Community.

The revised plans received minimise the number of trees required to be removed. A number of submissions received are of the opinion that the revised plans have not encompassed any noteworthy change, however that position is not agreed with as it is found that significant alterations to the footprint of the building and extensive root mapping has determined the building's location.

Detailed commentary on these matters can be found later in this report by Council's Landscape Officer and Bushland and Biodiversity Officers who, after review of all revised documentation, are satisfied with the proposal subject to stringent protection conditions for the lifetime of the development.

- **Built form compliance, building bulk and size of dwelling**

Comment

A number of submissions received object to the proportions of the dwelling and attribute that massing to built form non-compliances.

The proposal does not display any level of non-compliance to the built form controls that would be unexpected given the topographical constraints of the land. The proposal does not comply with the building envelope, front setback, landscaped area and (for an external staircase) the side setback. Each of these matters is discussed in detail under their respective clauses later in this report.

In summary it is found that each of the non-compliances is acceptable and, in most instances, is supported by variation provisions built into the Pittwater 21 Development Control Plan.

- **Site frontage and views from Riverview Road**

Comment

Concern is raised in a number of submissions regarding the site's frontage with regards to the built form treatment and the impact on public views. This matter is discussed in detail throughout this report but in summary, the garage is considered to be acceptable and well-designed but the front fence is considered excessive in height (2.1m) and is conditioned to be lowered to a maximum height of 1.0m.

- **View sharing from private properties**

Comment

Concern has been raised from Nos. 187 and 174 Riverview Road that they will experience view loss caused by the proposed development. This matter is discussed in detail later in this report. In summary the extent of view loss caused by the development is not considered sufficient to warrant the refusal of the application.

- **Visual and acoustic privacy**

Comment

Concern has been raised by adjoining properties that the proposal, particularly the swimming pool area, may detract from their existing provision of visual and acoustic privacy.

Visually it is not considered that the swimming pool or decks throughout the building would cause any unreasonable degree of overlooking into neighbouring properties. Where a minor impact may exist it could be remedied through the use of privacy screening, however that may result in a more severe view or visual bulk impact. On that basis visual privacy is considered acceptable.

The use of the site for the purpose of a dwelling house is not considered to cause any unreasonable acoustic impacts to neighbours. A condition is imposed which requires the swimming pool equipment to be located or designed in such a fashion to minimise any acoustic intrusion.

- **Overshadowing**

Comment

Concern is raised by the property to the south that the proposal would unreasonably overshadow their home. The revised plans received have pulled the built form away from the southern boundary at several levels which have significantly reduced the degree of overshadowing experienced at mid-day (the period where the most significant degree of



overshadowing was occurring). The amended plans include detailed shadow analysis which demonstrate compliance with the requisite DCP controls and as such, this matter does not warrant the refusal of the application.

- **Land use**

Comment

Several submissions received query whether the proposal is a "family home" (dwelling house) given the lower two levels of the house that are not internally connected to the rest of the building. No approval is sought for any use other than a dwelling house and a condition is recommended to be imposed requiring such a use. Should that use be changed in the future it will be subject to a development application.

- **Rainwater absorption and stormwater management**

Comment

Concern is raised that the footprint of the building will minimise the degree of rainwater absorption commensurate to the existing building. It is true that the building footprint is larger than the existing building, however the stormwater management system and rainwater absorption has been assessed as satisfactory.

- **Erection of height poles**

Comment

Several submissions received requested height poles to be erected to ascertain view loss from both the public and private domain. The applicant was not requested to erect height poles for several reasons including the fact that the purported view loss is understood without the need for height poles (i.e., the garage), the topography of the land causing difficulties in erecting and maintaining height poles and, given that the site is heavily vegetated currently which lessens the ability to see the poles themselves from neighbouring properties.

Sufficient information has been supplied by objectors and has been observed on site to ascertain an accurate depiction of view loss, which is elaborated upon later in this report.

- **Impact on property value**

Comment

Several submissions raise concern that the development will devalue their properties. Property value is not a matter for consideration under the section 4.15 of the Environmental Planning and Assessment Act 1979.

- **Creation of a precedent**

Comment

Concern is raised in several submissions that the scale of the proposed dwelling may become a precedent for future developments within the locale. Precedence is not a metric used to assess development applications, rather the applicable DCP and LEP controls are. In this respect, the development does not create a precedent and this matter does not warrant the refusal of the application.

- **Floor Space Ratio and desired character**

Comment

A submission received states that the Floor Space Ratio (FSR) of the development is 0.65:1 and is therefore incongruous with the desired character of the locale. FSR is not an applicable control under the relevant environmental planning instruments.

- **Aims of Plan (PLEP)**

Comment

The aims of the Pittwater Local Environmental Plan 2014 are considered to be satisfactorily achieved.

- **Objectives of the zone**

Comment

The objectives of the C4 Environmental Living zone are considered to be satisfactorily achieved.

- **Consideration of DA2020/1338 and DA2019/0380**

Comment

A submission received refers to recent view loss assessments in the above-mentioned development applications. A comparison between applications is not a practical exercise as each application is considered on its own merits. The consideration of one application does not translate to policy or guidance in how every application must be considered.

- **Traffic congestion and management of construction traffic**

Comment

Concern is raised that the construction of the development may cause traffic congestion. The Riverview Road and Cabarita Road northern peninsula is commonly subject to houses renovating and therefore construction traffic is nothing new on this road. Notwithstanding that, a condition is included in the recommendations of this report that a Construction Traffic Management Plan be prepared and approved prior to the commencement of works.

## REFERRALS

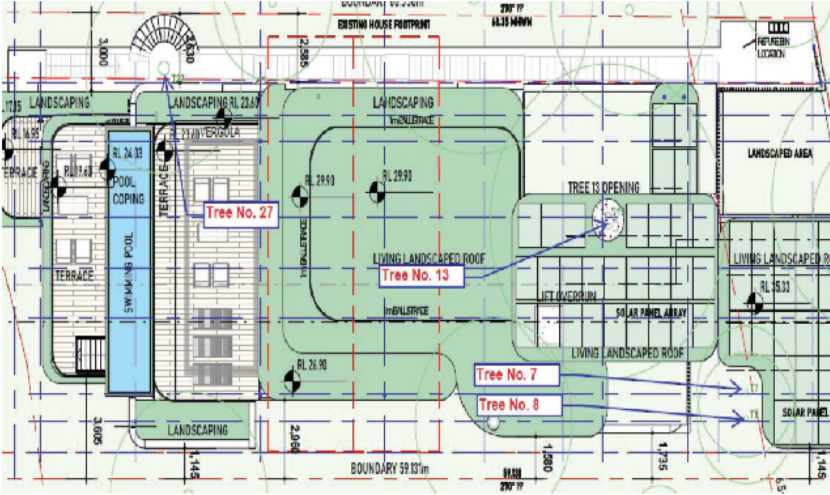
Internal Referral Body	Comments
Landscape Officer	<p><b><i>Supported, with conditions</i></b></p> <p><b>Final Landscape Comments - 17/01/2022</b></p> <p>Following issue of updated and amended plans and reports, the Landscape Referral is assessed by an alternate Landscape Officer (Senior Landscape Architect).</p>

Internal Referral Body	Comments
	<p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1 Avalon Locality, including: D1 Character as viewed from a public place.</li> </ul> <p>The site is located in the C4 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 C4 Environmental Living zone.</p> <p>A Landscape Plan and an Arboricultural Impact Assessment is submitted with the development application. No concerns are raised in respect of the Landscape Plan subject to conditions of consent. Locally native tree replacement is proposed as well as mass planted gardens and planters. It is noted that eight existing Spotted Gum trees within the lower slopes, identified as tree numbers 31, 33, 34, 35, 36, 27, 38 and 39 in the Arboricultural Impact Assessment are retained and thus, along with the retention of rock outcrops, provide the preservation of natural landscape features to satisfy the objectives of the C4 Environmental Living zone to the lower slopes of the property. The upper slope of the property includes the retention of existing trees in proximity to the proposed development works, and the Arboricultural Impact Assessment provides review following tree root investigations of the arboricultural impacts and concludes the existing trees are able to be preserved and subject to tree protection measures.</p> <p>The Arboricultural Impact Assessment report dated November 2021 provides tree root mapping investigation and assessment to alleviate the concerns raised in previous Landscape Referral comments. The report notes that the tree protection zone and structural root zone radial distance assessment is impacted by the presence of underlying bedrock and exposed floaters/outcrops and site review of tree root impact is based on site observations.</p> <p>The following arboricultural assessment is submitted in the Arboricultural Impact Assessment: eighteen existing trees within the property are</p>

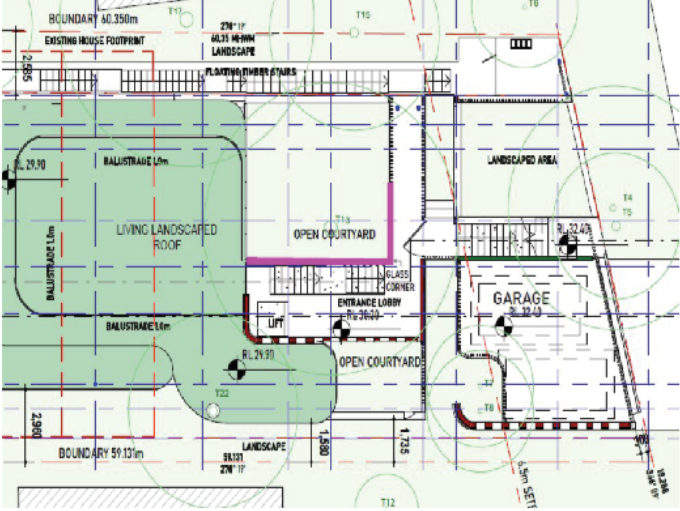
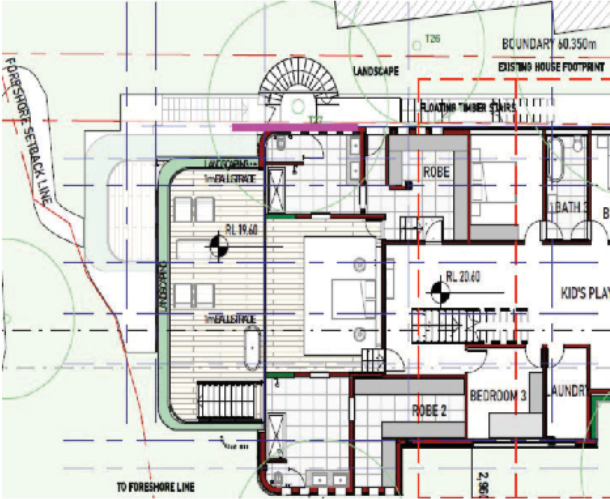


Internal Referral Body	Comments
	<p>assessed for retention; eight are proposed for removal due to development impact or tree health issues (excluding any exempt species) within the property; two existing street trees are preserved; and the Arboricultural Impact Assessment concludes that existing trees located within adjoining properties in proximity to development works, following tree root investigations where necessary, are not impacted by the development works, subject to tree protection measures.</p> <p>A Project Arborist shall be engaged to supervise and approve all development works upon the site near existing tree numbers 13, 22, and 27 within the property and tree numbers 17 and 23 within adjoining properties.</p> <p>Of concern, but ultimately subject to the Planning Officers assessment, is the proposed garage and timber batten structure that presents to the streetscape. Under DCP control D1 Character as viewed from a public place, "Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place" and there is no landscape treatment to soften the proposed dominance and impact, and additionally the public view of water is removed and the DCP outcomes to preserve and enhance local views is lost.</p> <p>Should the Planning Officer consider the development to be acceptable on planning merits, Landscape Referral raise no objections.</p> <p><b>Second Landscape Comments – 20/12/2021</b></p> <p>Following original concerns raised regarding significant tree removal and the impacts of proposed works on trees to be retained, amended Architectural Plans and an Arboricultural Impact Assessment have been provided with the application.</p> <p>The Arboricultural Impact Assessment and subsequent tree report provided with the application has identified a total thirty-nine trees, six of which are located in the adjoining property to the north, four are located in the adjoining property to the south, two in the road reserve alongside the remaining twenty-seven located within the site boundaries. Of these thirty-nine trees identified, eleven trees, including Tree No. 1, 2, 3, 3b, 10, 11, 18, 20, 21, 28 and 37, have been proposed to be removed. Trees No. 1, 2 and 3 have been identified as exempt species, and therefore do not require Council's approval to be removed. For this reason, no major concern is raised with the removal of these three trees. Trees No. 3b, 10, 11 and 20 have all been identified as being in poor health with a low</p>

Internal Referral Body	Comments
	<p>retention value largely as a result of being suppressed by more significant canopy trees, as well as the presence of borers and termites. Tree No. 18 contains a visible termite nest in the lower canopy, with a number of dead limbs present as well. For this reason, Tree No. 18 has also been identified as being in poor health with a low retention value. Tree No. 21 is also impacted by termites, with visible decay present. Tree No. 28 has been identified as having a poor canopy development, likely a result of previous construction works that saw hard surfaces and retaining walls constructed within its TPZ. Finally, Tree No. 38 has been identified as having visible decay and in a period of decline, hence removal of this tree has been proposed. Considering all the above information, the removal of these trees can be supported as it is clear these trees have less than optimal health and are likely to further decline in the future which could possibly pose a risk to both property and life. It is noted the Landscape Plan provided proposes three significant canopy trees as replacement, alongside a number of smaller trees and shrubs to return landscape amenity and canopy coverage to the site.</p> <p>Concern is raised as a number of trees, including Tree No. 4, 5, 7 and 8, have not been assessed with regards to potential impacts as a result of proposed works. Trees No. 4 and 5 are existing street trees located within the road reserve at the front of the property. The demolition plan, Drawing No. 001-120, demonstrates that the existing stone driveway and stone retaining wall located at the front of the site within the TPZ and SRZ of these trees is to be removed. The removal of these structures is likely to negatively impact the health and potentially the structural integrity of these trees which is not likely to be supported. Trees No. 7 and 8 are located adjacent to the proposed garage, with a tree root investigation also taking place where the proposed pier footing is to be located. The Arboricultural Impact Assessment states no significant roots (greater than 20mm) are to be removed; however, this hole, identified as Hole 1, has uncovered a large tree root that does appear to be far greater than 20mm, and would require removal. The width of this root has not been identified in the Arboricultural Impact Assessment. No discussion has been made regarding the implication of this root being removed, hence concern is raised regarding the on-going health of these trees should proposed works proceed in this location.</p> <p>As there have been no discussions of proposed works and the likely impacts on these four trees, it is currently unclear as to whether these can successfully be retained. For this reason, it is recommended that an amended Arboricultural Impact Assessment be provided with the application exploring the impacts of proposed works on these four trees. Should investigations determine these trees cannot be safely retained and preserved, it is recommended an alternative layout should be sought.</p> <p>Following concerns raised regarding the impacts of proposed works on trees in adjoining properties, a number of tree root investigations have taken place. These investigations, excluding Hole 1, have not identified any significant roots, hence the impacts of proposed works appear to be manageable and are not anticipated to negatively impact trees in these adjoining properties. Subject to recommended tree protection measures,</p>

Internal Referral Body	Comments
	<p>including the appointment of a Project Arborist to supervise works, the impacts on these trees are manageable and can be supported.</p> <p>The two most significant trees located within the site, identified as Trees No. 13 and 27, have now been retained, with a number of tree root investigations taking place to determine the likely impacts of proposed works on existing root structures. Although this is seen as a positive, and it is clear work has been done to retain these trees, concern is still raised as these trees, in addition to Trees No. 7 and 8, fall within 2 metres of the proposed building. Should the plans be approved with the current layout, Trees No. 7, 8, 13 and 27 may all be removed without approval under the tree removal provisions outlined in control B4.22. The implications of this are significant as the total number of trees likely to be removed increases, including the two most value, biodiversity rich trees within the site. For this reason, it is recommended that further design alterations be made, ensuring that proposed works are at least 2 metres clear of proposed works to not only minimise impacts but also ensure they are retained in the long-term. The proximity of these trees to the proposed building can be seen in the image below:</p>  <p>It is noted tree root investigations have taken place adjacent to Trees No. 13 and 27; however, concern is raised as these tree root investigations do not appear to have been completed on the edge of proposed works. Hence, these investigations do not provide an accurate depiction of the existing roots and what is likely to be impacted by the proposed works. In order to ensure proposed works do not impact significant roots of these two trees, it is recommended that additional tree root investigations take place in the locations as depicted by the PINK line in the below images. Should design alterations be made to ensure greater clearance from these trees, the tree root investigations should take place on the edge of the proposed works, similar to that depicted in the below images:</p>



Internal Referral Body	Comments
	 <p>Required tree root investigation location for Tree No. 13.</p>  <p>Required tree root investigation location for Tree No. 27.</p> <p>In light of the above concerns, the landscape component is therefore not currently supported. It is recommended that an amended Arboricultural Impact Assessment be provided detailing the likely impacts of proposed works on Trees No. 4, 5, 7 and 8, with site specific tree protection measures recommended to ensure these trees are successfully retained and adequately protected. Should this investigation find proposed works are to have TPZ encroachments greater than 10% or any SRZ impact, further tree root investigations are required in accordance with AS4970-2009, specifically Clause 3.3.3 Major Encroachment. Additionally, it is recommended that an alternative design layout be sought ensuring that proposed buildings are located at least 2 metres from trees to be retained. This is particularly important for Trees No. 13 and 27. Following this, additional tree root investigations are required to take place in the locations depicted in the above images, or on the edge of proposed works. Should</p>

Internal Referral Body	Comments
	<p>these investigations determine no significant roots are found and no detrimental impacts on these trees is likely, the landscape component of the proposal could be supported subject to conditions of consent.</p> <p>Upon the receipt of the required information, further assessment can be made.</p> <p><b>Original Landscape Comments - 10/09/2021</b></p> <p>This application is for demolition of an existing residential dwelling, and the construction of a new residential dwelling, inclusive of a swimming pool, double garage and new landscape works.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environmental Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1.14 Landscaped Area - Environmentally Sensitive Land</li> <li>• D1.20 Scenic Protection Category One Areas</li> </ul> <p>The Statement of Environmental Effects provided with the application notes that a number of trees are required to be removed in order to facilitate proposed works. This statement is largely supported by the Architectural Plans as it is evident a significant number of trees are proposed to be removed. It is further noted that an Ecology Report has been provided alongside the application, however an Arboricultural Impact Assessment has not.</p> <p>Generally, there a number of concerns raised with the proposal, largely relating to the removal significant, high value, native canopy trees, as well as the impacts of proposed works on those trees proposed to be retained. The Ecology Report provided has noted that a total of seventeen native canopy trees are to be removed, sixteen of which are from the Pittwater Spotted Gum Forest, an Endangered Ecological Community (EEC). Nine trees are proposed to be retained, all of which are located below the Foreshore Building Line. Two additional trees also appear to be retained within the road reserve at the front of the site.</p> <p>It is noted that a Pre-Lodgement Meeting was conducted for this site, with Biodiversity Advice recommending the redesign of the built form and site layout to ensure Trees No. 13 and 27 be retained. Tree No. 13 and 27 are of particular high value, and efforts should be made to retain these. Landscape comments also recommended that an alternative building layout be sought, particularly in the eastern portion of the site, preventing the removal of a number of significant native trees. It is evident that limited re-design has occurred, as both of these two high value trees, as well as trees towards the eastern boundary, are proposed for removal. Considering the bulk and scale of the building, it is recommended again that the site layout be re-visited, exploring opportunities to retain these two</p>

Internal Referral Body	Comments
	<p>trees and other high value vegetation. That being said, the need for this is to be determined following advice by both the Planning and Biodiversity Teams respectively.</p> <p>Further concern is raised regarding the impacts of proposed works on trees to be retained, specifically on those trees located in adjoining properties as well as the road reserve. Trees in neighbouring properties are considered prescribed, irrespective of species and height, and must therefore be protected and retained throughout proposed works. Any negative impacts towards the short-term and long-term health of these trees would likely not be supported. The Tree Protection Zone Diagram demonstrated that the proposed dwelling is to have an encroachment of 8.97% into the Tree Protection Zone (TPZ) of Tree No. 15, a 13.89% TPZ encroachment for Tree No. 24, and a 15.41% TPZ encroachment for Tree No. 26. These encroachments into the TPZ of Trees No. 24 and 26 are in addition to existing TPZ encroachments as result of the existing dwelling, meaning Tree No. 24 has a total encroachment of 17.69%, with the total for Tree No. 26 equalling 19.89%. Trees No. 4 and 5 are both located within the road reserve adjacent to the eastern boundary and have expected TPZ encroachments of 23.41% and 22.23% respectively, with both Structural Root Zones (SRZ) impacted as well. In addition, Tree No. 23, located in the neighbouring property to the south is also likely to be impacted by proposed works, with the proposed dwelling encroaching a total of 29.24% into the TPZ, an increase of 15.53% when compared to the existing dwelling and site conditions. It is clear that proposed works are expected to have a significant impact of these trees, with the potential to negatively impact the health and vitality of these existing trees long term. As no Arboricultural Impact Assessment has been provided, the true impacts of these works are not fully known. For this reason, it is therefore recommended that an Arboricultural Impact Assessment be provided with the application in accordance with Councils Development Application Lodgement Requirements. This Arboricultural Impact Assessment is required to investigate the proposed works, including the required excavation, and determine the likely impacts these are to have on existing trees to be retained. The removal of any of these trees, in addition to the significant tree removal already proposed, would likely not be supported. It should be noted that any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009, specifically <i>Clause 3.3.3 Major Encroachment</i>.</p> <p>The retention of existing native canopy trees is vital to satisfying control B4.22 as key objectives of this control include "to effectively manage the risks that come with an established urban forest through professional management of trees", "to protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". The retention of existing vegetation is also necessary to satisfy control D1.20, as key objectives of this control include "to achieve the desired future character of the locality", as well as "to maintain and enhance the natural environment of Pittwater as the predominant feature</p>

Internal Referral Body	Comments
	<p>of the landscape with built form being a secondary component".</p> <p>The landscape component of the proposal is therefore not currently supported due to the significant impacts of proposed works on existing trees and vegetation. It is recommended that an alternative building design and site layout be sought, exploring the retention of key native trees, including Trees No. 13 and 27, as well as other significant vegetation towards the eastern boundary. In addition, it is also recommended that an Arboricultural Impact Assessment be provided with the application in accordance with Councils Development Application Lodgement Requirements. This Arboricultural Impact Assessment is required to investigate the proposed works and determine the likely impacts these are to have on existing trees to be retained. It should be noted that any encroachment into the TPZ of existing trees by greater than 10%, or any encroachment into the SRZ, is deemed to be major, and therefore requires a tree root investigation in accordance with AS4970-2009, specifically <i>Clause 3.3.3 Major Encroachment</i>.</p> <p>Upon the receipt of the required information and documentation, further assessment can be made.</p>
NECC (Bushland and Biodiversity)	<p><b>Supported, with conditions</b></p> <p>The application seeks approval for the demolition of an existing dwelling, and construction of a new dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act) and Regulation 2017 State Environmental Planning Policy (Coastal Management)</b></p> <ul style="list-style-type: none"> <li>Coastal Environment Area</li> </ul> <p><b>Pittwater Local Environmental Plan (PLEP)</b></p> <ul style="list-style-type: none"> <li>7.6 Biodiversity Protection</li> </ul> <p><b>Pittwater Development Control Plan (PDCP)</b></p> <ul style="list-style-type: none"> <li>B4.7 Pittwater Spotted Gum Forest</li> </ul> <p><b>Final Comments - 11/01/2022</b></p> <p>Council's Biodiversity referral team note the submission of an amended Architectural Plan, in combination with an amended Arboricultural Impact Assessment and Management Plan (Botanics 2021) and Biodiversity Development Assessment Report (ACS Environmental 2021).</p> <p>On review of the amended plans against the concerns raised by Council's Biodiversity referral team (7/10/2021), the following is noted:</p>



Internal Referral Body	Comments
	<ol style="list-style-type: none"> <li>1. A finalised Arboricultural Impact Assessment and Management Plan has now been provided.</li> <li>2. Impact assessment and species identification is now consistent between the submitted Biodiversity Development Assessment Report (BDAR) and Arboricultural impact Assessment.</li> <li>3. Additional measures to avoid and minimise biodiversity impacts have been included within the proposal, including an amended design and are discussed within the BDAR.</li> </ol> <p>According to the amended Arboricultural Impact Assessment and Management Plan, the application will require the removal of eleven (11) trees, including:</p> <ul style="list-style-type: none"> <li>• T1, 2 &amp; 3 - <i>Ligustrum lucidum</i> (exempt - species)</li> <li>• T3b, 10, 11, 20 &amp; 21 - <i>Allocasuarina torulosa</i></li> <li>• T18 - <i>Eucalyptus umbra</i></li> <li>• T28 &amp; 37 - <i>Corymbia maculata</i></li> </ul> <p>All trees proposed for removal appear to be located within the site and are located within or in close proximity to the building footprint, with the exception of T37 (<i>Corymbia maculata</i>) which is located below the foreshore building line and is not designated for removal in amended Architectural Plans (DurieDesign 2021a; Drawing 001-200 - 001-206) nor the Landscape Plans (DurieDesign 2021b). Inadequate justification is provided for the removal of this tree, and its depicted removal is assumed to be an error and should be amended within the submitted Arboricultural Impact Assessment and Management Plan (Botanics 2021) and 'Existing and Demolition Plan' (DurieDesign 2021a; Drawing 001-120).</p> <p>Tree 1, 2 and 3 (<i>Ligustrum lucidum</i>) are a former noxious weed species and are exempt within the Northern Beaches, therefore no objection is raised to their removal. All other trees proposed for removal are prescribed, and require approval for removal.</p> <p>The Project Arborist has determined that of the 42 trees assessed, a total of 31 (or 32 including T.37) trees can be safely retained. Of these, it is noted that only 9 are located within the property and above the foreshore building line (i.e. the developable portion of the site), and 3 of them rely on a successful transplantation for survival:</p> <ul style="list-style-type: none"> <li>• T7, 8, 13, 22 - <i>Corymbia maculata</i> (retained in-situ)</li> <li>• T27 - <i>Eucalyptus paniculata</i> (retained in-situ)</li> <li>• T29 - <i>Allocasuarina torulosa</i> (retained in-situ)</li> <li>• T19 - <i>Ceratopetalum gummiferum</i> (retained via transplantation)</li> <li>• T9, 16 - Exempt or non-locally native species (retained via transplantation)</li> </ul> <p>Depending on tree species and size, transplantation commonly has a high</p>



Internal Referral Body	Comments
	<p>failure rate, however in this instance no objection is raised by Council's Biodiversity Unit as the species are non-locally native, exempt, or otherwise do not form a part of <i>Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion</i> endangered ecological community (EEC). Below the foreshore building line, and subject to the retention of Tree 37, it is also noted that 7 prescribed trees (<i>Corymbia maculata</i>) will also continue to persist (T.31, 32, 33, 34, 35, 36 &amp; 37).</p> <p>Based on the review undertaken, it is understood that the extent of locally-native and prescribed trees that are proposed for removal to facilitate the application is either 7 of 21 (33%) throughout the entire property, or 7 of 14 (50%) above the foreshore building line only. It is also noted that the Project Arborist has determined that these 6 of these trees (T.3b, 10, 11, 18, 20, 21) proposed for removal have decay, borers and/or termites. T.18 contains a visible termite nest in the lower canopy which was observed by Council's Biodiversity Officer onsite.</p> <p>It is understood that the proposed architectural design has been amended to retain high-value trees within the site. Trees of high-significance (Tree 13 &amp; 37) are now proposed for retention, which is consistent with the advice provided by the Biodiversity Officer at pre-lodgement and the previous Biodiversity Unit recommendation (7/10/2021). Several retained trees will be in close proximity (&lt;2m) from the proposed dwelling, and therefore may be subject to a future exemption under PDGP B4.22 as noted by Council's Landscape referral team. However the Council's Biodiversity Unit raise no objection subject to a condition that these trees are maintained in perpetuity.</p> <p>In a review of the amended proposal against Section 7 of the Biodiversity Assessment Methodology (2020), Council's Biodiversity Officers found:</p> <ul style="list-style-type: none"> <li>• The proposed removal of 33% of canopy (tree count) within the site, with the retention of 50% of prescribed trees occurring above the foreshore building line (i.e. developable area of the site)</li> <li>• The proposed replanting of 6 trees (2 <i>Angophora costata</i>, 1 <i>Corymbia maculata</i>, 3 <i>Livistona australis</i>), at best resulting in a long-term loss of 4% - 8% of canopy and PSGF EEC within the site depending on the success of the transplantation of Tree 19.</li> <li>• Adequate evidence of avoidance and minimisation through retention of high value trees, specifically Tree 13 and 27 that are located within the permissible development area and are now planned for retention.</li> </ul> <p>The amended design allows for retention of high-value trees within the site, and although the current design requires the removal of 7 trees, 6 of these are compromised by decay, borers or termites and may otherwise be approved for removal under the s8(1), (2) or (3) <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>, therefore removal of these trees is considered acceptable subject to replanting proposed under the Landscape Plan, and ongoing retention of all high-value trees</p>

Internal Referral Body	Comments
	<p>within the site. A Vegetation Management Plan and Tree Protection Plan will be conditioned to protect all trees proposed for retention and to restore and maintain the currently weed-infested understorey per the recommendation of the Biodiversity Development Assessment Report (ACS Environmental 2021).</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant biodiversity controls.</p> <p><b>Original Comments- 7/10/2021</b></p> <p>Council's Biodiversity Unit do not support the proposal in its current form.</p> <p>The key concerns raised by Biodiversity include:</p> <ol style="list-style-type: none"> <li>1. A finalised Arboricultural Impact Assessment is not provided with the application.</li> <li>2. The Biodiversity Development Assessment Report (BDAR) relies on the unfinalised Arboricultural Impact Assessment, and therefore cannot be relied upon for assessment of nearby tree impacts.</li> <li>3. The BDAR does not demonstrate adequate avoidance or minimisation of biodiversity impacts in accordance with the Biodiversity Assessment Methodology 2020.</li> <li>4. The proposed impacts to Pittwater Spotted Gum Forest within the site are considered non-compliant with Clause 13 of the State Environmental Planning Policy (Coastal Management), Clause 7.6 of the Pittwater Local Environmental Plan 2014 and B4.7 of the Pittwater 21 Development Control Plan.</li> </ol> <p>Further detail on point (1) - (4) is provided below.</p> <p><b>(1)</b> The recently submitted 'Pre DA Impact Assessment and Management Plan' and 'Tree Table' (Botanics Tree Wise People 2021), appears to be conceptual and does not provide an assessment of all trees within 5m of the proposed works. An updated report, with a clear assessment of short-term and long-term impacts to all trees within 5m of the proposal is required. The report must clearly state which trees are proposed for removal. Impacts to trees within adjoining properties or the road reserve will not be supported, and must be clearly assessed by an AQF5 Arborist in accordance with PDCP 4.22.</p> <p>Council's Biodiversity Unit have undertaken a review of the submitted plans, and note that the following trees have been recommended for removal regardless of the DA:</p> <ul style="list-style-type: none"> <li>• T1 - T3 <i>Ligustrum lucidum</i> (exempt - species)</li> <li>• T16. <i>Pittosporum undulatum</i> (exempt - height &lt;8m)</li> <li>• T18. <i>Eucalyptus robusta</i> (prescribed)</li> </ul>

Internal Referral Body	Comments
	<p>No objection is made by Council's Biodiversity Unit to the removal of T1, 2, 3 &amp; 16 given their exempt status within the LGA, however concern is raised over the species identification of T18 and the below referenced trees:</p> <ul style="list-style-type: none"> <li>• T5 &amp; 18 <i>Eucalyptus robusta</i> (identified by Council's Biodiversity Officers as <i>Eucalyptus umbra</i>)</li> <li>• T8, 10, 11, 20, 21 &amp; 29 <i>Casuarina glauca</i> (identified by Council's Biodiversity Officers as <i>Allocasuarina torulosa</i>)</li> <li>• T27 <i>Eucalyptus microcorys</i> (identified by Council's Biodiversity Officers as <i>Eucalyptus paniculata</i>)</li> </ul> <p>The correct species identification must be included in any finalised Arboricultural Impact Assessment submitted for the application.</p> <p>T.18, or any other tree determined to be a 'Risk to Life or Property' by an AQF5 Arborist may be approved for removal in accordance with s8(1), (2) or (3) <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>. The planning pathway is separate from a DA Application, and must be resolved prior to lodging a DA should the applicant or their Arborist rely on this approval pathway. This process requires a concurrence from Council's Tree Services team, and a License to Pick or Harm a Threatened Species or Ecological Community from DPIE should the applicant wish to remove a tree diagnostic of the Pittwater Spotted Gum Forest EEC: <a href="https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/licences-to-control-or-harm/licences-to-harm-threatened-species">https://www.environment.nsw.gov.au/licences-and-permits/wildlife-licences/licences-to-control-or-harm/licences-to-harm-threatened-species</a></p> <p>If an approval under SEPP (Vegetation in Non-Rural Areas) has not been sought and approved prior to DA lodgement (evidence required), all tree removal will be assessed under Part 4 of the EP&amp;A and will be subject to the Biodiversity Offset Scheme and assessed by Council's Biodiversity Unit as requiring removal to facilitate the application.</p> <p><b>2)</b> The Biodiversity Development Assessment Report (BDAR : ACS Environmental 2021) states that 17 native canopy trees are proposed for removal, including, 7 <i>Corymbia maculata</i>, 2 <i>Eucalyptus umbra</i>, 5 <i>Allocasuarina torulosa</i>, 1 <i>Eucalyptus punctata</i>, 1 <i>Ceratopetalum gummiferum</i> &amp; 1 <i>Eucalyptus paniculata</i>. The BDAR makes several references to this information having been collated from the <i>Tree Table and Pre-DA Impact Assessment and Management Plan for 189 Riverview Road, Avalon Beach</i> (Botanics Tree Wise People 2021) however this report appears to be conceptual and does not provide a clear schedule of trees requiring removal. Following finalisation of the Arboricultural Impact Assessment, the BDAR must be updated to reflect the impacts specified by the Arboricultural Report.</p> <p><b>(3)</b> The proposal seeks to remove native vegetation from the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values mapping. A BDAR prepared by an Accredited Assessor in accordance with</p>

Internal Referral Body	Comments
	<p>BAM 2020 is noted within the submitted documentation.</p> <p>Section 4.3.7 of the BDAR provides an assessment of Section 7.1.2 of the BAM (2020) which requires: <i>"The BDAR or BCAR must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design, including placement of temporary and permanent ancillary construction and maintenance facilities."</i></p> <p>The assessment provided by the Accredited Assessor is limited and the impacts to the extent of Pittwater Spotted Gum Forest within the site are understated in favor of retention of cave structures. The same cave structures have also been determined to be <i>'degraded to the point that the species is unlikely to use the subject land'</i> in accordance with s.5.2.3(2)(a) (ii) of the <i>Biodiversity Assessment Methodology 2020</i> for threatened microbats. While Council's Biodiversity Unit agree that the cave habitat must be retained, the assessment provided by the Assessor that <i>"Avoidance of impacts have been achieved by avoiding any impact on cave or cliff structures that occur below the Foreshore Building Line"</i> is considered inaccurate. Further, the position that 'minimisation' of impacts have been achieved through the (unfinalised) Tree Protection Zone Management Plan (Botanics Tree Wise People 2021) which provides measures to avoid impacts to trees in the adjoining properties or road reserve, which would not be permissible without relevant owners consent, is also considered inaccurate.</p> <p>No evidence of lower impact design options have been presented with the proposal, and therefore it is assumed that none have been considered.</p> <p>In a review of the proposal against Section 7 of the BAM (2020), Council's Biodiversity Officers found:</p> <ol style="list-style-type: none"> <li>1. TPZ Encroachment of over 10% of up to 5 trees proposed for retention, including up to 29.24% encroachment into the TPZ of Tree 23 in the neighbouring property, as detailed in Council's Landscape Unit referral.</li> <li>2. The proposed removal of 64% of canopy within the site, including all trees above the Foreshore Building Line (the maximum developable area of the site)</li> <li>3. The proposed replanting of 6 trees, in existing vegetated areas, or otherwise growth restricted by the proposed development, at best resulting in a long-term loss of 42% of canopy and TEC within the site.</li> <li>4. Limited evidence that impacts to significant biodiversity features such as Tree 13 &amp; Tree 27 have been avoided, in accordance with advice provided by Council's Biodiversity Officer at pre-lodgement.</li> <li>5. The 'avoided' cave structures cited within the BDAR are located below the Foreshore Building Line, and likely would not have been impacted nor would impacts from ancillary structures (e.g. paths) have been supported by Council in accordance with 4.1.4.5 of the PDCP.</li> </ol>



Internal Referral Body	Comments
	<p>(4) Citing Pittwater DCP B4.7, advice provided by Councils Biodiversity Officer at pre-lodgement meeting:</p> <p><i>"At this stage, the proposal is therefore considered to be inconsistent with the control. The applicant is therefore encouraged to redesign the proposal in accordance with arboricultural advice to enable retention of high significance trees, particularly Trees 13 and 27."</i></p> <p>Impacts to biodiversity have not substantially changed from those proposed at pre-lodgement, or are otherwise unclear in the submitted documentation. At present, the application seeks to remove up to 64% of canopy (including TEC), while proposed landscaping will at best, result in a long-term loss of 42% of canopy and is therefore considered inconsistent with PLEP7.6 and PDOP 4.7; <i>Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.</i></p> <p>The site is subject to cl.13(1)(a) of State Environmental Planning Policy (Coastal Management):</p> <p><i>"(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"</i></p> <p>No assessment of the proposal against the cl.13(1)(a) is provided with the application, and the current design is considered likely to have an adverse impact on the integrity and resilience of the ecological environment.</p> <p>As the plans have not changed substantially since pre-lodgement, the advice provided by Council's Biodiversity Unit remains unchanged: This loss of vegetation is not supported and the footprint of the building should be re-designed to minimise the loss to an acceptable degree. The applicant is encouraged to explore alternative design options that retain the significant biodiversity features within the site and utilise the existing vegetation to compliment the proposed landscaped gardens.</p>
NECC (Coast and Catchments)	<p>The development proposal is for demolition of the existing site structures and the construction of a new dwelling at 189 Riverview Road, Avalon Beach.</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b></p> <p>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the DA. The proposed development is consistent with the objects, as set out under</p>

Internal Referral Body	Comments
	<p>Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b></p> <p>The subject site has been identified as being within the NSW Coastal Zone and therefore the Coastal Management Act 2016 (CM Act) is applicable to the proposed development. The subject site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, clauses 13, 14 and 15 as well as other relevant clauses of the CM SEPP will apply to this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated October 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018 subject to conditions.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Risk Management</b> The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. As the lowest floor level of the dwelling is proposed to be at 14.30m AHD, which is well above the Estuarine Planning Level adopted by Council for the site (2.66m AHD), the proposed development satisfies the requirements of the B3.7 Estuarine Hazard Controls and the Estuarine Risk Management Policy for Development in Pittwater.</p> <p><b>Development on Foreshore Area</b> The subject property is affected by the foreshore building line and Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. As no development is proposed within the foreshore area the DA satisfies Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	<p><b>Supported, with Conditions</b></p> <p><i>JK Geotechnics Engineer's addressed the concerns raised previously in regards to joint block. The Geotechnical Engineers has certified an Acceptable Risk can be achieved for the development. Proposed Driveway is within the proximity of large trees located in the road reserve. The structural design for the vehicular crossing is required to be supported by an Arborist. Engineering conditions have been recommended in this regards.</i></p> <p><i>Planner to seek Council's Landscape Officers comments with respect to recommended Engineering conditions relating to Council's Tree.</i></p>

Internal Referral Body	Comments
	<p><i>No Development Engineering objection subject to conditions and Landscape Officers comments/approval requested above.</i></p> <p><u>Planner comment</u> Development Engineers have recommended that an Arborist Report be produced regarding the structural design of the driveway in proximity to existing street trees on Council land. The engineers have requested that this condition be revised by Council's Landscape Officers.</p> <p>Landscape has put conditions on which require these trees to remain. There is no conflict between engineering and landscape conditions, rather they support one another. In this instance a referral of the engineers 'Submission Roads Act Application for Civil Works in the Public Road' is not required.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Supported, without conditions.

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

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

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

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

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

##### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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. 1227940S\_02 dated 18 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	50	59

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 objection to the development application.

### 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:*
- the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - coastal environmental values and natural coastal processes,*
  - 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,*
  - marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - 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 entirety of the site is identified as being within the coastal environment area, similar to any waterfront property on the Northern Beaches. The development application has been assessed and not being likely to cause an adverse impact on any of the criterion stated within Clause 13 (1) (a) through to (g).

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

Comment

The consent authority may be satisfied that the development is designed, sited and will be managed to avoid the aforementioned adverse impacts.

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

- (1)
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*
    - (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that:*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment

The entirety of the site is identified as being within the coastal use area. No public access is readily available to the foreshore area at the front of the site and, in the event that it was, the development in

question would not impede said access given that the building is landwards of the foreshore building line. The works are not considered to have an adverse impact on the above-listed criterion and will be appropriately managed to avoid said impact.

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 or other surrounding land.

#### 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	9.7m	14.1% (1.2m)	No (see Clause 4.3(2D))
4.3(2D) - Height of Buildings	10.0m		N/A	Yes

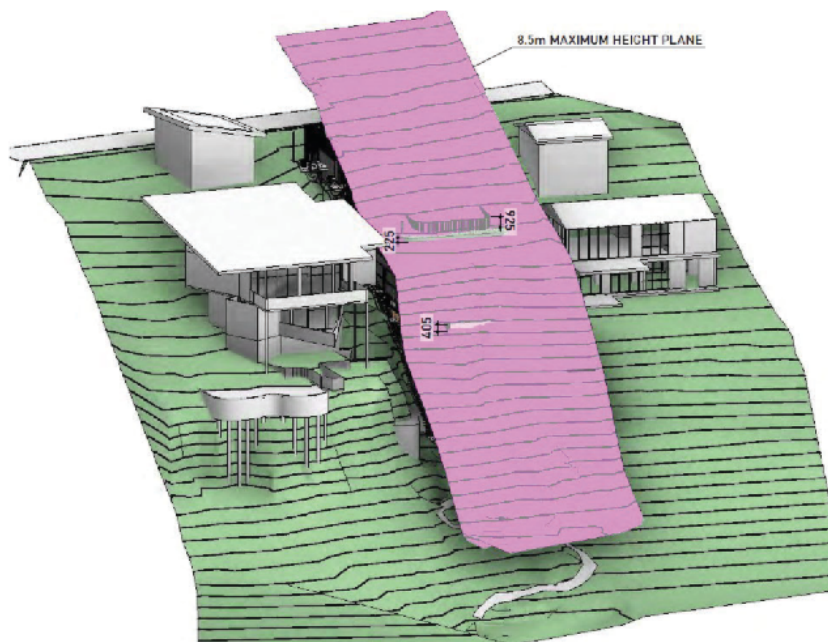
#### Consideration against Clause 4.3(2D)

Clause 4.3(2D) stipulates that development on land that has a maximum building height of 8.5 metres may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

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

##### Comment

The project architect has prepared the below height blanket diagram taken at a height of 8.5m above ground level:



The extent of encroachment and the elements encroaching the 'blanket' in pink above are the elements subject of the below assessment, and those elements are considered to be minor.

**(b) the objectives of the clause are achieved.**

Comment

The Objectives of the Clause are addressed 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 height of the proposed dwelling house is generally consistent with the development controls and with the proportions of newer dwellings within the locality.

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

The height and scale of the proposal is consistent with what could be developed on adjoining sites under the current planning controls. Whilst the two immediately adjoining properties are not developed to the same extent that this proposal seeks, the proportions of the build are not incompatible with their heights.

*(c) to minimise any overshadowing of neighbouring properties.*

The development provides a compliant level of solar access to neighbouring properties.

*(d) to allow for the reasonable sharing of views.*

View loss is discussed elsewhere in this report. The minor building elements that may impact upon

views do not exceed the height limit.

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

The building is designed to step down the slope of the land and does not necessitate an excessive degree of excavation, commensurate to other developments on similarly sloping sites.

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

The building is not considered to have an adverse visual impact when viewed from the private domain, street or Pittwater waterway. The building is largely screened by landscaping, which will continue to grow and further screen the building in longevity.

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

#### Comment

The slope of the land exceeds 16.7 degrees.

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

#### Comment

The development is considered to be designed and sited to take into account the slope of the land to minimise the need for cut and fill.

The above considerations confirm that the 10 metre height limit may be applied in this particular instance.

#### 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
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### **5.7 Development below mean high water mark**

No works are sought under this cover that are below the mean high water mark.

## 7.2 Earthworks

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

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

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

### Comment

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

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

### Comment

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

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

### Comment

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

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

### Comment

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

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

### Comment

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

*(f) the likelihood of disturbing relics*

### Comment



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

## 7.6 Biodiversity protection

Refer to comments from Council's Biodiversity Officer.

## 7.7 Geotechnical hazards

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

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

### Comment

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

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

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

### Comment

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

- (b) the consent authority is satisfied that:*
  - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
  - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
  - (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

### Comment

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal from a geotechnical perspective, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any

geotechnical risk and significant adverse impact on the development and the land surrounding the development.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(east) 6.5m	Garage - 0.3m Entrance Lobby - 7.8m	95% -	No Yes
Rear building line	FSBL	> FSBL	-	Yes
Side building line	(north) 2.5m	Dwelling - 2.58m Exterior Stairs - Nil to 1.5m	- 100%	Yes No
	(south) 1m	Garage - 1.3m Dwelling - 1.14m to 2.96m Pool - 3.1m	- - -	Yes Yes Yes
Building envelope	(north) 3.5m	Outside envelope	N/A	No
	(south) 3.5m	Outside envelope	N/A	No
Landscaped area	60% (642.6m <sup>2</sup> )	Deep soil - 54.7% (586m <sup>2</sup> ) Landscaping over structures- 32.74% (304.34m <sup>2</sup> )	9% N/A	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	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
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	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	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

#### **A4.1 Avalon Beach Locality**

The Desired Future Character statement of the Avalon Beach Locality reads as follows:

- *The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The 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. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Vehicular and pedestrian access into and through the locality is good. Pedestrian links, joining the major areas of open space (Angophora Reserve, Stapleton Park and Hitchcock Park) and along the foreshores, should be enhanced and upgraded. Similarly, cycle routes need to be provided through the locality. Carparking should be provided on site and where possible integrally designed into the building.*

*Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.*

*Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.*

*The design, scale and treatment of future development within the Avalon Beach Village will reflect the 'seaside-village' character of older buildings within the centre, and reflect principles of good urban design. External materials and finishes shall be natural with smooth shiny surfaces avoided. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors. The natural landscape of Careel Bay, including seagrasses and mangroves, will be conserved. Heritage items and conservation areas indicative of early settlement in the locality will be conserved, including the early subdivision pattern of Ruskin Rowe.*

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

#### Comment



The ability to achieve the intent of the Desired Future Character statement (**DFC**) forms an integral part of the development controls within the Pittwater 21 Development Control Plan 2014 (**P 21 DCP**) and thus it is pertinent to establish whether or not this development, as a whole, can appropriately be described as achieving the DFC.

Whilst the DFC does state the dwellings should be a maximum of two storeys in any one place this control is not imbedded within any built form control and, generally seeks to limit three storey houses of flat blocks. Such a control is difficult to achieve on a sloping block such as that of the subject development site, however the massing of the built form is considered to be appropriately distributed to minimise unreasonable impacts of bulk and scale and, any actual impact of such would be largely ameliorated by the facade design of the building. In this instance an exceedance of two storeys is accepted and congruous with surrounding buildings.

The height of the proposed development is lesser than existing canopy trees. The design incorporates a biophilic architecture with plantings on the walls and roof which will, over time, largely screen the majority of the built form from view. The extensively landscaped western half of the site (adjacent to the waterway) is to remain and accommodates vegetation that will screen the development.

The development proposes a fence and garage door for the width of the front boundary, both to be constructed of open timber batons. This fence is discussed in greater detail later in this report and is altered via condition, and thus does not materially alter the DFC of the locale, nor the development's ability to achieve that.

In consideration of all factors it is found that the development appropriately achieves a balance between the existing landforms and vegetation, the reasonable development expectations of the land and the establishment of new green infrastructure to benefit the ecology and biodiversity of the locale in longevity.

#### **B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community**

Refer to comments from Council's Landscape Officer and Bushland and Biodiversity Officer.

#### **B4.22 Preservation of Trees and Bushland Vegetation**

Refer to comments from Council's Landscape Officer and Bushland and Biodiversity Officer.

#### **C1.3 View Sharing**

Objections claiming view loss have been received from the following properties:

1. 187 Riverview Road, Avalon (south), and
2. 174 Riverview Road, Avalon (east, across the street).

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

- *A reasonable sharing of views amongst dwellings.*

##### 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

**187:** From 187 to the south the views to be affected can generally be described as tree tops in the foreground and water views in the background. The views to be affected do not consist of land-water interface (except for on the distant western side of Pittwater) but do consist of otherwise uninterrupted panoramic views of Pittwater to the west.

**174:** From 174 the development site sits to the opposite side of the road. The views from 174 are wholly atop of their neighbouring properties to the west. The views to be affected consist of filtered water views, being filtered by vegetation on the site itself and built forms at other neighbouring properties (fences and carports).

### 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

**187:** The views are enjoyed from both a sitting and standing position, although standing provides a greater breadth of view. The views in question are across a side boundary (the south side of the development site).

**174:** The views are visible from a standing position and are heavily filtered from a sitting position. The views are obtainable over the front boundary to the rear boundary of the development site.

### 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

**187:** 187 is designed in a manner that all rooms generally enjoy an easterly outlook onto Pittwater and beyond. The principle areas in question in this assessment at the ground floor (top

floor) kitchen and living/dining areas that open up onto a deck area which accommodates an inclinor platform. The deck is bound by privacy screens to both flank (north and south) edges. To the north, the privacy screen projects approximately 800mm beyond the western edge of the deck. The effect of this screen makes the existing house at 189 Riverview largely unseen. The screen is estimated to have a height of 2m which, when taking into consideration the floor level of the deck, results in an approximate maximum RL of 28.2 (note: the survey provided with this DA and a survey provided with a recent DA for 187 have differing RLs, i.e., the ridge of the subject house is RL27.2 whereas the neighbouring DA survey marks is as RL28.29 thus being a 1.29m difference. For the purpose of this assessment the RLs on the subject application survey are deemed to be correct).

The relationship between the two properties is visible on the below image (source: nearmaps January 2021)



In this image the privacy screen (shadow) can be seen on the northern edge of the deck. Generally, the deck aligns with the existing house. The objection includes the following photograph which displays the deck, view and privacy screen:





In the location of the existing house the building is to increase in height by approximately 2.5m - that storey (which is entirely void space and glass) will be visible atop of the privacy screen. The void space aligns with the westernmost edge of the deck at no. 187.

Located west of the deck is a lightweight vergola structure at RL26.6 which is 400mm higher than the deck. Below the vergola are several more stepped floors of the building that sit at least 3m below the height of the vergola.

From the above photograph, it is considered that the vergola may be visible and would project at near the balustrade height of the above photo towards the water. The rest of the dwelling is not considered to cause view loss as, from standing on the edge of the deck looking downwards into the development site, views are heavily obstructed by existing vegetation both mature and newly planted.

On balance it is acknowledged that the proposed dwelling will be seen from the neighbouring house, however that is a reasonable expectation living in an urban area. The extent of impact is limited to a lightweight vergola structure, as the majority of the built form has been pushed as eastwards as possible. In the event that the discussed privacy screen were to be removed (as it does not appear to be required by any condition of consent) then the analysis of this assessment would not materially change, as it is not expected that the screen obstructs a large portion of water views. On balance of all factors it is considered that the view loss could best be described as minor.

**174:** No. 174 sits on the eastern side of Riverview Road and has a wide frontage the equivalent of both nos. 189 and 191 Riverview. The extent of impact to the views from 174 is largely limited to the proposed carport and front boundary treatment as well as proposed tree plantings. The view is best enjoyed from the front garden / driveway and parking area and less-so from inside the house, however views of the water are still obtainable from bedroom / studies and living spaces. The objector contends that the predominant loss of views will be from their home office which they work in every day. From the top of the driveway, the current view is as per the below photograph:



From a comparative analysis of the sites and documentation submitted for the current DA and an older (2020) DA at 174, the following facts have been established:

- FFL of 174 is RL 38.39
- Driveway at boundary of 174 is RL 36.00
- Driveway at kerb of 174 is RL 33.90-34.10
- Riverview Road is approx. RL 34 (varies)
- Driveway at boundary of 189 is RL 32.60
- Existing parking pad at 189 is RL 29.60 (varies slightly)
- Existing carport roof at 191 is approx. RL 35.20 (taking surveyed FFL of 32.19 and assuming 3m height)
- Proposed garage FFL - RL 32.40
- Proposed garage parapet - RL 35.50

The garage in question is on the southern portion of the site, i.e., the left hand side of the photo, and sits 1m away from the brushbox fence to the left - that fence is surveyed as sitting on Council land and at the corner has a height of RL 33.32, and along the street an RL of 33.88.

In the above photograph, the carport is generally in the location between the brushbox fence and the nose of the white truck which roughly is described as the large clump of vegetation that does not provide views.

The proposed parapet height of the garage sits 1.5m higher than the road level, and sits approx. 3m lower than the floor level of 174.



The views to be affected consist of the foreground water views that are impeded by vegetation. It is not considered that any views of the western foreshore district will be impacted.

The objector has provided photographs with an estimation of height poles as below, with the top of the ladder being outstretched to a length of 3.9m measured from the base:



The height of 3.9m is derived from earlier sets of plans, the revised parapet height of the garage measured from the FFL is 3.5m. The approximate location of the person holding the ladder is surveyed to be RL 33.02 and therefore the top of the ladder is at RL 36.92. This height is 1.4m greater than the proposed parapet height of RL 35.50, consequent of the revised plans.

On balance and for reasons explained in Step 4 below, the view loss is deemed to be minor to moderate.

#### **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

**187:** In a holistic sense the portion of building which may cause view loss is minor commensurate to the build as a whole, which is reflective of the attempts to minimise such impacts. The extent of impact is not considered to be severe and is caused by a lightweight and openable shade structure to provide shade and amenity to the principal private open space of the development site which would otherwise be exposed to westerly sun. It is not considered that the element causing view loss is unreasonable.

**174:** The impact of views from 174 is consequent of the location of the garage on the boundary which is tied to the view loss issue in their submission. The topography of the land makes providing compliant vehicular access beyond the front setback line difficult, notwithstanding the current layout of the site. Such difficulties are displayed on numerous other garages on the street.

The garage structure could be pushed further into the site to increase the compliance with the front setback, and remain below the height limit, however this would cause a greater impact on the existing views enjoyed.

It is noted that the garage is to be constructed of visually permeable materials on all four sides and is topped by a large living green-roof. The extent of view loss does not warrant a redesign of the proposal and the outlook from 174 will remain characterised by water and bushland views, enhanced by the green roof. It is not considered that the proposed garage is unreasonable, and it is found that all reasonable attempts have been made to minimise impact by lowering the height of the structure to a minimum, opening up all four sides, and providing a green roof.

The submission from 174 goes on to object about view loss from proposed trees. The provision of trees prevails over views.

- *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

From the street it is considered that the development does not cause any unreasonable obstruction of views to Pittwater and West Head. The relevant levels of the garage commensurate to the roadway are described above.

The materiality of the garage and front fence is widely spaced timber battens that permit views through to the waterway but provide a degree of privacy and security to occupants of the dwelling. However, the proposed front fence measures approximately 2.1m in height which is unacceptable. A condition of consent is recommended to reduce the height of this front fence from 2.1m to 1.5m which will allow for pedestrian views over the fence towards the water but will limit downward views into the property.

- *Canopy trees take priority over views.*

#### Comment

The development does not seek to remove trees for the purpose of obtaining views. Whilst concerns have been raised in submissions about the proposed tree plantings, the retention and establishment of canopy trees take priority over views and this issue therefore does not warrant the refusal of the DA.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP 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.

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

The proposal is not anticipated to cause any detriment to the provision of privacy currently enjoyed by neighbouring properties. The building has been designed with screening on most side window and landscaping to filter any sightlines. It should be noted on perspectives and elevations that the central level is a double height void space, and thus impacts from those windows is not considered unreasonable.

### **C1.14 Separately Accessible Structures**

The lowest two levels of the dwelling are not internally accessible from the main building, however these floors host ancillary rooms to the principal dwelling including bedrooms, rumpus room, a bathroom and a home gym. These spaces are not considered capable of independent habitation and a condition will be imposed on any consent requiring the property to only be used as one dwelling house.

### **C1.19 Incline Passenger Lifts and Stairways**

Clause C1.19 requires inclinators and stairways to be located 2m from the side boundary of a site. The proposal does not achieve compliance with this requirement, and the non-compliance is discussed in detail later in this report under Clause D1.9 Side and rear building line.

### **D1.8 Front building line**

#### Description of Non-Compliance

Clause D 1.8 Front building line of the P 21 DCP prescribes a 6.5m setback requirement for all structures, but does permit a variation on steeply sloping or constrained sites for Council to consider reduced or nil setbacks for car parking structures, however all other structures on the site must satisfy or exceed the minimum building line.

In this instance the site is deemed to be steeply sloping and constrained and therefore the variation provision is applicable. The proposed garage has a setback to the front boundary of 0.3m and the entrance lobby and rest of the house has a minimum front setback of 7.8m.

#### Merit Consideration

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

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

Comment

It is established elsewhere in this report that the development can achieve the desired future character of the locality.

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

Comment

The concerns raised by the community and Council's Landscape Officer with regards to public views and the general treatment of the front of the site is noted.

The proposed garage takes up half the width of the sites frontage with the remaining half being bound by a 2.1m high timber open baton fence.

Along Riverview and Cabarita Road views in westerly direction and enjoyed from most of the street. There are numerous examples of solid and bulky garages being built on or in proximity to the front boundary, often for more than half the width of a frontage, however these poor examples are not reason or precedent to repeat such a design.

The garaging is located in the most sensible location on the site given tree locations and the topography, and thus no objections are raised to its location.

The front (street-facing) and rear wall of the garage are to be constructed of open timber batons that permit partial views through from the street to the water. The flank facades of the garage are constructed of a 'hit and miss' breezeblock design which equally permits vistas through. The level of visibility through the garage (for half the site's width) is considered acceptable. The structure itself also benefits from a large living green roof which is (to the author's knowledge) the first along Riverview Road and will provide visual interest.

However, it is considered that there is no reasonable need for a 2.1m high front boundary fence in this location. If the intent of that fence is to provide privacy to the occupants then the window arrangement should be redesigned. A fence of some degree is required in this location given the drop in land, and therefore a condition is imposed which limits the fence to be no greater than 1m in height. This reduced height will not obstruct public views, and pedestrians will be able to see over the fence and over the top of the building thus preserving views and vistas.

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

Comment

N/A Riverview Road is not a main road.

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

Comment

The encroachment of the garage into the front setback area is directly caused by the retention of two trees (Tree T7 and T8) to the rear of the garage. The structure has been designed to be of minimal dimensions and curved around these tree trunks to allow for their retention.

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

Comment

Not achieved but, given the reasonably quiet nature of Riverview Road, not considered to be essential.

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

Comment

The presence of a garage in the front setback area is not considered to detract from the bushland character of the locality. The material palette and green roof is considered to enhance the character.

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

Comment

The encroaching elements do not exceed the height of trees and are of a minimal height.

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

Comment

The proposal is considered to be a positive addition to the street scape and will present as an attractive building. The works will not harm pedestrian amenity.

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

Comment

Achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 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**Description of Non-Compliance

Clause D1.9 Side and rear building lines of the P 21 DCP 2014 prescribe required side setbacks of 1m to one side and 2.5m to the other side and, in this instance, a foreshore building line applies rather than a traditional numeric rear setback control.

The proposed dwelling is compliant with all side and rear setback requirements, however the proposed external staircase and inclinator line to the northern edge of the site encroaches the setback area by up to 100%.

Merit Assessment

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

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

Comment

It has already been established in this report that the development achieves the desired future character of the Locality.

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

Comment

The non-complying elements consist of floating timber stairs and an inclinator line. These elements are deemed to minimally contribute to any bulk and scale given the actual proportions of those elements, and their positioning close to ground level.

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

Comment

The non-complying elements are not considered to cause any view loss. View loss is discussed in greater detail elsewhere in this report.

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

Comment

As above.

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

Comment

The majority of properties within the vicinity have similar access arrangements to that proposed; indeed similar to a house on a flat block of land having side access. The stair and inclinator are not considered to detract from the amenity of neighbours.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment

Landscaping is discussed elsewhere in this report.

- *Flexibility in the siting of buildings and access.*

Comment

The placement of stairs and inclinator is considered to be logical in this instance and is not



found to result in any impacts to neighbouring amenity, and thus flexibility in their siting is supported.

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

Comment

Vegetation retention is discussed elsewhere in this report.

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

Comment

Not applicable as there is not adjacent commercial zone.

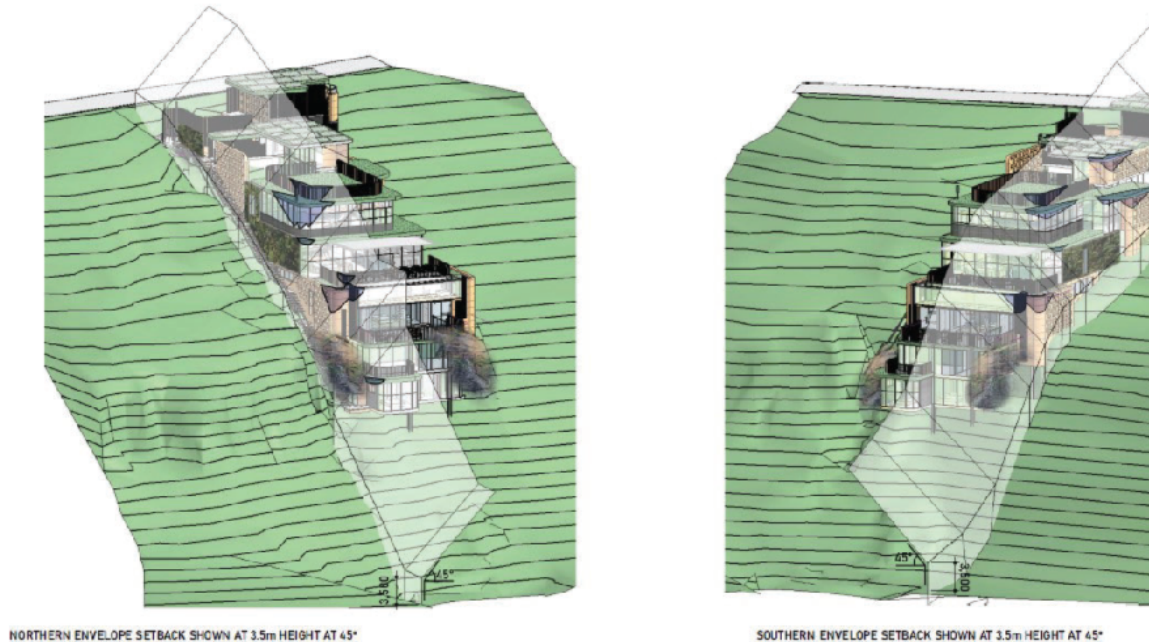
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D1.11 Building envelope**

Description of Non-Compliance

Clause D1.11 Building envelope of the P 21 DCP prescribes a 3.5m high envelope measured from the outer edges of the site before turning inwards at a 45 degree angle. Elements of the building should not project beyond this theoretical envelope. The control does include a variation provision that states that where a building footprint is situated on a slope of 16.7 degrees, a variation may be considered on a merit basis.

The proposal exceeds the prescribes envelope on both the northern and southern elevations as depicted on the below overlay plans prepared by the architect:



It is noted that the proposed vergola adjacent to the swimming pool appears to project beyond the envelope but it not shown as doing so on the above diagram.

#### Merit Consideration

With regard to the request for a variation, the development is considered against the underlying outcomes of the control as follows:

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

#### Comment

It has already been established in this report that the development achieves the desired future character of the Locality.

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

#### Comment

The proposed encroachment to the building envelope does not manifest on the street elevation and does not materially alter the streetscape. The overall height and scale of the proposal is lesser than that of trees which will continue to tower over the built form.

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

#### Comment

Designing a building on a sloping site poses many challenges which is why the P 21 DCP includes variation provisions, for circumstances such as those posed by this application. As evident in the above diagrams the building steps back eastwards at each level and, in part,

steps inward from the levels below on the flank elevations to minimise envelope encroachments. This, coupled with the design curving around existing trees to facilitate their retention, is considered to be sufficient grounds to say that the development can spatially relate to the natural environment.

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

Comment

The encroachments to the building envelope do not amount to any unreasonable bulk and scale commensurate to the compliant development.

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

Comment

Views are discussed elsewhere in this report.

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

Comment

The revised plans under assessment have significantly stepped in the southern edge of the building away from the boundary to improve solar access and improve visual privacy to the dwelling to the south. Other encroaching elements of the building envelope are not considered attributable to any amenity impacts upon adjoining land.

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

Comment

Vegetation retention is discussed elsewhere in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 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.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

Clause D1.14 Landscaped Area of the P 21 DCP prescribes a required landscaped ratio of 0.6:1 or 60%. The intent of that control is that calculable landscaped open space be located at ground level, and therefore roof gardens, planter boxes and the like are not included within that numeric.

The applicant contends that a deep soil landscape area of 645sqm or 60.2% is provided. Council's calculation of this falls slightly short of this figure, and instead is 586sqm or 54.7% thus resulting in a 9% variation to the control requirements. It should be noted that the architect's CAD software is likely more accurate than Council's measurement software, however in any instance the quantum of landscaped area will be assessed against the objectives of the control.

In furtherance to the above, and notwithstanding that it does not count towards the above calculable

landscaped area, the proposal includes a living green roof on all roofs of the building, equating to an additional 304.34sqm (or 32.74% of the site over and above deep soil landscaping) being considered as landscaping over structure. This element is important to note in preface to the below merit assessment.

#### Merit Consideration

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

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

#### Comment

Established earlier in this report.

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

#### Comment

The calculated shortfall in landscaped area is not attributable to any unreasonable perception of bulk and scale. That is, the perceived bulk and scale of the development is not likely to be markedly different if a compliant provision of landscaped area was provided. In any case, the bulk and scale of the built form is considered to be appropriately minimised by way of unique fenestration detailing to both flank facades, the inclusion to living green walls and green roofs, the reasonably open front facade (discussed elsewhere in this report) and the wide foreshore building line which the development sits behind.

Temporally the built form will become increasingly disguised and subservient to vegetation which will further minimise bulk and scale in longevity.

- *A reasonable level of amenity and solar access is provided and maintained.*

#### Comment

The proposed development is found to provide a reasonable level of amenity and solar access to neighbouring properties. It is not considered that there be would any marked improvement in neighbouring amenity were a compliant provision of deep soil landscaping be provided. Instead, it is considered that the alternate forms of landscaping proposed (other than deep soil landscaping) will significantly enhance the amenity of neighbours by way of improving their visual outlook and making a contribution to lessening to urban heat island effect.

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

#### Comment

Vegetation retention is discussed elsewhere in this report in detail.

- *Conservation of natural vegetation and biodiversity.*

#### Comment

Vegetation retention (conservation) is discussed elsewhere in this report.

This biophilic nature of the proposed design is considered to be beneficial to the local biodiversity and shall provide alternate habitats for creatures and insects, beyond the typical habitats found within the general locale.

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

Comment

Council's Development Engineer has raised no objections to the proposed stormwater dispersal methodology. It is noted that the majority of stormwater runoff from the site would flow towards the waterway, in which it is forced to traverse through sand-stone filled gabion walls which both prevents soil erosion and provides nutrition to the receiving downstream plants.

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

Comment

The Clareville / Avalon Beach locale would not readily be described as 'rural' but it certainly has a bushland character and quality to it. The proposed development as a whole is considered to be complementary and enhancing to the existing character both at the inception of the building, but moreso in longevity as vegetation matures and envelops the built form.

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

Comment

As described above.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP 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.

#### **D1.16 Fences - Flora and Fauna Conservation Areas**

The site is identified as being located within the Flora and Fauna Conservation Area Category 2.

This control requires that front fences shall not exceed a height of 1m above existing ground level, shall be compatible with the streetscape character and shall not obstruct views available from the road.

The application proposes a 2.1m high timber batten screen fence for the length of the frontage northwards of the proposed garage. It is assumed that this height has been chosen to match-in with the garage door (which is to slide horizontally like a gate) and to provide privacy to occupants of the dwelling.

The fence, at this height, does however unreasonably impede on public views and creates a sense of enclosure at the street edge for the total width of the site which is unacceptable.

Therefore, as described elsewhere in this report, a condition is impose requiring the fence to be



reduced in height to be no greater than 1m.

Subject to this condition, the proposal would comply with 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 \$27,250 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,725,000.

#### **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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

The assessment of this application and this report acknowledge that there has been a significant community interest in the proposal, namely around impacts to vegetation. This report has demonstrated that the 11 trees sought for removal are all in a poor condition and are appropriate for removal and

replacement.

The impacts caused by the development on the private amenity of adjacent land are considered to be acceptable for a residential development.

This report concludes with the recommendation that the Northern Beaches Local Planning Panel grant conditional approval to the development application.

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 DA2021/1522 for Demolition works and construction of a dwelling house on land at Lot C DP 381427, 189 Riverview Road, AVALON BEACH, Lot LIC 567410, 189 Riverview Road, AVALON BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
001-101 Rev. K - Site Plan	15 November 2021	Durie Design
001-120 Rev. K - Existing and Demolition Plans	15 November 2021	Durie Design
001-200 Rev. K - Ground Floor	15 November 2021	Durie Design
001-201 Rev. K - Level-1	15 November 2021	Durie Design
001-202 Rev. K - Level-2	15 November 2021	Durie Design
001-203 Rev. K - Level-3	15 November 2021	Durie Design
001-204 Rev. K - Level-4	15 November 2021	Durie Design
001-205 Rev. K - Level-5	15 November 2021	Durie Design
001-206 Rev. K - Roof	15 November 2021	Durie Design
001-210 Rev. K - Level-2 Pool Detail	15 November 2021	Durie Design
001-211 Rev. K - Pool Detail Section and Elevations	15 November 2021	Durie Design
001-212 Rev. K - Garage Detail	15 November 2021	Durie Design
001-300 Rev. K - North Elevation	15 November 2021	Durie Design
001-301 Rev. K - South Elevation	15 November 2021	Durie Design
001-302 Rev. K - West Elevation	15 November 2021	Durie Design
001-303 Rev. K - East Elevation	15 November 2021	Durie Design
001-310 Rev. K - Section A-A	15 November 2021	Durie Design
001-311 Rev. K - Section B-B	15 November 2021	Durie Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment and Management Plan	November 2021	Botanics Tree Wise People Pty Ltd
BASIX Certificate No. 1227940S_02	18 November	Gradwell Consulting

	2021	
Revised Biodiversity Development Assessment Report (BDAR)	16 November 2021	ACS Environmental Pty Ltd
Geotechnical Assessment (ref: AG20235)	23 September 2021	Ascent Geotechnical Consulting

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L001 Rev. C - Ground Floor Landscape Plan	10 November 2021	Durie Design
L002 Rev. C - Level-1 Landscape Plan	10 November 2021	Durie Design
L003 Rev. C - Level-2 Landscape Plan	10 November 2021	Durie Design
L004 Rev. C - Level-3 Landscape Plan	10 November 2021	Durie Design
L005 Rev. C - Level-4 Landscape Plan	10 November 2021	Durie Design
L006 - Rev. C - Roof Level Landscape Plan	10 November 2021	Durie Design
L007 Rev. C - Planting Schedule	10 November 2021	Durie Design
L008 Rev. C - Planting Details	10 November 2021	Durie Design

<b>Waste Management Plan</b>		
<b>Report Title</b>	<b>Dated</b>	<b>Prepared By</b>
Site Waste Management Report (SW21/06097)	17 June 2021	Senica Consultancy Group

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

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

## 2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies 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 as:

*"A building containing only one dwelling."*

(development is defined by the Pittwater Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

3. **Prescribed Conditions**

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.



- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

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

- management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$27,250.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,725,000.00.

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](http://www.northernbeaches.nsw.gov.au)

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

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

### 6. Security Bond

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

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

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

Authority prior to the issue of the Construction Certificate.

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

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

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

The applicant is to lodge a Bond of \$95000.00 as security against any damage or failure to complete the construction of any vehicular crossings, road shoulder any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

**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:

- i) 300mm for groundcovers
- 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. **Transplanting Methodology**

A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed tree number 9 Queensland Firewheel Tree and tree number 19 NSW Christmas Bush, including:

- i) Preparation of the trees/palms to be transplanted,
- ii) transplanting methodology and installation works,
- iii) post-transplanting care and duration,
- iv) ongoing maintenance program,
- v) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: Tree protection.

10. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of 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.

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 JK Geotechnics dated 20 October 2020 and ASCENT Geotechnical Engineering dated 23 September 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Pre-clearance Survey**



A pre-clearance survey is to be undertaken by the Project Ecologist prior to any tree removals.

Details demonstrating compliance are to be prepared by the Project Ecologist and submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native wildlife.

**13. Notification of determination to which the Biodiversity Offset Scheme applies**

The applicant or Project Ecologist, on behalf of the applicant, must download and complete the "Biodiversity Offsets Scheme – Notification of Determination" form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre [bam.support@environment.nsw.gov.au](mailto:bam.support@environment.nsw.gov.au). The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifying Authority must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

**14. Like for like credit retirement conditions - Ecosystem credit retirement conditions**

Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Certifying Authority prior to release of construction certification.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
1214 - Pittwater	Pittwater and	1	NO	Pittwater, Cumberland,	1214, 1589

Spotted Gum Forest	Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion			Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

15. **Variation rule credit retirement conditions - Ecosystem credit retirement conditions**  
Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 2 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 2 requirements is to be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifying Authority prior to release of construction certification.

Table 2 Ecosystem credits required to be retired – variation rules

Impacted plant community type	Number of ecosystem credits	Containment
1214 - Pittwater Spotted Gum Forest	1	NO

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

16. **Vegetation Management and Tree Protection Plan**

Prior to issue of the any Construction Certificate, a Vegetation Management and Tree Protection Plan (VMTPP) must be prepared to the satisfaction of Manager Bushland and Biodiversity of Northern Beaches Council and submitted to the Certifying Authority.

In accordance with the recommendations of the Biodiversity Development Assessment Report, the VMTPP must detail management actions to protect any retained trees occurring within or adjacent to the construction footprint, as well as a weeding program to remove any High Threat Exotics weeds from the property following construction. Measures to remove climbing weeds observed within the canopy of significant trees to be retained must also be included.

The VMTPP is to be prepared by the Project Ecologist in consultation with the Project Arborist, and must include a clear map and table detailing documenting the location and status of all trees to be retained in perpetuity including those within 2m of the future dwelling and Tree 37 (Spotted Gum) below the foreshore building line.

The VMTPP may form part of a Construction Environmental Management Plan.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

17. **Traffic Management and Control Plan**

The Applicant is to submit an application for Traffic Management and control Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management/control 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.

18. **Amendments to the approved plans**

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

- the front boundary fence is to be reduced in height to be no greater than 1.0m in height measured from ground level.

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. **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 retaining wall, vehicular driveway slab within the road reserve 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 structural engineer. The design must include the following information:

1. Retaining wall supporting the vehicular crossing (within the road reserve) at the front boundary alignment must be located within the development property.
2. The design plan shall show all public utility services (depth and location) affecting the proposed driveway. Any relocation and/or adjustment requires written approval from the public authority. All cost associated with the relocation or adjustments are to be borne by the property owner.
3. The existing trees located adjacent to the vehicular crossing in the road reserve shall be retained unless approved by Council. A detail Arborist supporting report on the structural design for the vehicular crossing including retaining wall is to be submitted with the design plans.
4. Submission of Structural details of driveway, retaining wall and associated works.
5. Detail driveway levels and Civil plans, which must include cross-sectional details of existing and proposed levels taken from the center line of Riverview Road to the proposed garage.
6. The provision of extra low vehicle crossing profile and 5.0 metres wide vehicular crossing in accordance with Northern Beaches Council Drawing No A4-3330/5 and specifications.
7. The vehicular crossing within the public road shall be in plain concrete.
8. Pedestrian access shall be incorporated within the driveway.
9. The parking area and driveway must comply with AS/NZS 2890.1: 2004

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.

20. **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.

21. **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 **XX** Report (reference).



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.

22. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact receiving waters.

23. **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.

24. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Transport Team prior to issue of any Construction Certificate.

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 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 routes through the Council area and the location and

type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed

- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

25. **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](http://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

##### 26. 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, and all other arboricultural works as required.

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 in the vicinity of the following existing trees:

- i) trees 13 Spotted Gum, 22 Spotted Gum, and 27 Grey Ironbark within the property
- ii) trees 17 Spotted Gum and 23 Spotted Gum with adjoining property

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 trees listed above have been carried out satisfactorily to ensure no impact to the health of the trees. 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.

**27. Tree Removal Within the Property**

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

- i) tree numbers 3b, 10, 11, 20 and 21 Rose She Oaks
- ii) tree number 18 White Mahogany
- iii) tree number 28 Spotted Gum
- iv) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

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

Reason: To enable authorised development works.

**28. 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.

29. **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.

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:

- 187 Riverview Road, Avalon Beach
- 191 Riverview Road, Avalon Beach

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

31. **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.

32. **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**

33. **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 Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

All street trees within the road verge 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.

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

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: Street tree protection.

34. **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 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.

Reason: Tree and vegetation protection.

35. **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.

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. **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.

39. **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.

40. **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.

41. **No Fill in Native Vegetation Areas**

No fill is to be introduced in the area of native vegetation or habitat remaining on the site.

Reason: To ensure the protection of the natural environment.

42. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required, in accordance with applicable regulations, to ensure waste and debris does not enter receiving waters.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

43. **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**

44. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,

ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 2.0 metres from common boundaries,

iii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space or solar collectors, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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.

45. **Condition of Retained Vegetation**

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.

46. **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.

47. **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.

48. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (DurieDesign 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.

49. **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.

50. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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 weeds.

**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. 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.

**53. 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.

**54. 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.

55. **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.

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

56. **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.

57. **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.

58. **Removal of exemption under B4.22 of Pittwater 21 Development Control Plan**

The exemption by proxy listed under B4.22 of the Pittwater 21 Development Control Plan is to be removed for the site, specifically:

*Council's authorisation of a Vegetation Clearing Permit is not required for:*

- *The removal of a tree, where the base of the trunk of the tree at ground level, is located within two (2) metres of an existing approved building (not including decks, pergolas, sheds, patios or the like, even if they are attached to a building).*

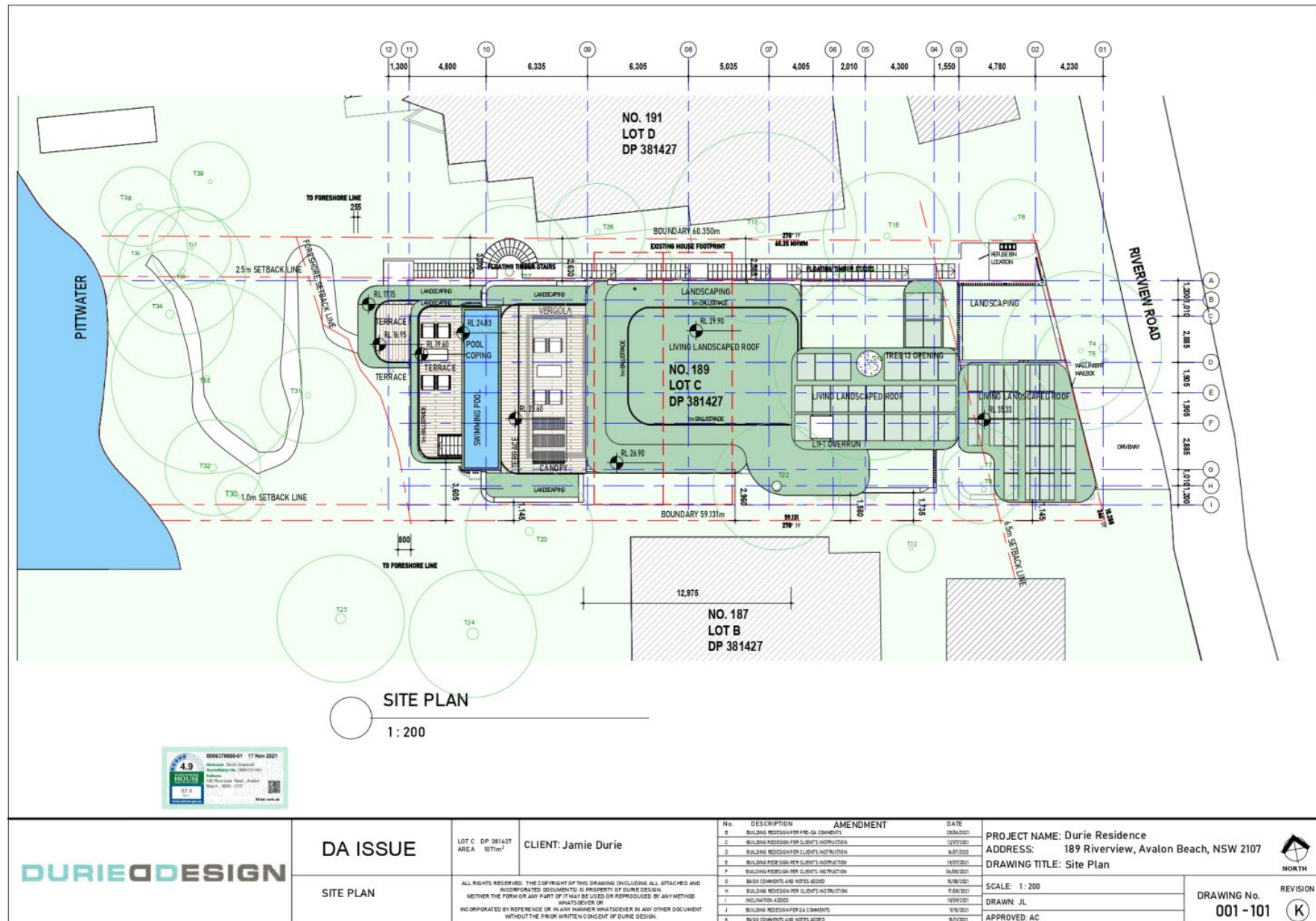
All native trees within 2m of the future approved building that would otherwise be considered exempt, must only be cleared following approval via Development Application/Modification, a Vegetation Clearing Permit or is otherwise subject to s8(3)(4) of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Reason: Ongoing protection of trees within 2m of the future approved building.

59. **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.

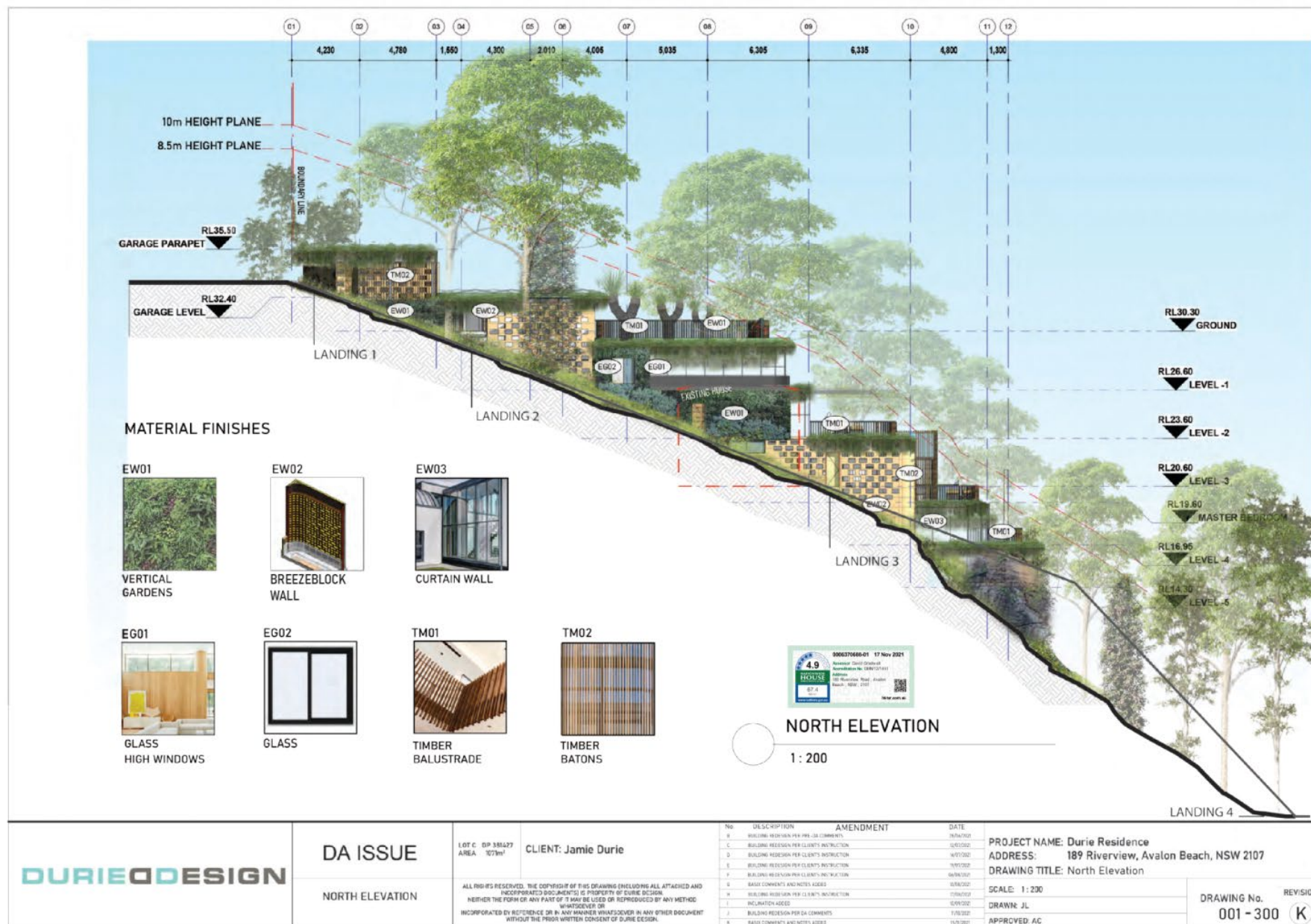
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.







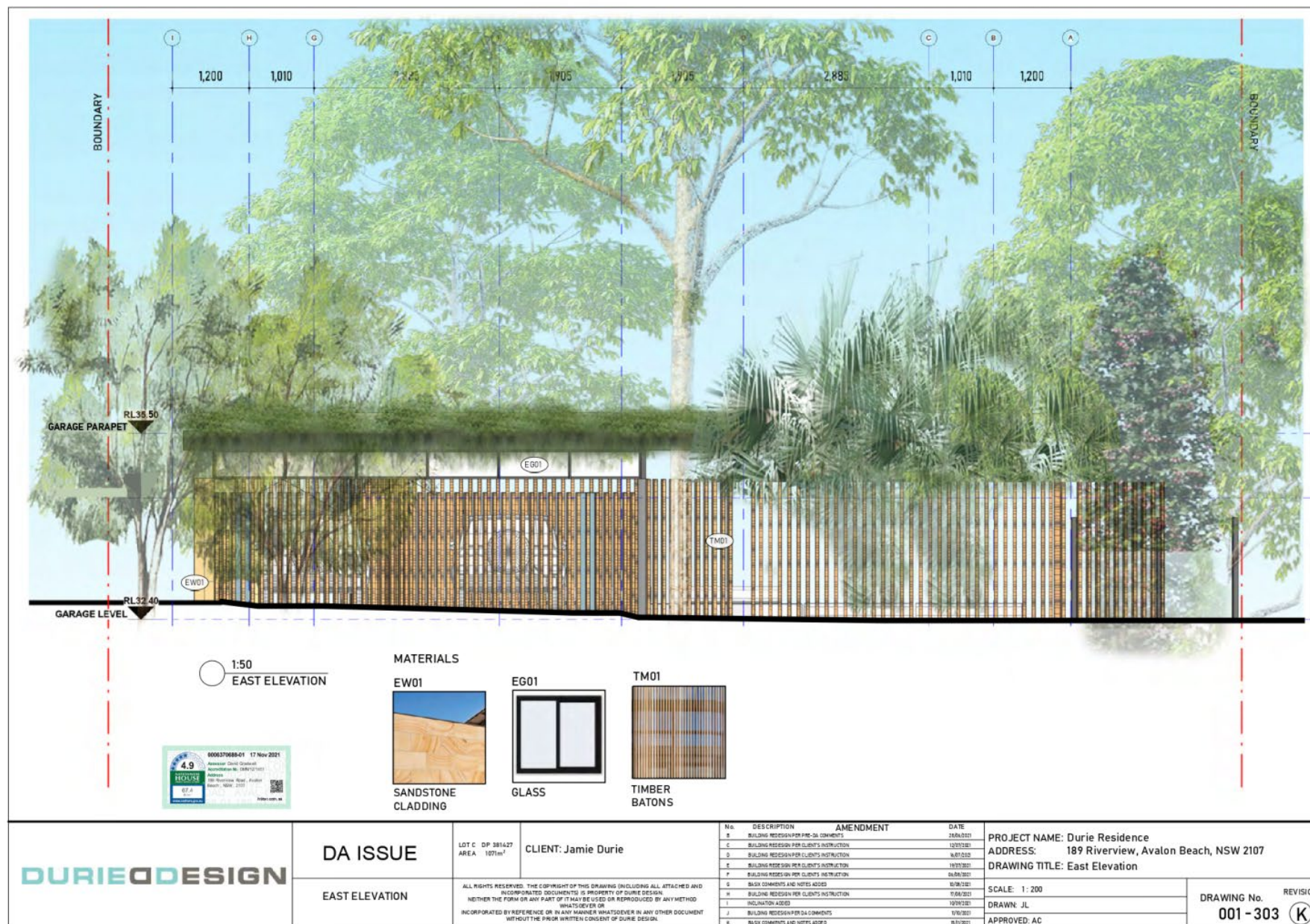














## 5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2021/1593 - 377 SYDNEY ROAD, BALGOWLAH - CONSTRUCTION OF A ADVERTISING STRUCTURE
AUTHORISING MANAGER	Tony Collier
TRIM FILE REF	2022/039015
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is Council.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No DA2021/1593 for the Construction of an advertising structure at Lot 2 DP 134700, 377 Sydney Road, Balgowlah, for the reasons for refusal set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1593
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<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot 2 DP 134700, 377 Sydney Road BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Construction of an advertising structure
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Mark Nicholas Hansen and Northern Beaches Council
<b>Applicant:</b>	Ei Media

<b>Application Lodged:</b>	17/09/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	27/09/2021 to 11/10/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 80,000.00
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### EXECUTIVE SUMMARY

The application seeks approval for the construction of an advertising structure on the western facade of an existing building fronting Sydney Road, Balgowlah.

The proposed development overhangs onto the adjoining Council Road Reserve and therefore requires referral to the Northern Beaches Local Planning Panel (NBLPP) for determination.

During public notification three (3) submissions have been received, two (2) in objection and one (1) in support of the proposal.

The proposal has been referred to Property Management and Commercial and Road Reserve Officers who were unable to support the application.

Assessment of the application has found it to be inconsistent with relevant controls and objectives of the *State Environmental Planning Policy No 64 - Advertising and Signage*, the aims of the *Manly Local Environmental Plan 2013* and the applicable controls of the *Manly Development Control Plan 2013*.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal comprises of the development of a wall mounted digital advertising structure on the western facade of the existing two storey building at 377 Sydney Road. The structure will overhang onto the Council owned road reserve and will be highly visible to vehicular and pedestrian traffic travelling east along Sydney Road.

The dimensions of the proposed sign are 5.5m x 3.3m and the sign will have a total display area of 18.15m<sup>2</sup>.

## **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 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.13 Design excellence  
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes  
 Manly Development Control Plan - 4.4.3 Signage

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 134700, 377 Sydney Road BALGOWLAH NSW 2093
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the southern side of Sydney Road Balgowlah.

	<p>The site is regular in shape with a frontage of 5.155m along Sydney Road. The site has a surveyed area of 196.7m<sup>2</sup>.</p> <p>The site is located within the B2 Local Centre zone and accommodates a two storey commercial building with a garage and car parking space at the southern rear.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>The site is located within the Balgowlah Town Centre along Sydney Road. The Town Centre comprises of a mix of commercial and residential uses within the immediate vicinity of the site.</p>
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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 commercial purposes for an extended period of time.

Following preliminary assessment of the application a meeting was held to discuss Council's concerns with the development. Following the meeting Council advised the applicant they would have the opportunity to provide amended plans to significantly reduce the size of the digital advertising structure. The applicant was advised that the opportunity to provide amended plans did not mean Council would necessarily support the reduced size.

The applicant has not provided any amended plans to reduce the size of the digital advertising sign.



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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to non compliance with environmental planning instruments. No further information has been provided.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the State Environmental Planning Policy No. 64 Advertising and Signage, Manly Local Environmental Plan 2013 and the Manly Development Control Plan and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/09/2021 to 11/10/2021 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 3 submission/s from:

Name:	Address:
Ben Sullivan Hunter	18 / 366 - 372 Sydney Road BALGOWLAH NSW 2093
Mr Steven Tang	C/- Balgowlah Pharmacy 340 Sydney Road BALGOWLAH NSW 2093
Mr Yorick Benjamin Sweetnam	375 Sydney Road BALGOWLAH NSW 2093

The matters raised within the submissions are addressed as follows:

- Visual Amenity**

Comment:

Key concerns raised in the submissions relate to the visual impact of the large signage structure when viewed from residential dwellings and the streetscape. The location of the sign has direct view corridors towards nearby residential receivers and would ultimately result in an unreasonable visual impact.

- Light Pollution**

Comment:

Submissions have been received in relation to light pollution. In any circumstance that would result in an approval of the development application conditions would be recommended to ensure a light curfew at night to reduce light pollution.

- Non compliance with relevant Environmental Planning Instruments (EPI's)**

Comment:

A submission was received raising concerns that the application does not comply with the State Environmental Planning Policy No 64 Advertising and Signage and the Manly Development Control Plan. The application has been assessed in accordance with the relevant EPI's and have found the proposal to be contrary to the relevant controls and objectives.

Council received one submission of support from a nearby business owner. Council has taken this submission into consideration of the assessment of the application.

## REFERRALS

Internal Referral Body	Comments
Property Management and Commercial	Currently there is no policy in place that permits 3rd party advertising of this nature over Council's road reserves. As such, the proposal cannot be approved until such time as a policy regarding advertising on road reserves has been adopted by Council.
Road Reserve	No direct impact on existing road infrastructure assets however the structure encroaches into the Council public road reserve airspace for private use. Former Manly Council's policy in relation to leases of road reserve only permits such leases for driveways and parking. As such, there is no provision that would permit a lease associated with an advertising panel.

Internal Referral Body	Comments
	<p>Former Manly Council's policy, Advertising and Advertisements Policy (A21), does not support advertising on Council owned or controlled property.</p> <p>The application provides offers of sponsorship to Council for advertising and promotion which may be unlawful.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable.
NSW Roads and Maritime Services - (SEPP 64 signage cl 17(3)(c))	The proposal was referred to Transport for NSW (TfNSW) who provided a response stating that they have reviewed the application and raise no objection to the application as it is unlikely to have a significant impact onto the classified road network. TfNSW provided conditions to be incorporated into any consent issued by Council.

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP 64 - Advertising and Signage

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

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



having regards to both design and finishes.

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

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The site is situated within the Balgowlah Local Centre which comprises of a mix of commercial and residential uses. The locality consists of business identification and way finding signage. The proposal is not considered to be consistent with the existing or desired future character of signage within the locality.	NO
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Approved signage within the immediate vicinity consists of business identification signage. There is no approved third party signage within the immediate vicinity.	NO
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed digital advertising signage is located within a local centre that comprises of a mix of commercial and residential uses. The digital advertising signage would be highly visible and detract from the visual amenity of the south facing residential units along Sydney Road.  The illumination of the digital advertising sign is not considered appropriate given the close proximity of residential receivers.	NO
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	There are no significant views within the immediate vicinity. However, given the site is located within the foreshore scenic protection area it is likely to be within the view corridor.	NO
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal does not dominate the skyline, however the proposed size of the sign along the western facade of the existing dwelling is not considered to be consistent with the character of the locality.	NO
Does the proposal respect the viewing rights of other advertisers?	There are no other digital advertising signs within the immediate vicinity of the site.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed size and location of the digital advertising signage is not considered appropriate for the Balgowlah Local Centre. The signage would cover a large portion of the existing facade and would be highly visible from surrounding commercial and residential receivers.	NO
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage would not contribute to the streetscape, setting or landscape.	NO
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	There is no existing advertising signage along the western facade of the building.	N/A

Does the proposal screen unsightliness?	N/A	N/A
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal does not protrude above buildings, structures or tree canopies in the area.	YES
<b>5. Site and building</b> 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?	Council does not consider the digital advertising signage to be compatible with the scale, proportion and characteristics of the site, building or locality.  The building directly adjoins Council's road reserve that features seating for outdoor recreation. The location of the digital advertising signage is not considered appropriate for this area.	NO
Does the proposal respect important features of the site or building, or both?	There are no important features on the building however the site directly adjoins Council's road reserve that has undergone development to enhance the streetscape. The digital advertising signage would detract from this.	NO
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed digital advertising signage has no relation to the site or building.	NO
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	There are no safety devices or platforms proposed as part of the signage structure.  The proposed digital advertising signage will be illuminated.  A logo is proposed below the signage structure.	YES
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The digital advertising signage would result in illumination. The applicant has advised the illumination levels can be adjusted based on the time of day. However there has been no certainty provided that the illumination would not result in an unacceptable level of glare and comprise the safety of vehicles and pedestrians.	NO
Can the intensity of the illumination be adjusted, if necessary?	Yes.	YES
Is the illumination subject to a curfew?	Illumination would be subject to a curfew given the close proximity of residential receivers.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposal has been reviewed by TfNSW who provided comments supporting the proposal subject to conditions of consent to ensure a high level of safety would be maintained for any public road, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal is not expected to obscure any sight lines from public areas.	YES

Accordingly, the proposed signage is not considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be inconsistent with the provisions of the SEPP and its underlying objectives.

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable.

### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

The proposal does not comprise of any works to the building that require an assessment of the principal development standards.

#### Compliance Assessment

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	No
6.11 Active street frontages	Yes
6.13 Design excellence	No

#### Detailed Assessment

### 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.

Comment:

The site is located within the foreshore scenic protection area. Although the signage will not be visible from the foreshore it is likely it would be visible in view corridors looking south towards the foreshore area. The proposed digital advertising sign is not a suitable development for land within this protection area.

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.

### 6.13 Design excellence

Council does not consider the proposed digital advertising structure to exhibit design excellence. The development is not considered to be consistent with (4) of 6.13 Design Excellence as it does not enhance the streetscape, will add to street clutter and is not sympathetic to the setting, including neighbouring sites and existing or proposed buildings.

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.13 Design Excellence of the Manly Local Environmental Plan 2013.

### Manly Development Control Plan

Built Form Controls

The proposal does not comprise of any works to the building that require an assessment of the built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.3 Townscape (Local and Neighbourhood Centres)	No	No
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.8 Waste Management	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	No	No
4.2.6 Balgowlah Local Centre	No	No



Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.3 Signage	No	No
5 Special Character Areas and Sites	No	No
5.4.1 Foreshore Scenic Protection Area	No	No

#### Detailed Assessment

### 3.1 Streetscapes and Townscapes

#### Description of non-compliance

The proposed size, location and type of signage is not considered appropriate for the Balgowlah Local Centre and will negatively impact on the streetscape. There are no approved third party advertisements within the area and the proposal is not consistent with any particular theme for signage.

#### 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 minimise any negative visual impact of walls, fences and carparking on the street frontage.***

#### Comment:

This objective is not applicable to the proposal

- ***Objective 2) To ensure development generally viewed from the street complements the identified streetscape.***

#### Comment:

The proposed size, location and type of signage is not considered to complement the identified streetscape. The town centre consists of business identification signage and does not permit third part advertisements unrelated to the building on which they are displayed.

- ***Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.***

#### Comment:

This objective is not applicable to the proposal.

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 not supported, in this particular circumstance.

#### 4.4.3 Signage

##### Description of non-compliance

Council is not satisfied the development is consistent with and meets the objectives and assessment criteria of *State Environmental Planning Policy No 64 - Advertising and Signage* Schedule 1, with particular reference to the compatibility with the desired amenity and visual character of an area and streetscape.

Clause 4.4.3.1 specifically states all advertising content must relate to the building or goods sold on the premises to which it is attached. The third party digital advertising sign does not propose to relate to the building or goods sold on the premise and therefore does not comply with this control.

The signage is also not considered to be compatible with the streetscape in terms of its size and scale in proportion to building and other urban elements.

The sign is considered to fall under flush wall signs and end wall advertising of Clause 4.4.3.3. Flush wall sign advertising on end walls adjoining residential premises are prohibited in order to reduce adverse visual impacts, and to protect the amenity of residents. The site does not directly adjoin a residential zone however there are residential uses within 30 metres of the proposed digital advertising sign with direct view corridors. The size and location of the proposed sign is not considered appropriate for the nature of the streetscape and townscape.

The proposal is for a large digital advertising structure with the intention to have multiple different advertisements regularly changing. Council also does not permit poster type, regularly changing advertising material on flush wall signs.

The proposed signage is 18m<sup>2</sup> which is greater than the size permitted under 4.4.3.3 h) Flush wall signs.

##### 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 ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.***

##### Comment:

The size of the proposed digital advertising signage is not considered to harmonise with its surroundings and the buildings to which they are attached.

- ***Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.***

##### Comment:

The digital advertising signage is not considered necessary and will result in visual clutter within a neighbourhood centre. It should be noted there are a number of shop top residential dwellings within

the immediate vicinity who would have direct view corridors towards the sign.

- **Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.**

Comment:

The proposal is not for a business identification sign.

- **Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining building, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.**

Comment:

Council does not consider the proposed size and location of the advertising to be designed in sympathy to the building to which is attached and any adjoining building.

- **Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.**

Comment:

The site is not heritage listed nor is it within the vicinity of any heritage items.

- **Objective 6) To ensure all signage is of high standards of graphic and textural content.**

Comment:

The proposal seeks the use of the sign structure for advertising content. The proposal does not approve the specific graphic and textural content. This would be subject to conditions of consent and compliance with relevant industry standards.

- **Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.**

Comment:

The site is not located within an industrial zone.

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 4.4.3 Signage of the Manly Development Control Plan.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **CONCLUSION**

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

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

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

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

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

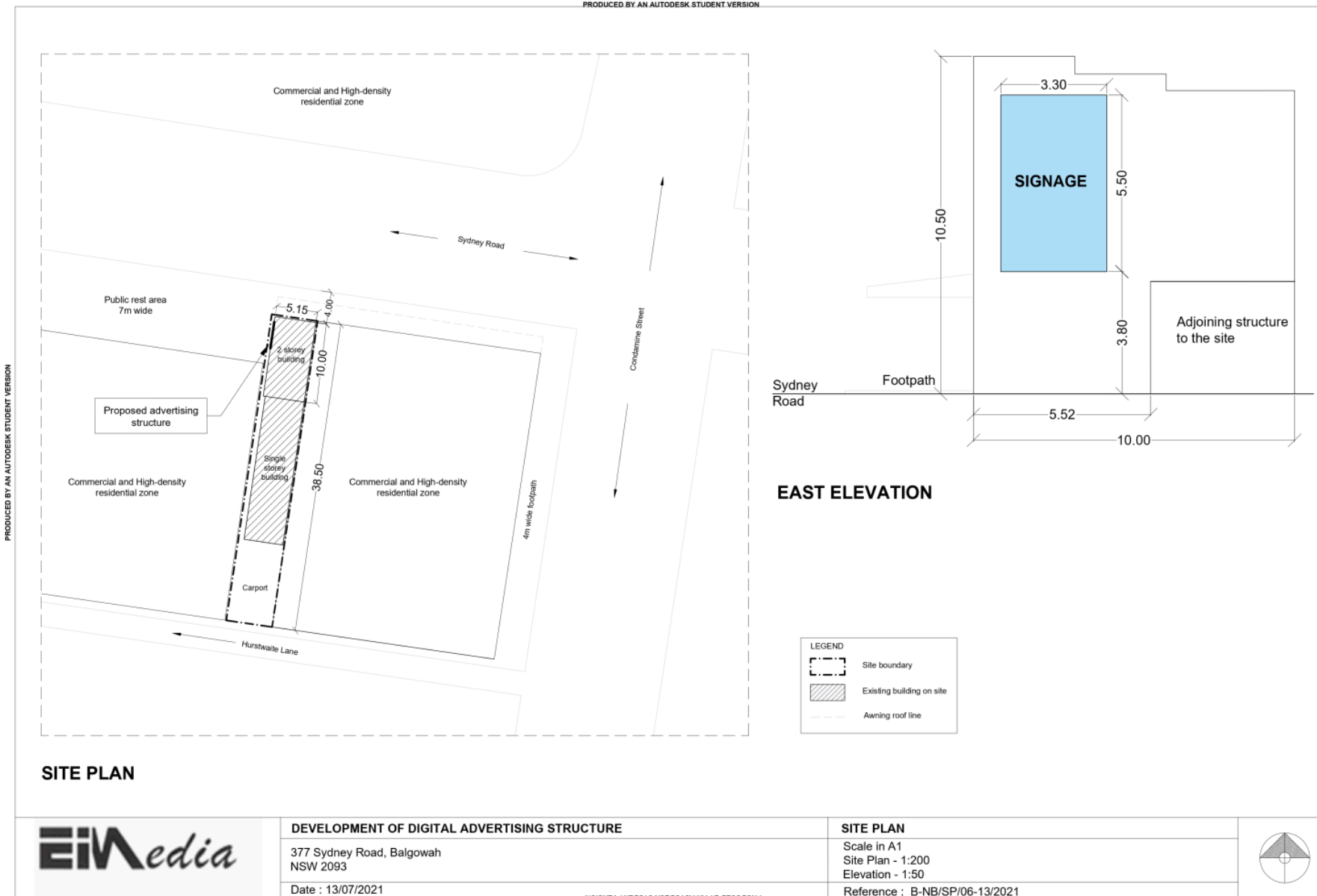
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

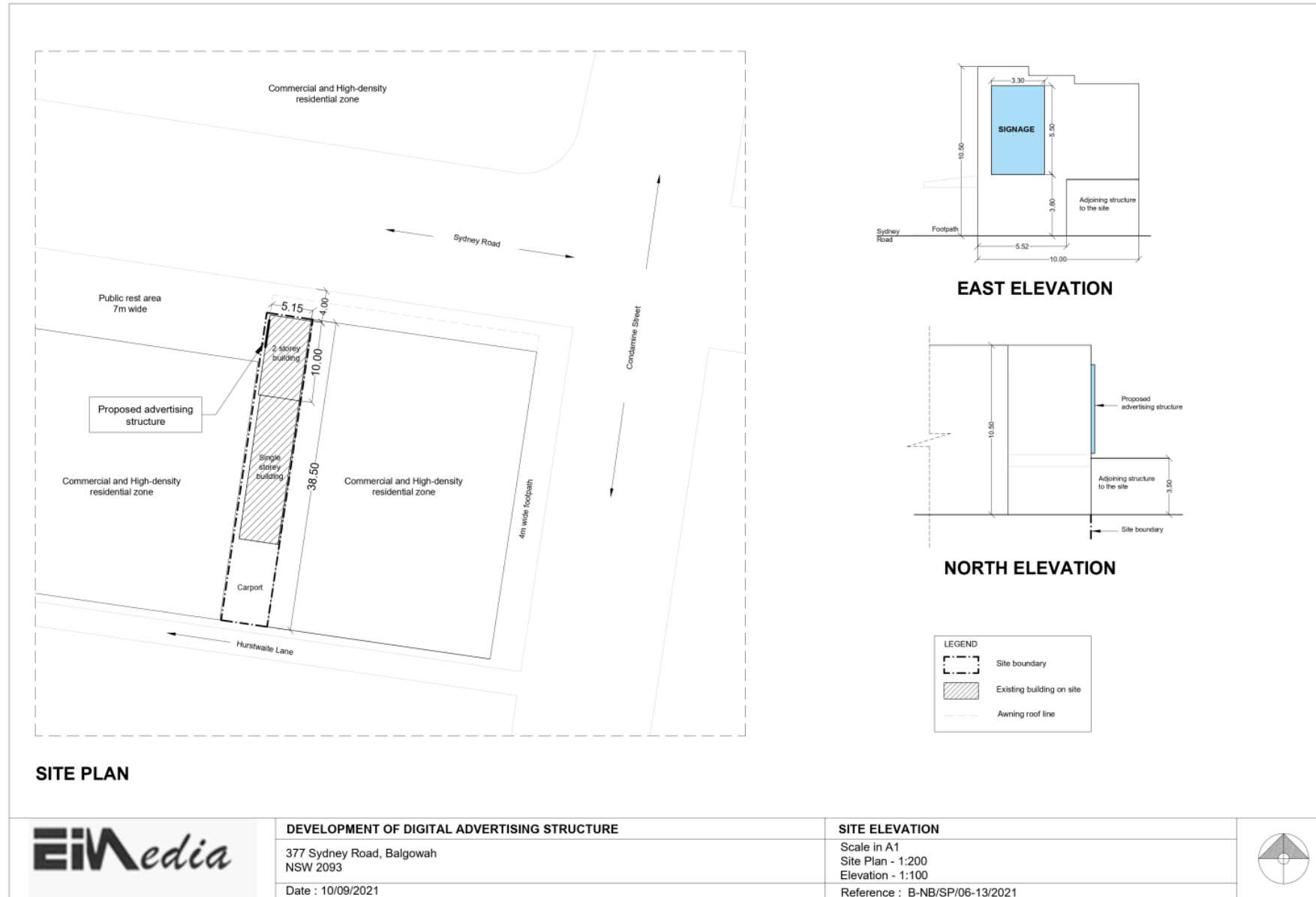


## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority **refuse** Development Consent to Development Application No DA2021/1593 for the Construction of an advertising structure on land at Lot 2 DP 134700,377 Sydney Road, BALGOWLAH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979. In particular, the site is not considered to be suitable for the proposed development.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 64 - Advertising and Signage.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
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 3.1 Streetscapes and Townscapes 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 3.1.3 Townscape (Local and Neighbourhood Centres) of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres) of the Manly Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.6 Balgowlah Local Centre of the Manly Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.3 Signage of the Manly Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5 Special Character Areas and Sites of the Manly Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.4.1 Foreshore Scenic Protection Area of the Manly Development Control Plan.
11. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest. In particular, the proposed sign will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.





**ITEM 5.2**

**MOD2021/0668 - 48A QUEENSCLIFF ROAD, QUEENSCLIFF -  
MODIFICATION OF DEVELOPMENT CONSENT DA2011/0360  
GRANTED FOR ALTERATIONS AND ADDITIONS TO A  
RESIDENTIAL FLAT BUILDING**

**AUTHORISING MANAGER** Rebecca Englund  
**TRIM FILE REF** 2022/039201  
**ATTACHMENTS** 1 Assessment Report  
2 Site Plan

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0668 for Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building at Lot CP SP 4129, 48A Queenscliff Road, Queenscliff, subject to the conditions set out in the Assessment Report.



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0668
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<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot CP SP 4129, 48A Queenscliff Road QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Owners of Strata Plan 4129
<b>Applicant:</b>	Boston Blyth Fleming Pty Ltd

<b>Application Lodged:</b>	31/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	13/09/2021 to 27/09/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The modification application seeks consent to modify DA2011/0360, which approved alterations and additions to an existing residential flat building to provide two additional residential units in an existing undercroft area.

The modification application is limited to the landscaped treatment of the western side setback, towards the rear (south) of the building. The treatment of the area in question was the subject of many submissions in the original development consent, and specific conditions were imposed by the consent authority to limit the extent of development in this area in order to minimise impacts upon the amenity of adjoining properties, specifically with regard to potential impacts upon views.

In response to the notification of the modification application, two submissions were received in objection to the application, raising concerns with regard to potential view impacts, privacy, amenity and construction activity. These matters have been addressed in detail in this report and are not considered to warrant special conditions or further amendments. Since the works relate to minor landscaping elements and the garden area is bordered on two sides by high existing walls, no unreasonable impacts are created by the proposed modifications.

As the modification application has been lodged under the provisions of s4.55(2) of the Act, and as the conditions relating to the treatment of the area in question were imposed by WDAP (an equivalent determination panel), the modification is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination, with a recommendation of approval.

### **PROPOSED DEVELOPMENT IN DETAIL**

This application, made pursuant to Section 4.55(2) of the Act, seeks to modify the approved landscaping located in the south-western corner of the site, including the deletion of the approved pathway in the side setback location. Specifically, the modification involves:

- Site preparation of the incomplete garden area on the western side of the lower ground level terrace
- Installation of a small water feature (recirculating water)
- Removal of previously approved pathway.
- Reshaping the approved low garden bed sandstone walls for garden terracing
- Landscape planting regime as per the modification plans DA-100 / D drawn by Space Landscape Design, dated 2.6.2021.

Approval of the proposed landscaping works will also require amendments to the conditions of consent, specifically the inclusion of a new condition (Condition 1E) to make reference to the modified plans.

It is noted that the proposed works are slightly lower (100mm - 500mm) than the height of the as-built walls currently on site. The as-built works and their relation to adjoining properties are shown in the images below.



Condition 1D reads as follows:

**Condition No. 1D - Modification of Consent - 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) Modification Approved Plans*

**Architectural Plans - Endorsed with Council's stamp**

<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-002 Rev B	28/10/2020	Custance
DA-003 Rev C	28/10/2020	Custance
DA-007 Rev B	28/10/2020	Custance
DA-008 Rev B	28/10/2020	Custance
DA-009 Rev B	28/10/2020	Custance
DA-010 Rev B	28/10/2020	Custance

**Reports / Documentation – All recommendations and requirements contained within:**

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<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Fire Engineering Report Peer Review (Ref: 17084-R1-V2)	22/11/2019	Peter Gardner & Associates
Geotechnical Assessment (Ref: 2010-198)	January 2021	Crozier Geotechnical Consultants
Fire Engineering Report (107347-FER-r4)	23/09/2019	BCA Logic

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

*c) All landscaping depicted in these modification architectural plans (all dated 28/10/2020) contained within this condition, is to be deleted and does not form part of the consent. Landscaping to be undertaken in accordance with the original landscape plans.*

*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.*

Council does not amend document lists in earlier conditions, but rather imposes a new condition to reference the most recent plans, which acts to supersede any plans previously referenced. This is of relevant in this instance, as the new plans provided do not show the remainder of the works approved in the previous modification application. A new Condition (Condition 1E) is recommended to refer to the amended landscape plans and the supporting geotechnical report.

As the plans listed in Condition 1D must remain, the first sentence of Part (c) remains relevant. However, it is appreciated that the second sentence may cause confusion. To avoid such confusion, Condition 1E also contains a sentence to confirm that in the event of any inconsistency between Conditions 1D and 1E, Condition 1E is to prevail.

## 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 Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - E7 Development on land adjoining public open space

## SITE DESCRIPTION

<b>Property Description:</b>	Lot CP SP 4129, 48A Queenscliff Road QUEENSCLIFF NSW 2096
<b>Detailed Site Description:</b>	<p>The site is located within the R2 Low Density Residential zone and accommodates an 11-storey residential flat building containing 15 units and basement carparking.</p> <p>The subject site is located on the southern side of Queenscliff Road.</p> <p>The site is battle-axe in shape with a frontage of 4.8m along Queenscliff Road and a depth of between 41.375m and 88.91m. The site has a surveyed area of 1,081m<sup>2</sup>.</p> <p>The subject site contains a steep slope which has a diagonal fall of approximately 21m (18%) in a north to south direction (from Queenscliff Road) towards Queenscliff Beach.</p> <p>Existing landscaped open space on site is characterised by areas of rock outcrops within the northeastern portion of the site and poor quality shrubs, medium size trees ground cover and weeds within the rear (southern) portion of the site. The site has been subject to substantial cut and fill in the past. Vehicular access to the site is provided by a steep driveway from Queenscliff Road.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by apartment style housing to the north-west, west, south-west, west and north-east. These apartment style buildings vary in scale between two and five stories in scale. A one-storey dwelling house occupies the site to the north, No. 44 Queenscliff Road. The southern boundary of the site adjoins a landscaped reserve which adjoins Queenscliff Beach.</p>

Map:



## SITE HISTORY

**Development Application No.DA2009/1471** for 'Alterations and additions to an existing residential flat building, comprising a new storeroom and tiling on the ground floor and basement level' was approved on 6 January 2010.

**Prelodgement Meetings** - On 28 January 2010 and 2011, two (2) pre DA meetings were held for alterations and additions to an existing residential flat building including a ground floor residential unit, additional carparking spaces within the existing sub-floor space and landscaping and remedial works.

In summary, the proposed works presented at the meetings were generally supported as it would provide a more contemporary building design to the lower portion of the building, improve the visual transition to the adjoining reserve at Queenscliff reserve, and increase the overall number of car parking spaces on-site. Furthermore, the pre-lodgement report noted that the design of the proposed development should maintain view sharing, solar access and privacy between adjoining properties, particularly No.1 and 1A Greycliffe Street.

In conclusion, the proposal was generally supported on the merits of the scheme and DA2011/0360 was subsequently lodged with Council.

**Development Application No.DA2011/0360** for alterations and additions to a residential flat building was approved by Council on 12 September 2011. In summary the works involved:

- the construction of two (2) residential units, comprising of an undercroft Unit (Unit A) and lower ground level split level unit (Unit B), within the southern portion of the existing apartment building including ancillary site works.
- alterations to the existing car parking areas located within the lower level and excavation works up to 7.5m in depth within the northern setback area of the site to construct three (3) levels of car parking, including six (6) mechanical car stacking spaces and two (2) visitor spaces. These works will result in an overall increase in the number of car parking spaces by 11 spaces, from 16 (existing) to 27 (proposed) spaces.
- alterations for two (2) additional ramps to provide access to the existing and proposed car

parking areas.

Under Warringah LEP 2000 the works were Category 2 "Housing" and therefore permissible. The subject building has since become a prohibited use as an RFB within the R2 Low Density Residential Zone for Warringah LEP 2011.

**Pre-lodgement Meeting No.PLM2015/0011** for alteration and additions to a residential flat building was held with Council on 9 July 2015. A number of modifications have been required to address various components of the consent with unforeseen contingencies in the progress of construction works.

The development consent has subsequently been modified four (4) times since 2011, the most recent of which was **Mod2020/0572** involving the regularization of an as-built tiered landscaped terrace area at the southwest side of the building with planting and mechanical ventilation exhaust stack on the northern side of the building above the basement parking area, the removal of a pedestrian path along the southern portion of the western boundary and changes to the fire sprinkler system.

The following condition was imposed by the Development Determination Panel (DDP) in its determination of 2nd March 2021:

*"1D(c) All landscaping depicted in these modification architectural plans (all dated 28/10/2020) contained within this condition, is to be deleted and does not form part of the consent. Landscaping to be undertaken in accordance with the original landscape plans. 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."*

The reasoning behind for the imposition of this condition was expanded upon within the DDP minutes as follows:

*"The Panel does not concur with the assessment report, or supplementary memo in regards to the impact from the proposed landscaping. The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.*

*The Panel considers that the impact of the landscape terracing, and raised levels of landscaping, are unacceptable in relation to visual impacts, view loss, light and amenity to the adjoining properties. In this regard the landscape plans and references to the landscaping in the architectural plans are to be removed from the approval.*

*These issues were raised previously in the original determination. The landscaping plans were amended to remove the raised landscaped areas, in order to lessen the impacts on adjoining properties. The original approved landscape plans did not contain any detail which indicated changes to the existing ground levels. In this regard the approved landscaping should be installed at the ground levels prior to construction."*

The landscaping approved in the south-western corner of the site was unable to be implemented due to the presence of bedrock with the creation of terraced planter beds and the importation of soil the only viable option to enable the establishment of any form of landscaping on this portion of the site. Further, the approved pathway located on the boundary in this location would, if constructed, result in unnecessary impacts on the amenity of the adjacent apartments at No. 1A Greycliffe Street in terms of



privacy and view affectation noting that a 1 metre high balustrade would need to be constructed on the boundary to prevent persons falling into the adjoining property.

#### 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 DA2011/0360, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the 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	<p>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 DA2011/0360 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The landscaping approved in the south-western corner of the site was unable to be implemented due to the presence of bedrock with the creation of terraced planter beds and the importation of soil the only viable option to enable the establishment of any form of landscaping on this portion of the site.</li> <li>• The approved pathway located on the boundary in this location would, if constructed, result in unnecessary impacts on the amenity of the adjacent apartments at No.1A Greycliffe Street in terms of privacy and view affectation noting that a 1 metre high balustrade would need to be constructed on the boundary to prevent persons</li> </ul>



Section 4.55 (2) - Other Modifications	Comments
	<p>falling into the adjoining property.</p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <ul style="list-style-type: none"> <li>• <i>The modified landscape design seeks to maintain amenity between adjoining residential property and also the adjacent public domain / foreshore reserve,</i></li> <li>• <i>The modified landscape design proposes plant species which at maturity are suitable for view considerations and landscape setting,</i></li> <li>• <i>The modified landscape design proposes plant species which at maturity will not reduce existing levels of sunlight obtained by surrounding residential properties and will not cast shadow onto the adjacent public domain, and</i></li> <li>• <i>The modified landscape design removes the previously approved pathway and provides for a non-trafficable terraced landscaped area which will not be capable of being used, or adapted for use, as either private or communal open space and to that extent will not give rise to adverse visual or aural privacy impacts.</i></li> </ul> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p> <p>In considering the reasons for granting of consent it is noted that the Development Determination Panel of Council made the following conclusion in Minutes of the previous assessment relating to the works:</p> <p>The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.</p> <p><i>"The Panel does not concur with the assessment report, or supplementary memo in regards to the impact from the proposed landscaping. The impacts are such that this could not be considered to be within the parameters of a Modification under Section 4.55 (1A) as involving minimal environmental impact.</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>The Panel considers that the impact of the landscape terracing, and raised levels of landscaping, are unacceptable in relation to visual impacts, view loss, light and amenity to the adjoining properties. In this regard the landscape plans and references to the landscaping in the architectural plans are to be removed from the approval.</i></p> <p><i>These issues were raised previously in the original determination. The landscaping plans were amended to remove the raised landscaped areas, in order to lessen the impacts on adjoining properties. The original approved landscape plans did not contain any detail which indicated changes to the existing ground levels. In this regard the approved landscaping should be installed at the ground levels prior to construction."</i></p> <p>For the above reasons the applicant has provided a 4.55(2) application and as the proposal relates to landscaping works that are ancillary to the residential flat building the application and remains consistent with the original development consent, including reasons for granting approval. The changes to the landscaping at the south-west corner of the site allow for views and stabilisation of the soil area with low coastal planting and low sandstone walled garden beds that are sympathetic to the adjacent public reserve.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2011/0360 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under</p>	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.

Section 4.55 (2) - Other Modifications	Comments
section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(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 96 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>requested in this case, however the applicant has provided an response to submissions viewed online and demonstrating the merit consideration of the changes / modification proposed.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.



Section 4.15 'Matters for Consideration'	Comments

## EXISTING USE RIGHTS

**Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment: The Applicant has provided evidence in the form of development consent No.64/161 for Lot B in DP 2061, which reveals that the use of the building and land commenced as a lawful purpose in 1964, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

Pursuant to Warringah LEP 2000 the use was "Category 2 - Housing" however existing use rights have become applicable for the current R2 Low Density Residential zone now, since the gazettal of WLEP 2011. The works propose relate to a sloping garden area toward the south-western corner of the site to provide suitable low retaining walls for soil beds, native coastal planting and a garden water feature. The works have no impact on existing use rights for the building in terms of density, bulk, scale, traffic, noise, or the residential flat building design.

2. Was the use of the land for residential flat building was granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment: The use of the building and land for development of residential flat building containing 18 units was lawfully approved by Council on 24 September 1964, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building and land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent

as to ensure (apart from that provision) that the development consent would not lapse?

Comment: The Applicant has provided evidence in the form of survey information and development application documents, which reveals that the use of the building was in place prior to 2011 and development consent for alterations and additions granted on 12 September 2011, which is within one year, and prior to the date on which the provision having the effect of prohibiting the use commenced.

**What is “the land on which the existing use was carried out” for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment: Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights do not apply to the whole of the subject site.

**What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment: The modification works to the section of garden landscaping at the south western corner of the site does alter the approved landscape open space area for the site or the building structures, bulk, floor space, parking or any other built form controls.

**2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Comment: The modification work seeks to provide a suitable alternative landscape treatment at the

lower corner of the site below the end of the driveway area due to bedrock and shallow soil so that amenity between adjacent buildings is provided by suitable planting for the coastal environment.

### 3. What are the impacts on adjoining land?

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Comment: The modification to the garden landscape space does not create any unreasonable impact on adjacent land and maintains amenity considerations of noise, soil erosion protection, suitable planting, privacy and setback treatment.

### 4. What is the internal amenity?

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment: The modification work is wholly located within the site and does not impact existing bushland within the adjacent public reserve. Acceptable amenity for the surrounding residential environment is maintained. The previous approval for DA2011/0360 was made pursuant to Warringah LEP 2000 in that "housing" was subject to a Locality statement with "categories" of development and not a land use Zoning Table and Zones as per current the Standard Instrument LEP.

## 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 13/09/2021 to 27/09/2021 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:
Robyn Jean Wormald	15 / 1 Greycliffe Street QUEENSCLIFF NSW 2096
Christopher Hrones	12/11a Oyama Avenue MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

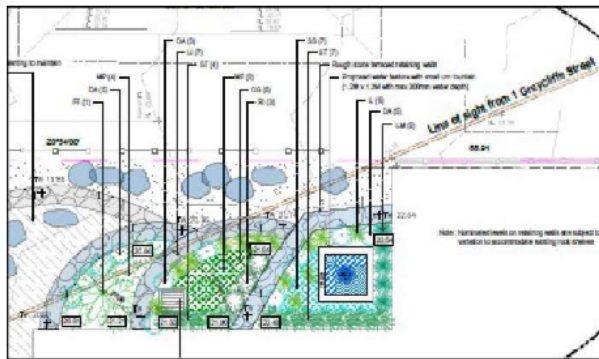
- *Concern regarding impact on views*

Comment: A submission was received from the property owners of 3/1a Greycliffe Street raising

concerns with regards to impacts to views. However, the concerns raised are not in relation to the proposed works but rather the landscaped treatment of the coastal reserve immediately to the south of the subject site. The landscaped treatment of the coastal reserve is not impacted by the proposed modifications and is not relevant to the subject application.

A second submission received from the property owners of 15/1 Greycliff Street made reference to existing impacts to views associated with the approved development in general, with no specific concern raised in relation to the proposed modifications.

Nonetheless, the landscaped plans have been designed to minimise impacts upon the amenity of adjoining properties by strategically locating the terracing and larger plants outside the view corridor in question. This issue is addressed in detail under the heading *Part C7 Views* within this report.



Based on the above, it is concluded that the proposed development will not have any unreasonable impacts on the available views from adjoining and surrounding properties and the modification is consistent with the objectives of Part C7 of the DCP.

- *Concern regarding noise, debris and dust from construction activity.*

Comment: The works proposed in the subject modification application are relatively minor in comparison to the scope of works approved under the parent development application, which have already been completed. The impacts upon neighbouring properties associated with construction should be relatively minimal, with unreasonable impacts mitigated/covered by existing conditions of consent.

A submission also raised concern regarding existing debris associated with the mulch that has been used in the as-built landscaped area. Whilst the mulch has subsequently been removed, the proposed landscaping of ground covers in this area will protect the exposed soil/mulch which should actively reduce the amount of mulch/dirt/debris within this area. Further, the proposed retaining walls are designed to sit slightly higher than the edge of the garden bed to retain the mulch and soil within the subject site.

- *Concern that the water feature may cause smell and mosquitoes from stagnant water.*

Comment: The water feature has recirculating water that prevents smell and mosquitoes due to the moving water. The water noise assists to mask background noise between adjacent bedroom / private open space areas. Nonetheless, the applicant has agreed that if the water feature is of concern, they are agreeable to its deletion. Noting that the water feature is in a location that is somewhat physically disconnected from the associated unit, a condition of



consent is recommended to delete the water feature, with the area to be replaced with plantings of the same species as those proposed in the surrounding garden.

- *Concern regarding solar access.*

Comment: A submission has been received in objection to the proposed plantings and any further impacts upon solar access. The majority of the proposed plantings are ground covers with maximum maturity heights of less than 1m. Whilst some slightly taller plants are proposed (maximum 1.5m in height), they are setback from the boundary, adjacent to the existing wall of the development. The proposed plantings will not result in any additional overshadowing of the adjacent property.

- *Concern regarding the visual appearance of the retaining wall.*

Comment: A submission was received regarding the visual appearance of the existing retaining walls. The proposed modifications will result in a minor reduction to the height of the walls, and the proposed plantings will result in the enhancement of the aesthetic appearance of the area.

The two submissions received have been considered in detail and none of the matters raised warrant the refusal of the subject application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>Supported without conditions.</b></p> <p>The application is for modification of development consent DA2011/0360 and amendment to approved plans referenced in the most recent modification approval Mod2020/0572. This application proposes to modify the landscaping works in the south-western corner of the site and associated conditions 1D(a) and 1D(c) of Mod2020/0572.</p> <p>The landscape plans provide for a lowering of as built terraced walling between 100mm and 500mm below existing and provide a plant schedule amended with planting to a height of no more than 1 metre within the garden beds occupying the view line of 1 Greycliffe St.</p> <p>Landscape Referral no objections to the landscape works as depicted by Landscape Plan DA-100 revision D.</p>
NECC (Coast and Catchments)	<p><b>Supported without conditions.</b></p> <p>The application has been assessed against the requirements of clauses 13, 14 and 14 of State Environmental Planning Policy Coastal Management and has been assessed to comply. Therefore, it is supported for approval with conditions.</p>
NECC (Water Management)	<p><b>Supported with existing condition (No.16) applied.</b></p> <p>The project is proposing minor landscaping works. The proposed modification to the approved DA are low environmental risk from a water quality management perspectives (stormwater and</p>

Internal Referral Body	Comments
	groundwater). Sediment and erosion controls measures shall be maintained at all times during construction activity.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid requirements have been addressed by existing referral advice provided for the original development application as modified. No further matters are advised as per case reference "A32622 - Decision not required".

### 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

The requirements of SEPP 55 (and Draft SEPP) were addressed as part of the parent development application. The modification works maintain consistency with the SEPP and no further detail consideration or change to conditions is required pursuant to the SEPP.

#### 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 modification of the development related to the parent approval for alterations and additions to an 11 storey residential flat building.

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 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 modification work maintains consistency with the landscape character of the foreshore area and includes native plant and shrubs that are suitable for the coastal environment and position adjacent to other apartment buildings.

### **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 modification work does not affect the building form and scale of the approved development work.

**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:

No change is proposed to the density of the site. The existing building is one of numerous anomalies with the current zoning as low density residential land due to historical development at the Queenscliff end of Manly Beach. (Parent DA added Units to the building with renovation works to the subfloor areas and parking areas as part of a major renovation to the building.)

**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 modification work does not affect the sustainability performance of the building.

**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 modification relates to a minor section of the site applicable to garden area changes for landscaping and minor retaining walls with a cosmetic water feature to enhance noise privacy and amenity.

**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 wellbeing.

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 modification works will maintain amenity to adjacent land and provide appropriate planting and soil support to limit erosion.

**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 modifications include a water feature that is safe and does not require fencing. The position of the garden area is subject to passive surveillance from adjacent private open space.

**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 modification work does not affect housing diversity or social housing considerations.

**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:

Acceptable design aesthetics have been applied for the modification works to respond to the conditions

of consent and reasons for the modification work.

### APARTMENT DESIGN GUIDE

The proposed modification work is a qualitative change to the existing landscape space and does not change the area or dimensions of setbacks, landscape area, building elements to the RFB, residential access, or does not change the siting, building design, configuration or performance. Therefore, no detail assessment under the criteria of the 'Apartment Design Guide' is required.

### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

#### Comment:

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

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

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 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 proposed modification work is a qualitative change to the existing landscape space and is

consistent with the design quality principles and objectives of the ADG.

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

The requirements of SEPP BASIX were addressed as part of the parent development application. The modification works maintain consistency with the SEPP for associated landscaping components and no further detail consideration or change to conditions is required pursuant to the SEPP.

#### **SEPP (Infrastructure) 2007**

The requirements of *SEPP Infrastructure* were addressed as part of the parent development application. By existing conditions the modification works maintain consistency with the SEPP for the works including compliance with *Ausgrid*, *Sydney Water*, *Transport for NSW* and other service infrastructure authorities. No further detail consideration or change to conditions is required pursuant to the SEPP.

#### **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:

#### **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 works are not likely to alter coastal processes or adversely affect the natural foreshore environment.

#### **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 landscaping work and changes to the open space area are consistent with the coastal environment for garden feature work, use of native species for habitat and minimal impact on the coastal 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:

The proposed landscaping work and changes to the open space area are consistent with the coastal use area objectives.

#### 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 modification work is consistent with the coastal use area requirements and objectives of the SEPP.

As such, it is considered that the modification 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 proposed landscaping work and changes to the open space area are consistent with the coastal zone objectives to ensure no increased risk from coastal hazards.

**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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	31.3m (Originally 11 storey building - Alterations created a 12 storey configuration with renovation work)	No change	268% (Existing)	No (As approved)

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
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

#### Warringah Development Control Plan

##### Built Form Controls

Standard	Requirement	Approved	Proposed	Variation %	Complies
B1 Wall height	7.2m	12 storey RFB 31.0m 8m for Unit additions to RFB lower levels	No change	Existing 330.5%	As approved
B3 Side Boundary Envelope	East 45 degrees at 5m	Main RFB structure  Within envelope for lower Unit additions	No change	Existing 100%  N/A	No As approved  Yes
	West 45 degrees at 5m	Main RFB structure  Within envelope for lower Unit additions	No change  No change	Existing 100%  N/A	No As approved  Yes
B5 Side Boundary	East	Building	No change	Existing	No

Setbacks	0.9m	additions: Nil to 4.5m		100%	As approved
		Main RFB and utility 0.0m to 3.9m	Ventilation outlet:  7.3m	Existing 100%	No As approved
	West 0.9m	Main RFB building: 0.9m to 3.9m	No change	N/A	Yes
		Main RFB and driveway 0.0m to 3.9m	No change Ventilation outlet:  9.5m	N/A	Yes
		Foreshore area	No change Landscaped terrace: 0.9m	N/A	Yes
	North 0.9m	Building: Nil to 3.5m	No change	Existing	No As approved
		-	Ventilation outlet:  2.2m	Existing	Yes
	B7 Front Boundary Setbacks	6.5m	45.0m (Access handle area)	No change	Existing
B9 Rear Boundary Setbacks	6m	Building: 4.1m to 6.4m	Unaltered	Existing	As approved
		Balconies: 2.1m to 4.4m	No change	Existing	As approved
		-	Landscaped terrace: 4.1m	Existing	No As approved
D1 Landscaped Open Space and Bushland Setting (Site area 853sqm excluding access handle)	40% 341sqm	18.9% 204sqm	No change	40.17% Existing	No As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	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	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **D1 Landscaped Open Space and Bushland Setting**

##### Description of non-compliance

The proposal seeks changes to the landscaped open space area and while no net area change is proposed the modification affects the approved landscape design.

##### 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 modification works are not visible from Queenscliff Road or the public beach area below the site due to the separation distance and adjacent structures such as fencing,



buildings and existing landform. The planting regime is appropriate for the local area that include sandstone garden edging and native plants.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment: The selected planting and reshaping of the garden bed include suitable species for the coastal environment and sandstone topography. The planting selected is similar to adjacent garden areas already completed at the southern side of the lower private terrace. The modification is consistent with this objective.

- *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 landscaping works proposed include suitable low lying shrubs and plants that will not have an adverse impact on views across the corner of the site and provide suitable soil cover to reduce erosion risk and landscape amenity to adjacent POS. The modification is consistent with this objective.

- *To enhance privacy between buildings.*

Comment: The landscaping provides an appropriate level of landscape separation and the inclusion of a small recirculating water feature assist to mask low level noise for privacy between adjacent POS. The modification is consistent with this objective.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment: The landscape area to be modified is on a steep side slope below the driveway area and is not suitable as a recreation space.

- *To provide space for service functions, including clothes drying.*

Comment: The landscape area to be modified is on a steep side slope below the driveway area and is not accessible for use as a clothes drying area or other functions.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment: The proposed modification to the landscape area does not create an adverse impact on stormwater management for the site and will provide suitable ground cover shrubs for soil support and covering exposed rock areas and to assist with infiltration in a landscape setting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and remains supportable on merit.

## D7 Views

### Merit consideration

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

(Note: a comprehensive view impact assessment was made with DA2011/0360, including site photos

from various parts of adjacent properties / units. This information has been reviewed in context of submissions received and considered as part of this modification application assessment)

- *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) step planning principle outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd V 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 Step 1: The views available from affected properties include whole views of the Queenscliff / Manly Beach land/water interface, the Pacific Ocean and distant views of North Head and St Patrick's Estate. These views are highly valued and views from adjacent apartments that have yards adjacent have a similar whole view. Generally, the works are not readily visible due to the high terrace and driveway structure / corner of a 2m to 3m retaining wall on the south side of the landscape area.

These views are also obtained through building corridors and voids and landscaping are also available. Accordingly, these views are considered of minor to moderate value.



Image: View line between buildings of Manly beachfront area not affected by the modification works.

## 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 Step 2: The proposed landscaping will have a negligible impact on any views obtained from the ground floor units at the rear of No. 1 Queenscliff Road as the landscaping works are situated beside a corner of the building with high walls on 2 sides.



Image: Side view over Council reserve area from 1A Queenscliff Road. This area is not part of the modification.

### 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 Step 3: The proposed landscape plantings on-site, including the maturity height and foliage density of trees and understorey species, is not expected to result in further unacceptable and unreasonable view loss impacts to adjoining and surrounding lands. The modification work area is depicted below and show that the high courtyard walls, elevated driveway and sloping garden bed area will ensure no view impact on views. The proposed planting has been laid out so that only low plants are positioned in the view corridor and these are well below the standing or sitting view line.





Image: Location of modification work in relation to side setback and adjacent higher walls of existing buildings.

#### 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 skillful 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 Step 4: The proposed landscape plantings on-site, including the maturity height and foliage density of trees and understorey species, is not expected to result in further unacceptable or any unreasonable view loss impacts to adjoining and surrounding lands,

including adjacent apartments at No.1 and No.1A Queenscliff Road.

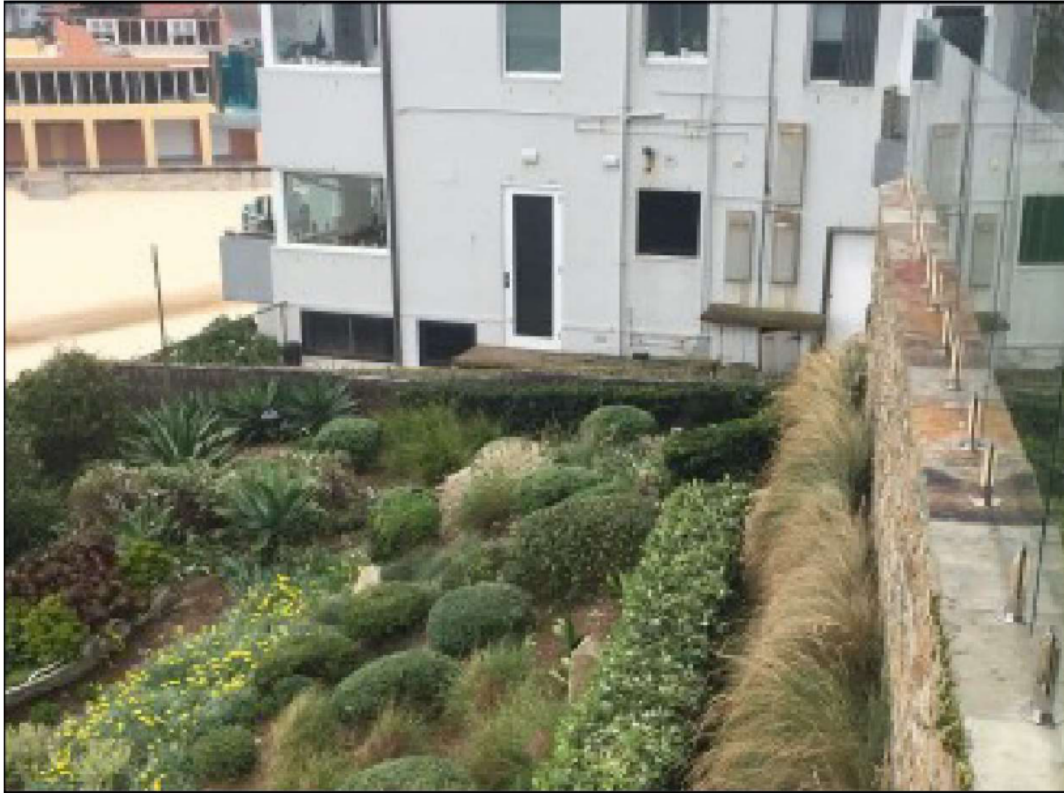


Image: Type of landscaping completed in front of the modification area to match to garden landscape area to be completed.

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

Comment: The modification to the garden area provides graduated garden beds for the slope and suitable planting. The position and shape of the garden area is situated well below the main driveway structure and will assist in improved amenity for adjacent private open space without impacting views.

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

Comment: The modification works includes suitable garden planting for the coastal environment of low shrubs and grass. No canopy trees are proposed.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant requirements and objectives of this control.

### **E7 Development on land adjoining public open space**

The site adjoins a foreshore reserve and Council has undertaken rehabilitation planting / weed management of the adjacent reserve including extensive replanting works for erosion control and native coastal habitat. The landscaping changes seek to maintain consistency with the Council reserve area that now has more established coastal plants. The change to low hob retaining walls will assist in soil retention of garden bed and the proposed plantings will improve the aesthetic appearance of the

setback area.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

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

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

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

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

The modification works relate to an unfinished section of the garden landscaped area below the main driveway structure and adjacent "Unit A" that was a new unit constructed in the southern undercroft of the original building. The parent consent was subject to the Apartment Design Guide (ADG) under State Environmental Planning Policy (SEPP) No.65 and the modification assessment has the relevant parts of the SEPP. The building is also located in the R2 Low Density Residential zone (following the gazettal of Warringah LEP 20111 and therefore existing use rights apply to the building which have been addressed in context of the modification being limited to ground level garden landscaping only.

The modification application received two submissions raising concerns with potential view impacts, privacy, amenity, the water feature and construction activity which have been considered addressed during the assessment. This assessment including inspection of the subject site and surroundings has resolved that the modification work does not warrant special conditions or plan amendments for the construction certificate process. The works relate to minor landscaping elements and the garden area is bordered on two sides by high existing walls no unreasonable impacts are created by the modification proposal. The work zone for the garden area to be completed is not part of the adjacent public reserve and appropriate planting is selected for the natural coastal environment.

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. Mod2021/0668 for Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building on land at Lot CP SP 4129,48 A Queenscliff Road, QUEENSCLIFF, subject to the conditions printed below:

### B. Add Condition 1E - Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

#### 1E. Modification of Consent - 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) Modification Approved Documents

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment 2010-198	17.8.2021	Crozier Geotechnical Consultants

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-100 Revision D Landscape Plan	2.6.2021	Space Landscape Designs

In the event of any inconsistency between the plans or requirements of Conditions 1D and 1E, Condition 1E is to prevail.

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





**ITEM 5.3**

**MOD2021/0761 - 9999 PITTWATER ROAD, BROOKVALE -  
MODIFICATION OF DEVELOPMENT CONSENT DA2019/1190  
FOR CONSTRUCTION OF A NEW GRANDSTAND AND  
CENTRE OF EXCELLENCE**

**AUTHORISING MANAGER** Rebecca Englund  
**TRIM FILE REF** 2022/039415  
**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is Council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0761 for Modification of Development Consent DA2019/1190 for construction of a new grandstand and centre of excellence at Lot 7069 DP 1058602 and Lot 1 DP 114027 and Lot 1 DP 651395 and Part Lot 1 DP 784268 and Lot 6 DP 785409 and Lot B DP 966128, 9999 Pittwater Road, Brookvale, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	MOD2021/0761
<b>Responsible Officer:</b>	Danielle Deegan (independent planning consultant)
<b>Land to be developed (Address):</b>	Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128, Lot 6 DP 785409, Pittwater Road, Brookvale
<b>Proposed Development:</b>	Construction of a new grandstand and centre of excellence
<b>Zoning:</b>	Warringah LEP2011 – Land zoned RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Northern Beaches Council
<b>Applicant:</b>	Manly Warringah Sea Eagles Ltd
<b>Application Lodged:</b>	27/10/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Community facility
<b>Notified:</b>	27/10/2021 to 17/11/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	None
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks to modify development consent DA2019/1190 for "Construction of a new grandstand and Centre of Excellence" via a Section 4.55(1A) application. The original development application was determined by the Sydney North Planning Panel (SNPP) on 29 July 2020. This modification application is submitted under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) and therefore is not required to be determined by the SNPP as per 123BA of the Environmental Planning and Assessment Regulations 2000 (the Regulations).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as Northern Beaches Council is the Crown Land Manager of the land.

The modification to the development seeks to amend the architectural plans to reconfigure internal floor space on level 1. The overall building height, scale, footprint and use of the building remains unchanged.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Consultation Plan. No submissions were received during the notification period. The proposed development continues to be of good design and provides suitable amenities for the Manly Warringah Sea Eagles and the broader sporting community, it is therefore recommended that the application be approved.

## PROPOSED DEVELOPMENT IN DETAIL

The application is to modify development consent DA2019/1190 which granted consent for "Construction of a new grandstand and Centre of Excellence".

Specifically, the modifications sought are:

1. Minor changes to the internal layout on level 1 as follows:

- Replace an area of offices located in the south-western corner of level 1, with an active cardio gym area.
- Replace the utility room, study and sleep room, located on level 1, with a tiered theatre.

The proposed changes are within the approved building envelope and are consistent with the approved use. There are no external modifications to the building proposed.

2. Amend the wording of condition No 52 to enable separate occupation certificates (OCs) to be issued to allow for a staged delivery of the rehabilitation pool and completion of the remaining building.

The applicant has advised the pool is being procured from Italy, where the manufacturer is based. International procurement delays caused by the ongoing COVID pandemic is causing a delay in freight times, thus reducing the contractor's ability to ensure completion of this element of the proposed development in conjunction with the remaining structure.

The current wording of condition 52 states that the delivery of the pool is connected to the issuing of 'any interim / final Occupation Certificate'. It is proposed to change the wording to enable a staged OC approach. The proposed wording is outlined below:

**52. Public swimming pools and spa pools fit out**

*Prior to the issuing of any ~~interim~~ / final occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of the public swimming pools and spa pools are compliant with the relevant and current guidelines including:*

- Public Health Act 2010
- Public Health Regulation 2012

*Reason: To ensure compliance with legislation and to protect public health and safety*

The amended wording will allow ongoing construction of the building.

## 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 – Zone RE1 Public Recreation  
Warringah Local Environmental Plan 2011 – 5.10 Heritage Conservation

## SITE DESCRIPTION

The subject site is located on the northern side of Pittwater Road, Brookvale. It is legally identified as Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128 and Lot 6 DP 785409. The site is bounded by Pittwater Road to the south, Federal Pde to the north, Alfred Road to the west and Pine Avenue to the east. The site slopes gently down from north to south, with a total fall of approximately 4.8 metres and an average gradient of approximately 1 in 60. The site area is approximately 4.6 hectares.

The site is occupied by a sportsground known as Brookvale Oval located on the southern portion of the site, a formal car parking area on the corner of Alfred Street and Pittwater Road, and open space on the remainder of the site. The sportsground has grandstands on its western and southern sides and a spectator hill on its eastern side. There are other related structures on the site such as ticket offices, canteens and amenities.

The building comprising of the new grandstand and Centre of Excellence, approved under DA2019/1190, is currently under construction on the northern side of the playing field. This area was formerly a grassed spectator hill.

Adjoining the site to the north is public open space that forms a “village green”, a children’s play area and a child care centre. To the east, north and west of the site is residential development comprising a mix of dwelling types including dwelling houses, multi-dwelling housing and residential flat buildings. Opposite the site to the east on Alfred Road is St Augustine’s College. To the south of the site extending to the east on Pittwater Road is commercial development that forms part of the Brookvale commercial area.



**Figure 1 – Site Map**

## **SITE HISTORY**

On 29 July 2020, DA2019/1190 for “Construction of a new grandstand and Centre of Excellence” was approved by the Sydney North Planning Panel.

The consent approved demolition works and the construction of a building containing a Centre of Excellence for the Manly Warringah Sea Eagles rugby league football club, the formalisation of seating for approximately 3,000 spectators and public amenities at the northern end of the existing Brookvale Oval with associated landscape and stormwater management works.

The Centre of Excellence building, as approved, contains two levels. The lower level provides public toilets, an entry foyer, team change rooms and toilets, gymnasium, rehabilitation pool areas, a flexible education space, plant and storerooms. The upper level contains, offices, board room, meeting rooms, study, theatre, breakout area, premium seating area, toilets, plant and storerooms. External tiered seating for 3,000 spectators adjoins the building on its southern side. The approval includes a canopy over the seating area, extending out from the top of the Centre of Excellence building.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 27/10/2021 to 17/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment	<p><u>Supported with conditions</u></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Amended Construction Certificate Stage.</p>
Strategic and Place Planning (Urban Design)	<p><u>Supported</u></p> <p>The proposed amendments are located within the approved building envelope, and do not propose an intensification of use. There is no modification to the external appearance of the building. As such, there is no objection to the proposed amendments.</p>
Environmental Health (Industrial)	<p><u>Supported</u></p> <p>Internal changes to the concourse level are unlikely to impact any of the amenity criteria as the use remains "substantially the same". No objections to the proposal.</p>
Traffic Engineer	<p><u>Supported</u></p> <p>The proposed modifications are acceptable and are not considered to result in any appreciable traffic or parking impacts. The Transport Network team raises no objection to the changes and no new conditions are proposed</p>

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 findings of the Sydney North Local Planning Panel detailed in the Determination and Statement of Reasons for DA2019/1190, 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	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The footprint of the building remains unchanged.</li> <li>• The height and overall scale, form and appearance remains unchanged,</li> <li>• The primary use of the building remains unchanged,</li> <li>• The proposal does not further impact any aspect of the natural environment.</li> </ul>
(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	<p><b>Yes</b></p> <p>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 DA2019/1190 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The footprint of the building remains unchanged.</li> <li>• The height and overall scale, form and appearance remains substantially unchanged, apart from the minor amendments proposed under this application.</li> <li>• The use of the building remains unchanged</li> </ul>
(c) it has notified the application in accordance with:	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
(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	
(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	No submissions were received in relation to this application.

#### 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	<p>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.</p> <p>The site has been used for public recreation purposes since the early 20th century and has not been used for a purpose referred to in Table 1 of the contaminated land planning guidelines. Therefore, it is unlikely that the Site is contaminated.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

### CROWN LAND MANAGEMENT ACT 2016 and LOCAL GOVERNMENT ACT 1993

The site is classified as “community land” under the Local Government Act 1993 (“LG Act”).

Section 36(1) of the LG Act requires the preparation of a Plan of Management for all community land. The Brookvale Park Plan of Management (“PoM”) applies to the land.

Section 36(3)(a) of the LG Act provides that the PoM must categorise the land. The area covered by the PoM has been categorised as containing land within the sportsground, park and general community use categories. The proposed development is on land categorised as sportsground.

The SNPP came to following conclusion in its decision to approve the original development:

*“the Panel is satisfied that the proposal has been assessed against the PoM and is consistent with the requirements of the PoM. Notably, the PoM envisages the development of a northern stand, does not specifically require the retention of the heritage trees, requires a major event traffic and parking strategic plan but only for developments proposed to significantly increase the number of visitors. The Panel also notes there has been extensive community consultation on various proposals for Brookvale Oval since the PoM was adopted in 2002.”*

The modified proposal remains consistent with the provisions of the PoM.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies were considered in the merit assessment of the development 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)

There are no SEPPs or SREPs relevant to the assessment of this modification application.

## WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011 (WLEP 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

### Detailed Assessment

#### Zone RE1 Public Recreation

The application was approved based on the development comprising a recreation facility (indoor), being the Centre of Excellence, and a recreation area (major) being the grandstand, both of which are permissible uses within the RE1 Public Recreation zone. The relevant definitions in WLEP 2011 are:

**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

**recreation facility (major)** means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks.

Concern was raised in the assessment of the original application that the upper floor of the Centre of Excellence building, described in the Statement of Environmental Effects as "administration office space", comprised "office premises" as defined in WLEP 2011 and was a prohibited use. The definition of "office premises" in WLEP 2011 is:

**office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

The applicant's response was to characterise the office use of the development as an ancillary component of the Centre of Excellence facility as the approved gross floor area used for administration offices was 13.6% of the total gross floor area of the total area of the facility. The

relatively minor size of the administration office area indicates that the offices are ancillary to the other uses within the development.

The SNPP accepted that the scale, design and nature of the area used for administration offices is such that it is an ancillary use to the other uses within the Centre of Excellence facility and the use of the development as a recreation area (major) and was, therefore, permissible with development consent.

The proposed modifications further reduce the overall area used for office use and therefore remains an ancillary use to the recreational facility (major).

The proposed staging of the occupation certificates will allow the completion and occupation of the of the building prior to the installation of the indoor swimming pool. Given that the swimming pool is located in the separated 'rehab area' and is not publicly accessible, there are no concerns with this staged approach. It is noted that Council's Building Assessment Team have raised no objections to the staging of the occupation certificates.

The modified proposal remains a permissible use in the zone and is consistent with the zone objectives.

#### **Clause 5.10 – Heritage conservation**

Clause 5.10(4) of WLEP 2011 requires that the consent authority must, before granting consent to development in respect of a heritage item, consider the effect of the proposed development on the heritage significance of the item concerned.

The 'Brush Box and Camphor Laurel trees surrounding Brookvale Park Pine Avenue, Alfred Street, unmade section of Federal Parade and Pittwater Road (near Pine Street intersection)' are listed as a heritage item in Schedule 5 of WLEP 2011 and shown as a landscape item on the WLEP 2011 Heritage Map (I132).

Development consent DA2019/1190 includes approval for the removal of 11 of the heritage-listed Brush Box trees. The 11 trees have been removed and replaced with 11 x *Lophostemon confertus*, to north of the Centre of Excellence, as required by condition No 31 of the consent.

The proposed modifications have no impact on the remaining heritage-listed trees.

#### **WARRINGAH DEVELOPMENT CONTROL PLAN (WDCP)**

As the proposed changes are internal only and do not affect the approved use of the site, the modified proposal remains consistent with the applicable provisions of the WDCP

#### **7.12 CONTRIBUTIONS**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

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

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



This assessment has taken into consideration the submitted plans and Statement of Modification. The modified proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

The proposed modifications are minor and result in a development that is substantially the same, with regards to visual built form outcome, impact upon the natural environment and impact on the amenity of surrounding residents.

The proposed changes are all internal. The proposed conversion of office floor space to gym and theatre uses is consistent with the objectives of the zone. The proposed development continues to be of good design and provides suitable amenities for the Manly Warringah Sea Eagles and the broader sporting community, it is therefore recommended that the application be approved by the LPP.

The proposed development satisfies the appropriate controls and 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. Mod2021/0761 for Modification of Development Consent DA2019/1190 granted for the construction of a new grandstand and centre of excellence on land at Lot 7069 DP 1058602 and Lot 1 DP 114027 and Lot 1 DP 651395 and Part Lot 1 DP 784268 and Lot 6 DP 785409 and Lot B DP 966128 9999 Pittwater Road BROOKVALE, subject to the conditions printed below:

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

The development must be carried out in compliance (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_1002 (Revision P)	13.08.2021	Hassell Pty Ltd

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

### B. Modify condition No 52 to read as follows:

#### 52. Public swimming pools and spa pools fit out

Prior to the issuing of the relevant interim/final occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of the public swimming pools and spa pools are compliant with the relevant and current guidelines including:

- Public Health Act 2010
- Public Health Regulation 2012

Reason: To ensure compliance with legislation and to protect public health and safety

**C. The addition of the following conditions:**

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

**31A. Access and Egress**

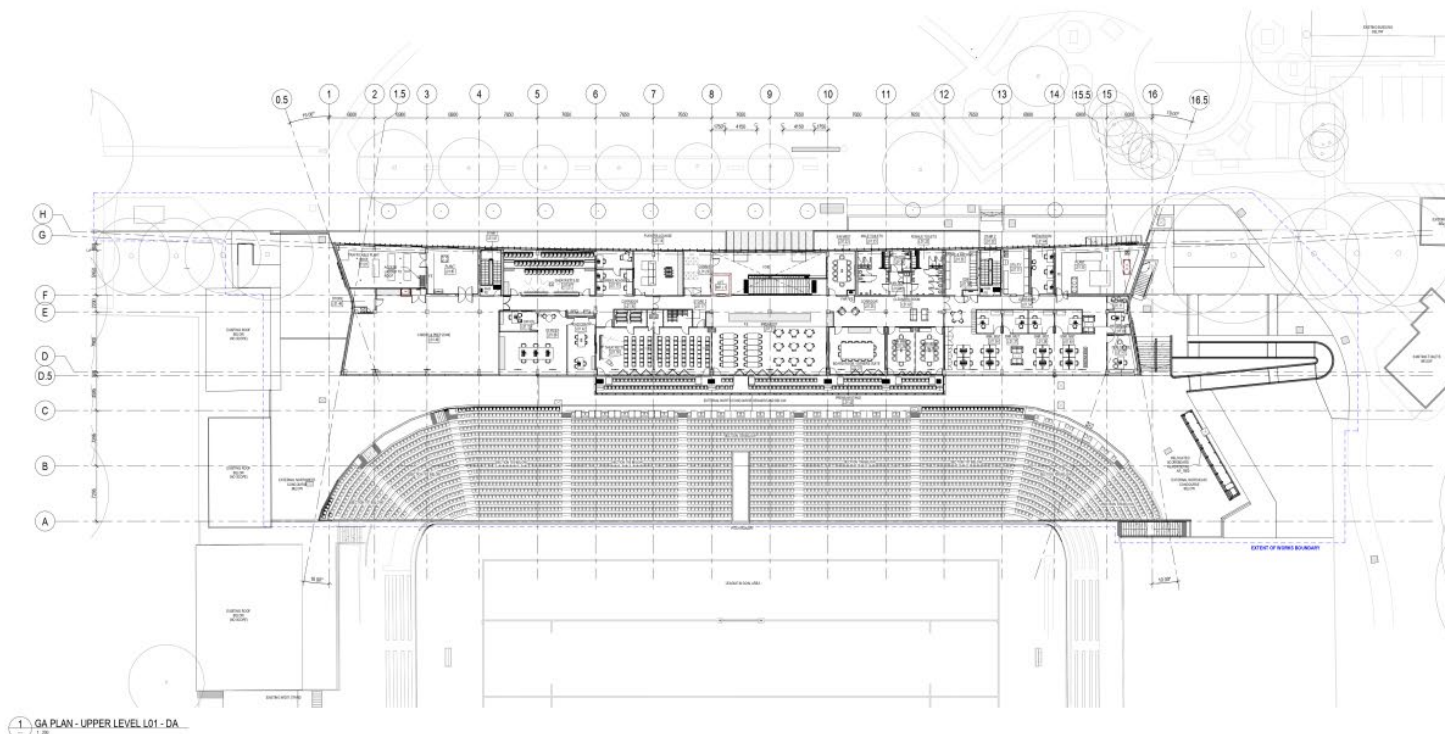
The change to use areas proposed within the building will require the number of and width of exits to be reviewed for compliance with Part D of the Building Code of Australia, as part of the assessment of the Amended Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.

Reason: To ensure adequate provision is made for access and egress, for occupant health and safety.

**31B. Sanitary Facilities**

Sanitary facilities are to be provided for the building in accordance with Part F2 of the Building Code of Australia. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.

Reason: To ensure adequate provisions are made for health and amenity within the building.



LEGEND FIRE RATING	
SYMBOL	DESCRIPTION
FE	2-HOUR FIRE RATING
FE	FIRE EXTINGUISHER
FHR	FIRE HOSE REEL

<b>REFERENCE MAP</b> 	
<b>NOTES</b> 1. Do not scale drawings. With dimensions given, all dimensions are in millimetres unless noted otherwise. 2. All measurements are to be taken from the centre of the wall unless otherwise noted. 3. All dimensions shall be verified on site before proceeding with the work. Tolerances shall be within a range of 10mm. 4. All work shall be done in accordance with the relevant standards. 5. This drawing is for information only and is not to be used for construction purposes. 6. This drawing is an unauthorised copy. Unauthorised use is prohibited. 7. Copyright of this drawing is retained by Hassell Ltd.	
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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/2093
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<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 20 SP 75108, 20 / 31 - 35 Delmar Parade DEE WHY NSW 2099
<b>Proposed Development:</b>	Alterations and additions to a residential flat building
<b>Zoning:</b>	Warringah LEP 2011 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Peta-Lee Quill Melissa Andrea Kozloff
<b>Applicant:</b>	Performance Building Consultants

<b>Application Lodged:</b>	08/11/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/11/2021 to 02/12/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 24.7%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 25,840.00
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### EXECUTIVE SUMMARY

The application seeks consent for the erection of a vergola at Unit 20 within the existing residential flat building known as 31 - 35 Delmar Parade. The proposed works have a height of 10.6m and therefore the works breach the building height development standard in the LEP of 8.5m by 24.7% (2.1m). It is noted that the works will sit at the same level of the building's existing parapet which also extends to a height of 10.6m.

Notification of the application resulted in no submissions.

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the development to the existing residential flat building contravenes the building height development

standard by more than 10%.

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 proposal is for construction of a Vergola (awning) louvered roof system attached to the top floor balcony of Unit 20, with a total proposed area of 15.1sqm. It is noted that the balcony associated with Unit 20 is located to the rear of the property.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B2 Number of Storeys

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 20 SP 75108, 20 / 31 - 35 Delmar Parade DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Delmar Parade.</p> <p>The site is irregular in shape with a frontage of 47.56m along Delmar Parade and a depth of 45.15m. The site has a surveyed area of 1967.2m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates two/three storey residential flat building.</p>

	<p>The site slopes from the front southern boundary to the rear northern boundary 16% sloping grade.</p> <p>The site has a mix of native and exotic species of plants, shrubs and trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by three storey residential flat buildings on the northern side of Delmar Parade and residential dwellings house with associated outbuildings/structures on the southern side of Delmar Parade.</p>
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Map:



## SITE HISTORY

**DA2002/0887** - Demolition of existing dwellings and associated outbuildings and the erection of a residential flat building containing (22) units, basement carparking and associated landscaped area approved 22 January 2003

**MOD1/2002/0887** - Modification of Development Consent No. 2002/0887DA for the demolition of existing dwellings and associated outbuildings and the erection of a residential flat building containing (22) units, basement carparking and associated landscaped area approved 19 December 2003

**MOD2/2002/0887** - Modification of Development Consent No. 2002/0887DA for the demolition of existing dwellings and associated outbuildings and the erection of a residential flat building containing (22) units, basement carparking and associated landscaped area approved 21 September 2005

## 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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b></p>

Section 4.15 Matters for Consideration	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered 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 18/11/2021 to 02/12/2021 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 of the application Council received no submissions.

#### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>

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

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

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

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

**State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)****SEPP 55 - Remediation of Land**

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.

**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 new vergola to Unit 20. Overall, it is considered that the proposal does not involve a substantial redevelopment or the substantial refurbishment of the existing building.

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

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

## Warringah Local Environmental Plan 2011

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.6m	24.7%	No

### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes



## Detailed Assessment

### **4.6 Exceptions to development standards**

#### Determination of Building Height and Clause 4.6 of the WLEP 2011

As mentioned previously, the application was lodged on the basis that it does not comply with the Height of Buildings development standard under Clause 4.3 of the WLEP 2011 and a Clause 4.6 Variation request was submitted for Council's consideration.

The site is subject to an 8.5m height control which is the vertical distance from Australian Height Datum (AHD) to the highest point of the building pursuant to the definition of building height under Clause 4.3 WLEP 2011.

In this regard, it is noted that the building height definition in the standard instrument states as follows: *building height (or height of building) means:*

- (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.*

As a result, an assessment of request to vary a development standard has been undertaken below.

#### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.6m
Percentage variation to requirement:	24.7%

#### 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 there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *The proposed vergola will not add to the height of the approved building.*
- *The awning is consistent with the prevailing building height and streetscape character of the area.*
- *The roof form is an open structure and fits well into the topography of the allotment without adding to the bulk or scale of the building.*
- *There is no impact in terms of view sharing from adjacent neighbours or public areas and with the awning built over an approved terrace area it adds no additional height to the approved building.*
- *The awning has minimal impact with regard to privacy and solar access enjoyed by adjacent properties. It maintains adequate sunlight access to private open spaces and to habitable rooms of the adjacent dwellings and the residence itself.*
- *The bulk and scale of the proposed development is generally consistent with residential buildings in the locality.*
- *The proposed awning has been designed to meet the day to day needs of residents and will provide an active use of the private open space of the dwelling.*

Therefore, the applicants written request argues, in part:

- The proposed breach relates to the topography areas of the site;
- The proposed breach does not result in any unreasonable overshadowing of adjoining properties;

- The proposed breach does not result in any view loss impacts from the public domain;
- The proposed breach does not result in any loss of privacy for neighbouring properties;
- The proposed breach does not result in any adverse visual impact; and
- The proposed breach does not detract from compliance with the R3 Medium Density Residential Zone objectives.

In the circumstances of the moderate sloping site conditions variation of the development standard of 8.5m, while continuing to allow for a unit within a residential flat building, is not considered unreasonable.

The overall height of the proposed development on the site is 10.6m. It is agreed that the breach is largely unavoidable due to the slope of the land and existing height of the building (which is greater than the current height control) that the non-compliance will not result in any unreasonable impacts to any surrounding properties.

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:

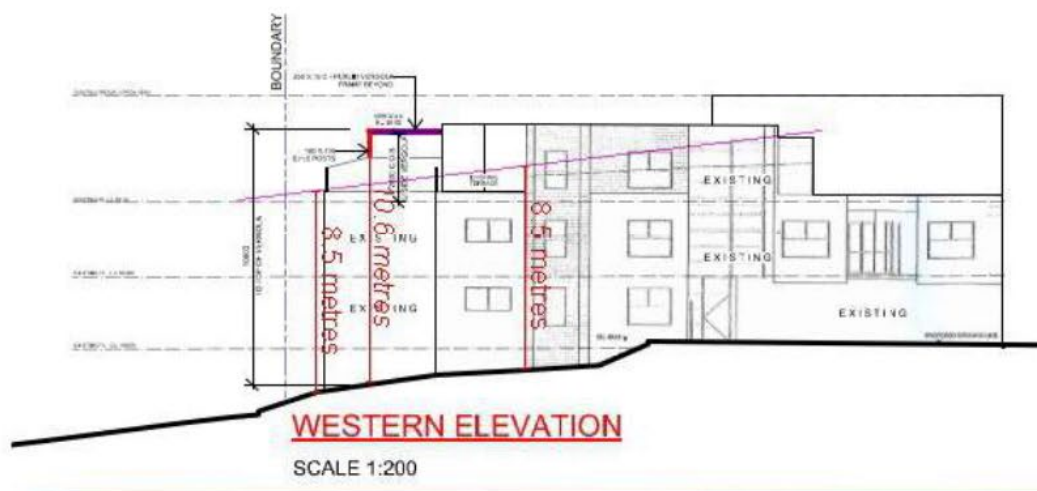
The development is for the addition of a vergola with a flat roof. There is no increase in the overall building height and the proposed vergola will sit below the roof of the existing residential flat building.

The proposed variation to the building height is not readily distinguished and the proposal will continue to present as a two and three-storey residential flat building when viewed from the Delmar Parade frontage due to the position of the building and given the balcony associated with Unit 20 is located to the rear of the building.



**Photo 1:** Existing presentation of the subject site and residential flat building.

The land has an average gradient of 1:6 which influences the building height and roof elements that exceed the corresponding height plane. See figure below.



**Figure 1: Building Height non-compliance shown in purple.**

The proposal's building height continues to reflect the established built form character of the immediate Delmar Parade area where multi-level, and non-complying building heights are prevalent due to approvals under previous legislation and the steep topography of the land along this immediate area.

The position of the proposed vergola is inconsistent with the existing wall lines and influenced by the existing floor levels. The use of fenestration, articulation, compliant setbacks and a flat roofline reduce building bulk so that the building profile maintains the hill side backdrop with appropriate colours and materials.

As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with, and complementary to existing development in the locality, particularly in relation to height, roof form and character.

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

Comment:

The building height non-compliance is located throughout the structure, with the non-compliance being relatively moderate in size.

The height non-compliance does not have an unreasonable impact upon any existing district views from the southern side of Delmar Parade due to the higher placement/vantage point of these properties and the main view lines orientated to the north, northeast and northwest.

The bulk and scale of the proposed development will be a representation of a three (3) storey development when viewed from the property to the north.

The proposal is appropriately designed to maintain the privacy of the subject site and adjoining properties (subject to conditions).

The application includes shadow diagrams (see Plan No. Sheet 2 of 2 dated 17 August 2021 as prepared by Vergola). The diagrams indicate that the development will not cast any unreasonable shadow over the neighbouring unit between 9.00am and 3pm on 21 June.

Therefore, privacy, amenity and solar access are provided for within the proposed development, with the proposed development displaying a minimal impact on surrounding residences.

The development satisfies this objective.

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

Comment:

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

Existing landscaping is to be retained and will continue to soften and filter the new built form.

Therefore, the amended proposal will be sufficiently integrated into the existing landscaped setting and contribute to the scenic quality of the bush environment.

The development satisfies this objective.

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

Comment:

The proposal reflects the established built form character of the immediate Delmar Parade area where multi-level residential flat buildings are prevalent, due to the steep topography of the land.

The extensive existing landscaping has been retained and will soften and filter the built form.

As such, the non-compliance and the similarity of the bulk and scale to the existing residential flat building, does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible and not cause any unreasonable visual impact when viewed from public places.

The development satisfies this objective.

### **Zone objectives**

The underlying objectives of the R3 Low Density Residential zone are:

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

Comment:

The proposal maintains the use of the site as a residential flat building, continuing to contribute to the housing needs within a medium density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

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

Comment:

The proposal will be a low-impact development and has been designed to respond to the topography. The vergola will provide the occupants an increased level of amenity without causing unreasonable impacts to adjoining neighbours or to the site itself. The development does not result in any adverse impact on native trees, retains existing trees, whilst continuing to demonstrate compliant landscaped area as required by the Warringah DCP 2011.

It is considered that the development satisfies this objective.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

A variety of housing types will still be provided within this medium density residential zone.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

*It is considered that the proposal will maintain a high visual quality in its presentation to public streets and spaces.*

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, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a residential flat building (Class 2 building).

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2	3	50%	No
B3 Side Boundary Envelope	5m (east)	Within envelope	N/A	Yes
	5m (west)	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	4.5m (east)	13.676m	N/A	Yes
	4.5m (west)	28.5m	N/A	Yes



B7 Front Boundary Setbacks	6.5m	30.7m	N/A	Yes
B9 Rear Boundary Setbacks	6m	6.566m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B2 Number of Storeys	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
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
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	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

The existing residential flat building is predominately a three (3) storeys in height which exceeds the current control of two (2) storeys.

##### 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 existing building will in all purposes demonstrate a two storey building from the front southern elevation when viewed from Delmar Parade with an entry into the basement level carpark underneath. It is noted that the adjoining properties to the west and east are both three (3) storeys in height and hence will be similar to the proposed development.

Given the above it is considered that the proposal will not dominate its surrounds and is consistent with merit consideration.

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

Comment: The proposed development has been designed with setbacks, articulation and materials that will assist to minimise the visual impact of the development when viewed from adjoining and surrounding properties and the public domain. It is considered that the proposal will satisfy this merit consideration.

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

Comment: Given the location of the subject site and the proposed height it is considered that equitable sharing of views to and from public and private properties will be maintained ensuring compliance with merit consideration.

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

Comment: Generally, the development has been designed having regard to maintaining a reasonable level of internal and external privacy to future dwelling occupants and adjoining properties.

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

Comment: The proposed roof will provide sufficient architectural features and visual interest to demonstrate innovation and variation.

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

Comment: The proposed height of the development is generally consistent with residential flat buildings within the area and therefore is considered to demonstrate generally compliance with the height control within the LEP and address this merit consideration.

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.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 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 subject site currently contains a part two (2) and part three (3) storey residential flat building. The proposal seeks consent for the construction of a vergola for Unit 20.

The development only has two (2) non-compliances a breach of the height of buildings standard under Warringah Local Environmental Plan 2011 (WLEP 2011) and the Number of Storeys under the Warringah Development Control Plan 2011 (WDCP 2011).

The proposal attracted no submissions to the formal notification.

This assessment has concluded that the non-compliances are reasonable and the Clause 4.6 variation to the height of buildings development standard can be supported based on the applicants written request.

Overall, the proposal will be an upgrade to the existing unit, while satisfying the objectives of the zone and being consistent with character of the locality.

Accordingly, the application is recommended for approval 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 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 DA2021/2093 for Alterations and additions to a residential flat building on land at Lot 20 SP 75108, 20 / 31 - 35 Delmar Parade, DEE WHY, 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
Sheet 1 of 5	17 August 2021	Vergola (NSW) Pty. Ltd.
Sheet 2 of 5	17 August 2021	Vergola (NSW) Pty. Ltd.
Sheet 3 of 5	17 August 2021	Vergola (NSW) Pty. Ltd.
Sheet 4 of 5	17 August 2021	Vergola (NSW) Pty. Ltd.
Sheet 5 of 5	17 August 2021	Vergola (NSW) Pty. Ltd.

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

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

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

#### 2. Prescribed Conditions

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any



damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

**5. 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.

**6. 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.

**7. 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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**8. 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.

9. **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.

10. **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**

11. **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.

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

12. **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. (DACPLF01)

13. **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.

## SITE ANALYSIS

EXISTING TOTAL UNIT AREA = 177 sq.m.  
EXISTING OUTDOOR AREA APPROX = 36 sq.m.

**PROPOSED VERGOLA = 15.1 sq.m.**

### NOTES:-

AS THE PROPOSED VERGOLA IS TO BE BUILT OVER AN EXISTING HARDSTAND AREA WITHIN AN EXISTING UNIT BLOCK. THERE WILL BE NO INCREASE TO THE EXISTING SITE COVERAGE.

ALL DOWNPIPES TO BE DIRECTED INTO THE EXISTING STORMWATER DISPOSAL SYSTEM.

ALL DIMENSIONS ARE TO BE CONFIRMED WITH A SITE MEASURE PRIOR TO MANUFACTURE.

### NOTES:-

VERGOLA FRAME: POWDERCOAT FRAME "WOODLAND GREY" COLOUR FINISH

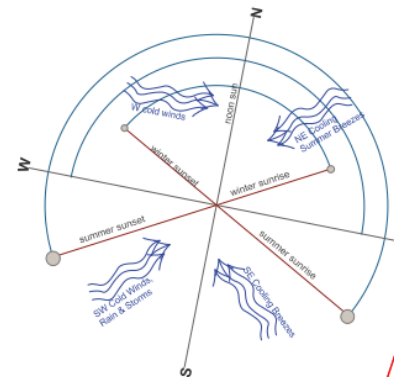
VERGOLA POSTS: POWDERCOAT "WOODLAND GREY" COLOUR FINISH

FLASHING & GUTTER: MADE IN COLORBOND COLOUR "SURFMIST"

VERGOLA LOUVRES: MADE IN COLORBOND COLOUR "SURFMIST"

S/WATER: 75mm PVC DOWNPIPE TO EXISTING GUTTER & STORMWATER SYSTEM WITH PAINT COLOUR "SURFMIST"

CAP FLASHING IN WOODLAND GREY:



## SITE PLAN

Scale 1:200



ALL MEASUREMENTS TO  
BE VERIFIED AT C/M

### GENERAL NOTES

All work to be carried out in accordance with the Building Code of Australia, all Local and State Government Ordinances, relevant Australian Standards, Local Electricity and Water Authorities Regulations and all other relevant Authorities concerned.

All timbers to be in accordance with SAA Timber Structure Code AS1720 and SAA Timber Framing Code AS 1684.

All work to be carried out in a professional and workmanshiplike manner according to the plans and specification.

Do not scale off the drawings unless otherwise stated and use figured dimensions in preference.

All dimensions are to be checked and verified on site before the commencement of any work.  
Locate and protect all services prior to construction.

**NO. 31-35  
SP:75108**

Site Area Approx.  
1967.17 sqm

DEL MAR PARADE



7 TEPKO ROAD TERREY HILLS NSW 2084  
TEL: (02) 9450 3300  
FAX: (02) 9450 3333

### Project:

**PROPOSED VERGOLA  
LOUVERED ROOF SYSTEM  
AT EXISTING RESIDENCE**

### Client:

Peta Quill and Mel Kozloff

### Address:

20/31-35 Delmar Parade,  
Dee Why - NSW

DATE DRAFTED	17-08-21	AMENDED DATE	A -
SALES REP.	M.H		B -
DRAWN	JGW/AC	SHEET No.	1 OF 5
DRAWING No.	18759	DATE SIGNED	
SCALE	AS NOTED @A3		
CLIENTS SIGNATURE			





ALL MEASUREMENTS TO  
BE VERIFIED AT C/M

**GENERAL NOTES**

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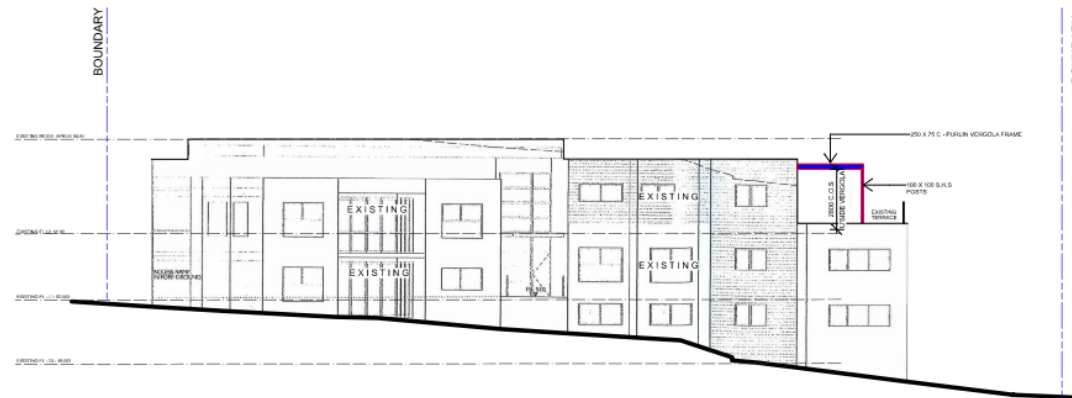
**Client:**

Peta Quill and Mel Kozloff

**Address:**

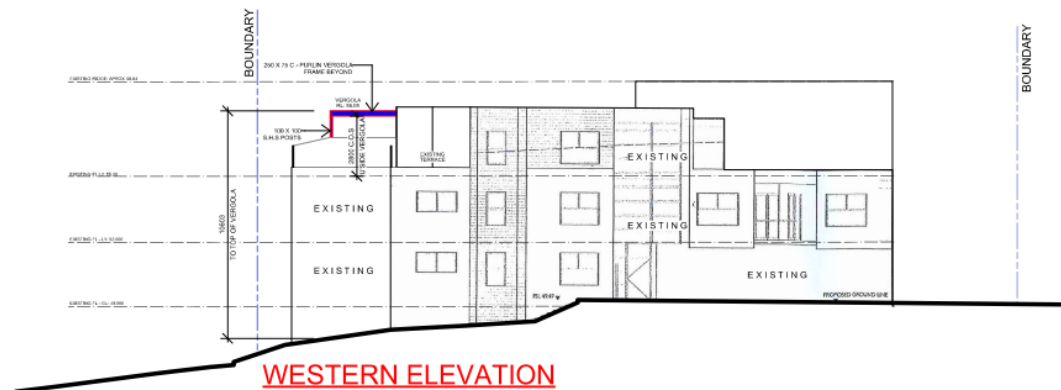
20/31-35 Delmar Parade,  
Dee Why - NSW

DATE DRAFTED	17-08-21	AMENDED DATE	A -
SALES REP.	M.H		B -
DRAWN	JGW/AC	SHEET No.	4 OF 5
DRAWING No.	18759	DATE SIGNED	
SCALE	AS NOTED @A3		
CLIENT'S SIGNATURE			



**EASTERN ELEVATION**

SCALE 1:200



**WESTERN ELEVATION**

SCALE 1:200

ALL MEASUREMENTS TO  
BE VERIFIED AT C/M

**GENERAL NOTES**

All work to be carried out in accordance with the Building Code of Australia, all Local and State Government Ordinances, relevant Australian Standards, Local Electricity and Water Authorities Regulations and all other relevant Authorities concerned.  
All timbers to be in accordance with SAA Timber Structure Code AS1720 and SAA Timber Framing Code AS 1684.  
All work to be carried out in a professional and workmanshiplike manner according to the plans and specification.  
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**Peta Quill and Mel Kozloff**  
Address:  
**20/31-35 Delmar Parade,  
Dee Why - NSW**

DATE DRAFTED	17-08-21	AMENDED DATE	A -
SALES REP.	M.H		B -
DRAWN	JGW/AC	SHEET No.	5 OF 5
DRAWING No.	18759	DATE SIGNED	
SCALE	AS NOTED @A3		
CLIENTS SIGNATURE			

## Application to Vary a Development Standard

### Unit 20 31-35 Delmar Pde, Dee Why

The purpose of this submission is to formally request a variation to the Height of Buildings control pursuant to Clause 4.6 of the Warringah LEP 2011.

#### **1. What is the name of the environmental instrument that applies to the land?**

*Warringah LEP 2011*

#### **2. What is the zoning?**

Residential

#### **3. What are the objectives of the zone?**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that medium density residential environments are characterised by landscaped settings that are 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.

#### **4. What is the development standard being varied?**

Height of Buildings

#### **5. Under what clause is the standard listed?**

Clause 4.3

#### **6. What are the objectives of the standard?**

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

#### **7. What is the numeric value of the development standard in the environmental planning instrument?**

*8.5m*

**8. What is the proposed numeric value of the development standard in your development application?**

10.6m

**9. What is the percentage variation?**

21.9%

**10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

*In Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 point test for consideration of a SEPP 1 objection set out in Winten Property Group Ltd v North Sydney Council (2001). The aim of this test is to determine whether requiring compliance with the standard would be unreasonable or unnecessary in the circumstances. The Chief Judge advised that the requirement to demonstrate that an objection is well founded could be satisfied in any of the following ways:*

- 1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The objectives of the standard have been achieved. The proposed Vergola will not add to the height of the approved building. The awning is consistent with the prevailing building height and streetscape character of the area. The roof form is an open structure and fits well into the topography of the allotment without adding to the bulk or scale of the building.

There is no impact in terms of view sharing from adjacent neighbours or public areas and with the awning built over an approved terrace area its add no additional height to the approved building.

The awning has minimal impact with regard to privacy and solar access enjoyed by adjacent properties. It maintains adequate sunlight access to private open spaces and to habitable rooms of the adjacent dwellings and the residence itself.

In terms of the zone objectives, the locality surrounding the site is displaying evidence of a renewal process, with medium to high density residential developments. The bulk and scale of the proposed development is generally consistent with most residential buildings in the locality. The proposed awning has been designed to meet the day to day needs of residents and will provide an active use of the private open space of the dwelling.

The objectives of the Height of Buildings control remain relevant, and the proposed development is generally consistent with, or not antipathetic to, the objectives of the Height of Buildings control, notwithstanding the numerical variation.



**11. How would strict compliance hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Act?**

Strict compliance with the height control in this instance would hinder greatly the resident's right to an active use of the private open space of the dwelling. The proposed shade structure provides shelter and protection from the weather, contributing the protection of the health and safety of the occupants. The proposed Vergola does not change or add to, the existing and approved building height.

**12. Are sufficient environmental planning grounds to justify contravening the development standard?**

The proposed awning certainly achieves the objectives of the standard. As the height of the building remains the same as prior to the proposed awning, together with the reasons set out above, it is considered that sufficient environmental planning grounds have been met to justify contravening the development standard in this instance.

**The Environmental Planning and Assessment Act 1979**

*Objectives:*

- (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.*

**How are the objectives of the Act being met in this instance?**

The proposed Vergola is an open, steel, ecologically sustainable structure that will have minimal long-term effect on the environment. It will be built over an existing hardstand terrace area and has no detrimental effect on neighbouring properties with regard to view sharing, solar access or privacy. It's a high-quality designed and constructed awning that will enhance the occupants use of the private open space of the dwelling.

**Conclusion**

This application has shown that there are sufficient environmental planning grounds to justify contravening the development standard and that the development standards relating to building height are unreasonable and unnecessary in this instance.

The proposed Vergola will sit on an existing and approved terrace and will not increase the height of the existing and approved building. The proposed is consistent with that of the existing residence and will

have no adverse effect to the solar access, streetscape or the distinctive character of the area. It is consistent with the objectives of the standard and the objectives for development within the zone.

It is considered that the development will not compromise the planning intent for the site or the character and amenity of the surrounding area. This application has shown justification that the requirements as set out in the decision of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 have been met, to enable council to determine the application.

As part of this assessment, reference is made to Commissioner Roseth in *Pathburn v North Sydney* [2005] NSWLEC 444 where the Senior Commissioner expressed, in terms of the planning principle that deals with impacts on neighbouring properties, the following:

*“One should balance the magnitude of the impact with the necessary and reasonableness of the proposal that creates it. An impact that arises from a reasonable or necessary proposal should be assessed differently from an impact of the same magnitude that arises from an unreasonable or unnecessary proposal.”*

*An impact that arises from a proposal that fails to comply with a planning control is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”*

In this instance, the proposal will not have detrimental amenity impacts on the adjacent allotments in regard to loss of solar access or views resulting from the non-compliance.

In general terms, compliance with the Height of Buildings control is unreasonable or unnecessary in these particular circumstances, and there are sufficient environmental planning grounds to justify the proposed variation to the Height of Buildings control.

**ITEM 5.5**

**MOD2021/0647 - 96-97 NORTH STEYNE, MANLY -  
MODIFICATION OF DEVELOPMENT CONSENT DA 272/2017  
FOR ALTERATIONS AND ADDITIONS TO AN EXISTING  
RESIDENTIAL FLAT BUILDING**

**AUTHORISING MANAGER** Rebecca Englund  
**TRIM FILE REF** 2022/039614  
**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan and Elevations

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0647 for Modification of Development Consent DA 272/2017 for Alterations and additions to an existing Residential Flat Building at Lot 101 DP 1110110, 96-97 North Steyne, Manly subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0647
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<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 101 DP 1110110, 96 - 97 North Steyne MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA 272/2017 for Alterations and additions to an existing Residential Flat Building
<b>Zoning:</b>	Manly LEP2013 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Cecil George Koutsos Isabel Brenda Koutsos
<b>Applicant:</b>	Squillace Architects

<b>Application Lodged:</b>	26/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	13/09/2021 to 27/09/2021
<b>Advertised:</b>	13/09/2021
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to an existing residential flat building.

The proposal results in a net increase to the gross floor area of the building by 32.6sqm. Whilst the actual increase to the residential flat building is minor, the existing development as a whole significantly exceeds the maximum FSR LEP standard by 1,108sqm or 55.3%. This means that the additional floor area proposed in this modification application further increases the variation to the FSR development standard.

The proposed modification also results in an increase to the height of the building. The existing building currently exceeds the 13m



maximum LEP building height control by 1.9m. The modification application proposes to increase the height of the development by a further 1.55m due to the proposed mechanical plant and screening located centrally on the roof. The mechanical plant and screening results in a 26.5% variation to the LEP building height standard overall.

The development also proposes to extend the ground floor terrace to the eastern (North Steyne) boundary which will reduce the approved landscaped area from 55sqm to 37.2sqm. The site requires 293.87sqm of landscaped area. Given the substantial existing non-compliance with landscaping control and the limited landscaping provided on the site, a further reduction of the landscaped area is not supported. A condition is recommended that will require the deletion of the works to the ground floor terrace.

As the development relates to a residential flat building (Class 2) the application is referred to Northern Beaches Local Planning Panel (**NBLPP**) for determination.

The NBLPP can be satisfied that notwithstanding the increase to height and FSR are not substantial and that the proposed development is consistent with the objectives of the Manly LEP and DCP. No objections have been raised from internal experts, subject to conditions. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

## **PROPOSED DEVELOPMENT IN DETAIL**

The subject modification application proposes the following works:

### **Ground Floor:**

- Larger waste room.
- Reconfiguration of entry stairs.
- Additional outdoor shower at the entry.
- Additional privacy screens and gate at unit 2&3.
- Demolish existing terrace wall & replace with new wall & stone cladding
- Reconfiguration/extension of wall on the east side.
- Unit 3: new pool/spa and new glazed pool fence in terrace
- Unit 4: Extend ensuite and reconfigure glazing line

### **Level 1 & 2:**

- Reconfigure new vertical privacy screens along the balcony in three different types, fixed, sliding, and bi fold (refer to elevation plans).
- Reshape / curved small portion of edge of the balcony to match the existing building shape.
- Reconfigure southern balcony area and privacy screens - curved edge removed and rationalised to straight edge.
- Unit 8 & 14: reconfigure external southern wall.
- Units 8, 10, 14 & 16: additional new condenser units and screen in west balcony.
- Unit 9 & 15: Laundry area removed and the area added to Units 8 & 14.
- Unit 10 & 16: extension of northern external wall/windows into bedroom 1.

### **Level 3:**

- Reconfigure new vertical privacy screens along the balcony in three different types, fixed,

- sliding, and bi fold. (refer to elevation plans).
- Reshape / curved small portion of edge of the balcony to match the existing building shape.
- Reconfigure southern balcony area and privacy screens - remove curved edge removed and rationalise to straight edge.
- Unit 20: reconfigure external southern wall.
- Units 21 & 22: additional new condenser units and screen in west balcony.

**Level 4:**

- Units 21 & 22: extension of external eastern wall by 1m.
- Units 18, 19: additional new spa units to balcony.
- Units 17 & 22: extend terrace area.

**Roof:**

- Reduce extent of new roof at south west corner.
- Roof overhang reduced generally.
- Relocate skylights to maximise solar access.
- New roof plant with acoustic screen.

**Landscaping:**

- Removal / relocation of palm trees (refer to Landscape plan & Arborist report)
- Modification of front landscaped area.

**ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)  
 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 - 4.1.9 Swimming Pools, Spas and Water Features  
 Manly Development Control Plan - 4.1.10 Fencing

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 101 DP 1110110, 96 - 97 North Steyne MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject property is commonly known as 96 North Steyne and legally known as Lot 101 in DP 1110110. The site is located on the western side of North Steyne. The property is irregular in shape and has a frontage of 29.46m to North Steyne, an average depth of 44m. The site has a surveyed area of 1335m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density Residential zone from MLEP 2013 and accommodates a five (5) storey residential flat building with vehicular access provided off Pine Street to an existing basement car park. The site is relatively flat and is located within the foreshore scenic protection area.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by shop top housing and residential flat buildings. The adjacent property to the north, at 98 North Steyne, is developed with a five-storey residential flat building. The building is not identified however is located in proximity of a number of other items of local heritage significance. Directly west of the site fronting Pine Lane and Pine Street is a 2 storey residential apartment building. Directly opposite the site to the east is Manly Beach.</p>

Map:



## **SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA357/2010 - Strata Subdivision of existing Residential Flat Building into twenty-two (22) lots. Approved under delegation on 13 April 2011.
- DA272/2017 - Alterations and additions to an existing residential flat building. Approved at Northern Beaches Planning Panel (NBLPP) on 4 April 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;
- 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 DA272/2017, in full, with amendments detailed and assessed as follows:



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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the 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	<p>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 DA272/2017 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The bulk and scale of the development is generally retained with any changes to the building envelope resulting in a discernible impact when viewed from adjoining and nearby properties and when viewed from a public space.</li> <li>• The amenity of the adjoining properties is not compromised with views and privacy as previously approved being generally maintained.</li> <li>• Solar access is retained and remains compliant as originally approved.</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA272/2017 did not require concurrence from the relevant Minister, public authority or approval body.
(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.	No submissions were received in relation to this application.

## 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 96 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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
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 13/09/2021 to 27/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>No objection</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>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.</i></p>
Environmental Health (Industrial)	<p><b>No objection with conditions</b></p> <p>Among the proposed changes to the development, of interest to Environmental Health are the noise related matters: "Units 21 &amp; 22: additional new condenser units and screen in west balcony, and new roof plant with acoustic screen".</p> <p>An acoustic review by Acoustic logic ref: 20180678.2/2707A/R3/HC 5/05/2021 has examined noise implications of the condenser units roof top and levels 1,2, and 3 and determined that noise reduction measures can be implemented to eliminate nuisance.</p> <p>The review concludes: A detailed plant design and selection has not been undertaken at this stage. Therefore, a detailed acoustic review should be undertaken at CC stage to determine acoustic treatments to control noise emissions to levels complying with the noise emission criteria in Section 2.1.</p> <p>We believe potential noise issues can be satisfactorily addressed.</p>
Landscape Officer	<p><b>No objection with conditions</b></p> <p>The application is to modify development consent DA0272/2017, and the Landscape Referral considerations include modification to the landscape along the North Steyne frontage.</p> <p>A Arboricultural Impact Assessment is provided with assessment of the impact to existing trees/palms within the site. The recommendations include retention of tree 1 - Willow Bottlebrush, trees 4, 7, and 9 - Cabbage Tree Palms, and tree 10 - Triangle Palm, and the removal of trees 2, 3, 5, 6 and 8 - Cabbage Tree Palms that cannot be retained under the development proposal. A Project Arborist shall be engaged to supervise development works in proximity to the development proposal as</p>



Internal Referral Body	Comments
	<p>recommended in the Arboricultural Impact Assessment, and conditions shall be imposed.</p> <p>A Landscape Plan is provided that enhances the landscape areas under the development proposal and utilises appropriate coastal plant species. The existing landscape area at the corner of Pine Street and Pine Lane not impacted by the development works shall be retained and replacement Cabbage Tree Palm planting shall be included as replacement planting, and conditions shall be imposed to soften the built form.</p>

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

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

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

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

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

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

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

##### **SEPP 65 - Design Quality of Residential Apartment Development**

The original development application was assessed under the provisions of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) and the ADG.

The modifications proposed are relatively minor and do not alter the assessment made in the original development application, and the proposal remains consistent with the design principles of SEPP 65.

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

A BASIX certificate has been submitted with the application (see Certificate No. 880579M\_02, 19 August 2021).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	35	37

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

### SEPP (Coastal Management) 2018

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

#### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

#### Comment:

The development is contained wholly within the subject site and is not considered likely to negatively impact upon the matters raised in subclause (1).

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

Comment:

The development is located within the boundaries of the subject site with the proposed works reducing any impact to the surrounding land. The proposed development is not considered to negatively impact upon the matters raised in subclause (1).

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

(1)

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

Comment:

The proposed development will not impact on existing public access along the foreshore and there will be no additional amenity impacts towards adjoining properties. The proposed alterations and additions will not impact on the visual amenity when viewed from the waterway. The development is considered to be in keeping with the visual character of North Steyne and along the foreshore of Manly. The development is therefore not likely to cause an adverse impact on the matters referred to above.

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

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

Comment:

The proposed development will not impact on existing public access along the foreshore and there will be no additional amenity impacts towards adjoining properties. The site will not impact on the visual amenity when viewed from the waterway. The development is considered to be in keeping with the visual character of North Steyne and the broader Locality of Manly. The development is therefore not likely to cause an adverse impact on the matters referred to above.

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

### Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	13m	14.9m	16.45m	26.5%	No – not a new DA but rather this is a modification and existing development breaches control
Floor Space Ratio	FSR: 1.5:1 (2002.5sqm)	FSR: 2.33:1 (3110.5sqm)	FSR: 2.35:1 (3143.1sqm)	57%	No - not a new DA but rather this is a modification and existing development breaches control

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 4.3 Height of buildings

The application proposes mechanical plant with acoustic screening on the roof of the subject residential flat building. The mechanical plant and screening will measure a maximum height of 1.55m resulting in an overall building height of 16.45m (RL22.41). A condition is imposed in the consent to ensure that the highest point of the development does not exceed RL22.41 with the louvred screening in association



with the mechanical plant will not measure greater than 1.55m above the approved top of roof (RL20.79). Whilst the plant and screening exceeds the maximum 13.0m LEP height control prescribed for the site, the mechanical plant and screening will not be visible from a public place, with generous setbacks to the eastern, western, southern and northern boundaries. The residential flat building currently measures 14.9m in height with the previous application (DA272/2017) approving amendments to the roof form.

The non-compliant mechanical plant and screening is confined to a central portion of the roof and is considered to have a minimal impact towards the amenity of the surrounding properties and the appearance of the building when viewed from a public space.

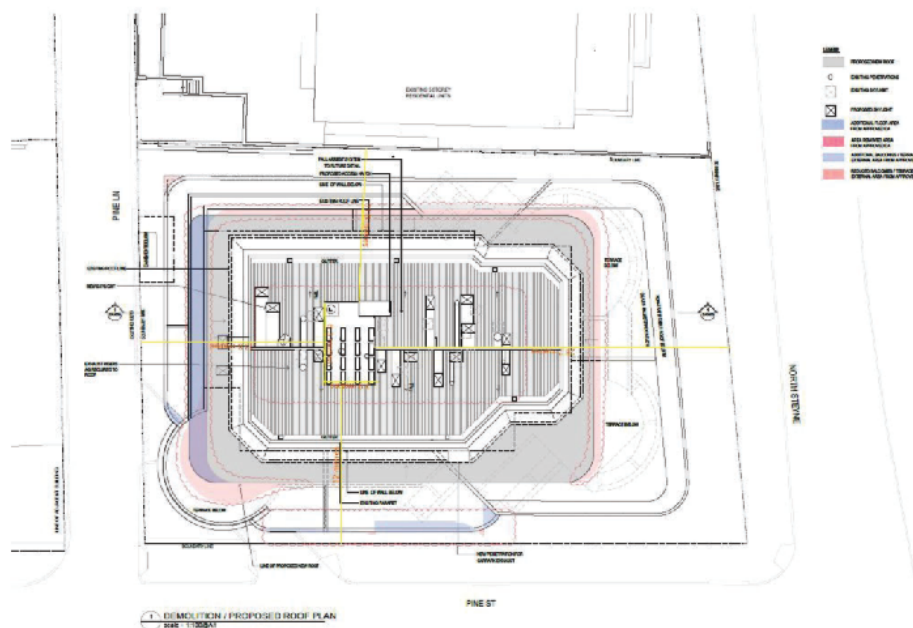


Image 1: Roof plan indicating setbacks from mechanical plant screening to eastern, western, northern and southern boundaries.

Despite the proposed intensification of the height non-compliance, the addition to the building height will be centrally located within the roof and will not be an overly visible addition to the residential flat building. The development does not give rise to inconsistency with the objectives of the building height control, as follows:

- *to provide for building height and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed modification will increase the approved building height by 1.55m. The non-compliant mechanical plant with louvred screening maintains consistency with the topography and prevailing building height in the area. The proposed mechanical plant and screening will not be visible from North Steyne.

- *to control the bulk and scale of buildings,*

Comment: Whilst the proposed mechanical plant and screening is not compliant with the building height control, the location of the mechanical plant and screening is such that it will not be a visible addition to the existing residential flat building and will not add any considerable bulk

to the development. The mechanical plant and screening will measure 3.9m in depth (east to west) and 6.3m in length (north to south). The screening is setback 13.8m from Pine Lane, 26.7m to North Steyne, 12m to Pine Street and 11.6m to northern boundary. The proposed works will not impact on the design of the building in that an articulated facade is maintained.

- *to minimise disruption to the following:*
  - (i) *views to nearby residential development from public spaces (including the harbour and*
  - (ii) *views from nearby residential development to public spaces (including the harbour and*
  - (iii) *views between public spaces (including the harbour and foreshores)*

Comment: It is assessed that the proposed minor increase to the height of the overall residential flat building will have a negligible impact on views to, from or between public spaces and residential development.

- *to provide solar access to public and private open spaces and maintain adequate sunlight, access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The proposed modification results in a development which results in generally the same building envelope as the approved development. The proposed development is sufficiently modulated and setback to minimise overshadowing on the adjoining and nearby properties.

- *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 proposed development has regard for the existing vegetation and topography, as discussed above.

The subject modification is not subject to the rigour of clause 4.6 of MLEP 2013. It is considered that that consent authority can be satisfied that the extent of the increased height proposed in the subject modification is relatively minor and not detract from the consistency with the objectives of this control.

#### 4.4 Floor space ratio

The application proposes 41sqm of additional floor space to the existing building. The application also proposes to delete 8.4sqm of floor area approved within the previous development application therefore resulting in an increase of 32.6sqm of additional floor space. The additional floor space is reasonably evenly distributed over the four (4) levels of the residential flat building with the additional floor space.

The additional floor space proposed increases the existing non-compliance from 3110.5sqm or 2.33:1 to 3143.1sqm or 2.35:1.

Despite the proposed intensification of the FSR non-compliance, the additional floor space does not give rise to inconsistency with the objectives of the floor space ratio control, as follows:

- *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed development is consistent with the existing and desired streetscape character. The proposed works are in keeping with the bulk, scale and design of surrounding residential flat buildings along North Steyne and within the immediate vicinity.

- *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: The floor space ratio of the proposed development does not give rise to any unreasonable impacts.

- *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: The visual impact of the development is compatible with surrounding development with the proposed amendments providing adequate setbacks and a desirable articulated design.

- *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The proposed development does not result in any adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

- *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment: N/A

The subject modification is not subject to the rigour of clause 4.6 of MLEP 2013. Nonetheless, the consent authority can be satisfied that the extent of the additional floor space proposed in the subject modification is relatively minor and does not detract from consistency with the objectives of the FSR development standard. Furthermore, the bulk and scale of the development is substantially the same as that anticipated in the original approval.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 1335sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North side: 12m	14.25m	13.7m	No
	West side: 12m	14.25m	13.7m	No
4.1.2.2 Number of Storeys	3	5	5 (existing)	No (existing)

4.1.4.1 Street FrontSetbacks	6.0m or streetscape	400mm - 4.0m	Nil - terrace (ground floor) (consistent with streetscape)	No
4.1.4.2 Side Setbacks and Secondary StreetFrontages	Level 4 - North side: 4.5m (based on wall height)	Level 4 Terrace 4.1m	Level 4 Terrace 2.1 - 2.5m	No
	Level 3 - North side 4.5m (based on wall height)	Level 3 Terrace - nil	Level 3 Terrace - nil (further extend terrace along northern boundary in an easterly direction)	No
	Secondary street frontage (Pine Street): Prevailing setback / 4.5m	Consistent with prevailing setback	Consistent with prevailing setback	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1	Open space 45% ofsite area (600.75sqm)	88% (1175.5sqm)	96.4% 1288.1	Yes
	Open space above ground 40% of totalopen space (470.2sqm)	71.7% (843.3sqm)	83.3% 979.2sqm	Yes
4.1.5.2 LandscapedArea	Landscaped area 25% of total open space (293.87sqm)	18.72% (55sqm)	12.6% (37.2sqm)	No
4.1.5.3 Private OpenSpace	12sqm per dwelling	Units 2-4, 6-10 and 12-22: >12m <sup>2</sup>	22 units >12m <sup>2</sup>	Yes
		Units 1,5 & 11: <12m <sup>2</sup>		
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	N/A	Unit 3 (ground level) - ground level Unit 18 (Level 4) - 11.3m Unit 19 (Level 4) - 11.3m	Yes No No
	1m curtilage/1.5mwater side/rear setback	N/A	Fronting North Steyne - Unit 3 (ground level) - 0.3m (water) 0.5m (curtilage) North - Unit 18 (Level 4)- 5.4m (water) 5.1m (curtilage South (Pine Street) - Unit 19 (Level 4) - 5.0m (water) 5.3m (curtilage)	No Yes Yes



Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	No
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	No
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	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)**

Clause 3.1.1.2 of the MDCP 2013 sets out the following requirements for front fences, which read as follows:

*a) Notwithstanding the maximum height provisions for fencing at paragraph 4.1.10; the siting,*

*height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*

*b) Boundary fences or walls must not be erected where they would conflict with the local character.*

*c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*

*d) Gates must not encroach on public land when opening or closing.*

Comment:

In response to the above criteria, a detailed assessment is carried out below:

a) The height of the proposed fence contains a maximum height of 2.0m, which exceeds the 1m requirement specified within Clause 4.1.10 of the MDCP 2013. The fence comprises a masonry wall with stone cladding and two (2) timber battern gates. The proposed fence will measure the same height as the existing wall whilst being moved to the eastern boundary. The height of fences along North Steyne does vary with examples of lower fences and more open style fences located to the north of the subject site. The proposal will reduce the landscaped area along the eastern boundary to accommodate for the proposed ground floor terrace extension and new wall. The existing landscaped area is significantly non-compliant with the required numeric control with the modification proposing to further reduce the landscaped area by 17.8sqm resulting in a 87.35% variation to the control. This is considered a significant departure and will not alleviate the visual impacts of the wall. Furthermore, the reduced landscaped area will not assist in softening the built form given the corner positioning of the building. For these reasons, the fence is considered to be inconsistent with part a) of this control.

b) The 2.0m front fence is inconsistent with the established local character along North Steyne and will alter the existing appearance of the development when viewed from a public domain. A reduction in the landscaped area and repositioning of the proposed wall closer to the eastern boundary will not contribute to a development compatible with the local character of development along North Steyne. For these reasons, the fence is considered to be inconsistent with part b) of this control.

c) The design and materials of the wall are considered to be in keeping with the architectural style of the building.

d) The development does not propose any gates to open or close over the front boundary. Based on the above assessment, it is concluded that the proposal does not satisfy the streetscape requirements for fences.

Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control as follows:

*Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage*

Comment:

The 2.0m fence is generally consistent with the existing streetscape character along North Steyne and is considered to satisfy the requirements outlined within the MDCP 2013. Adequate planting is proposed along the eastern boundary to assist in alleviating the visual impacts of the fence.

*Objective 2) To ensure development generally viewed from the street complements the identified streetscape.*

Comment:

The fence will be generally consistent with the established streetscape character along the North Steyne.

*Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

Comment:

The relocation of the front fence will result in the removal of a significant portion of landscaped open space along the eastern boundary. Whilst some landscaping will be maintained, the removal of the 17.8sqm of landscaped area will further reduce the non-compliant landscaped area significantly. The modification will remove the existing planting along the eastern side of the existing wall which assists in softening the built form.

The proposal therefore does not meet the objectives of this control. A condition is imposed to ensure the retention of the existing ground floor courtyard of Unit 2 and Unit 3 which in turn will retain the existing landscaped area for the site.

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

Description of non-compliance

The control requires development to be setback at least 1/3 of the adjacent maximum wall height from side boundaries. In applying this principle, the following side setbacks are required:

- Northern boundary: 4.5m

The terrace at level 4 servicing Unit 17 and Unit 22 along the northern elevation will be extended 2.6m - 2.8m towards the northern boundary creating a 2.1m - 2.5m setback. The northern wall of level 4 will maintain the approved setback of 6.0m.

The terrace at level 3 along the northern elevation will be further extended in a northerly direction by 800mm. The terrace will maintain a nil setback to the northern boundary. The existing planter box measuring 0.6m along the northern side of the terrace will be removed and proposed as part of terrace area. New privacy louvres are proposed along the northern side of the extended terrace.

The ground floor terrace servicing Unit 2 and Unit 3 will be extended towards the eastern boundary fronting North Steyne by 2.8m. The terrace extension for Unit 3 will include an in-ground spa located along the eastern edge of the terrace. The proposed extension to the ground floor terrace will further decrease the substantial non-compliant landscaped area along the eastern boundary. Council therefore cannot support the extension to the ground floor terrace. A condition is imposed to ensure the extension to the ground floor terrace does not form part of the consent.

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 works are not readily visible from the street and will therefore maintain the existing streetscape.

*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: Whilst the fourth level terrace will be extended a further 2.6 - 2.8m towards the northern boundary, there will be no additional overlooking towards the southern elevation of the adjoining residential apartment building. A visit to the site revealed the proposed additions to the existing RFB are designed and sited so as to respond well to the privacy of the subject site and adjacent sites. The extension of the terrace at level 3 to the northern boundary is not anticipated to result in any additional amenity impacts to the adjoining building at 98 North Steyne. The proposal will remove an existing planter to increase the size of the terrace and will incorporate privacy louvres to ensure maintain adequate privacy. The proposed works do not unreasonably impact upon access to light, sunshine and air movement for the subject site or adjacent sites, nor obstruct views to or from public or private places. The proposed development is acceptable in the streetscape as above at Objective 1. The proposed works do not impact upon traffic conditions.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment: The proposed development allows for flexibility in the siting of works on the site, without resulting in any unreasonable amenity impacts to the subject site or adjacent sites.

*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 extension of the third level terrace and fourth level terrace to the northern boundary will not impact on any natural features. The extension of the ground floor terrace, whilst marginally decreasing the setback to the eastern boundary will remove approximately 20sqm of landscaped area. Whilst it is acknowledged that trees are to be removed as a result of the development, an Arboricultural Assessment is provided which recommends appropriate conditions and is supported by Council's Landscape Officer. Conditions have been imposed to soften the built form.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment: The site is not bushfire prone.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

#### 4.1.5 Open Space and Landscaping

##### Description of non-compliance

The control requires at least 25% (293.87sqm) of the total open space to comprise landscaping. The modified proposal results in 12.6% (37.25sqm) of the total open space being landscaped, which represents a 87.4% variation from the prescribed requirement. It should be noted that the modified



proposal removes 17.8sqm of landscaping from the original approval (DA272/2017).

The plans propose a reduction in the landscaped area for the site as a result of the extension to the ground floor terrace along the eastern elevation fronting North Steyne servicing both Unit 2 and Unit 3. The development as approved fell short of the required minimum landscaped open space area, however the original proposal did not alter the existing landscaped area for the site. The extension of the ground floor terrace, will result in a further reduction to the significantly non-compliant landscaped area along the eastern elevation fronting North Steyne. The proposed modification proposes to relocate and remove palm trees and to modify the front landscaped area. An Arboricultural Assessment Report was submitted with the application which identified eleven trees as being identified as part of the proposal. Four (4) trees are identified for removal whilst seven (7) trees are proposed for retention.

Whilst the modified application does retain some planting and proposes coastal species in keeping with the character of the surrounding site, a reduction to the landscaped area is considered a significant reduction to the required numeric control and will not retain the landscaped character of the site when viewed from the public domain. A further reduction to the landscaped area will fail to assist in softening the built form of the development when viewed from both North Steyne and Pine Street.

Based on the above, the proposed development is inconsistent with the objectives of this clause. To ensure the expected outcomes of the original assessment and consistency with the control objectives are maintained a condition is imposed to delete the extension of the ground floor terrace for Unit 2 and Unit 3, hence maintaining the existing landscaped area for the site as approved under DA272/2017.

#### 4.1.9 Swimming Pools, Spas and Water Features

Under Part 4.1.9.2 of Manly DCP 2013 the requirements for the location and Under Part 4.1.9.2 of Manly DCP 2013 the requirements for the location and setbacks of swimming pools is as follows:

- Pool curtilage: 1m.
- Water line: 1.5m

The control states that spas must be built on or in the ground and not elevated more than 1m above natural ground level. The modification application proposes three (3) spas. The spa for Unit 1 will be in ground and will front North Steyne. Two (2) spas are proposed at Level 4 on the terrace for both Unit 18 and Unit 19 and are located 10.8m above natural ground level. The spa for Unit 18 is located 5.1m from the northern boundary and setback 900mm from the northern side edge of the balcony. The spa for unit 19 is located 5.3m from the southern boundary (Pine Street) and is 900mm from the balconies edge. A louvered screen is proposed between Unit 18 and Unit 19 to ensure compliance with pool safety standards.

As discussed throughout the report, Council does not support the extension of the ground floor terrace towards the eastern boundary given the further reduction to the non-compliant landscaped area along North Steyne. The in ground spa would form part of the extended terrace area for Unit 3 and is therefore not supported.

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

*Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.*

Comment: The proposed spas on the level 4 terraces for Unit 18 and Unit 19 will be appropriately setback from the eastern boundary (North Steyne) and from the southern and northern boundaries which will maintain the visual privacy for surrounding occupants. The in-ground spa located at ground level will be located to the eastern (front) boundary and will not be visible from North Steyne. Whilst the

spas at Level 4 are located 10.8m above natural ground level they will not be visible from the public domain and a condition is imposed to ensure noise levels from the spas do not exceed 5dBA above the background noise when measured from the nearest property boundary. The location of the spas is therefore considered to maintain the privacy of the neighbouring properties.

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.*

Comment: The proposed spas located at Level 4 are located to the northern and southern boundaries of the site and given the height above ground level and generous setbacks, will not be visible when viewed from both Pine Street and North Steyne. The location and small size of the spas are not anticipated to adversely impact on the established character of the locality.

*Objective 3) To integrate landscaping.*

Comment: Although the proposed development does not integrate landscaping in the immediate vicinity of the spas located on level 4, the elevated nature and location of the spaces being sufficiently set back from the eastern, western and northern boundaries eliminates overlooking opportunities and the visibility from the public domain. The spa proposed at ground level for Unit 1 is not supported given the location will result in a reduction of the non-compliant landscaped area along the eastern boundary.

*Objective 4) To become an emergency water resource in bush fire prone areas.*

Comment: The subject land is not classified as bush fire prone land, therefore, this objective is not applicable.

With regard to the above and noting that the objectives of the control are satisfied, the proposed variation is considered to be acceptable and supportable on merit.

#### **4.1.10 Fencing**

The modification proposes to demolish the existing wall along the eastern boundary (North Steyne) and replace with new wall and stone cladding. A new glazed pool fence is located inside the wall and will be visible from the public domain. The new wall will measure extend 1.4m to the east and will be flush with the eastern (front) boundary. The wall will measure a maximum height of 2.0m (RL7.52) above natural ground level and therefore will exceed the maximum allowable height for fences under clause 4.1.10. This control prescribes a 1m maximum height limit for solid fences along the front boundary.

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

**Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 application seeks consent for alterations and additions to an existing residential flat building. The key planning issues considered within the assessment are the proposed variations to the Floor Space Ratio development standard and Height development standard.

Notwithstanding the proposed floor space ratio variation of 57%, and the proposed height of buildings variation of 26.5% the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain. Conditions are recommended to ensure that a detailed acoustic review be undertaken at construction certificate stage to ensure any noise emissions is managed to reduce any amenity impacts towards the adjoining residential properties.

No submissions were received in relation to the proposed development.

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. Mod2021/0647 for Modification of Development Consent DA 272/2017 for Alterations and additions to an existing Residential Flat Building on land at Lot 101 DP 1110110,96 - 97 North Steyne, MANLY, subject to the conditions printed below:

### **A. Add Condition No.1AA - "Modification of Consent - Approved Plans and supporting Documentation" to the 'General Conditions' section of the consent 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Dwg No. DA1003 Issue C - Demolition - Proposed Ground Floor Plan	12 January 2022	Squillace Architects
Dwg No. DA1004 Issue C - Demolition - Proposed Levels 1 & 2 Floor Plans	12 January 2022	Squillace Architects
Dwg No. DA1005 Issue C - Demolition - Proposed Level 3 Floor Plan	12 January 2022	Squillace Architects
Dwg No. DA1006 Issue C - Demolition - Proposed Level 4 Floor Plan	12 January 2022	Squillace Architects
Dwg No. DA1007 Issue B - Demolition - Proposed Roof Plan	11 August 2021	Squillace Architects
Dwg No. DA3000 Issue B - Proposed Building Section AA	11 August 2021	Squillace Architects
Dwg No. DA2000 Issue C - Demolition - Proposed West Elevation (Pine Lane) / Proposed North Elevation	12 January 2022	Squillace Architects
Dwg No. DA2001 Issue C - Demolition - Proposed East Elevation (North Steyne) / Proposed South Elevation (Pine Street)	12 January 2022	Squillace Architects
Dwg No. DA3005 Issue A - Detail Section	17 January 2022	Squillace Architects
Dwg No. DA3006 Issue A - Proposed Section through Ground Spa	18 January 2022	Squillace Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. 880579M_02	19 August 2021	EPS
Condenser Unit Noise Review	5 May 2021	Acoustic Logic



Arboricultural Impact Assessment	13 July 2021	All Arbour 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Dwg No.000 - Landscape Coversheet (Issue B)	20 July 2021	Site Image Landscape Architects
Dwg No. 101 - Landscape Plan - Ground Floor (Issue C)	20 July 2021	Site Image Landscape Architects
Dwg No. 102 - Landscape Character (Issue A)	12 July 2021	Site Image Landscape Architects
Dwg No. 501 - Landscape Details (issue A)	12 July 2021	Site Image Landscape Architects

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

**B. Add Condition No. 7A "Amendments to Approved Plans" prior to the 'Conditions to be satisfied prior to the issue of the Construction Certificate' section of the consent to read as follows:**

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

- The mechanical plant louvred screening is limited to a maximum of 1.55m in height above the approved top of the roof (RL20.79) and is not to exceed an overall height greater than RL22.34.
- Delete the extension to the ground floor terrace for Unit 2 and Unit 3.
- Delete the proposed wall along the eastern boundary.

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.

**C. Add Condition No. 7B "Noise - Design of Mechanical Plant" prior to the 'Conditions to be satisfied prior to the issue of the Construction Certificate' section of the consent to read as follows:**

Prior to the issue of a Construction Certificate the specifications of the condenser units 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 the condenser units in accordance with the recommendations within the Condenser Unit Noise Review by Acoustic Logic Consultancy Pty Ltd dated 5 May 2021 (ref: 20180678.2/2707A/R3/HC).

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.

**D. Add Condition No. 7C "Structural Certification" prior to the 'Conditions to be satisfied prior to the issue of the Construction Certificate' section of the consent to read as follows:**

The terraces at level 4 for Unit 18 and Unit 19 shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. This is to ensure the spas will not impact the structural integrity of the building.

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

Reason: Public and private safety.

**E. Add Condition No. 11A "Project Arborist" prior to the 'Conditions to be satisfied prior to any commencement' section of the consent to read as follows:**

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 and the recommendations of the Arboricultural Impact Assessment. 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) section 4.3 - trunk protection battens to existing trees, 4, 6, 7, 9, 10 and 11.

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.

Reason: Tree protection.

**F. Add Condition No. 11B "Project Arborist" prior to the 'Conditions to be satisfied prior to any**

**commencement' section of the consent to read as follows:**

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

- trees 2, 3, 5, 6 and 8 - Cabbage Tree Palms

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

Reason: To enable authorised building works.

**G. Add Condition No. 19B "Acoustic Certification" prior to the 'Conditions to be satisfied prior to the issue of the Occupation Certificate' section of the consent to read as follows:**

An acoustic review by an Acoustic Engineer, shall be undertaken prior to occupation to determine that acoustic treatments/plant and equipment are compliant with the measures to control noise emissions as required by Acoustic Logic (ref: 20180678.2/2707A/R3/HC 5/05/2021) and comply with legislation to prevent offensive noise.

Reason: To prevent noise nuisance.

**H. Add Condition No. 19B "Landscape Completion" prior to the 'Conditions to be satisfied prior to the issue of the Occupation Certificate' section of the consent to read as follows:**

Landscaping is to be implemented in accordance with the approved Landscape Plans, inclusive of the following conditions:

- i) two (2) *Livistona australis* (Cabbage Tree Palm) shall be installed within the existing landscape area at the corner of Pine Street and Pine Lane not impacted by the development works, at a minimum 75 litre or larger pot container size,
- ii) one (1) *Livistona australis* (Cabbage Tree Palm) shall be installed within the existing landscape area between existing Cabbage Trees identified as tree 4 and tree 7, at a minimum 75 litre or larger pot container 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.

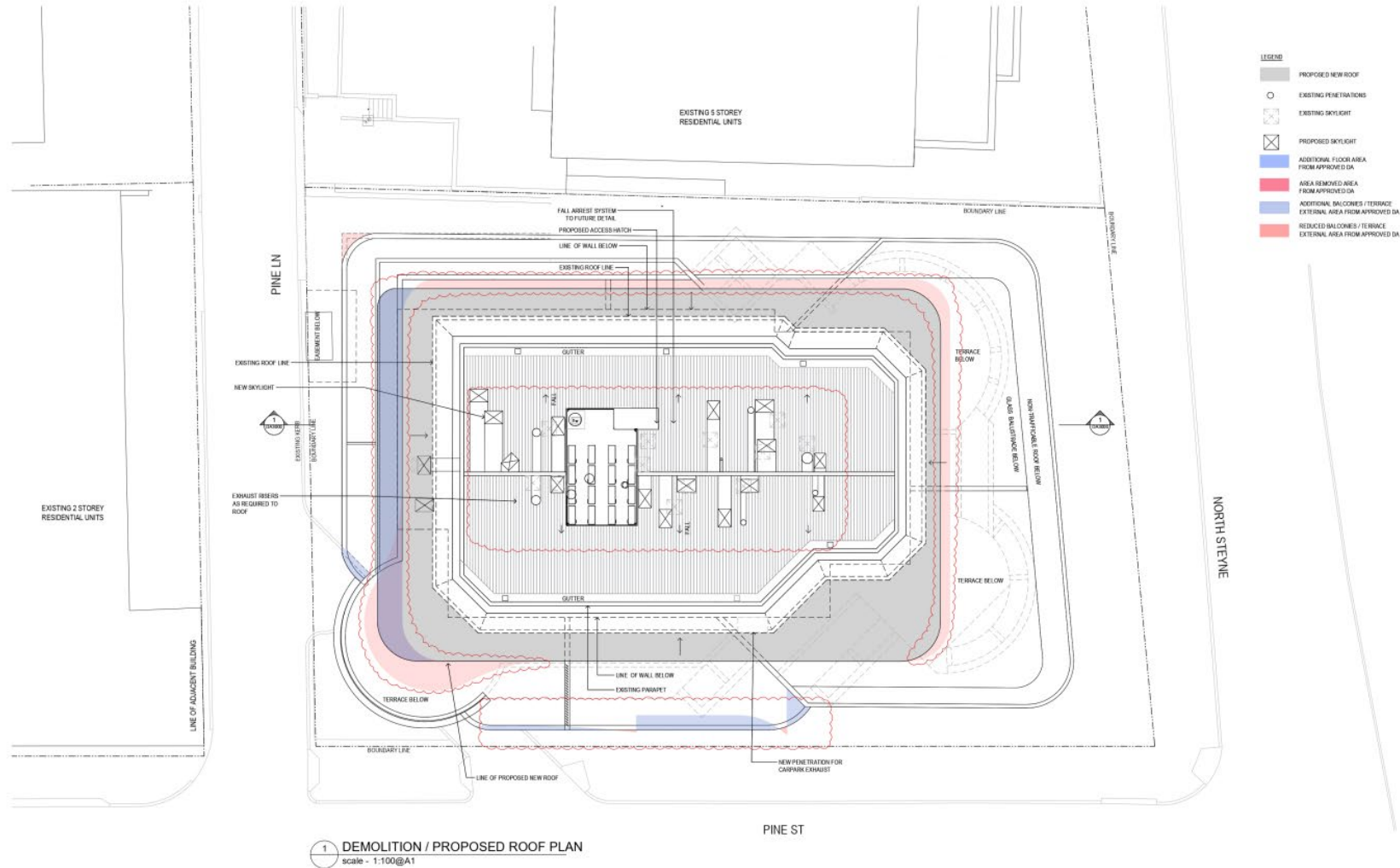
Reason: Environmental amenity.

**I. Add Condition No. 20A "Swimming Pool/Spa Motor Noise" to the 'Ongoing Conditions relating to the ongoing operation of the premises or development' section of the consent to read as follows:**

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.

**J. Delete Condition ANS04A.**



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**STATUS**  
**SECTION 96**

Do not use drawing, verify all dimensions on site. Report any discrepancy or observational to architect. This drawing is for the purpose of council approval and is not suitable for construction.

**ISS DATE PURPOSE OF ISSUE**  
**A 21.11.17 DEVELOPMENT APPLICATION**  
**B 11.08.21 SECTION 4.55**

**NOTES**

AO 1:100 @ A3  
A1 1:100 @ A1

**REV B**

- REINFORCING / REDUCING OF NEW ROOF BOUNDARY
- RELOCATING NEW SKYLIGHTS
- RECONFIGURATION OF NEW CONDENSER UNITS
- ADDITIONAL NEW ACCESS HATCH

**PROJECT**  
**BELLA VISTA APARTMENTS**

96 North Steyne  
Marly

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**DRAWING NO**  
**DA1007**

**NAME**  
**B**

**JOB NO**  
**KOU5610**

**DRAWN BY**  
**SQA**

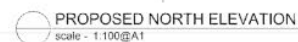
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1:200@A3**

**DATE**  
**21.11.17**

**DRAWING TITLE**  
**DEMOLITION / PROPOSED  
ROOF PLAN**





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Architects

ISS	DATE	PURPOSE OF ISSUE
A	21.11.17	DEVELOPMENT APPLICATION
B	11.08.21	SECTION 4.55
C	12.01.22	SECTION 4.55 WITH GFA CALCULATIONS

NOTES

REV. 1  
LARGER WASTE ROOM TO ACCOMMODATE WALL FOR CHAIR LIFT  
RECONFIGURATION OF ENTRY STAIRS  
ADDITIONAL NEW CHAIR CLIMBER  
ADDITIONAL OUTDOOR SHOWER AT THE ENTRY  
ADDITIONAL PRIVACY SCREENS AND GATE TO BEDROOM 1 AND 2 AT UNIT 3  
REMOVING EXISTING KITCHEN WALL & REPLACING WITH KITCHEN WALL & STONE CLADDING  
REMOVAL, RELOCATION OF PALM TREES AS PER ARCHITECT'S ADVICE  
ADDITION OF NEW POOLSPA

PROJECT  
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DRAWING NO		ISSUE		JOB NO	
DA2000		C		KOU1610	
DRAWN BY		CHECKED BY		SCALE	
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DATE		DATE		DATE	
21.11.17		21.11.17		21.11.17	
DRAWING TITLE					
PROPOSED WEST / NORTH ELEVATION					



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**SECTION 96**

STATUS

ISS	DATE	PURPOSE OF ISSUE
A	21.11.17	DEVELOPMENT APPLICATION
B	11.08.21	SECTION 4.55
C	12.01.22	SECTION 4.55 WITH GFA CALCULATIONS

Client's name, address, and telephone number are shown on the drawings. The drawings are for the use of the client only and are not to be used for any other purpose without the written permission of the copyright owner.

NOTES

- 1. LARGER WASTE ROOM TO ACCOMMODATE WALL FOR CHAIR LIFT
- 2. RECONFIGURATION OF ENTRY STAIRS
- 3. ADDITIONAL NEW CHAIR CLIMBER
- 4. ADDITIONAL OUTDOOR SHOWER AT THE ENTRY
- 5. ADDITIONAL PRIVATE SCREENS AND GATE TO BEDROOM 1 AND 2 AT UNIT 3
- 6. REDUCING EXISTING TERRACE WALL & REPLACE WITH NEW WALL & STONE CLADDING
- 7. REMOVAL / RELOCATION OF PALM TREES AS PER ARBORIST'S ADVICE
- 8. ADDITION OF NEW POOLSPA

PROJECT  
**BELLA VISTA APARTMENTS**

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CLIENT'S REF:  
**DA2001 C**

DATE  
21.11.17

PROPOSED  
EAST / SOUTH ELEVATION

**ITEM 5.6**

**MOD2021/0876 - 16 GRANDVIEW DRIVE, NEWPORT -  
MODIFICATION OF DEVELOPMENT CONSENT DA2020/1260  
GRANTED FOR CONSTRUCTION OF A SECONDARY  
DWELLING**

**AUTHORISING MANAGER** Tony Collier  
**TRIM FILE REF** 2022/039667  
**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan and Elevations

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

---

**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. Mod2021/0876 for Modification of Development Consent DA2020/1260 granted for Construction of a secondary dwelling at Lot 93 DP 16029, 16 Grandview Drive, Newport, for the reasons for refusal set out in the Assessment Report.

### APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	MOD2021/0876
<b>Responsible Officer:</b>	Sarah McNeilly (Independent Consultant Planner)
<b>Land to be developed (Address):</b>	Lot 93 in DP 16029 - 16 Grandview Drive, Newport
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1260 for the construction of a secondary dwelling
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Malcolm Charles White
<b>Applicant:</b>	Christian Miles (C/- Nolan Planning Consultants)
<b>Application Lodged</b>	11/11/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential
<b>Notified:</b>	06/12/2021 to 14/01/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

### EXECUTIVE SUMMARY

The modification application seeks to amend development consent DA2020/1260 relating to the construction of a secondary dwelling approved by the Northern beaches Local Planning Panel (NBLPP) on 3 February 2021.

The modification application seeks to delete Condition 7(a) of the development consent which required the floorplan of the secondary dwelling to be amended so that only one bathroom is provided. The modification will therefore allow for ensuite bathrooms to each of the bedrooms to be retained.

Public notification of the application resulted in no submissions being received.

The proposed modification would not result in a change in the size or external form of the approved secondary dwelling, nor would it result in an impact to adjoining neighbours. The inclusion of two small ensuites would allow for slightly greater amenity for the occupants. However, there is a concern that this could encourage rental opportunities for multiple occupants or family groups and is inconsistent with the relevant DCP control. Accordingly, it is recommended that the application be refused and condition 7(a) be retained.

The application has been assessed by an independent external planning consultant as the applicant is related to a member of staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979. Therefore, the



application is referred to the NBLPP for determination.

## PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 3 February 2021 under Development Application DA2020/1260 for the construction of a secondary dwelling.

This application has been made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 seeking to make the following amendments to the approved development:

### Deletion of Condition 7(a)

Condition 7(a) requires:

#### **7. Amendments to the approved plans**

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

- a) *The floor plan of the secondary dwelling is to be amended so that only one bathroom is provided for use by the occupants of the secondary dwelling.*

The proposal will allow for ensuite bathrooms to each of the bedrooms to be retained with Condition 7(a) deleted.

In justifying the amendment, the applicant states in the submitted Statement of Modification:

*"The proposed modification to amend Condition 7 to delete sub-clause (a) is considered to be justified for the following reasons:*

- *The inclusion of the two bathrooms does not alter the approved footprint or building envelope.*
- *The two bathrooms will not have any detrimental impact on the adjoining properties. Bathrooms are not high use areas and will not impact on the amenity or privacy of the adjoining properties.*
- *The provision of two bathrooms does not increase the density, nor intensify the use.*
- *Whilst Clause C1.11 of the Pittwater DCP limits secondary dwellings to providing only one bathroom, there is no direct reasoning for this control. The outcomes of Clause C1.11 are still achieved with the proposed modifications in that there is no change to the approved bulk or scale, does not alter the approved footprint nor require removal of any vegetation. It does however increase the opportunity for rental accommodation to meet the stated outcomes of this clause.*
- *The proposed modifications do not result [in] any impacts on the adjoining properties, character of the locality or the environment.*

*It is therefore considered appropriate that the request to amend Condition 7 as described be supported".*

It is noted that Condition 7(a) was not an additional condition imposed by the NBLPP.

## 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 DCP - C1.11 Secondary Dwellings and Rural Workers Dwelling.

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 93 in DP 16029 - 16 Grandview Drive, Newport
<b>Detailed Site Description:</b>	<p>The site has an area of 557.2m<sup>2</sup> with a frontage of 12.19m to Grandview Drive. The rear of the site abuts Crown of Newport Reserve to the east. The site is located on the north-eastern side of Grandview Drive and has a depth of 45.725m. The frontage of the site includes access via a shared lower access road.</p> <p>The site is located within the C4 Conservation Living zone and is currently developed with a stepped multi-level dwelling with metal roof. A parking platform is located at the frontage of the site. The property has a significant fall from the street frontage (RL36.77) towards the rear boundary (RL18.9).</p> <p>The rear of the site includes the approved single storey secondary dwelling which is currently under construction.</p> <p><b>Description of Adjoining and Surrounding Development</b></p> <p>The site is surrounded by detached one and two storey dwellings within landscaped settings, and a large drainage reserve to the east.</p>

## Site Aerial



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed one previous application.

**Mod2021/0241** (amending DA2020/1260 subject of this modification) – Modification to amend Condition 4 – Approved by Council on 10 May 2021.

**Mod2021/0165** (amending DA2020/1260 subject of this modification) – Modification to amend the determination date and Condition 21 – Approved by Council on 20 April 2021.

**Development Application (DA2020/1260)** (the original application being the subject of this modification) – Development Application for construction of a secondary dwelling – Approved by Northern Beaches Local Planning Panel on 3 February 2020.

**Development Application (NO622/08)** was lodged in 2008 for the alterations and additions to the existing dwelling (Submitted: 17/12/2008) approved by Council on 11 June 2009.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 it and any advice given by



relevant Council/Government/Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1260, 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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>The modified development does not result in adverse streetscape, environmental or amenity impacts. In particular, there will be no discernable impacts for neighbours.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>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 DA2020/1260 for the following reasons:</p> <ul style="list-style-type: none"> <li>The modified development will not have a materially different impact when compared to the approved development.</li> <li>The modified development will not alter the land use of the site.</li> </ul>
(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 was not required to be publicly exhibited or notified 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.	No submissions were received in relation to this application.



### 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)	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15(1) (a)(iia) – Provision of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the environmental Planning and Assessment Regulation 2000 (EP & A Regulation 2000)	<p><u>Division 8A</u> of the EP &amp; A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP &amp; A Regulation 2000 allow council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP &amp; A Regulation 2000 requires the consent authority to consider AS 2601 – 1991. The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 93 and/or 94</u> of the EP &amp; A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP &amp; A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p>

Section 4.15 – Matters for Consideration	Comments
	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.
Section 4.15 (1) (b) – the likely impacts of the development including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development may have a detrimental social impact in the locality, as the additional bathroom may allow the opportunity for more than one tenant or family group in the secondary dwelling.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received
Section 4.15 (1) (e) – the public interest	The proposal would introduce amenities which could be utilised to increase the occupancy of the secondary dwelling. This would compromise the intent of Clause C1.11 of the Pittwater 21 Development Control Plan and create an undesirable precedent which could result in increased residential density. Therefore, the application is not considered to be in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 6 December 2021 to 14 January 2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, the relevant Development Control Plan and Council's adopted Community Participation Plan.

No submissions were received.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported (No additional conditions)</b>  <i>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

### 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

The original BASIX certificate would remain valid, as plans are the same as those submitted with the original Development Application (see Certificate No. 1137791S dated 21 September 2020).

### SEPP (Coastal Management) 2018

The proposed modification would not alter the built form (footprint) of the secondary dwelling and accordingly, the original assessment is still applicable.

#### 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?	No

#### Principal Development Standards

Standard	Permitted	Approved	Proposed	% Variation	Complies
4.3(2FA) Height of Buildings	5.5m	5.497m	No change	-	Yes

#### Compliance Assessment

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

#### Detailed Assessment

#### C4 Environmental Living

The objectives of the C4 zone are considered to be fulfilled as is detailed below.

- **To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.**
- **To ensure that residential development does not have an adverse effect on those values.**
- **To provide for residential development of a low density and scale integrated with the landform and landscape.**
- **To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors**

The development does not respond appropriately to the objectives of the zone (particular Point 3) as it includes 2 bedrooms and ensuites which provide the opportunity for more than one tenant or family group to be housed within the secondary dwelling thereby potentially increasing the density to beyond that normally envisaged.



#### Clause 5.4 Controls relating to miscellaneous permissible uses

Sub-clause (9) provides:

##### (9) Secondary dwellings:

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

1. 60 square metres,
2. 25% of the total floor area of the principal dwelling.

The area of the approved proposed secondary dwelling is unchanged at 59.9m<sup>2</sup>.

#### Pittwater Development Control Plan 2014

##### Built Form Controls

Control	Requirement	Approved	Proposed	Complies
Front Building Line	6.5m	N/A	Unaltered	Yes
Rear building Line	6.5m	1.478m	Unaltered	No (No change)
Side building line	2.5m (west boundary)	2.6m	Unaltered	Yes
	1m (east boundary)	0.95m	Unaltered	No (No change)
Building envelope	3.5m (east boundary)	Within envelope	Unaltered	Yes
	3.5m (west boundary)	Within envelope	Unaltered	Yes
Landscaped area	60%	45.8% 255.53m <sup>2</sup>	Unaltered	No (No Change)

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Security		
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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Workers Dwelling	No	No
C1.12 Waste and Recycling	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front Building Line	Yes	Yes
D10.8 Side and Rear Building line	No	Yes
D10.11 Building Envelope	Yes	Yes
D10.13 Landscaped Area – Environmentally Sensitive Land	No	Yes
D10.14 Fences – General	Yes	Yes
D10.16 Construction, retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **C1.11 Secondary Dwellings and Rural Workers Dwelling**

##### Description of Non-compliance

The DCP requires a secondary dwelling to contain no more than one bathroom. The proposed development proposes two bathrooms within the secondary dwelling. A condition of consent requiring the removal of one bathroom was placed on the consent and the applicant now seeks to delete this.

##### Merit consideration

The proposal includes 2 bedrooms and the ensuites proposed are small with no change to footprint proposed, resulting in no alteration to the dwelling visually. The living space to be retained is adequate and the change will allow for slightly greater amenity for the occupants. However, the inclusion of 2 bathrooms does allow opportunity for more than one tenant or family group to be

housed within the small space. The possibility of multiple tenants is at odds with the intent of the provision. Consideration against the objectives of the clause is provided below.

- ***Limitation of the visual bulk and scale of development.***

Comment:

The bulk and scale will remain unchanged from that approved.

- ***Provision of design flexibility for second storey development.***

Comment:

The building bulk is unchanged.

- ***Restriction of the footprint of development site.***

Comment:

The bulk and scale will remain unchanged from that approved.

- ***Retention of natural vegetation and facilitation planting of additional landscaping.***

Comment:

The inclusion of the second bathroom will have no impact on vegetation and landscaping with the building footprint unchanged.

- ***Provision of rental accommodation.***

Comment:

The ability to provide rental accommodation will be retained. However, it should be limited to one tenant or family group through the retention of the requirement for one bathroom.

It is concluded that the proposed development is inconsistent with the relevant objectives of the PDGP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D10.8 Side and Rear Building line**

The proposal does not seek to alter the side and rear building line approved within DA2020/1260. No change to approved built form is proposed.

#### **D10.13 Landscaped Area – Environmentally Sensitive Land**

The proposal does not seek to alter the landscaped area approved within DA2020/1260. No change to approved built form is proposed.

#### **7.12 CONTRIBUTIONS**

The modification does not change the cost of works or impact contributions.

#### **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 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:

- Inconsistent with the objectives of the DCP.
- Inconsistent with the zone objectives of the LEP.
- Consistent 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.

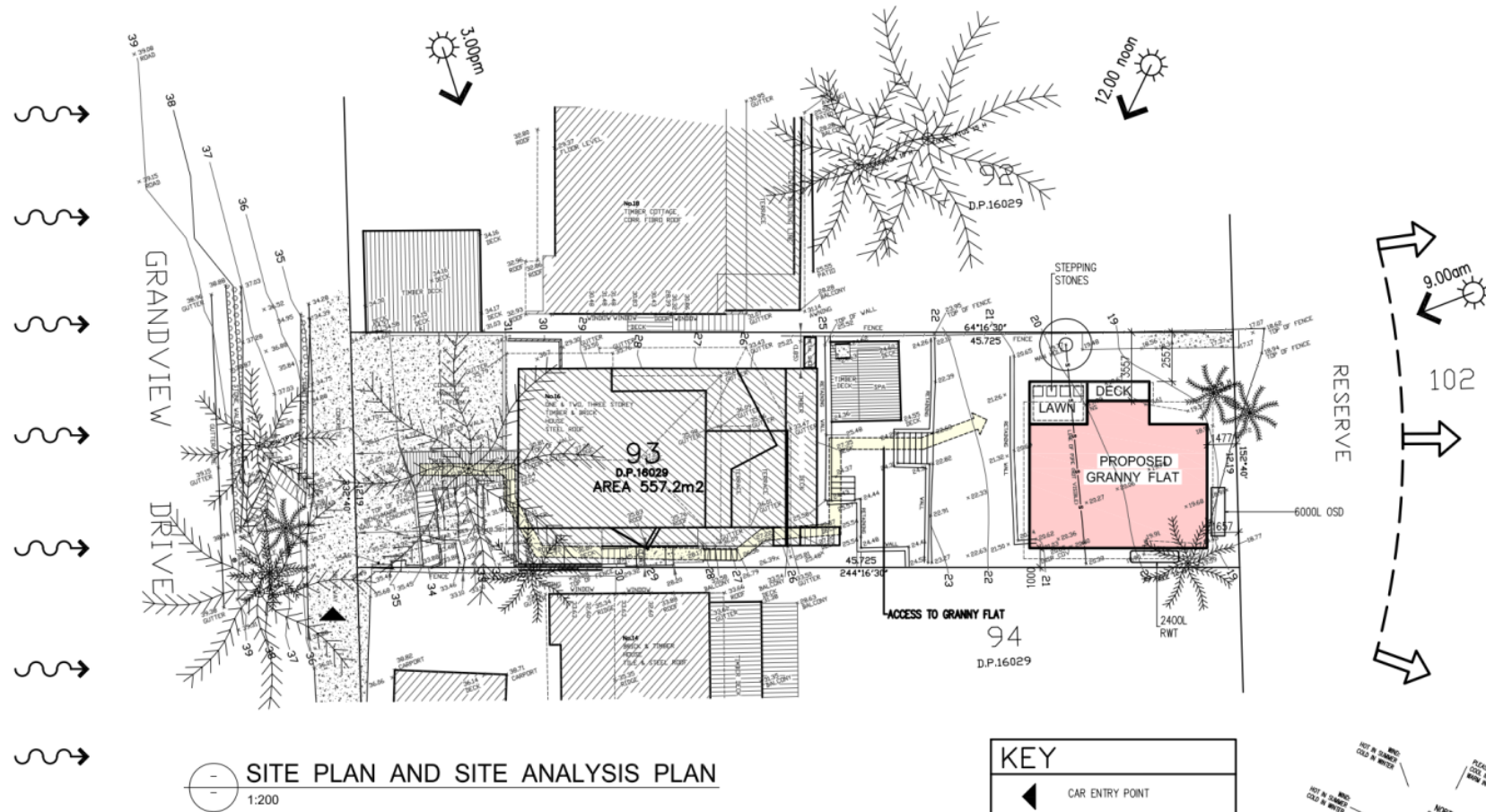
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

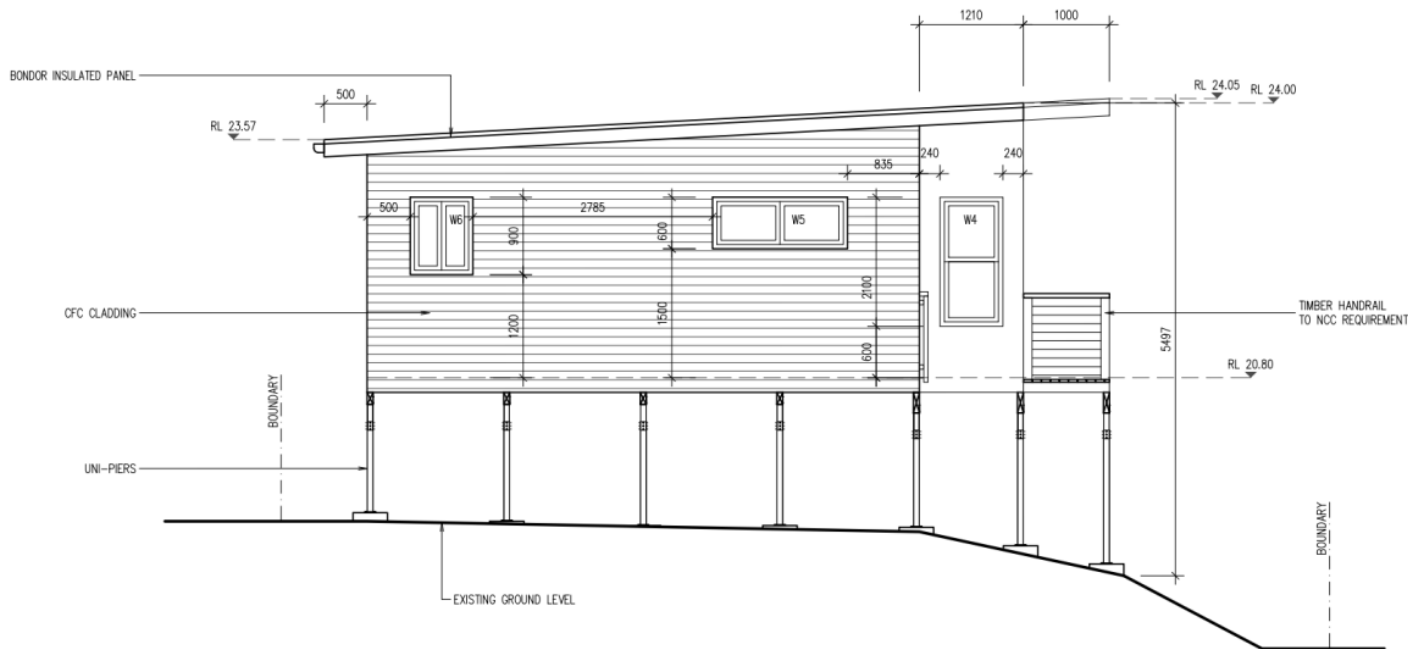
## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of the Northern Beaches Council as the consent authority, **refuses** Modification Application No. Mod2021/0876 for the modification of Development Consent DA2020/1260 granted for the construction of a secondary dwelling on land at Lot 93 in DP 16029, No. 16 Grandview Drive, Newport, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the zoning objectives of the Pittwater Local Environmental Plan 2014. In particular, the development which provide the opportunity for more than one tenant or family group to be housed within the secondary dwelling thereby potentially increasing the density to beyond that normally envisaged.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings of the Pittwater 21 Development Control Plan. In particular, the secondary dwelling includes two bathrooms which will enable the use of the dwelling as share accommodation.
3. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979. In particular, the proposed development is to the detriment of social objectives, providing the opportunity for more than one tenant or family group to be housed within the secondary dwelling.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest. In particular, the proposal could be utilised to increase the occupancy of the secondary dwelling which would compromise the intent of Clause C1.11 of the Pittwater 21 Development Control Plan and create an undesirable precedent for increased residential density.







**PROPOSED EAST ELEVATION FOR TIMBER FRAME**  
1:50

**CLADDING:**  
THE CLADDING TO BE DARK EARTHY TONES

**ROOF COLOUR:**  
WOODLAND GREY

**WINDOW DIMENSIONS:**  
ALL DIMENSIONS OF WINDOW ARE FRAMING SIZES, NOT WINDOW SIZES



**GENERAL NOTES:**

1. Builder to check and confirm all necessary dimensions on site prior to construction. Do not scale the drawing.
2. All dimensions that relate to site boundaries and easements are subject to verification by site survey.
3. All work to be in accordance with BUILDING CODE OF AUSTRALIA & to the satisfaction of local council requirements & other authorities.
4. All timber construction to be in accordance with the "TIMBER FRAME" code.
5. Any detailing in addition to what is specified shall be resolved between the owner and the builder to the owner's approval, except for any structural details or design which is to be supplied by Structural Engineer.
6. Roof eaves & sub-eave drainage to be disposed of in the approved manner or as directed by local council inspectors.
7. All electrical power & light outlets to be determined by owner.
8. Make good and repair all existing finishes damaged by new work. Reuse existing material where possible.

3	AMENDED ISSUED FOR CC	17/05/21
2	ISSUED FOR CC	22/02/21
1	ISSUED FOR DA	09/09/20
No.	AMENDMENT	DATE
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Email: koreckym@gmail.com www.plansdesign.com.au  
Phone: 99813332, Mob: 0438 148 944

PROJECT:  
**PROPOSED GRANNY FLAT  
No 16 GRANDVIEW DRIVE  
NEWPORT, LOT 93 IN D.P.16029**  
CLIENT:  
**MR. & MRS. MILES**

DATE: 17/05/21	SCALE: AS NOTED
DRAWN: MK	ISSUE: 3
DRAWING Nr: 20064	SHEET: 3



**NOTE:**  
**EXTERNAL FINISHES**

**CLADDING:**  
THE CLADDING TO BE DARK EARTHY TONES

**ROOF COLOUR:**  
WOODLAND GREY

**WINDOW DIMENSIONS:**  
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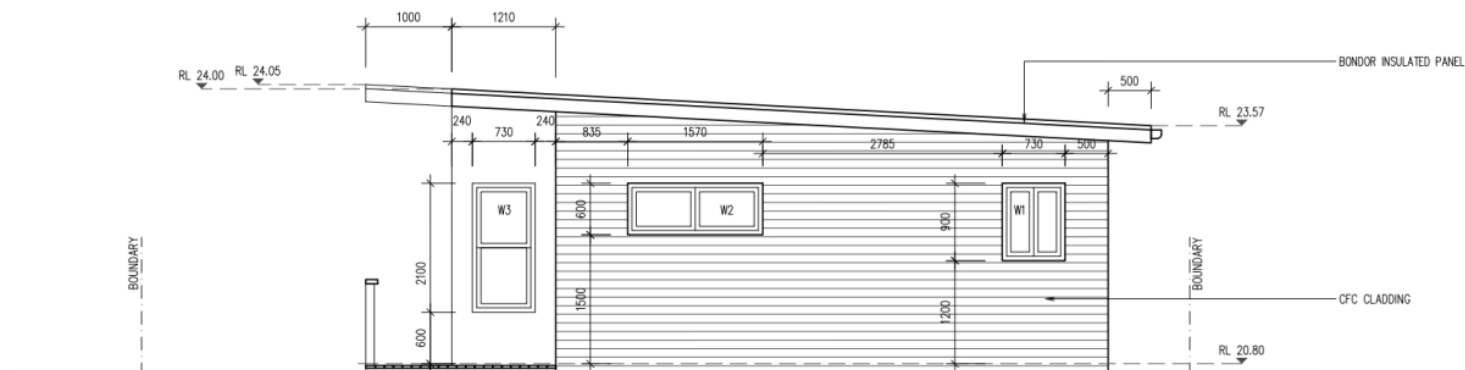
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DRAWN: MK	ISSUE: 3
DRAWING Nr: 20064	SHEET: 4



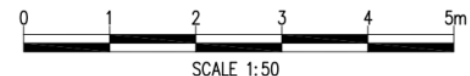
**PROPOSED WEST ELEVATION FOR TIMBER FRAME**  
1:50

**NOTE:**  
**EXTERNAL FINISHES**

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THE CLADDING TO BE DARK EARTHY TONES

**ROOF COLOUR:**  
WOODLAND GREY

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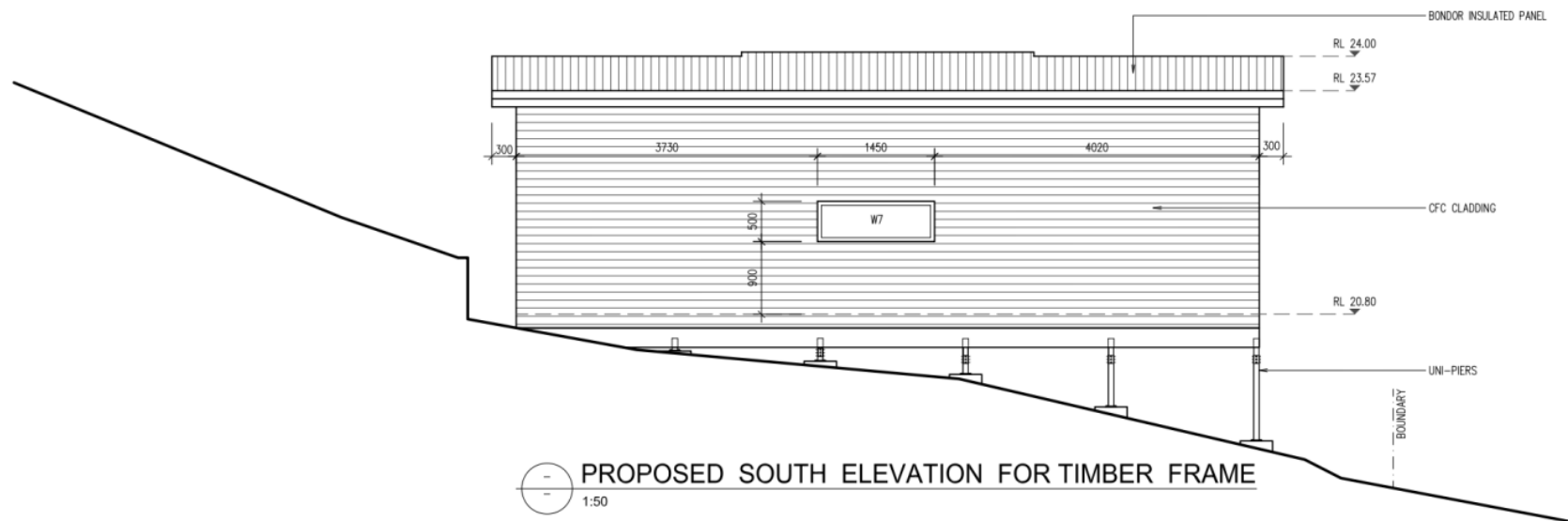
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**NEWPORT, LOT 93 IN D.P.16029**  
CLIENT:  
**MR. & MRS. MILES**

SCALE 1:50	
DATE: 17/05/21	SCALE: AS NOTED
DRAWN: MK	ISSUE: 3
DRAWING Nr: 20064	SHEET: 5





NOTE:  
EXTERNAL FINISHES

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ROOF COLOUR:  
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WINDOW DIMENSIONS:  
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