



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 MARCH 2022

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

Peter Robinson
Executive Manager Development Assessment

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 March 2022

1.0 APOLOGIES & DECLARATIONS OF INTEREST

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5.0 NON PUBLIC MEETING ITEMS139

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 DA2020/1762 - 316 Hudson Parade, Clareville - Demolition works and construction of boatshed, ramp, slipway, jetty & steps 139

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 2 FEBRUARY 2022

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 2 February 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/2034 - 30 FAIRLIGHT STREET, FAIRLIGHT - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2022/104964
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 4 Design and Sustainability Advisory Panel Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/2034 for Demolition works and construction of a residential flat building at Lot 50 DP 705739, 30 Fairlight Street, FAIRLIGHT for the reasons for refusal set out in the Assessment Report

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DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2034
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 50 DP 705739, 30 Fairlight Street FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	30 Fairlight Pty Limited
Applicant:	30 Fairlight Pty Limited

Application Lodged:	02/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	12/11/2021 to 26/11/2021
Advertised:	12/11/2021
Submissions Received:	28
Clause 4.6 Variation:	4.4 Floor space ratio: 24.1%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,531,296.00
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EXECUTIVE SUMMARY

The proposal seeks consent for demolition works and the construction of a residential flat building containing five apartments with basement car parking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal attracted more than 10 submissions, includes a departure to the floor space ratio development standard that exceeds 10% and seeks approval to a Residential Flat Building.

The proposal was notified and advertised for a period of 14 days. Council received 28 submissions in objection to the development in response to the advertising of the application. The primary concerns raised in the submissions relate to the following matters:

- FSR variation, building height & overdevelopment of the site;
- Streetscape character and visual bulk;
- MDCP setback non-compliances;
- MDCP Wall height non-compliance and excessive floor-to-floor/ceiling heights;
- Non-compliance with SEPP 65 and the ADG;
- View loss, privacy and overshadowing impacts;
- Impacts of excavation extent and potential loss of trees on adjoining properties;
- Traffic, parking and safety impacts;
- Stormwater management and redirection of ground water flows to adjoining properties.

The development proposes a floor space ratio of 0.93:1, resulting in a variation of 24.1% (155.5m²) to the 0.75:1 control. The Applicant's Clause 4.6 written request does not adequately demonstrate that the proposal achieves the objectives of the height of buildings development standard, or that there are sufficient environmental planning grounds to justify the extent of the proposed variation sought. The variation will result in excessive visual bulk and generates a greater car parking demand than that which can be appropriately accommodated on the site.

The proposed development is found to be inconsistent with the desired future character as prescribed by the planning controls contained within the MLEP and MDCP, particularly with regard to bulk and scale, visual and amenity impacts and landscape outcomes. Further issues are also raised in relation to the provisions of SEPP 65 and the Apartment Design Guide, traffic and parking, and stormwater and waste management. Given the number and extent of the proposed non-compliances/inconsistencies with the applicable controls, the proposal is considered to represent an overdevelopment of the site.

The proposal is not supported by the Design and Sustainability Advisory Panel or Council's Development Engineering, Traffic, Waste and Landscape sections.

Accordingly, based on the detailed assessment contained in this report, the application is not supported and is recommended for refusal for the reasons listed in this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a residential flat building as follows:

Basement

- Pedestrian entry, lobby, stair and lift access
- Car parking for 10 vehicles
- Storage and bicycle parking
- Bin store room
- Plant room
- Pump room
- Services

Ground

- 2 x Three bedroom apartments
- Landscaped podium structure (south)
- Landscaped rear private open spaces areas (north)

Level 1

- 2 x Three bedroom apartments

Level 2

- 1 x Three bedroom apartment

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.3.1 Landscaping Design
Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 3.6 Accessibility
Manly Development Control Plan - 3.7 Stormwater Management
Manly Development Control Plan - 3.8 Waste Management
Manly Development Control Plan - 3.9 Mechanical Plant Equipment
Manly Development Control Plan - 3.10 Safety and Security
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 50 DP 705739, 30 Fairlight Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Fairlight Street. The site is irregular in shape with a frontage of 16.01m along Fairlight Street and a depth of 54.64m. The site has a surveyed area of 861.7m². The site is located within the R1 General Residential zone and accommodates an existing single-storey dwelling house, triple garage and swimming pool. The site slopes 6.2m from rear (north) to front (south) and includes a crossfall of up to 1m from west to east. The site contains a range of vegetation including 38 trees and smaller planted vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a range of multi-storey and mid-rise residential flat buildings and detached dwelling houses.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2020/0103 for Demolition works and construction of a Residential Flat Building was withdrawn by the Applicant in response to numerous concerns raised by Council in relation to:

- Height of buildings and Floor space ratio;
- General amenity, privacy, solar access and views;
- Number of storeys, setbacks and visual bulk;
- Open space and landscaping;
- Non-compliance with various aspects of SEPP 65 and the ADG;
- Vehicular access; and
- Waste management.

The subject application, **DA2021/2034** was submitted to Council on 2 November 2021 and was referred to the Design and Sustainability Advisory Panel on 9 December 2021. The DSAP Report included a total of 24 recommendations in relation to the proposed development, generally relating to:

- Strategic context, urban context: surrounding area character;
- Scale, built form and articulation;
- Landscape;
- Amenity;
- Facade treatment / Aesthetics; and
- Sustainability.

On 16 December 2021, the Applicant commenced Class 1 appeal proceedings against Council's deemed refusal of the Development Application.

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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would addressed via a condition of consent were the application recommended for approval. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter would addressed via a condition of consent were the application recommended for approval. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.

Section 4.15 Matters for Consideration	Comments
	<u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent were the application recommended for approval. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter would be addressed via a condition of consent were the application recommended for approval.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for residential flat building development. However, the proposed development does not provide an appropriate contextual response in relation to the applicable controls or the character of the surrounding locality.
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 Manly LEP, Manly DCP and SEPP 65 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/11/2021 to 26/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 28 submission/s from:

Name:	Address:
Mr Rajesh Arora	12/20-22 Fairlight Street MANLY NSW 2095
Mr Roger Charles Twigg	4 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Mark Damian Williams Mrs Catherine Marianna Williams	3 / 28 Woods Parade FAIRLIGHT NSW 2094
Mr Peter John Adams	3 / 1 Berry Avenue FAIRLIGHT NSW 2094
Mr Colin Reginald James	32 Fairlight Street FAIRLIGHT NSW 2094
Mr Stephen Hogan	3 / 34 Fairlight Street FAIRLIGHT NSW 2094
Withheld	ELANORA HEIGHTS NSW 2101
Ms Dianne Voun Parrish	2 / 1 Berry Avenue FAIRLIGHT NSW 2094
Ms Pamela Doreen Prior	3/26-28 Fairlight Street FAIRLIGHT NSW 2094
Ms Cheryle Annette Newton	3 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Robert Lester Smale	1 / 34 Fairlight Street FAIRLIGHT NSW 2094
Mr Errol John Fletcher	1 / 6 Pine Street MANLY NSW 2095
Ms Patricia Ann Laubinger	3 / 28 Woods Parade FAIRLIGHT NSW 2094
Mr Ian Joseph Glover Mrs Barbara Glover	7 / 26 Fairlight Street FAIRLIGHT NSW 2094
Ms Valerie Jean Bowman	5 / 26 Fairlight Street FAIRLIGHT NSW 2094
Ms Eilis Maire Hurley	6 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Alan Graham Keenleside	1 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Christopher John Milne	16 / 15 Laurence Street MANLY NSW 2095
Mr David Anthony Costa	21 Fairlight Street FAIRLIGHT NSW 2094
Ms Ann Helen Stone	7 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Nikki Britton	Address Unknown
Mrs Lucia Orvi Pattison	5 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Ross Geoffrey Kelly	Po Box 934 MANLY NSW 1655
James Dale Graham	4 / 137 Sydney Road FAIRLIGHT NSW 2094
Mr David Christopher Buckner Mrs Elizabeth Buckner	8 / 2 - 3 Berry Avenue FAIRLIGHT NSW 2094
Mr Graham Carlton Mrs Patricia Elaine Carlton	2 / 34 Fairlight Street FAIRLIGHT NSW 2094
Mr Jeremy Owen Magee	1 / 26 Fairlight Street FAIRLIGHT NSW 2094
Ms Rebecca Ann Fee	4 / 49 Wood Street MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

- FSR variation, building height, overdevelopment of site

Comment:

The assessment of the applicant's Clause 4.6 written request finds that the proposed floor space ratio variation is excessive and is not supportable. The submitted plans indicate that a significant reduction to the overall building and wall height is readily achievable and necessary in order to reduce the associated visual bulk, overshadowing and view impacts of the proposal. The proliferation of non-compliances in relation to the controls contained within the Manly LEP and DCP, SEPP 65 and the ADG demonstrate the proposed development represents an overdevelopment of the site, and as such the proposal is not supportable.

This matter is considered to warrant the refusal of the application.

- Streetscape character and visual bulk

Comment:

The proposal is inconsistent with the character of the streetscape due to its excessive bulk, inadequate front setbacks and inappropriate landscape treatment at the streetfrontage.

This matter is considered to warrant the refusal of the application.

- MDCP setback non-compliances

Comment:

The proposal includes various breaches of the applicable MDCP built form and amenity controls, including wall height, setbacks, landscaped area, solar access, privacy and maintenance of views. The proposal does not achieve the relevant objectives of these controls and is not supportable.

This matter is considered to warrant the refusal of the application.

- MDCP Wall height non-compliance and excessive floor-to-floor/ceiling heights

Comment:

The proposal exceeds the maximum permitted wall height for the site at both the eastern and western elevations. Given the excessive level 2 floor to ceiling heights proposed and the adverse visual and amenity impacts resulting from the wall height breaches, the proposal is not supported.

This matter is considered to warrant the refusal of the application.

- Non-compliance with SEPP 65 and the ADG

Comment:

The proposal is inconsistent with multiple aspects of SEPP 65 and the ADG as discussed in this report, and is not supportable.

This matter is considered to warrant the refusal of the application.

- View loss impacts

Comment:

A view loss assessment is completed under 3.4.3 in this report. The assessment finds that the proposal has not given adequate consideration to views from surrounding properties and is not supportable.

This matter is considered to warrant the refusal of the application.

- Privacy impacts

Comment:

The proposal includes numerous large windows orientated to the eastern and western side boundaries that not appropriately designed or located for privacy and do not incorporate adequate screening measures. As such, the proposal will result in adverse privacy impacts to adjoining properties and is not supportable.

This matter is considered to warrant the refusal of the application.

- Overshadowing impacts to adjoining properties

Comment:

The proposal will maintain a reasonable level of sunlight access to the private open spaces of the adjoining properties. However, insufficient detail has been provided to consider the overshadowing of living room windows within these properties, particularly 32 Fairlight Street to the west.

This matter is considered to warrant the refusal of the application.

- Excavation and site stability

Comment:

The proposed excavation to accommodate the required car parking is anticipated to adversely impact adjoining properties and the natural environment, including significant trees located on 32 Fairlight Street to the west. Further, the car parking demand and subsequent extent of required excavation is largely attributable to the additional gross floor area achieved beyond the FSR control. The proposed excavation in proximity to the property boundaries is considered to be excessive and is not supported. Were the application recommended for approval, conditions would be imposed regarding certification of geotechnical measures and preparation of pre and post-construction dilapidation reports for the relevant adjoining properties/structures. However, any measures to allow the retention of trees located 32 Fairlight Street are not foreseen.

This matter is considered to warrant the refusal of the application.

- Impact to trees, including those located on adjoining properties, provision of open space and landscaping

Comment:

The likely impact to trees T27 and T37 located on 32 Fairlight Street is not supportable by Council. Further, the proposed landscape outcome for the site, which includes the removal of all existing trees and limited ability to provide compensatory planting, is also unacceptable.

This matter is considered to warrant the refusal of the application.

- Traffic, parking and safety impacts

Comment:

The proposal provides a compliant number of car parking spaces as required by the Manly DCP and is not considered to result in any adverse impact to the surrounding road network. However, the design of the proposed basement car park does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1 and the proposal does not demonstrate that forwards entry and exit to and from the site is possible from each parking space via a swept path analysis. Given the length of the circulation aisle, a waiting bay and traffic control measures inside the car park are also required. As such, the proposal does not appropriately address traffic and safety matters.

This matter is considered to warrant the refusal of the application.

- Stormwater management and redirection of ground water flows to adjoining properties

Comment:

The proposed stormwater design is inconsistent with Council's Water Management for Development Policy and is not supportable.

This matter is considered to warrant the refusal of the application.

- Reduced development potential of 32 Fairlight Street

Comment:

It is acknowledged that the proposal, if approved, would adversely impact the future development of 32 Fairlight Street due to the number and extent of non-compliances with the provisions of the MLEP, MDCP, ADG and SEPP 65 as discussed in this report. It is also likely that a future development of a similar scale at No. 32 would likely have an adverse impact on the amenity of the subject development, if approved.

This matter is considered to warrant the refusal of the application.

- No boundary fencing proposed

Comment:

Were the application recommended for approval, conditions would be imposed requiring that sufficient boundary fences be provided in accordance with the NSW Dividing Fences Act 1991.

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

- Mechanical plant equipment noise

Comment:

Were the application recommended for approval, conditions would be imposed requiring that all mechanical plant equipment be acoustically treated to comply with the relevant noise standards.

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

- Construction and excavation impacts

Comment:

Were the application recommended for approval, conditions would be imposed requiring that the works be carried out in accordance with the relevant standards to minimise disruption to the amenity of surrounding properties.

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

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	Not Supported The application was referred to the Design Sustainability Advisory Panel (DSAP) for consideration and comment. The DSAP raised a number of fundamental issues with the design of the development and overall did not support the proposal. The Panel made a total of 24 recommendations to improve the design quality,

Internal Referral Body	Comments
	contextual fit and sustainability of the proposal. The primary issues raised by the Panel included: • Strategic context, urban context: surrounding area character; • Scale, built form and articulation; • Access, vehicular movement and car parking; • Landscape; • Amenity; • Facade treatment / Aesthetics; and • Sustainability. The DSAP Report concluded that <i>"The Panel does not support the proposal in its current form. A complete redesign incorporating substantial reduction in the floor area, significantly reduced extent of excavation and significant retention of existing tree canopy is required. Any breach of the floor space controls would need to be supported by an analysis of the benefits compared to a complying scheme."</i> Council concurs with the concerns raised by the DSAP for the reasons discussed in this assessment. A copy of written advice provided by the DSAP is attached to this report.
Building Assessment - Fire and Disability upgrades	Supported subject to conditions.
Environmental Health (Acid Sulphate)	Supported without conditions. General Comments The property is located in a Class 5 for acid sulfate soils. Acid sulfate soils are not typically found in a Class 5 area. Areas classified as Class 5 are located within 500 metres on adjacent class 1,2,3 or 4 land. Any Works in a class 5 area that are likely to lower the water table below 1 metre AHD on adjacent class 1, 2, 3 or 4 land will trigger the requirement for assessment and may require management. SEE advises the following: <i>Clause 6.1 Acid Sulfate Soils - Clause 6.1 of MLEP 2013 maps the site as Class 5 on the Acid Sulfate soils map. The DA is accompanied by a Geotechnical assessment report prepared by JKGeotechnics dated 12 July 2021 which did not identify the presence of acid sulfate soils. Accordingly, no further investigation is warranted.</i> From the Geotechnical Report prepared by JKGeotechnics dated 12 July 2021 (Reference: 34216Brpt) there is no mention of acid sulphate soils or if the works are likely to lower the water table below 1 metre AHD on adjacent class 1, 2, 3 or 4.

Internal Referral Body	Comments
	However, the Geotechnical Report advises the following regarding excavation: <i>The basement is proposed at RL42m, which is the street level at the south-eastern corner of the site, but will require excavation to a maximum depth of about 5.5m towards the rear of the site. The basement will extend to the eastern, southern and western boundaries and will be offset about 5.5m from the northern boundary. The portion of the site to the rear of the basement will require excavation to a depth of about 1.5m to 2m to form a level landscaped area, with retaining walls constructed along the boundaries to allow this excavation.</i> Given that the site is located approximately 45m above sea level and nearest Class 4 is approximately 385m away at approximately 15m above sea level the likelihood of the works lowering the water table below 1 metre AHD within an adjacent Class 4 area is low.
Landscape Officer	Not supported. The development application is for the demolition of the existing dwelling house and construction of a residential flat building containing five units above basement parking. Council's Landscape Referral have assessed the application against the following relevant landscape controls and policies: • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (b) against the design quality principles within schedule 1; the Apartment Design Guide under SEPP 65 clause 28(2)(c); and clause 30. • the associated Apartment Design Guide, including Principle 5: Landscape, and the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and • Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): 3.3.1 Landscaping Design; Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings. A Landscape Plan prepared by Black Bettie Landscape Architecture and a Arboricultural Impact Assessment prepared by Treeism, are submitted in accordance with Council's DA Lodgement Requirements, Landscape Plans and a Arboricultural Impact Assessment are provided with the development application in accordance with Council's DA Lodgement requirements. The existing site vegetation contains 38 trees and all are proposed for removal. Four (4) are assessed as prescribed trees under the Manly DCP and thus requiring Council consent for removal and these include T13 Cedrus deodara, T16 and T17 Yucca aloifolia, and T25

Internal Referral Body	Comments
	Pittosporum undulatum. The remaining thirty four (34) are Exempt Species by either height or by species type. Exempt Species located on the site include Black Bean, Cypress, Umbrella Tree, Gleditsia, Willow, Sweet Pittosporum, Kentia Palm, Golden Cane Palm, Cocus Palm, Alexandra Palm, and Canary Island Date Palm. The Landscape Plans provide the minimum 7% deep soil zone required under the Apartment Design Guide to the rear of the property, however this is disrupted with retaining walling for change of levels and by lawn areas. It is advised that to provide the landscape outcome intended for deep soil areas to support tree planting, the lawn areas shall be deleted and mass planting shall occupy the area. The location of the retaining wall shall be aligned to ensure that tree planting is at least two metres from walling. Smaller areas of natural ground landscape areas are provided along the front northern boundary and otherwise the remaining landscape areas are contained on slab within planters. Concern is raised on the impact of the basement alignment and excavation to the side boundaries in proximity of existing trees within adjoining property at No. 32. Existing trees T27 Camphor Laurel assessed in the Arboricultural Impact Assessment with a medium retention value, and T37 Rose Apple assessed in the Arboricultural Impact Assessment with a high retention value are both located in close proximity to the basement. The Arboricultural Impact Assessment recommends that the retention of T27 is not achievable based on the impact of development and whilst not providing a recommendation for removal for T37, the Arboricultural Impact Assessment notes that a tree root investigation is required to determine whether or not the tree can be retained. Council does not support the removal of any existing tree or vegetation within adjoining properties and does not provide recommendations for any removal upon land not the subject of a development application. The applicant may seek by way of written owner's consent from the adjoining property owner at No. 32 for common agreement to remove existing tree T27 but this is not a matter for Council to impose any recommendations. The matter of a firm understanding of the impact to existing tree T37 is not known at this stage and without evidence to the contrary to suggest retention of existing tree T37 is viable, it is suggested that the basement alignment shall be altered and setback at a distance as determined through arboricultural investigation. Likewise, without owner's consent for removal of existing tree T37, the basement alignment shall be altered and setback at a distance as determined through arboricultural investigation. At this stage Landscape Referral are unable to support the development application as the outcome of existing trees within adjoining property is unknown, potentially requiring the redesign of the basement alignment, and the Landscape Plans shall be adjusted to provide a deep soil zone to the rear of the property to establish tree

Internal Referral Body	Comments
	planting.
NECC (Development Engineering)	Not supported. The applicant proposed to install an OSD in the proposed courtyard on the proposed ground floor where limits the access to the OSD tank. In accordance with Council's Water Management for Development Policy, the OSD tank must be freely accessed due to the safety and possible maintenance. As such, the OSD tank shall be relocated to an accessible area as the requirement of the above policy. The application cannot be supported due to the clause 3.7 of Council's Manly DCP 2013.
NECC (Water Management)	Supported subject to conditions. This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The development is subject the Water Management for Development Policy. Due to the sensitivity of the Sydney Harbour and to maintain a good water quality, Council recommend the stormwater filtration system to achieve the Policy General Stormwater Quality Requirements. In addition the carwash bay shall not be connected to the stormwater system, detention system or drained directly to the environment. Wastewater and rainwater run-off from vehicle, machinery and equipment wash bays can pose a significant threat to the health of natural waterways and coastal waters if they are discharged into the stormwater system. This application, subject to conditions, is supported.
Strategic and Place Planning (Heritage Officer)	Supported subject to conditions. HERITAGE COMMENTS Discussion of reason for referral This proposal has been referred for heritage comment as it involves demolition of an Edwardian Federation cottage, one of a surviving adjacent pair of contemporaneous but dissimilar dwellings. Neither is listed, but a number of heritage items are located in the vicinity. Details of heritage items affected There are a number of listed heritage items within the vicinity of this site, being: <i>Item 12 - All stone kerbs (sections of Fairlight Street);</i> <i>Item 151 - Group of 3 houses, 21-25 Fairlight Street;</i> <i>Item 161 - Group of dwellings, 2A-25, 27 and 29 Margaret Street and 38 The Crescent; and</i>

Internal Referral Body	Comments		
	<i>Item 162 - Street trees, Margaret Street (from Lauderdale Avenue to Fairlight Street).</i>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	This application is for demolition of the existing dwelling and construction of a new residential flat building. The application was supported by a Heritage Impact Statement (<i>Weir Phillips Heritage and Planning</i>, dated October 2021), which has been reviewed. The comparative and particular distances of the heritage items in the vicinity from No. 30 are such that it is considered that no substantive adverse heritage impacts will arise from the proposed development. These impacts are understandably favourably assessed in the submitted Heritage Impact Statement. The most perceivable outcome of the proposal will be its somewhat dominating and intrusive effect on views from the sensitive, heritage listed street opposite (Margaret Street). This street precinct is protected somewhat by its heritage listed street trees. However, the urban design qualities of the proposal, in terms of its relationship with the existing setting, should be carefully assessed. It is difficult to conclude however, that there is a substantial heritage impact on this heritage item in the vicinity. In heritage terms, the proposed loss of the existing cottage, and the new development proposed for the site, are regrettable but not capable of opposition on heritage grounds. As the existing cottage dates back to the early 20th century, archival recording of the cottage is recommended prior to demolition. Therefore, no objections are raised on heritage grounds, subject to a condition requiring archival recording of the cottage prior to demolition. <u>Consider against the provisions of CL5.10 of MLEP2013:</u>		

Internal Referral Body	Comments
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? Yes Further Comments COMPLETED BY: Robert Moore, External Heritage Advisor/Janine Formica, Heritage Planner DATE: 5 January 2022
Traffic Engineer	Not supported. Proposal description: Demolition of the existing dwelling house and construction of a new three-storey residential flat building with basement car parking. The proposed development involves the demolition of existing structures on the site to facilitate the construction of a residential flat building comprising 5 × three-bedroom residential units. The existing dwelling has three enclosed garages accessing to/from Fairlight Street. The proposed development will provide a single entry point and enable all vehicles to enter and exit the site in a forward direction. Off-street parking is proposed for a total of 10 cars in a single-level basement car parking area at street level. The plans (Master Set) – Revision A, designed by DKO Architecture (NSW) Pty Ltd, dated June 2021, the Traffic and Parking Assessment report prepared by VARGA TRAFFIC PLANNING Pty Ltd dated 13 October 2021 have been reviewed by the Traffic team. Notes/comments on parking requirement, traffic impact and carpark design: • <i>Manly DCP</i> applies to the subject site. According to the DCP, in LEP Residential Zones, the parking rate is as follows: - o 1 resident parking space for each dwelling (irrespective of the number of bedrooms), plus - o 0.2 resident parking spaces for each 2 bedroom dwelling, plus - o 0.5 resident parking space for each 3 (or more) bedroom dwelling, plus - o 0.25 visitor parking space for each dwelling (irrespective of the number of bedrooms). - o The calculation of resident parking and visitors parking is to be individually rounded up to the next whole number.

Internal Referral Body	Comments
	Application of the above rates to the proposed development would result in 8 residential parking spaces and 2 visitor parking space. Parking is provided in accordance with the provisions of Manly DCP, providing 8 resident and 2 visitor parking spaces within the basement level. - Bicycle parking stands are also required at a minimum rate of one (1) stand for every three car parking spaces, with a minimum provision of one (1) stand for each premise, i.e. three (3) bicycle stands for the proposed development. Bicycle parking within the storage area of the basement is provided. - The parking spaces have not been dimensioned on the architectural plans. The plans should be accompanied by dimensioned parking spaces. - The driveway at the property line is measured to be approximately 3.9 metres wide, reducing to about 3.5 meters wide at the entrance and then increasing to 6.1 inside the property. These plans should include dimensions for the driveway. - It is noted that a low volume driveway carrying less than 30 vehicles per hour (two way) is anticipated for the development; however, given that the circulation aisle is more than 30m long for safety reasons and to prevent entering vehicles having to reverse back onto Fairlight Street, a waiting bay inside the carpark and traffic control measures requiring exiting vehicles to Give Way to entering traffic such as traffic light control should be included on the amended plans. A swept path analysis to confirm that forwards entry and exit to and from the site is possible from each parking space shall also be provided. - The proposed driveway does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1. Given the use of the property frontage by pedestrians, it is considered that the plans shall be amended to ensure that compliant sightlines to pedestrians are provided. - The proposal will generate minimal traffic during the peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. The plans require amendment to address the concerns outlined above prior to further assessment
Waste Officer	Not supported. Waste Management Assessment Recommendation – Refusal The proposal does not meet Councils requirements. Specifically:

Internal Referral Body	Comments
	- The bin storage room is located in a secure basement carpark. Residential waste storage room design and access As this is a multiple occupancy proposal Council will be providing a "wheel out / wheel in" service for the bins. The owners corporation / building occupants are not to place the bins at the kerbside for collection. Any doors fitted on the waste storage area, pathway and access must be: - Able to be latched in an open position for servicing with - Unobstructed by any locks and security devices - Openable in an outward direction of travel when taking To prevent access from the bin storage area to the secure basement carpark, the applicant may choose to: - Include a solid wall between the bin room and carpark including a resident access door from the carpark that can be locked from the inside of the bin room. Residents could then access to the bin storage room via a key or swipe from the carpark to avoid any allegations towards collection staff having access to secure parts of the building. - The proposed resident access door must open into the carpark, not into the passageway used for bin access. To improve access to the bin storage area, the applicant may choose to: - Replace the double doors that access the bin storage area with a single 1200mm wide door hinged on the RHS and opening outwards. This door could then be latched against the proposed wall.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a three-storey residential flat 'housing' development plus basement car parking for the provisions of five self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy

applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

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

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design Review Panel (known as the Design Sustainability Advisory Panel - DSAP). The application was referred to the DSAP for input and advice on the design of the residential flat building. As detailed in the DSAP comments, the application is not supported by the Panel for a range of reasons including the scale of the building, the fit of the building within its context, the extent of the proposed excavation, poor amenity outcomes within the development and to adjoining properties and the proposed landscape outcome.

In this regard, the DSAP does not support the application and Council concurs with the conclusion of the 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 desired future character of the locality is reflected in the planning controls contained within the Manly LEP and DCP. The proposal includes extensive non-compliances with the applicable controls, including significant breaches of the FSR, wall height, front and rear setback controls. Due to the excessive bulk associated with these non-compliances and the inadequate landscape design, the proposal does not respond and contribute the context and character of the locality.

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 proposal exceeds the scale and height appropriate to the existing and desired future character of the streetscape and surrounding area, as reflected by the extent of the proposed FSR and built form control non-compliances. The alignment and proportion of the building is also considered to be excessive for the number of units proposed. The proposed front setback breach and lack of landscape treatment at the site frontage is inconsistent with surrounding developments and does not

appropriately define the public domain or contribute to the character of the streetscape.

Principle 3: Density

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

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

Comment: The proposed development consisting of five apartments is appropriate for the site. However, the substantial internal dimensions of each of the five apartments are achieved through the variation to the FSR control and could not otherwise be achieved by a compliant scheme. Given the level of non-compliance with the planning controls and the excess parking demand generated by the development, it is considered that either the density or dimensions of the apartments proposed are greater than can be supported by the site.

Principle 4: Sustainability

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

Comment: Each of the apartments include multiple aspects, however many windows throughout the building appear to be inoperable, limiting the effectiveness of natural ventilation. The proposal is technically non-compliant with the ADG requirements in relation to sunlight access and the means of achieving solar access at the eastern and western elevations create privacy concerns to adjoining properties. The proposal provides the minimum deep soil area at the rear of the site, with the basement/excavation footprint occupying the remainder of the site and preventing opportunities for additional deep soil zones and landscaping.

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 and provides for practical establishment and long term management.

Comment: The proposal does not appropriately integrate the landscape and built form components of the development. The proposed nil-front setback precludes the provision of landscaping within the front setback and the non-compliance in relation to the MDCP landscaped area control is inconsistent with the desired landscape character of the streetscape and neighbourhood. With the exception of the 7% deep soil area provided adjacent to the rear boundary, the remaining landscaping consist of on-slab landscaped areas that are not of sufficient dimension to support substantial planting to contribute to the privacy or amenity of the subject site and adjoining properties, particularly given the inadequate

separation distances proposed. The proposed landscape design does not promote social interaction as no communal open space area is provided as required by the ADG.

Principle 6: Amenity

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

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

Comment: The proposal consists of open plan apartments that are well in excess of the minimum dimensions specified by the ADG. However, these dimensions are achieved through a 24.1% variation to the FSR control that will result in an unreasonable level of bulk and adversely impact the amenity of neighbouring properties. The east-west split of the apartments affords views and outlook to the south from indoor and outdoor spaces, but somewhat compromises sunlight access, natural ventilation and internal layouts. The proposal is non-compliant with the solar access requirements of the ADG, with only three of the five apartments achieving the required 2 hours of sunlight access. The living spaces of each apartment include large windows at the eastern and western elevations, however, many of these windows are not appropriately designed for privacy and appear to be inoperable.

Principle 7: Safety

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

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

Comment: The proposal incorporates secure access points at the street frontage, however the built form within the front setback limits opportunities for passive surveillance of the street frontage as noted by the DSAP.

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 proposed apartment mix is acceptable in the context of the site. Limited communal spaces are provided for social interaction amongst residents.

Principle 9: Aesthetics

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

textures.

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

Comment: The proposed development does not appropriately respond to the existing and future local context, particularly with regard to the predominant pattern of building and landscape elements at the street frontage. Further, the garage facade design at the street frontage is repetitive and lacks articulation, with no provision of landscape treatment to minimise the resulting visual impact.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent. Residential flat building development is appropriate in the context of the surrounding locality. However, the siting and scale of the proposal does not achieve consistency with the with the existing and desired character of such developments, which is reflected in the level of non-compliance with the applicable planning controls.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent. The proposed development does not respond to the streetscape due to the inappropriate siting of the garage and podium terrace. The proposed east-west split ensures that each of the apartments contains an east and/or north aspect. However, the design of the development is not considered to optimise or suitably regulate solar access within the apartments.

		The rear open space areas of 26 and 32 Fairlight Street will receive adequate sunlight access throughout the day. However, no elevational shadow diagrams have been provided to demonstrate the level of impact to any living room windows of these adjoining properties.									
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Inconsistent. The proposal provides an appropriate transition between the proposed development and the street frontage with regard to safety and security. However, the proposal will not enhance the amenity of the public domain or promote passive surveillance from within the apartments or associated private open spaces, as noted by the DSAP.									
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: - Communal open space has a minimum area equal to 25% of the site - Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Inconsistent. The proposal does not incorporate any communal open space areas. Each of the apartments provide relatively large private open space areas, however it is considered that the inclusion of communal open space would be beneficial and could be achieved in this case.									
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td>7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td><td></td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m		Inconsistent. The development achieves the design criteria with a deep soil area of 7%. However, the proposal includes alteration of the existing ground levels within the deep soil area with associated retaining walls at the side boundaries and adjacent to
Site area	Minimum dimensions	Deep soil zone (% of site area)									
Less than 650m ²	-	7%									
650m ² – 1,500m ²	3m										

	<table><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	the rear boundary. The proposed design of the deep soil area does not allow for the retention of tree T27 located on 32 Fairlight Street or the provision of new significant tree planting. The basement car park extends beyond the front and rear of the building footprint, limiting further provision of deep soil zones.								
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Inconsistent. The proposal contains various side boundary-facing living room and bedroom windows with side setbacks ranging from 2m to 3m at ground level and level 1, and from 3.2m to 3.8m at level 2. 26 Fairlight Street contains an existing residential flat building with a western side setback of approximately 5.5m. No. 26 contains limited window openings at the western elevation, with open space at the rear and elevated terraces at the front that are partially screened by obscured glass. The western side setback of No. 26 consists of a driveway and is not capable of supporting screen planting. 32 Fairlight Street contains an existing dwelling house with multiple windows at the eastern elevation that are set back 3m from the common boundary. The eastern side setback of No. 32 is mostly paved, with a small strip of landscaping
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		adjacent to the boundary that contains existing small tree planting. Based on the depth and proximity of the proposed excavation, it is unknown whether this planting will be able to be maintained. Further, the minimal separation distances provided to the western boundary will likely reduce the future development potential of No. 32. It is noted that the existing developments at Nos. 26 and 32 do not provide 6m separation, and that full compliance with the control would unreasonably constrain the development given the limited width of the site. However, the proposal does not incorporate any screening measures to mitigate adverse privacy impacts resulting from these windows. Similarly, the proposed landscaping within the side setbacks of the subject site is limited to on-slab planters that are unlikely to be capable of supporting adequate screen planting. Based on the inadequate separation distances and lack of any alternative screening measures, the proposal is unsatisfactory with regard to visual privacy.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent. The proposed building entry and pedestrian access are accessible and easy to identify from the public domain.
Vehicle Access	Are the vehicle access points designed and	Inconsistent.

	located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	The proposal does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1 to minimise conflicts between pedestrians and vehicles. The proposal has not demonstrated that vehicles can enter and exit the site in a forward direction. Further, the siting and design proposed garage entry design is incompatible with surrounding developments and does not create a high quality streetscape.
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	Consistent. The proposal includes compliant provision of car parking in accordance with the MDCP. Council's Traffic team raised no objection to the proposed car and bicycle parking provision.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Inconsistent. Three of the five proposed apartments (60%) will receive 2 hours of sunlight to living rooms and private open spaces. Given the southerly aspect of the site, the available views to the south and the

		overshadowing caused by existing developments located upslope to the north, a variation to the control may be supported. However, insufficient solar access diagrams have been provided to demonstrate the actual extent of direct sunlight access to the internal living rooms of the development in accordance with the design guidance.								
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent. 0% of the apartments will receive no direct sunlight access.								
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent. 100% of the apartments appear capable of being naturally cross ventilated. Concern is raised that the proposal does not demonstrate how cross ventilation is achieved within each unit, noting that many of the east and west-facing windows appear to be inoperable. Further, the means of achieving cross ventilation in the dual aspect living areas is via large side-facing windows that will result in adverse privacy impacts.								
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent. Each of the apartments are cross-through and dual aspect.								
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:									
	<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor</td></tr></table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor
	Minimum ceiling height									
	Habitable rooms	2.7m								
Non-habitable	2.4m									
For 2 storey apartments	2.7m for main living area floor									
		Consistent. The proposal includes adequate floor to ceiling heights.								

	<table><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>		2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use					
	2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent. Each of the five apartments achieve the minimum internal area for a three-bedroom apartment.
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent. The requirement is achieved.										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent. The requirement is achieved.										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent. The requirement is achieved.										
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Consistent. The requirement is achieved.										
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent. The requirement is achieved.										
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Consistent. The requirement is achieved.										

	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent. The requirement is achieved.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent. The proposed level 1 and 2 apartments provide the minimum required private open space.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.																	
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent. The requirement is achieved.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable to the development.															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent. The proposal provides more than 10m ² of storage for each apartment between the basement storage cages and internally within the apartments. The application indicates that more than 50% of the required storage is provided internally within the apartments. However, the indicated storage locations appear to be within the laundries and study nooks. Based on the internal dimensions of the apartments and the storage volume provided in the basement, the requirement is achieved.					
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															
	1 bedroom apartments	6m ²															
	2 bedroom apartments	8m ²															
	3+ bedroom apartments	10m ²															
At least 50% of the required storage is to be located within the apartment.																	
Acoustic Privacy	Noise sources such as garage doors, driveways,	Consistent.															

	service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	The building design is satisfactory in this regard.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent. The building design is satisfactory in this regard.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent. The proposed apartment mix is acceptable in the context of the site.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Inconsistent. The elevation of the ground level apartments above the garage entry provides amenity and security for residents. However, no direct access is provided to the ground floor apartments and the podium terrace does not promote activity or casual surveillance at the street frontage.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Inconsistent. The building facade is well-articulated and generally consistent with the building lines of adjoining developments. However, the siting and design of the garage entry and wall at the front boundary is inconsistent with pattern of building and landscape elements in the streetscape. The street facade is repetitive, lacks articulation and does not incorporate landscape elements to contribute to the visual interest and character of the locality.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the	Consistent. The proposed roof design is compatible with the street and adjacent buildings. The roof incorporates skylights to

	use of the roof top.	improve solar access to the level 2 apartment and provides adequate area to accommodate future installation of PV panels. Communal open space is not proposed on the roof top and would not be considered appropriate in the context of the site.																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Inconsistent. The proposed landscape design does not respond appropriately to the site and surrounds. Insufficient landscaped areas are proposed within the front setback and the dimensions and design of the deep soil within the rear setback are inadequate to support tree planting. The proposal's reliance upon on-slab planting minimises opportunities for deep soil planting and canopy trees. The overall landscape design is not satisfactory in providing privacy between buildings and mitigating bulk and scale.																				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent						Inconsistent. The proposed landscape design relies upon on-slab planter boxes, with the exception of the deep soil area within the rear setback. The planter boxes largely contain a minimum soil depth of 1m, but do not provide adequate soil area to support even small trees as proposed.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																		
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																		
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																		

	<table><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																		
Shrubs			500-600mm																			
Ground Cover			300-450mm																			
Turf			200mm																			
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Consistent. The proposal includes 1 apartment (20%) that incorporates the Livable Housing Guideline's silver level universal design features.																				
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable to the development.																				
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Not applicable to the development.																				
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Not applicable to the development.																				
Performance																						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent. The minimum NATHERS and BASIX requirements are included on the submitted plans.																				
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent. The proposal is supported by Council's Water Management, subject to recommended conditions. However, the proposed stormwater management design does not comply																				

		with the Water Management for Development Policy.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Inconsistent. The proposal does not comply with Council's Waste Management Guidelines.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent. The material selection is satisfactory with regard to longevity and sustainability.

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:

(a) The proposal includes a compliant number of car parking spaces in accordance with the Manly DCP requirements.

(b) The proposal achieves the minimum internal area for each of the apartments.

(c) The proposal achieves the minimum required ceiling height for each of the apartments.

(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 application is recommended for refusal due to inconsistencies with the design criteria of the ADG, as discussed above.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1235088M_02 dated 14 October 2021).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	10.974m	N/A	Yes
Floor Space Ratio	0.75:1 646.3m ²	0.93:1 801.8m ²	24.1%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	No
6.4 Stormwater management	No
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.75:1 (646.3m ²)
Proposed:	0.93:1 (801.8m ²)
Percentage variation to requirement:	24.1%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"A component of the additional floorspace (19m² for the foyer) is contained in a basement level that has no implications in regard to the size and scale of the building.*
- *In addition to the above, there is an absence of material negative impacts resulting from the proposed variation from the FSR standard."*

Comment:

The above environmental planning grounds relied upon by the applicant do not directly relate to any of the objects of the EPA Act and are therefore insufficient to justify contravening the development standard, particularly given that the extent of the variation sought in this case is 24.1% (155.5m²),

In this regard, the applicant's written request has not demonstrated that the the proposed development satisfies the objects of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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 Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The bulk and scale of the proposal is excessive in relation to the desired streetscape character. The visual catchment includes developments of varying ages and typologies that do not all necessarily reflect the desired character of the locality. However, given that the proposal relates to a new development, a greater level of articulation and compliance are expected and achievable in this case. It is also considered that the excess gross floor area contributes to a greater car parking requirement that results in significant bulk at the street frontage.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed gross floor area achieved at Level 2 of the development in exceedance of the development standard contributes to adverse impacts to views from the adjoining properties to the north.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

As discussed under objective (a) above, the parking demand of the development associated with the non-compliant gross floor area precludes the provision of adequate landscaping on the site. As such, the development does not maintain an appropriate visual relationship with the existing character and landscape of the area.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The development does not successfully minimise adverse impacts on the use and enjoyment of adjoining land and the public domain, specifically the proposal is considered to result in adverse visual impacts within the streetscape and does not maintain a reasonable level of amenity to the occupants of surrounding developments.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

N/A

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal provides additional housing to meet the needs of the community.

It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal is consistent with the variety of housing types in the locality.

It is considered that the development satisfies this objective.

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

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of the development standard, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard can not be assumed.

6.2 EarthworksDescription of non-compliance

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality 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: Were the application recommended for approval, conditions would be included in relation to the processing of excavated material and the quality of any fill.

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

Comment: The proposed earthworks are considered to result in adverse impacts to the amenity of adjoining properties. The extent of the excavation footprint does not allow for appropriate landscaping to mitigate the visual bulk and privacy impacts of the development, and is anticipated to preclude the

retention of trees T27 and T37 on the adjoining property to the west.

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

Comment: Were the application recommended for approval, conditions would be included in relation to the processing of excavated material and the quality of any fill.

(f) the likelihood of disturbing relics

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

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

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

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

Comment: The design of the development is such that it is not practical to incorporate measures that would minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is contrary to matters (d) and (h) above, and is inconsistent with objective (a) of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

6.4 Stormwater management

Description of non-compliance

The submitted on-site stormwater detention (OSD) system is not designed in accordance with the requirements of the Clause 3.7 (a) Stormwater Management of MDCP 2013, where all development must comply with Northern Beaches Council's 'Water Management for Development Policy'. As such, the proposal is inconsistent with Clause 6.4 Stormwater Management of MLEP 2013.

6.9 Foreshore scenic protection area

The subject site is separated from the immediate foreshore area and the proposal will not adversely impact visual aesthetic amenity or views to and from Sydney Harbour, the Pacific Ocean, foreshore areas or other public places.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 861.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/150m ²	1 dwelling/172.34m ²	N/A	Yes
	Dwelling Size: 90m ²	> 90m ²	N/A	Yes
4.1.2.1 Wall Height	E: 9.5m	Basement: 3.7m	N/A	Yes
		L1 Living/Master: 8.1m	N/A	Yes

	W: 9.5	L1 Balcony: 8.1	N/A	Yes
		L1 Beds: 7.1m	N/A	Yes
		L2: 10.6m	11.6%	No
		L1 Master: 6.7m	N/A	Yes
		L1 Beds: 7.2	N/A	Yes
		L1 Dining: 7.3m	N/A	Yes
		L1 Kitchen: 7.5m	N/A	Yes
		L1 Living: 7.8m	N/A	Yes
		L2: 10.1m - 10.3m	8.4%	No
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages (East)	Basement: 1.23m	0m	100%	No
	L1 Living/Master: 1.93m - 2.7m	3m	N/A	Yes
	L1 Balcony: 2.7m	2.3m	14.8%	No
	L1 Beds: 2.37m	1.7m - 2.1m	28.3%	No
	L2: 2.97m - 3.53m	3.7m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (West)	L1 Master: 2.23m	3.1m	N/A	Yes
	L1 Beds: 2.4m	1.8m - 2.2m	25%	No
	L1 Dining: 2.43m	3m	N/A	Yes
	L1 Kitchen: 2.5m	2m - 3m	25%	No
	L1 Living: 2.6m	2m	23.1%	No
	L2: 3.37m - 3.43m	3.1m - 3.8m	8%	No
4.1.4.4 Rear Setbacks	8m	Basement: 3.6m	55%	No
		Building: 8.8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area 430.85m ²	67.2% 579.3m ²	N/A	Yes
	Open space above ground 40% of total open space	26.8%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space 173.79m ²	15.7% 90.8m ²	47.8%	No
4.1.5.3 Private Open Space	12m ² per dwelling	> 12m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.6m	N/A	Yes
Schedule 3 Parking and Access	Residential: 8 spaces Visitor: 2 spaces	8 spaces 2 spaces	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X,

then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	No	No
3.3.2 Preservation of Trees or Bushland Vegetation	No	No
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	No	No
3.6 Accessibility	No	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	No	No
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	No	No
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	No
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

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:

The proposed garage entry and front wall are excessive in bulk and will be visually dominant when

viewed within the streetscape.

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

Comment:

The proposal does not complement the identified streetscape, which largely consists of open landscaped front setbacks with car parking located at or behind the front building line.

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

Comment:

The surrounding visual catchment includes examples of front walls and fences of moderate height. However, these properties generally include appropriate at-grade landscaping within the front setback. The proposed garage and front wall structure is not considered to be appropriate in this case and the lack of landscape treatment within the front setback does not respond to the character of the locality.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.1.1 Streetscape (Residential areas)

Description of non-compliance

3.1.1.5 Garbage Areas

Buildings with more than 1 dwelling require garbage storage enclosures which are:

- a) not visible off site;*
- b) integrated into the building design;*
- c) unobtrusive and blend in with the design of front fences and walls when forward of the building; and*
- d) located and designed with consideration given to the amenity of adjoining properties.*

Comment: The proposed bin storage room is integrated into the building design but is located within the front setback, which is not supportable.

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

- i) complement the predominant building form, distinct building character, building material and*

Comment: The proposal is inconsistent with the built form and character of the locality.

- ii) ensure the bulk and design of development does not detract from the scenic amenity of the*

Comment: The 0m-750mm front setback and resulting bulk of the garage entry and front wall will detract from the scenic amenity of the surrounding area when viewed from the streetscape and adjoining properties.

- iii) maintain building heights at a compatible scale with adjacent development particularly at the*

Comment: The non-compliant front setback and wall height breach at the building facade result in a scale that is incompatible with adjacent developments.

3.1.1.2 Front Fences and Gates

a) Notwithstanding 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.

Comment: The proposed front wall/podium exceeds the maximum permitted height under 4.1.10 and is inconsistent with the fencing characteristics of the adjoining properties and surrounding visual catchment.

b) Boundary fences or walls must not be erected where they would conflict with the local character.

Comment: The proposed front wall would conflict with the local character and is not supportable.

3.1.1.4 Garages, Carports and Hardstand Areas

a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:

- i) its roof form, material choice and detailing by being subservient to the associated dwelling; a*
- ii) being compatible with the streetscape and the location in relation to front setback criteria.*

Comment: The proposed garage entry and podium will dominate the street frontage and is incompatible with the prevailing front building line of the streetscape.

b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.

Comment: The proposed garage structure is excessive in bulk and scale is not considered to be a positive element of the streetscape.

The development is considered against the underlying Objectives of the control under Clause 3.1.

3.3.1 Landscaping Design

Description of non-compliance

The proposed landscape design does not respond appropriately to the character of the area. Specifically, the proposed landscaped areas are inadequate to support tree planting and do not maximise the residential amenity of the subject site, surrounding properties or the public domain. As such, the proposal does not comply with (a)(ii), (b)(i) or (b)(ii) of the control.

Merit consideration

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

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

Comment:

The proposed excavation footprint, building design and retaining wall locations do not facilitate appropriate compensatory tree planting or maintenance of any existing vegetation on the site.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

Comment:

The proposal includes the removal of 38 trees and is anticipated to significantly impact two trees on the adjoining property to the west. As such, the design of the development does not retain and augment existing landscape features and vegetation, and is not capable of supporting replacement planting of significant trees or vegetation.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objectives 1 and 2 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.3.2 Preservation of Trees or Bushland Vegetation

Description of non-compliance

The proposed basement alignment and excavation to the western boundary is in close proximity to two trees (T27 & T37) located within the adjoining property, 32 Fairlight Street.

The Arboricultural Impact Assessment recommends that the retention of T27 is not achievable based on the impact of development and whilst not providing a recommendation for removal of T37, notes that a tree root investigation is required to determine whether the tree can be retained.

No evidence of consent or agreement for the removal of T27 and T37 has been provided and Council does not support the removal of any existing tree or vegetation within adjoining properties, nor does it provide recommendation for any removal upon land not the subject of a development application.

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 protect and enhance the urban forest of the Northern Beaches.

Comment: The proposal includes the removal of all existing trees and vegetation on the site.

Objective 2) To effectively manage the risks that come with an established urban forest through professional management of trees.

Comment: The proposal has not adequately address the likely impacts to trees T27 and T37 located on the adjoining property, which are unlikely to be retained as a result of the development.

Objective 3) To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.

Comment: The proposed removal of all existing site vegetation and lack of adequate compensatory planting is inconsistent with this objective.

Objective 4) To protect and enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.

Comment: The proposal does not protect or enhance vegetation habitat for native plant and animal species.

Objective 5) To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long term.

Comment: The proposal does not retain any existing vegetation and the design of the development fails to promote the establishment of native canopy trees.

Objective 6) To protect and enhance the scenic value and character that trees and/or bushland

vegetation provide.

Comment: The proposal will result in a significant increase to the bulk of the built form and the proposed landscape design is inadequate to protect and enhance the scenic value and character of the locality.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or

b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

Comment: The proposal will result in minimal additional overshadowing of the rear private open space areas of Nos. 26 and 32 Fairlight Street, and complies with the control. The impact to the front terraces/balconies of the apartments at 26 Fairlight Street are south-facing and the likely impact to these areas is considered to be generally acceptable.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

Comment: The adjacent buildings have a north-south orientation and the control requires that the current level of solar access to living room windows within these properties is maintained for a minimum of 4 hours. The objection received from 32 Fairlight Street indicates that the dwelling contains three east-facing living room windows. Given the additional height and bulk of the proposal it is anticipated that the development will result in additional impact to these windows. However, the submitted shadow diagrams do not provide adequate detail to demonstrate that a compliant level of solar access is maintained.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The application has not provided sufficient shadow diagrams to demonstrate that the proposal will provide equitable access to sunlight.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposal will maintain adequate sunlight access to the private open spaces within the development site and adjoining properties, taking into account the southerly aspect of the sites. It is not possible to determine the adequacy of sunlight maintained to the living spaces/habitable rooms of No. 32.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposal is not considered to facilitate sunlight access to adjoining properties through appropriate modulation, particularly noting the excessive and unnecessary level 2 wall heights.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation

a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.

Comment: The proposed development includes large living room and bedrooms windows orientated to the eastern and western side boundaries that do not incorporate any screening or treatment to maintain the privacy of adjoining properties.

b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Comment: The proposal includes windows in close proximity to both side boundaries that are not off-set from those of the adjacent properties, particularly the living room windows at the western elevation of apartments 1 and 3. The proposal will also allow overlooking opportunities of the private open space areas of the adjoining properties.

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment: The proposed balcony and terrace areas are appropriately located and incorporate suitable blade wall and landscape screening.

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 loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed side boundary-facing windows are not appropriately located or designed for privacy and do not incorporate any screening measures to mitigate direct viewing. Further, the lack of landscaped area within the eastern and side setbacks limits the provision of substantial planting that may provide supplementary screening in lieu of adequate physical separation or alternative privacy measures.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The light and air access afforded by the proposed windows at the eastern and western elevations is at the expense of the privacy of adjoining developments.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

As noted by the DSAP the proposal does not address the street in a manner that encourages passive surveillance of the street frontage from habitable rooms within the development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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.

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

Comment:

Objections relating to view loss were received from 8 residents at 1 Berry Avenue, 2-3 Berry Avenue and 28 Woods Parade. As part of this assessment, view loss inspections of the following properties were undertaken:

- 2/1 Berry Avenue
- 3/1 Berry Avenue
- 4/1 Berry Avenue
- 4/2-3 Berry Avenue
- 7/2-3 Berry Avenue

View loss inspections of 28 Woods Parade were not undertaken, however photographs were included in a submission received from this property.

1 Berry Avenue

1 Berry Avenue adjoins the subject site to the north (rear). The available views include filtered water views of North Harbour, including land-water interface at North Head, South Head and in the vicinity of Reef Beach. The views are partial views as they are obscured by existing vegetation on the subject site.



Photo 1. Available views from 2/1 Berry Avenue. The pitched roof of the existing dwelling is visible in the centre of the photo.



Photo 2. Available views from 3/1 Berry Avenue. The pitched roof of the existing dwelling is visible in the centre of the photo.



Photo 3. Available views from 4/1 Berry Avenue. The pitched roof of the existing dwelling is visible in the centre of the photo.

2-3 Berry Avenue

2-3 Berry Avenue adjoins the subject site to the north-west. 7/2-3 obtains filtered water views of North Harbour. 4/2-3 obtains filtered water views from the lower level and expansive water views from the upper level, including land-water interface at Dobroyd Head, North Head and South Head. The views are partial and whole views depending on the location within the property.



Photo 4. Available views from 4/2-3 Berry Avenue lower floor balcony. The existing dwelling is not visible due to the vegetation in the foreground.



Photo 5. Available views from 4/2-3 Berry Avenue upper floor bedroom. The existing dwelling is not visible due to the building vegetation in the foreground.



Photo 6. Available views from 7/2-3 Berry Avenue. The existing dwelling is visible in the centre of the photo but is largely obscured by the vegetation in the foreground.

28 Woods Parade

28 Woods Parade is located to the west of the site beyond 2-3 Berry Avenue. The available views include water views of Manly Cove, including land-water interface at East Esplanade. The views are generally whole views but are somewhat disrupted by existing developments and vegetation to the east of the subject site.



Photo 7. Available views from 3C/28 Woods Parade. The pitched roof of the existing dwelling is visible in the centre of the photo.

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:

1 Berry Avenue

The affected views are available from the southern terraces of the apartments. The views are obtained across a rear boundary from a sitting or standing position.

2-3 Berry Avenue

The affected views are available from the balcony of apartment 7 and the balcony and bedroom of apartments 4. The views are obtained across a side and rear boundary from a standing position.

28 Woods Parade

The affected views are available from the bedroom and study. The views are obtained across a side

boundary.

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

Comment:

The height of the proposed building is 3.21m above the roof ridge of the existing dwelling, and projects into the existing view corridors to the east and west of the pitched roof form. However, in the absence of any detailed analysis of view loss or height pole templates of the development, it is not possible to accurately determine the extent of view loss resulting from the proposal.

Based on the view inspections undertaken, the overall impact of the proposal is anticipated to be minor, largely due to the extent to which the existing views are obstructed by vegetation. However, given the relevance of the non-compliances discussed below and the apparent lack of view loss analysis undertaken in the design, this minor impact is not considered to be acceptable. Further, it is noted that the proposal includes removal of all existing vegetation from the site, which would otherwise largely negate the view impacts of the proposal.

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

Comment:

The proposed non-compliances relevant to view loss are floor space ratio, wall height and side setbacks. The front and rear setback and landscaped area non-compliances occur at or below natural ground level and are not relevant to views. The side setback non-compliances at levels 2 and 3 make some contribution to the loss of view corridors through the site as viewed from the rear, but are relatively minor in extent. The primary contributors to the anticipated view loss are the significant FSR and wall height breaches, which result in a level of bulk at the upper levels beyond what is anticipated by the controls - the proposal includes an additional 155.5m² (24.1%) gross floor area along with 0.6m to 1m of wall height above the 9.5m control. With regard to these variations, it is noted that each of the apartments exceed the minimum 90m² internal area requirement by between 47m² and 89m² and that the level 2 penthouse apartment achieves ceiling heights of 3.4m to 4m.

In relation to the compliant building height, it is considered that there are more skillful design alternatives that would maintain a reasonable level of amenity to the level 2 apartment, while reducing the overall height of the building as discussed above.

The proposed internal areas and ceiling heights directly contribute to the proposed FSR and wall height breaches, the associated building bulk and loss of views from adjoining properties. Further, the Applicant has not undertaken any detailed analysis of view loss to demonstrate that the building design

has taken views into account. As such, the proposal is considered to be unacceptable in relation to the maintenance of views and is recommended for refusal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant considerations of the planning principle and the objectives of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.6 Accessibility

The control requires that 25% of dwellings within residential accommodation containing 4 or more dwellings be provided as adaptable housing, being 1.25 (2) apartments in this case. The proposal includes only 1 adaptable dwelling (20%). Given that the development complies with the adaptable housing requirements of the ADG, the proposal is acceptable in this regard.

3.7 Stormwater Management

Description of non-compliance

The submitted on-site stormwater detention (OSD) system is not designed in accordance with the requirements of the Northern Beaches Council's 'Water Management for Development Policy'. The proposal is therefore non-compliant with 3.7(a) of the control.

Merit consideration

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

Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.

Comment: The proposed stormwater design does not permit appropriate access to the OSD tank for maintenance and is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objective 4 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.8 Waste Management

Description of non-compliance

The proposed bin storage room is not designed in accordance with Council's Waste Management Design Guidelines as required by this control.

Merit consideration

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

Objective 1) To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:

- *sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- *adoption of design standards that complement waste collection and management services offered by Council and private service providers;*
- *building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- *appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

Comment: The design of the proposed bin storage room is not suitable to permit the collection and management of waste by Council or Council's waste contractors.

Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 4) To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.

Comment: The design of the proposed bin storage room is not suitable to permit the collection and management of waste by Council or Council's waste contractors.

Objective 5) To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.

Comment: Were the application recommended for approval, suitable conditions would be imposed

ensuring consistency with this objective.

Objective 6) To minimise any adverse environmental impacts associated with the storage and collection of waste.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Objective 7) To discourage illegal dumping.

Comment: Were the application recommended for approval, suitable conditions would be imposed ensuring consistency with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objective 2 and 4 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

3.9 Mechanical Plant Equipment

The proposed mechanical plant equipment is located within the building envelope and conditions relating to noise levels would be imposed were the application recommended for approval.

3.10 Safety and Security

Description of non-compliance

The proposal does not provide adequate sight lines at the basement garage entrance, contrary to 3.10.1(a)(iii). Further, the proposed podium planting structure obscures sight lines from habitable rooms to the street frontage, contrary to 3.10.2(B).

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 all development are safe and secure for all residents, occupants and visitors of various ages and abilities.

Objective 2) To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.

Objective 3) To contribute to the safety and security of the public domain.

Comment:

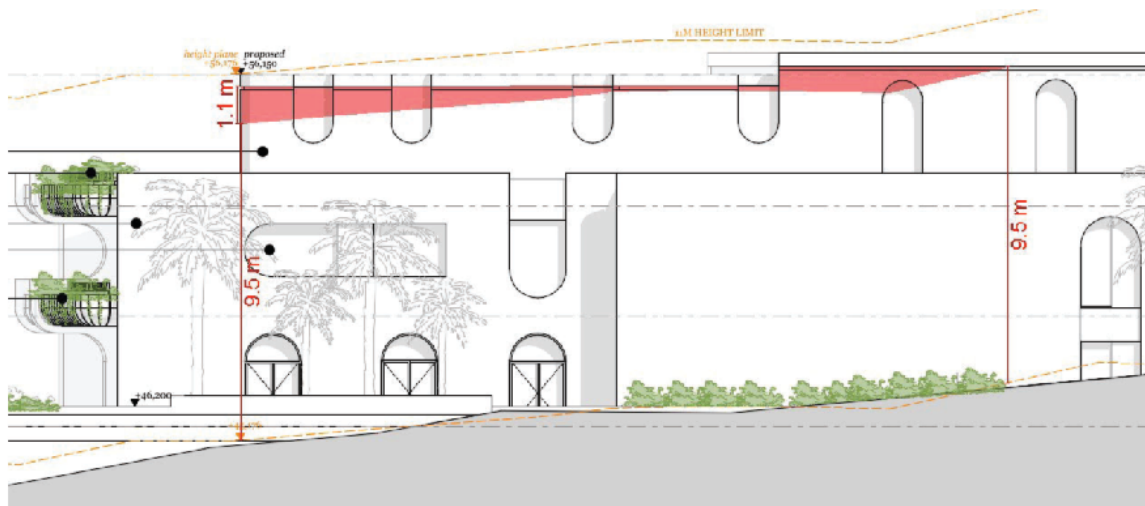
The non-compliant design of the development does not ensure the safety and security of residents, occupants, visitors or the public domain.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

Description of non-compliance

Clause 4.1.2.1 permits a maximum wall height of 9.5m for the site. The proposed Level 2 exceeds the control up to a maximum height of 10.6m at the eastern elevation and 10.3m at the western elevation. The extent of the wall height breaches are indicated on the below plans:



Eastern Elevation



Western Elevation

Merit consideration

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposal complies with the height of buildings development standard, but not does adequately step with the topography to maintain compliance with the wall height control. The wall height breaches extend to the front edge of the eastern and western elevations, presenting additional bulk within the

streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed Level 2 wall height non-compliances result in an unnecessary and unreasonable level of bulk, particularly given the Level 2 ceiling heights of 3.4m at the front and 4m at the rear. Whilst these ceiling heights afford greater internal amenity, a reduction in the wall height breach and resulting visual bulk presented to the street and adjoining properties is readily achievable in this case.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed non-compliant wall heights contribute to the overall building height, which in turn results in view impacts from the surrounding properties to the north of the site.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposed wall height is likely to contribute to additional overshadowing of adjoining properties. However, elevational shadow diagrams demonstrating the level of overshadowing of adjoining dwellings have not been provided.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives 1(a), (b), (c) and (d) of the control. Accordingly, this assessment finds that the proposal is supportable in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

See Clause 4.6 assessment.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

The proposal includes variations to the setback controls as follows:

Front

- The proposed 0m - 750mm front setback to the garage entry and podium wall is non-compliant with the 6m control.
- The proposal is also contrary to 4.1.4.1 (a), which requires that front setbacks relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

Eastern Side

- The proposed 0m setback to the basement wall is non-compliant with the 1.23m requirement.
- The proposed 2.3m setback to the Level 1 wall and Level 2 balcony is non-compliant with the 2.7m requirement.
- The proposed 1.7m - 2.1m setback to the Level 1 Bedroom wall is non-compliant with the 2.37m requirement.

Western Side

- The proposed 1.8m - 2.2m setback to the Level 1 Bedroom wall is non-compliant with the 2.4m requirement.
- The proposed 2m - 3m setback to the Level 1 Kitchen wall is non-compliant with the 2.5m requirement.
- The proposed 2m setback to the Level 1 Living wall is non-compliant with the 2.6m requirement.
- The proposed 3.1m - 3.8m setback to the Level 2 wall is non-compliant with the 3.37m - 3.43m requirement.

Rear

- The proposed 3.6m setback to the Basement Garage is non-compliant with the 8m control.
- The proposal is also contrary to 4.1.4.4 (b), which requires that rear setbacks allow sufficient space for planting of vegetation including trees.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed garage and wall structure at the front boundary does not maintain and enhance the existing streetscape and is inconsistent with the desired spatial proportions and landscape character of the street. The existing garage structure on the site is noted but is not considered to reflect the character of the surrounding visual catchment.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*

- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed front setback breach is inconsistent with the surrounding streetscape and does not provide adequate separation to adjoining development. The proposed setback non-compliances do not directly result in unreasonable privacy, solar access, view or traffic impacts, which are addressed separately in this report.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed variations to the front and rear setback controls are not considered to be appropriate in this case. The proposed side setback breaches are generally minor in extent, but the application has not demonstrated that they are reasonable in the site context.

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 proposed development is unable to incorporate sufficient tree planting and deep soil zones due to the front and rear setback breaches associated with the basement garage.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objectives 1, 2, 3 and 4 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed landscaped area of 15.7% (90.8m²) is non-compliant with the 30% control, resulting in a shortfall of 82.99m².

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal includes the removal of all existing landscaping and vegetation from the site and does not seek to retain any existing site features.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal includes a total of 62.7m² of soft landscaped area at the rear of the site. However, this area is disrupted by the proposed excavation and retaining walls with inadequate dimensions to support new tree planting.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

Due to the extent of the proposed basement excavation, the proposed landscaping across much of the site is limited to on-slab planters with a maximum depth of 1m. The proposed landscape design is inadequate to maintain and enhance the amenity of the site, streetscape or the surrounding properties.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Whilst a greater landscaped area would improved water infiltration, the proposal includes a stormwater design that seeks to manage stormwater on the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed landscape design is not anticipated to spread weeds or degrade surrounding private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal is not capable of supporting adequate wildlife habitat or corridors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objectives 1, 2, 3 and 6 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The proposed garage entry and podium terrace above will result in excessive visual bulk within the streetscape, does not maintain the desired character of the locality and will dominate the street frontage. As such, the proposal is non-compliant with 4.1.6.1 (a) and (b).

The proposal does not include a swept path analysis to confirm that forwards entry and exit to and from the site is possible from each parking space, and therefore does not demonstrate compliance with 4.1.6.4 (a).

The proposed driveway does not provide a sight line triangle consistent with section 3.2.4(b) of AS2890.1 and is therefore non-compliant with 4.1.6.4 (c).

Further, noting that the circulation aisle is more than 30m long, for safety reasons and to prevent entering vehicles having to reverse back onto Fairlight Street, a waiting bay inside the carpark and traffic control measures requiring exiting vehicles to Give Way to entering traffic such as traffic light control should be provided.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal includes a compliant number of car spaces on site. However, it has not been demonstrated that the access to the basement car park is compliant with the relevant standards.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal includes a compliant number of car spaces on site.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposal does not demonstrate that the location and design of the driveway, parking spaces or

circulation areas are efficient, safe or convenient. Further, the proposed garage design is not appropriately integrated into the design of the development and will result in adverse visual impact within the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The geotechnical investigation prepared in relation to the development does not anticipate site instability or impacts to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

Council raised no objection to the width of the proposed footpath crossing.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposal does not appropriately integrate access, parking and landscaping. The proposed built form at the street frontage causes excessive visual bulk and impervious surfaces that do not permit adequate landscape treatment within the front setback.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

N/A - The subject site is not located in a Centre.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with objectives 1, 3, 5 and 6 of the control. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

4.1.8 Development on Sloping Sites

The site is mapped as Geotechnical Area G4 and a geotechnical investigation has been prepared in relation to the proposed development. The recommendations of the report would be incorporated into the conditions of consent were it recommended for approval.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposed excavation extends to both the eastern and western side boundaries, and beyond the rear (northern) building line. The proposed excavation is also within the structural root zone and tree

protection zone of trees T27 and T37, located on the adjoining property. The application has not demonstrated that the retention and long-term survival of these trees is possible. As such, the proposal is non-compliant with 4.4.5.1 (a), (b) and (d). Were the application recommended for approval, conditions would be imposed requiring the preparation of pre and post-construction dilapidation reports in accordance with 4.4.5.2 (b).

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The proposal does not limit the extent of excavation and or the height of retaining walls. The proposed excavation and the design and location of retaining walls do not allow for adequate planting to mitigate the visual and amenity impacts of the development

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the objective of the control. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent 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 \$55,313 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,531,296.

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposal seeks consent for demolition works and the construction of a residential flat building containing five apartments with basement car parking.

Council received 28 submissions in response to the advertising of the application. The concerns raised in the submissions are discussed in detail in this report.

The development proposes a floor space ratio of 0.93:1, resulting in a variation of 24.1% (155.5m²) to the 0.75:1 control.

The design of the proposed development is not considered to be suitable or appropriate within the context of the site. The key planning issues considered within the assessment are the variation to the floor space ratio development standard, various DCP built form non-compliances, inconsistencies with the provisions of SEPP 65 and the ADG, and the resulting bulk and scale, visual and amenity impacts to the public domain and surrounding properties.

The proposal is referred to the Northern Beaches Local Planning based on the number of submissions received and the proposed variation to the floor space ratio development standard.

Assessment of the application against the Manly LEP and DCP, SEPP 65 and the ADG finds that the development will result in adverse impacts to adjoining properties, the streetscape and surrounding locality, and proposes an unacceptable level of non-compliance with controls as discussed in this report.

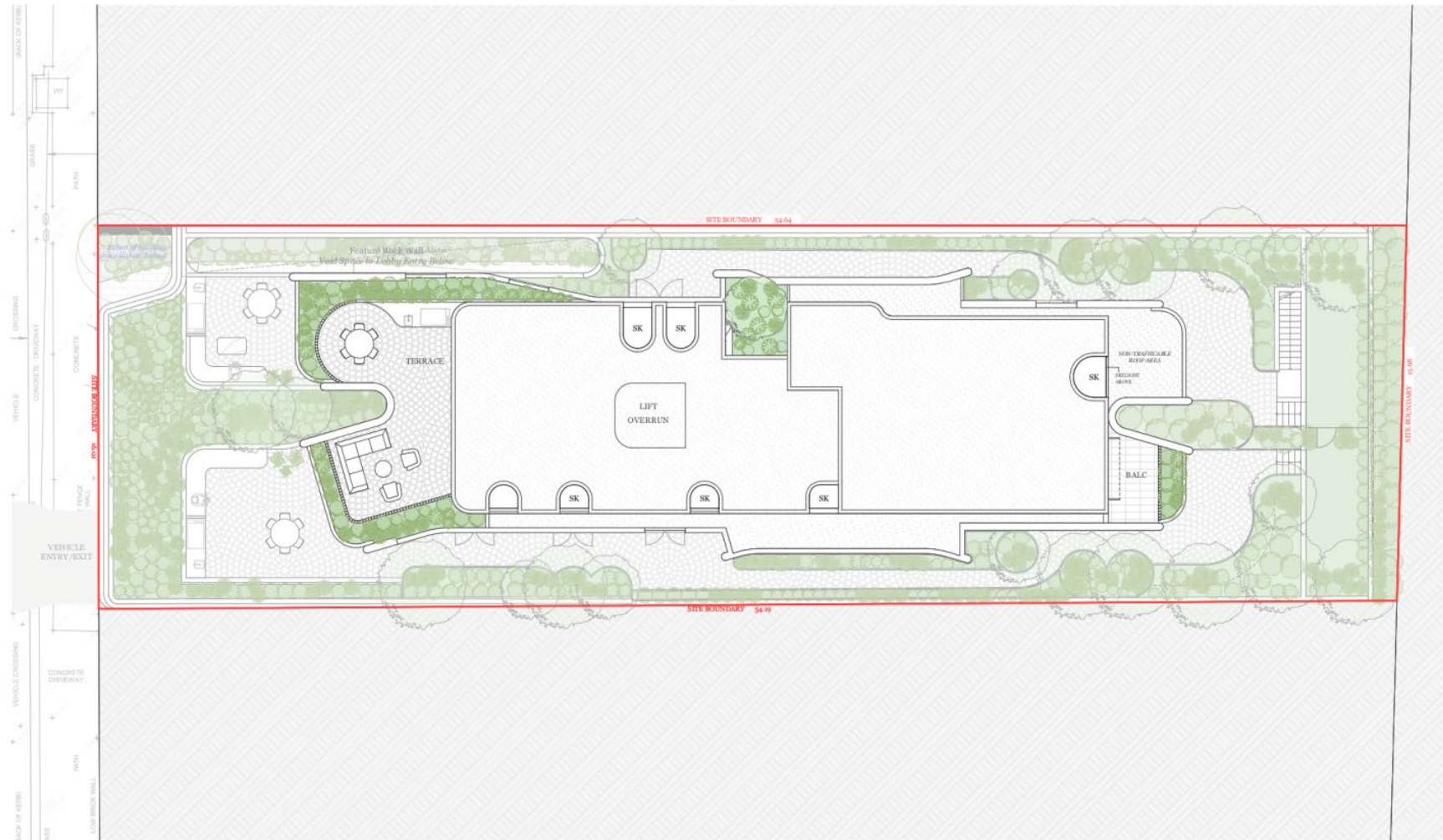
Based on the assessment undertaken within this report, the application is recommended for refusal. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority **REFUSE** Development Consent to Development Application No DA2021/2034 for the Demolition works and construction of a residential flat building on land at Lot 50 DP 705739,30 Fairlight Street, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.2 Earthworks of the Manly Local Environmental Plan 2013 and Clause 4.4.5 Earthworks (Excavation and Filling) of the Manly Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013 and Clause 3.7 Stormwater Management 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 3.1 Streetscapes and Townscapes 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 Clauses 3.3.1 Landscaping Design and 3.3.2 Preservation of Trees or Bushland Vegetation of the Manly Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.1 Sunlight Access and Overshadowing 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 3.4.2 Privacy and Security 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 3.4.3 Maintenance of Views of the Manly Development Control Plan .
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.8 Waste Management of the Manly Development Control Plan.
12. 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 3.10 Safety and Security of the Manly Development Control Plan.
13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.
14. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
15. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.
16. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan.



DKO Architecture (NSW) Pty Ltd
42 Davies Street
Surry Hills, NSW 2010
ABN: 81956706590
NSW: Nominated Architects
Kees de Keijzer 5767 | David Randerson 8542

T +61 2 8346 4500
info@DKO.com.au
www.DKO.com.au

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Rev.	Date	By	Ckd	Description
A	12/10/2021	WL	NB	Development Application

Project Name
Project Address

30 Fairlight St, Fairlight
30 Fairlight St,
Fairlight, NSW 2094

Project Number
Drawing Name
Scale
Date

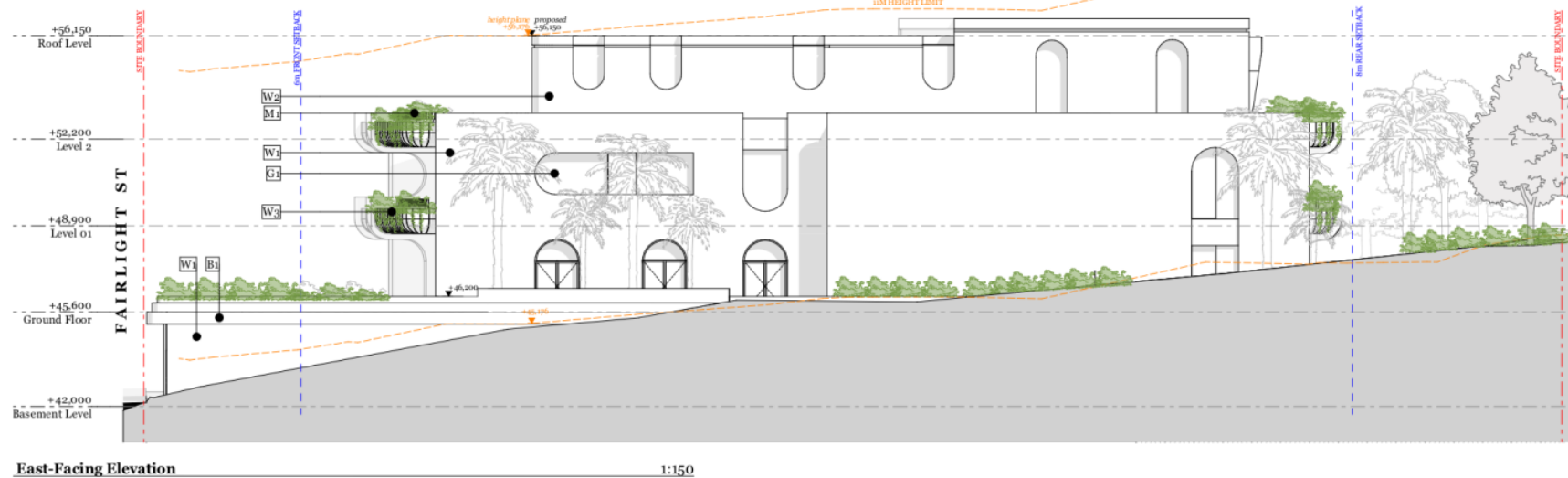
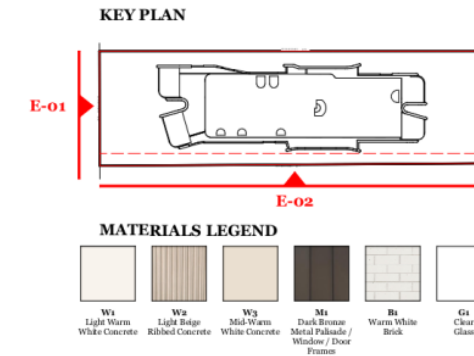
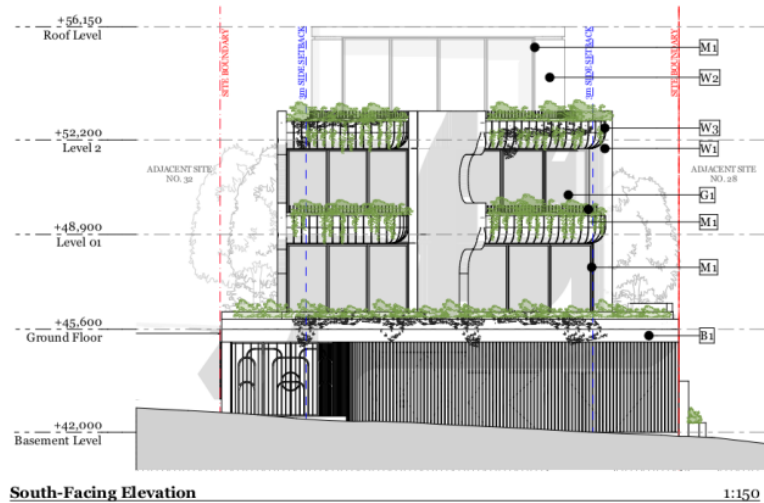
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Site Plan
1:150 (A3)
June 2021

Client

Adjani Pty Ltd

Drawing Number
Revision

DA104
A



DKO Architecture (NSW) Pty Ltd
42 Davies Street
Surry Hills, NSW 2010
ABN: 81956704590
NSW: Nominated Architects
Kees de Keijzer 5767 | David Randerson 8542

T +61 2 8346 4500
info@DKO.com.au
www.DKO.com.au

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Rev.	Date	By	Ckd	Description
A	12/10/2021	WL	NB	Development Application

Project Name
Project Address

30 Fairlight St, Fairlight
30 Fairlight St,
Fairlight, NSW 2094

Project Number
Drawing Name
Scale
Date

00012781
Elevations - Sheet 1
1:150 (A3)
June 2021

Client

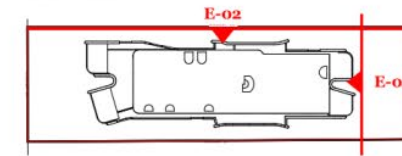
Adjani Pty Ltd

Drawing Number
Revision

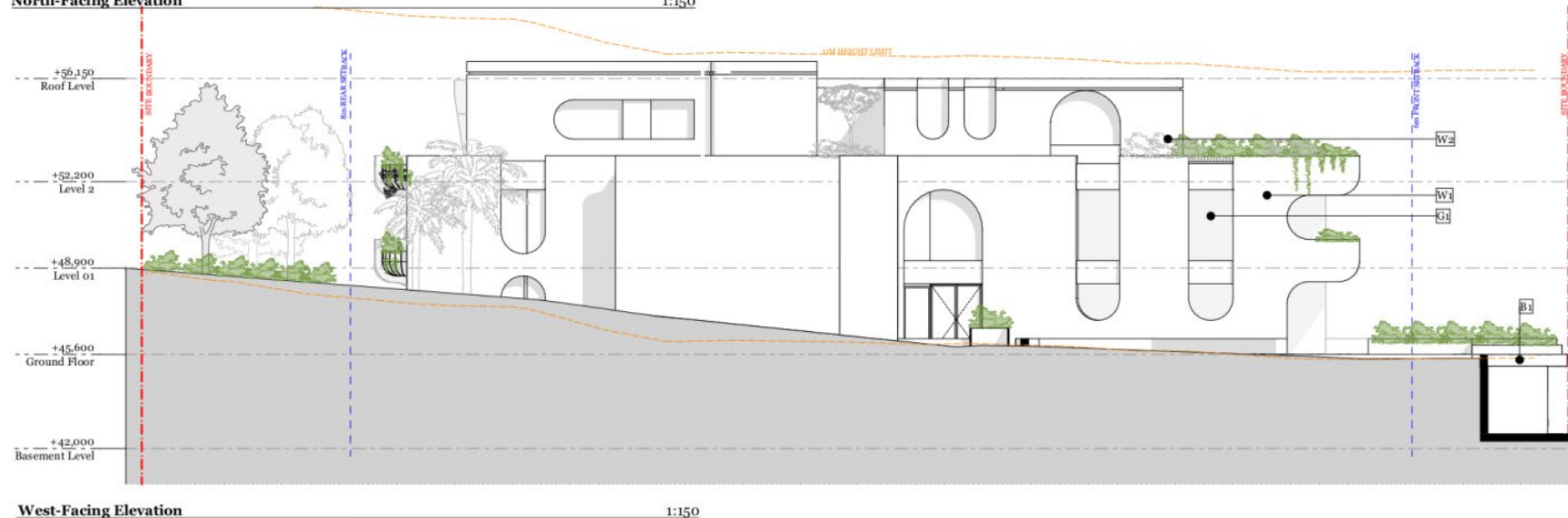
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KEY PLAN



MATERIALS LEGEND



DKO Architecture (NSW) Pty Ltd
42 Davies Street
Surry Hills, NSW 2010
ABN: 81956704590
NSW: Nominated Architects
Kees de Keijzer 5767 | David Randerson 8542

T +61 2 8346 4500
info@DKO.com.au
www.DKO.com.au

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Rev.	Date	By	Ckd	Description
A	12/10/2021	WL	NB	Development Application

Project Name
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30 Fairlight St, Fairlight
30 Fairlight St,
Fairlight, NSW 2094

Project Number
Drawing Name
Scale
Date

00012781
Elevations - Sheet 2
1:150 (A3)
June 2021

Client

Adjani Pty Ltd

Drawing Number
Revision

**DA301
A**



CLAUSE 4.6 VARIATION TO FSR DEVELOPMENT STANDARD

30 Fairlight St Fairlight

Clause 4.6 Variation to FSR Development
standard

30 Fairlight St Fairlight

Property	30 Fairlight Street, Fairlight																																																																																																																											
Development	The Development Application seeks approval for the construction of approval for residential flat building containing 5 units.																																																																																																																											
Subject Plans	<table><tr><th>Drawing No.</th><th>Drawing Name</th><th>Rev.</th></tr><tr><td>DA000</td><td>Cover Sheet</td><td>A</td></tr><tr><td>DA001</td><td>Development Summary</td><td>A</td></tr><tr><td>DA100</td><td>Site Photos</td><td>A</td></tr><tr><td>DA101</td><td>Site Analysis Plan 1/2</td><td>A</td></tr><tr><td>DA102</td><td>Site Analysis Plan 2/2</td><td>A</td></tr><tr><td>DA103</td><td>Existing Site Survey</td><td>A</td></tr><tr><td>DA104</td><td>Site Plan</td><td>A</td></tr><tr><td>DA105</td><td>Building Footprint Comparison</td><td>A</td></tr><tr><td>DA106</td><td>Demolition & Excavation Plan</td><td>A</td></tr><tr><td>DA200</td><td>Basement Plan</td><td>A</td></tr><tr><td>DA201</td><td>Ground Level Plan</td><td>A</td></tr><tr><td>DA202</td><td>Level 1 Plan</td><td>A</td></tr><tr><td>DA203</td><td>Level 2 Plan</td><td>A</td></tr><tr><td>DA204</td><td>Roof Plan</td><td>A</td></tr><tr><td>DA300</td><td>Elevations - Sheet 1</td><td>A</td></tr><tr><td>DA301</td><td>Elevations - Sheet 2</td><td>A</td></tr><tr><td>DA302</td><td>Materials & Finishes</td><td>A</td></tr><tr><td>DA303</td><td>Perspectives - Sheet 1</td><td>A</td></tr><tr><td>DA304</td><td>Perspectives - Sheet 2</td><td>A</td></tr><tr><td>DA305</td><td>Perspectives - Sheet 3</td><td>A</td></tr><tr><td>DA306</td><td>Perspectives - Sheet 4</td><td>A</td></tr><tr><td>DA400</td><td>Sections - Sheet 1</td><td>A</td></tr><tr><td>DA401</td><td>Sections - Sheet 2</td><td>A</td></tr><tr><td>DA500</td><td>Eye of the Sun</td><td>A</td></tr><tr><td>DA501</td><td>Shadows Study</td><td>A</td></tr><tr><td>DA502</td><td>Solar Access Calc.</td><td>A</td></tr><tr><td>DA503</td><td>Cross-Ventilation Calc</td><td>A</td></tr><tr><td>DA504</td><td>GFA Calc.</td><td>A</td></tr><tr><td>DA505</td><td>Deep Soil Calc.</td><td>A</td></tr><tr><td>DA506</td><td>Unit Mix Calc.</td><td>A</td></tr><tr><td>DA507</td><td>Adaptable Apartments</td><td>A</td></tr><tr><td>DA508</td><td>Adaptable Unit Layout</td><td>A</td></tr><tr><td>DA509</td><td>Livable Apartments</td><td>A</td></tr><tr><td>DA510</td><td>Livable Unit Layout</td><td>A</td></tr><tr><td>DA511</td><td>Height Plane Diagram</td><td>A</td></tr><tr><td>DA600</td><td>Site Isolation Scheme - Sheet 1</td><td>A</td></tr><tr><td>DA601</td><td>Site Isolation Scheme - Sheet 2</td><td>A</td></tr><tr><td>DA602</td><td>Site Isolation Scheme - Sheet 3</td><td>A</td></tr><tr><td>DA603</td><td>Site Isolation Scheme - Sheet 4</td><td>A</td></tr><tr><td>DA604</td><td>Site Isolation Scheme - Sheet 5</td><td>A</td></tr></table>	Drawing No.	Drawing Name	Rev.	DA000	Cover Sheet	A	DA001	Development Summary	A	DA100	Site Photos	A	DA101	Site Analysis Plan 1/2	A	DA102	Site Analysis Plan 2/2	A	DA103	Existing Site Survey	A	DA104	Site Plan	A	DA105	Building Footprint Comparison	A	DA106	Demolition & Excavation Plan	A	DA200	Basement Plan	A	DA201	Ground Level Plan	A	DA202	Level 1 Plan	A	DA203	Level 2 Plan	A	DA204	Roof Plan	A	DA300	Elevations - Sheet 1	A	DA301	Elevations - Sheet 2	A	DA302	Materials & Finishes	A	DA303	Perspectives - Sheet 1	A	DA304	Perspectives - Sheet 2	A	DA305	Perspectives - Sheet 3	A	DA306	Perspectives - Sheet 4	A	DA400	Sections - Sheet 1	A	DA401	Sections - Sheet 2	A	DA500	Eye of the Sun	A	DA501	Shadows Study	A	DA502	Solar Access Calc.	A	DA503	Cross-Ventilation Calc	A	DA504	GFA Calc.	A	DA505	Deep Soil Calc.	A	DA506	Unit Mix Calc.	A	DA507	Adaptable Apartments	A	DA508	Adaptable Unit Layout	A	DA509	Livable Apartments	A	DA510	Livable Unit Layout	A	DA511	Height Plane Diagram	A	DA600	Site Isolation Scheme - Sheet 1	A	DA601	Site Isolation Scheme - Sheet 2	A	DA602	Site Isolation Scheme - Sheet 3	A	DA603	Site Isolation Scheme - Sheet 4	A	DA604	Site Isolation Scheme - Sheet 5	A
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DA306	Perspectives - Sheet 4	A																																																																																																																										
DA400	Sections - Sheet 1	A																																																																																																																										
DA401	Sections - Sheet 2	A																																																																																																																										
DA500	Eye of the Sun	A																																																																																																																										
DA501	Shadows Study	A																																																																																																																										
DA502	Solar Access Calc.	A																																																																																																																										
DA503	Cross-Ventilation Calc	A																																																																																																																										
DA504	GFA Calc.	A																																																																																																																										
DA505	Deep Soil Calc.	A																																																																																																																										
DA506	Unit Mix Calc.	A																																																																																																																										
DA507	Adaptable Apartments	A																																																																																																																										
DA508	Adaptable Unit Layout	A																																																																																																																										
DA509	Livable Apartments	A																																																																																																																										
DA510	Livable Unit Layout	A																																																																																																																										
DA511	Height Plane Diagram	A																																																																																																																										
DA600	Site Isolation Scheme - Sheet 1	A																																																																																																																										
DA601	Site Isolation Scheme - Sheet 2	A																																																																																																																										
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DA604	Site Isolation Scheme - Sheet 5	A																																																																																																																										
Development Standard	Clause 4.3 Height of buildings of Manly Local Environmental Plan 2013 (Manly LEP)																																																																																																																											

Clause 4.6 Variation to FSR Development
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1. Summary

The proposed development involves the construction

Figure 1 shows the site configuration as outlined in red.



Source: Nearmap (as amended by GLN planning)

Figure 1 Aerial photograph of the site and surrounds

2 Authority to vary a development standard

The objectives of clause 4.6 seek to recognise that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the standard can be achieved as outlined below.

4.6 Exceptions to development standards

- 1) *The objectives of this clause are as follows—*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from*

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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 Planning Secretary has been obtained.*
- 5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- a. whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. the public benefit of maintaining the development standard, and*
 - c. any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
- a. the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b. the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

- 7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- 8) This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - a. a development standard for complying development,*
 - b. a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - c. clause 5.4,*
 - ca. clause 6.15,*
 - cb. a development standard on land to which clause 6.19 applies.*

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3 Development Standard to be Varied

A variation is requested to clause 4.4 which specifies the Floor Space Ratio (**FSR**) of buildings. This is a development standard as defined by s.1.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Clause 4.4 (2) requires:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

An extract of the Floor Space Ratio Map contained within the LEP is provided as **Figure 2**.

Clause 4.5 of the LEP outlines how to calculate the FSR of the building and subclause 4.5(2) relevantly provides the following definition:

- (2) *Definition of "floor space ratio" The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*



Source [FSR Map 3 Manly LEP](#) (as amended by GLN planning)

Figure 2 Extract of FSR Map from Manly LEP 2013 (subject site in red)

The LEP Dictionary provides the following definition:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

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- a) the area of a mezzanine, and
- b) habitable rooms in a basement or an attic, and
- c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—
- d) any area for common vertical circulation, such as lifts and stairs, and
- e) any basement—
 - i. storage, and
 - ii. vehicular access, loading areas, garbage and services, and
- f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- h) any space used for the loading or unloading of goods (including access to it), and
- i) terraces and balconies with outer walls less than 1.4 metres high, and
- j) voids above a floor at the level of a storey or storey above.

That site survey (Usher and Co dated 12/10/2021 provided with the development application shows that the area of the site is 861.7m², which accords with the site area to be taken into account in calculating the FSR as required by subclause 4.5(3) of the LEP.

4 Extent of Variation

The architectural plans (DA504A dated 12 October 2021) delineate that part of each floor that accords with the definition of gross floor area (**GFA**). In summary, the GFA of each level of the proposed building is:

• Basement	19m ²
• Ground	290m ²
• Level 1	286m ²
• Level 2	184m ²
• TOTAL	779m²

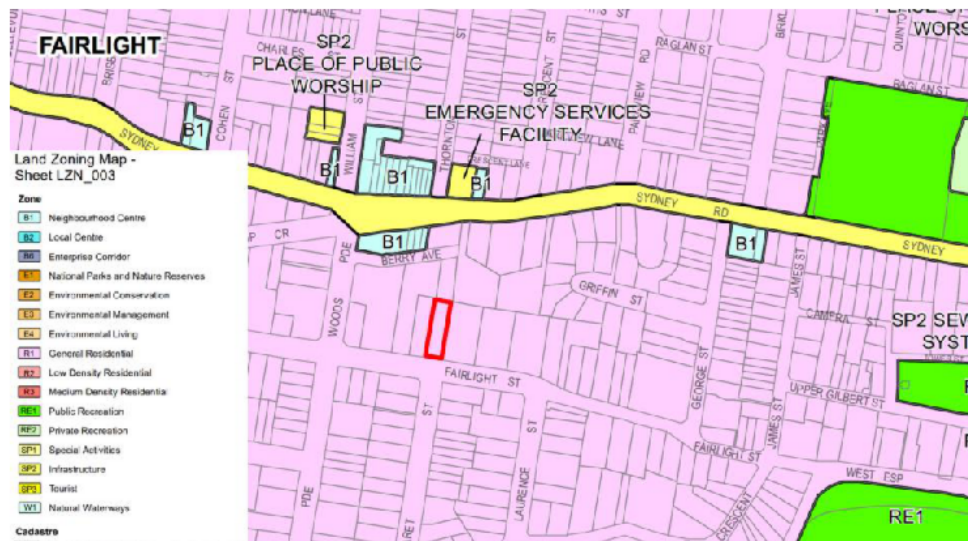
The site area of 861.7m² and the applicable 0.75:1 FSR standard provides a compliant GFA of 646.275m². The GFA of the proposal is 779m², that is an FSR of 0.90:1 and GFA exceedance of 132.725m² (20.5%).

5. Zoning

The zoning of the site and surrounding area is illustrated on **Figure 3** below.

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Source: [Land Zoning Map 3 MLEP](#)

Figure 3 Extract of Zoning Map from Manly LEP 2013 (subject site in red)

The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

6. Objectives of Clause 4.4

The objectives of the FSR clause are:

- a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Clause 4.6(3) requires the consent authority to consider a written request that demonstrates (amongst other things) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. When determining whether compliance with the standard is "unreasonable or unnecessary", it is usual to consider the Objectives of the clause relevant to the development standard. The Objectives of clause 4.3 are considered further below.

Clause 4.6 Variation to FSR Development
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7. Assessment

The following sections discuss the grounds for the variation to clause 4.4 against the relevant provisions of clause 4.6.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6(3)(a))

Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the maximum FSR development standard is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council* (2007) NSWLEC 827, Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. These include:

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 or 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 or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

We note that whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6. Regard is also had to the Court's decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which elaborated on how these five ways ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone.

In addition to the above, Preston CJ further clarified the appropriate tests for a consideration of a request to vary a development standard in accordance with clause 4.6 in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. This decision clarifies a number of matters including that:

- the five ways to be satisfied about whether to invoke clause 4.6 as outlined in *Wehbe* are not exhaustive (merely the most commonly invoked ways);
- it may be sufficient to establish only one way;
- the written request must be "sufficient" to justify contravening the development standard; and
- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.

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It is our opinion that the proposal satisfies at least one of the five ways established in *Wehbe* that demonstrate that the development standard is unreasonable and unnecessary in this instance, for the reasons set out below.

1st Way – The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposal would satisfy the objectives of the standard to the extent relevant to the proposal, and compliance with the FSR standard in this circumstance is considered both unreasonable and unnecessary for the reasons outlined below.

Objective (a) - to ensure the bulk and scale of development is consistent with the existing and desired streetscape character.

The existing and surrounding development is a mix of small and large scale developments which do not directly reflect the underlying development standards contained in Manly LEP. To the rear of the site are residential flat buildings that present at 8 (maximum) storeys at street level and XX levels at the rear of the subject site. Opposite and nearby to the site are existing residential flat buildings of 3 to 4 levels.

The proposed development is a building of 3 habitable levels within the 11m height limit as is anticipated by Manly LEP and DCP. The architectural treatment of the proposal provides for balconies on the street frontage and the building is located above the existing garage level on a greater than the minimum 6m setback which reduces the apparent bulk of the building as compared to other adjoining and near by developments. The density of the development is consistent with the provisions of Manly DCP. The proposed development is considered consistent with the existing and desired scale of the area.

Objective (b) - to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features.

The site is not in a location that enjoys access to specific important landscape and townscape features. There is an outlook enjoyed toward distant harbour glimpses and more general district views afforded by the location of the site on the upper levels associated with the ridgeline along which Sydney Road runs.

As discussed earlier and within the SEE, the density and height of the development is consistent with the anticipated built form under Manly LEP and DCP and consistent with the building alignments and scale of the nearby and adjoining properties.

Objective (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The existing streetscape of Fairlight Street is a mix of older and newer development styles. The existing dwelling house presents as a three car width garage and gate on a nil setback. The proposed architectural treatment of the elevated nature of the site will provide for a reduced dominant visual presentation of the carparking from that of the existing development.

Objective (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

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The development has been designed to respond to the objectives and development controls of State Environmental Planning Policy No. 65, Apartment Design Guide Manly LEP and DCP. The proposal will achieve an appropriate level of solar access, privacy and outlook. The proposal will not give rise to any impacts that are either not anticipated within a residential development and can be the subject of appropriate conditions of development consent.

Objective (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

This objective is not relevant but will not be hindered as a consequence of the proposed FSR variation.

Summary of Satisfaction of Objectives of the Standard

Preston CJ at paragraph 43 in *Wehbe v Pittwater Council* stated:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)." (paragraph 43 of Wehbe v Pittwater Council).

There is an expectation for development to achieve an appropriate scale and density. This will be achieved by the proposed development. The development of the site is of a height and scale that is anticipated and will not have any unacceptable environmental or amenity impacts.. Accordingly, the variation to maximum FSR standard will not compromise achievement of the objectives of the standard. Rather, this proposal offers an alternative means of achieving the objective.

2nd Way - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Other than objective (a) to the extent discussed above, this consideration is not relevant in this case.

3rd Way - The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

This consideration is not relevant in this case, other than as commented on with regard to the "1st way."

4th Way - The development standard has been virtually abandoned or destroyed by the Council's own decisions

As noted above, Council has previously varied the standard on several occasions.

5th Way - The zoning of the site is unreasonable or inappropriate and consequently so is the development standard.

This consideration is not relevant in this case.

Clause 4.6 Variation to FSR Development
standard

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Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))

The environmental planning grounds which support the contravention of the FSR of building standard relate to:

- A component of the additional floorspace (19m² for the foyer) is contained in a basement level that has no implications in regard to the size and scale of the building.
- XXXX
- In addition to the above, there is an absence of material negative impacts resulting from the proposed variation from the FSR standard.

Is the proposed development in the public interest? (Clause 4.6(4)(a)(ii))

The proposed development is in the public interest because it:

- Facilitates a development that is consistent with the objectives of the standard and the intent of the R1 zone under Manly LEP Consistency, with the objectives of the standard has been addressed previously under Wehbe method one ("1st way").
- Provides additional housing within the Sydney metropolitan region.
- The form of the proposed development is a permissible development achieving compliance with the built form controls of Manly LEP and DCP.
- The future occupants of the proposed development will have access to the existing facilities both built, infrastructure and environmental of the Fairlight locality.

In regard to the first point, the objectives of the *R1 General Residential* zoning of the site are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development is consistent with, or is not antipathetic to, the objectives of the zone for the reasons discussed above and below.

The proposed development will contribute to the delivery of about 5 new dwellings to provide alternative housing choice for the future residents. The proposal provides 3 bedroom residential apartment sizes and will form part of a housing mix within the R1 residential zone. Each dwelling provides a housing choice not readily available within the existing housing stock of Fairlight enabling a delivery of a small scale development containing 5 x 3 bedroom dwelling, each accessible via a lift, located in a landscaped setting with reduced maintenance responsibilities and improved affordability as compared to a single residential dwelling house within the locality.

The third objective is irrelevant, and the proposal is not antipathetic to this objective.

Consideration of concurrence by Director-General (Clause 4.6(4)(b) & (5))

Concurrence to the proposed variation is not required by the Secretary pursuant to clause 4.6(4)(b), as we understand that the relevant consent authority has the necessary delegation as set out in the Assumed Concurrence Notice issued by the Secretary of the Department of Planning and

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Environment dated 21 February 2018 (attached to DPE Planning Circular PS 20-002 dated 5 May 2020).

Despite this, the proposed variation to the maximum FSR standard is not considered to be detrimental to any matters of significance for state or regional environmental planning.

In the circumstances of the application, there is no public benefit in maintaining the development standard. To the contrary and consistent with the objectives of clause 4.6, allowing the variation will facilitate a development that achieves better and appropriate outcomes and represents an appropriate degree of flexibility in applying a development standard.

In relation to clause 4.6(5)(c), we note that no other matters have been nominated by the Secretary for consideration.

8. Conclusion

A variation to the strict application of Council's maximum FSR standard is considered appropriate for development of Lot 50, DP 705739, No 30 Fairlight Street, Fairlight.

The proposed FSR results in an optimum outcome for the site that provides alternative residential development, with negligible impacts compared to those caused by a compliant FSR.

The proposal meets the intent of the floor space ratio standard and in accordance with clause 4.6 of Manly LEP, demonstrates that the development standard is unreasonable and unnecessary in this case and that the variation is justified.

Design + Sustainability Advisory Panel Meeting Report – Date 9 December 2021

3 - DA2021/2034 - 30 Fairlight Street FAIRLIGHT

PANEL COMMENT AND RECOMMENDATIONS

General

Proposal is for five (5) three-bedroom apartments over three storeys, plus basement level. Floorspace proposed exceeds allowable FSR by 23.3%.

Strategic context, urban context: surrounding area character

Surrounding development has been identified as consisting of a mixture of residential flat buildings and dwelling houses of varying height including some that are considerably taller than would be permissible presently.

The varied heights of surrounding development has been referred to as part of a potential justification of additional floor space, however, in this instance the additional floorspace has led to a larger than normal number of car spaces for a site of this size, which has in turn resulted in an extent of excavation which has negative affects even beyond the site, including the necessary removal of trees on adjoining lot.

Surrounding development generally has a landscaped setback to the street. In contrast the proposal has a minimal setback to a podium-like form comprising driveway entry and services, concealed by Architectural screening.

Existing development on the site includes three car garage with minimal setback to the street, the top of which broadly aligns in height to the adjoining picket fence of adjoining development to the west of the site.

This existing setback condition has been referenced with respect to the proposal's similar minimal setback street interface. However, it is the view of the Panel that the proposed condition is not consistent with the character of the street and that proposal should seek to address the street in a manner which encourages passive surveillance and is consistent with the landscape character of the street.

The Panel observes that the proposal has the potential to cause view loss due to the topography and that a detailed visual impact analysis has not be undertaken.

Recommendations

1. Reduce excavation significantly so as to minimise impact on existing trees on and off site, particularly at rear of site.
2. Increase front landscape setback and provide more contextual street interface
3. Develop a view sharing strategy as a part of a detailed view impact analysis.

A.

Scale, built form and articulation

Three storey scale of the proposal is generally appropriate, notwithstanding front garage setback mentioned above.

The Panel notes that the northern private open spaces are located well below natural ground level and together with the flat floored apartments results in an excessive amount of excavation. The overall

approach to the planning and size of units (3 bedrooms, 2 bathrooms) means the design fails to respond to the limitations of the site topography.

The Panel supports the splayed walls to bedrooms adjacent to the side boundaries as they assist with providing light and views to bedrooms whilst preserving reasonable privacy relationships.

The balconies at the south and north ends of the building are separated by an exaggerated articulation which may enhance diagonal views, but has the effect of exacerbating privacy concerns, especially about western boundary. Due to the articulation of these walls at the northern end of the building, a poor privacy interface between north facing balconies results.

Recommendations

4. Set back ground level car park a minimum of 8m with trees and shrubs planted in setback
5. Reduce depth of excavation – reconsider overall planning to incorporate an east/west split between apartments rather than the proposed longitudinal split.
6. Ensure configuration and articulation maintains reasonable privacy to/from neighbouring development.
7. Ensure adequate privacy between the balconies and private open spaces of respective apartments within the proposal.

Access, vehicular movement and car parking

The number of car spaces provided are in accordance with the number of units and number of bedrooms. However the number of units and bedrooms rely on an excess floor area resulting in unacceptable impacts relating to loss of canopy due to excavation identified previously.

Street presentation is dominated by garage door, fire hydrant booster cupboard etc. which are consolidated into monolithic podium element.

Lines of sight for vehicle leaving site are restricted, potentially creating a hazard for pedestrians

Subterranean pedestrian access successful from an experiential point of view, but adds to extensive site excavation.

Recommendations

8. Reduce the number of units and or the number of bedrooms in order to reduce the number of car spaces and excavation required.
9. Improve sight lines from the car park for drivers leaving site to increase pedestrian safety.

Landscape

Extent of excavation would require removal of multiple trees, including trees on adjacent lots, which is an unacceptable impact.

Although generally large private open spaces have been incorporated, some communal open space should be considered.

Minimal deep soil planting has been provided - most is provided at significantly reduced levels, whereas it would have a more positive impact if it were provided as un-excavated deep soil area incorporating existing vegetation.

Planters on balconies provide positive softening of built form and have the potential to contribute to biodiversity.

Recommendations

10. Preserve canopy at rear of property as part of broader bio-corridor.
11. Consider Incorporating a communal open space in the form of a front garden.
12. Reduce extent of excavation so that all trees on neighbouring properties are protected.
13. Increase deep soil planting at front and rear of property.

Amenity

Whilst solar access is technically compliant, the means of receiving insolation in the form of west facing windows has created a privacy concern along the western boundary.

A number of skylights have been incorporated into the roof design, however these may present a source of uncomfortable, uncontrollable solar heat gain in summer.

Privacy interface between proposal and western and northern neighbour is poor as many windows and balconies offer direct lines of sight between respective habitable areas.

Many bathrooms have been located adjacent external walls, however, have not been provided with operable windows.

Many windows throughout proposal appear to be inoperable, reducing potential for occupants to cool spaces passively by capitalising on sea breezes.

Recommendations

14. Reconfigure means of solar access to western apartments so that reasonable privacy may be maintained with the neighbor to the west.
15. Where top level apartment(s) may benefit from sky light, provide means of controlling solar gain during summer. Consider clerestory type glazing favoring Winter insolation.
16. Ensure reasonable privacy between private open spaces of each dwelling
17. Provide means of natural ventilation and light to bathrooms wherever possible
18. Maximise natural ventilation options and provision for operable windows

Façade treatment/Aesthetics

Faux timber battened treatment of front facade is relentless and acontextual.

Three storey residential flat building is composed of multiple geometries, expressions and gestures presenting as whimsical expression and has a consistent off white and beige materiality with bronze coloured metalwork. The panel have confidence in the ability of the Applicant's Architect to develop a fine architectural expression.

Recommendations

19. Soften front presentation with plantings including tree(s) in concert with greater setback to garage.
20. Greater sectional detail of balconies, planters etc. may assist in interpreting proposal.

Sustainability

The essence of the current approach does not use the considerable skills of the architects and other consultants to honour or address the climate and biodiversity emergency we are experiencing. It would be worth investigating what approach would be taken if this guided the design. This would start by identifying the constraints (and opportunities) required to keep and nurture the existing landscape and the biodiversity it supports and designing buildings that have optimal solar access and are net zero emissions.

The level of ambition for the BASIX and NatHERS is very low – any lower and it would be illegal. Additionally, 2 star dryers (or any appliances) are not acceptable.

We strongly recommend the apartments achieve more than the lowest BASIX score, be fully electric (no gas), with as many PV panels on the roof as possible to supply more of the required power. A more efficient building envelope – with a particular focus on the windows/doors and insulation– will help achieve this, and provide a more future proof development that immediately delivers more comfort and affordable energy bills for the occupants.

Recommendations

21. Reconsider the layout on the site with the priority being to maintain the existing landscaping on the site and its neighbours.
22. Make the building fully electric, with no gas provided.
23. Use efficient electric options for hot water, cooking, BBQ, and space conditioning (if required).
24. Increase the energy efficiency of the building to deliver more natural comfort, higher BASIX scores and natural comfort for the occupants.

PANEL CONCLUSION

The Panel does not support the proposal in its current form. A complete redesign incorporating substantial reduction in the floor area, significantly reduced extent of excavation and significant retention of existing tree canopy is required. Any breach of the floor space controls would need to be supported by an analysis of the benefits compared to a complying scheme.

ITEM 4.2**DA2021/1344 - 53-55 WHISTLER STREET, MANLY -
ALTERATIONS AND ADDITIONS TO TWO SEMI-DETACHED
DWELLINGS INCLUDING A HARD STAND PARKING AREA****AUTHORISING MANAGER** Steve Findlay**TRIM FILE REF** 2022/105007**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.

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. DA2021/1344 for Alterations and additions to two semi-detached dwellings including a hard stand parking area at Lot 1 DP 742272, 53 Whistler Street, MANLY and Lot 1 DP 1103720, 55 Whistler Street, MANLY, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1344
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Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 1 DP 1103720, 55 Whistler Street MANLY NSW 2095 Lot 1 DP 742272, 53 Whistler Street MANLY NSW 2095
Proposed Development:	Alterations and additions to two semi-detached dwellings including a hard stand parking area
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Elizabeth Mary Davidson
Applicant:	Alex Prichard

Application Lodged:	11/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/08/2021 to 01/09/2021
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,666,000.00
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EXECUTIVE SUMMARY

The development application seeks consent for alterations and additions to two semi-detached heritage listed dwellings, including the demolition of the non-heritage rear additions at the rear of each item and the construction of new two storey rear additions. Part of the buildings to be demolished sit on and over the shared boundary (but within a ROW that benefits No. 55 Whistler Street) with No. 57 Whistler Street to the north.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to public interest as 16 objections to the proposal have been received. It is also noted that the application has been called to the March meeting of the LPP at the direction of the LPP Chair, Peter Biscoe.

Concerns raised in the objections predominantly relate to, parking and access, heritage, bulk and scale and amenity impacts.

Critical assessment issues included heritage and the granting of owner's consent. There are non-compliances with some of the Manly DCP controls, however, the proposal is compliant with the height of buildings (at 6.6m, the height control is 11m) and floor space ratio development standards.

The applicant elected to redesign the proposal in response to the heritage concerns. The subsequent amended plans removed the pitched roof and satisfied Council's Heritage Expert, subject to two conditions around the height and the finishes of the rear additions.

The amended proposal is a suitable design for the site and its context. Sited within a highly developed area, the development, if approved, would provide modern additions in a landscaped setting while preserving the integrity of the heritage items.

In relation to owner's consent, parts of the existing dwelling and rear extension on No. 55 Whistler Street sit on or slightly over the shared boundary with No. 57 Whistler Street. This is detailed on the survey and architectural plans submitted with the application. The rear extension is proposed to be demolished, including the parts that sit on land owned by No. 57 Whistler Street. The application has not been made pursuant to No. 57 Whistler Street (only Nos. 53 and 55 Whistler Street) and owner's consent from No. 57 Whistler Street has not been received. The building elements over the boundary are not exempt development and require development consent to demolish. Owner's consent must therefore be received from the owners of No. 57 Whistler Street in order for the consent authority to determine the application by way of approval. As owner's consent has not been received and is unlikely to be given, the application is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to two semi-detached dwellings. The two dwellings are listed heritage items (Item I257 and Item I258 - Pair of houses), though the heritage listed elements are confined to the original dwellings at the front of the sites.

The proposed works include the demolition of the existing (non-heritage) rear additions, internal alterations to the heritage items and the construction of new two storey rear extensions, new front fences and new landscaping.

In detail the proposal seeks consent for:

- The demolition of the existing rear additions, parts of which sit on land owned by No. 57 Whistler Street.
- Site preparation works.
- Internal alterations to the two heritage items to convert the living areas into bathrooms.
- The construction of new two storey rear additions, each containing a kitchen/living/dining space, laundry, pantry and WC on the ground floor, and master bedroom, bathroom and a sitting/study area on the first floor. The rear additions would be attached to the existing heritage items by ground floor corridors.
- The construction of ground floor terraces and pergolas attached to the rear of each addition.
- The construction of one parking space at the rear of No. 55 Whistler Street.
- Associated landscaping works.

Parts of the existing dwelling and rear extension on No. 55 Whistler Street sit on or slightly over the shared boundary with No. 57 Whistler Street. This is detailed on the survey and architectural plans

submitted with the application.

The rear extension is proposed to be demolished, including the parts that sit on land owned by No. 57 Whistler Street. The application has not been made pursuant to No. 57 Whistler Street (only Nos. 53 and 55 Whistler Street) and owner's consent from No. 57 Whistler Street has not been received. This matter is discussed in detail later in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 2.7 Demolition requires development consent
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 1103720, 55 Whistler Street MANLY NSW 2095 Lot 1 DP 742272, 53 Whistler Street MANLY NSW 2095
Detailed Site Description:	The site The site, formed by two Lots, Lot 1 DP 742272 (No. 53 Whistler Street) and Lot 1 DP 1103720 (No. 55 Whistler Street), is located on the western side of Whistler Street No. 53 Whistler Street is on the lot on the southern side of the subject site. It has a total site area of 295.6sqm, an eastern street frontage of 8.56m, a rear boundary of 9.015m,

a northern boundary of 33.775m and a southern boundary of 33.77m. The site is relatively level.

No. 55 Whistler Street is on the lot on the northern side of the subject site. It has a total site area of 278.3sqm, an eastern street frontage of 8.105m, a rear boundary of 8.32m, a northern boundary of 33.70m and a southern boundary of 33.775m. The site is relatively level.

Existing on each lot is a single-storey semi-detached dwelling. Both are late Victorian cottages and listed heritage items under Manly Local Environmental Plan 2013. The front part of each dwelling is constructed of sandstone and they have a shared hip roof. Both dwellings have rear extension which have been added later and are not original or contributory.

Both dwellings have a small landscaped area within the front setback, with additional landscaping to the rear. No parking is provided at No. 53 Whistler Street, but No. 55 Whistler Street has a single carport to the rear which is accessed via a right-of-way across No. 57 Whistler Street.

Existing boundary encroachments

Parts of the existing dwelling and rear extension on No. 55 Whistler Street sit on or slightly over the shared boundary with No. 57 Whistler Street. This is detailed on the survey and architectural plans submitted with the application.

Surrounding development

Located to the south of the site is, what was originally, a Masonic Hall which is listed as a heritage item. It was converted from a commercial building to a dwelling house under DA 253/2016.

Located to the north of the subject site is a two storey residential flat building. A driveway is located within the southern setback over which a right-of-access easement permits vehicle access to the rear of No.55 Whistler Street. At grade, hardstand parking is provided within the front setback.

Located on the opposite side of Whistler Street are multi-storey residential flat buildings with basement parking.

Located to the rear of the subject site is No.106, Pittwater Road, a three-storey residential flat building with parking at grade to the rear of the site, adjoining the rear of No.53 Whistler Street.

Map:



SITE HISTORY

There are no recent and relevant applications for these sites.

The land has been used for residential purposes for an extended period of time.

Right of way details

A Title Search for the subject properties that define the ownership or benefactor to the right of way was done by the applicant and submitted as supporting documentation to the application. This search shows:

- No. 55 Whistler Street (Lot 1 in DP 1103720) (the site) has noted as item 2 on the Certificate of Title for the Property a Right of Way "...appurtenant to the part shown so benefited in the title diagram affecting the land shown in DP 561787". The Land shown in DP 561787 is No. 57 Whistler Street (Adjoining Property).
- The Right of Way burdening the Adjoining Property is identified in DP 561787 as 10' wide (Conveyance No. 862 Book 552) (ROW) that extends along the boundary of Nos. 57 & 55 Whistler Street from Whistler Street to the rear boundary of the Adjoining Property and then along the rear boundary of the Adjoining Property to the northern boundary of the Adjoining Property.
- The details of the ROW are contained in Conveyance No. 862 Book 552, which is attached to the Certificate of Title to the property as identified in DP 561787.
- The details of the ROW provide that it is a right of carriage night and day for all purposes for the benefit of the site.
- There is no limitation to or specific use relating to the ROW, whether that be for waste or any other purposes.

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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent, should the application be approved. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to heritage, engineering and owner's consent issues. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent, should the application be approved. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent, should the application be approved. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent, should the application be approved. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent, should the application be approved.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.

Section 4.15 Matters for Consideration	Comments
environment and social and economic impacts in the locality	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The proposal has been found to be worthy of support from built form, heritage (subject to conditions) and amenity perspectives. However, the application seeks consent for works on land owned by No. 57 Whistler Street. The application has not been made pursuant to that land nor has owner's consent been received from No. 57 Whistler Street. In this regard, determining the development by way of approval is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/08/2021 to 01/09/2021 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 16 submission/s from:

Name:	Address:
Ms Satu Yuriko Vanska	51 Whistler Street MANLY NSW 2095
Ms Carol Patricia George	7 / 57 Whistler Street MANLY NSW 2095
Sabrina Woerdenbach	Address Unknown
Mr Simon Gerard Harrison	3 / 57 Whistler Street MANLY NSW 2095
Mr Frank Peylaire	23 / 28 - 32 Crown Road QUEENSLIFF NSW 2096
Mr Kenneth Arthur Bourke Ms Kathleen Anne Bourke	7 Waratah Street FRESHWATER NSW 2096

Name:	Address:
Mr Peter Gerard Bourke	12 / 133 Sydney Road FAIRLIGHT NSW 2094
Ms Madonna Jane Florine Jackson	1/57-59 Whistler Street MANLY NSW 2095
Mr Ryan Joshua Cole	6 / 57 Whistler Street MANLY NSW 2095
Mrs Catherine Louise Cavill	22 Daisy Street NORTH BALGOWLAH NSW 2093
Ms Christine Gloria Dudfield	12 / 133 Sydney Road FAIRLIGHT NSW 2094
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Mr Timothy John Riordan	108 Pittwater Road MANLY NSW 2095
Mr Joshua Redpath Gee	6 / 106 Pittwater Road MANLY NSW 2095
Mr John Boyd Schroder	9 Fromelles Avenue SEAFORTH NSW 2092
Mr Francis Nicholas Wilson	110 Pittwater Road MANLY NSW 2095

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

- **Bulk and height**
- **Southern setback**
- **Solar access**
- **Privacy**
- **Heritage**
- **Parking and access**
- **Consultation with adjoining neighbours**
- **Inadequate documentation**
- **Tree removal and planting**
- **Non-compliance with relevant controls**
- **View loss**

The matters raised within the submissions are addressed as follows:

- **Bulk and height**

The submissions raised concerns with the bulk of the proposal and claimed there is a non-compliance with the height limit.

Comment:

The height limit for the site is 11m. The proposed height is 6.6m. In addition, a condition further reducing the overall height (by 100mm) has been recommended by Council's Heritage Officer. This could be imposed if the application were to be approved.

The proposal is more than a full storey below the height limit, is set back adequately from the rear boundary, provides sufficient open space and deep soil landscaping, and sits within a highly built-up area.

In this regard, the bulk of the proposal is considered to be reasonable.

- **Southern setback**

The submissions raised concerns with the setback of the proposal to the southern boundary.

Comment:

This matter is discussed in detail under 4.1.4 Setbacks (front, side and rear) and Building Separation, below in this report. In summary, the proposal is non-compliant with the southern side setback, however, the side setback non-compliances will not impact on privacy or cause unreasonable view loss or overshadowing (this is discussed in more detail below).

- **Solar access**

Concerns were raised with respect to overshadowing of the neighbouring building to the south.

Comment:

The proposal will cast additional shadow on the neighbouring building to the south. The affected windows are particularly vulnerable as they are on the ground floor and are located close to the northern boundary. The proposed rear additions, at 6.6m, are well below the 11m height limit, the development sits in a highly developed area and complies with the rear set back (at the southern point of the building). In this regard, while additional shadow will be cast, the proposal is a reasonable response to the constraints of the site.

- **Privacy**

Concerns were raised with regard to overlooking and privacy impacts to the southern neighbour at 51 Whistler St, and to the rear neighbours at 106, 108 and 110 Pittwater Road. Particular concerns were raised with the proposed full length first floor rear facing windows.

Comment:

There will be no unreasonable overlooking into surrounding properties.

On both side elevations of the first floor, the windows are highlight and service a bedroom and study/sitting area.

The rear additions do have large rear facing windows on the first floor, however they are set back 8.0m from the rear boundary and approximately 20m from the neighbouring buildings to the rear. The windows are to a bedroom, which is a low use room compared to kitchen/living areas (these are located on the ground floor in this development).

- **Heritage**

Concerns were raised that the proposal was not in keeping with the heritage value of the site and surrounding area.

Comment:

Council's Heritage Officer has completed a full assessment (detailed below in this report). After amendments to the original design, and subject to a condition that would be imposed should this application be approved, the heritage requirements have been satisfied and the proposal is an

acceptable response in its context.

- **Parking and access**

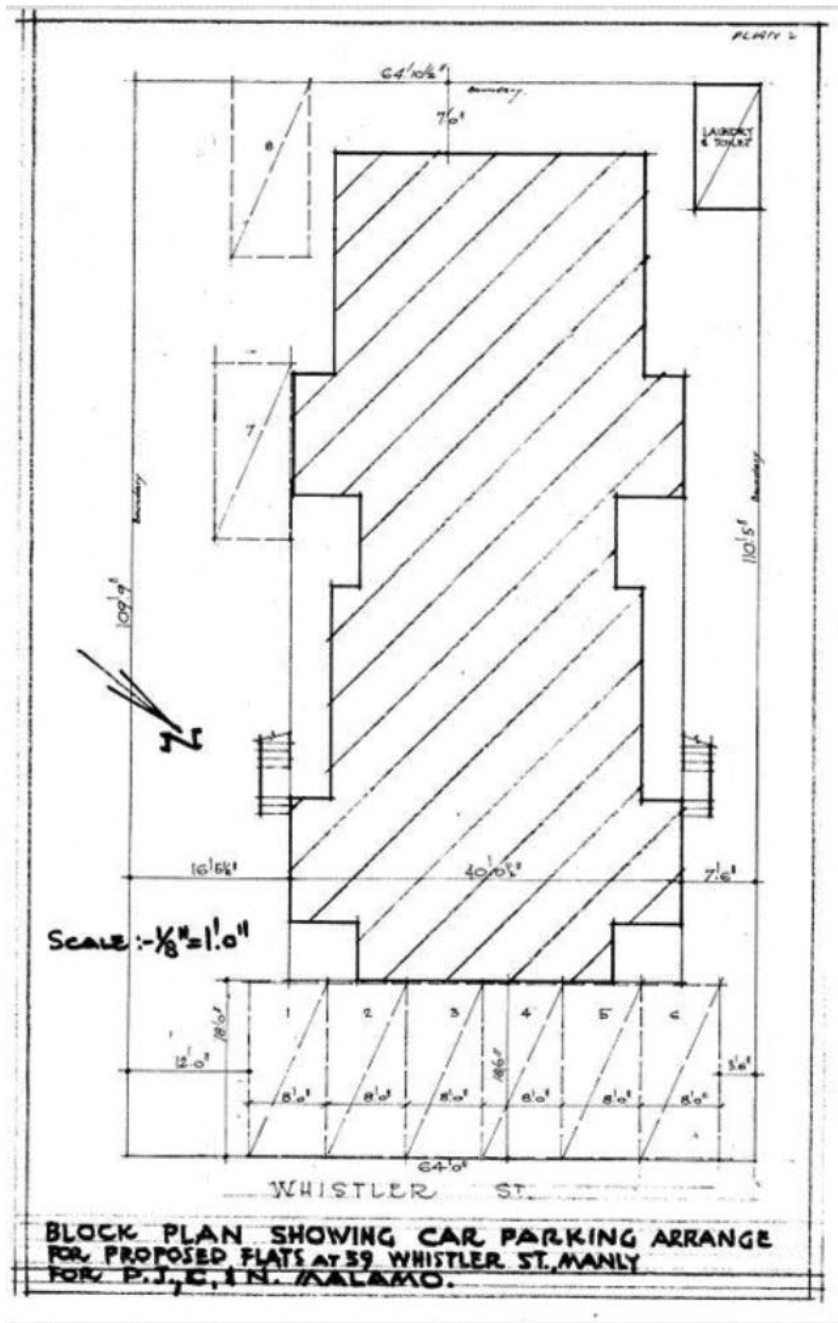
Concerns were raised with the proposed car space to the rear of number 55, and the access to this space via the right of way over the adjacent neighbour to the north, number 57. The end of the right of way has been used for parking by the residents of number 57, and concerns were raised with the loss of this space, both for the residents at 57, and in terms of loss of off-street parking in general, and in terms of the expansion of the two dwellings on the subject sites, with no increase in off street parking. Other concerns were raised with regard to pedestrian safety for residents of number 57, adjacent to the right of way, and for residents needing to walk a distance to find parking if the proposal resulted in loss of parking at number 57. Concerns over potential property damage were also raised with regard to the potential turning circles to access the car space.

Further concern was also raised as to whether legal right of way still exists, and whether the width of the right of way was sufficient. Further concerns were raised regarding use of the right of way for construction if the application is approved.

Comment:

From the information provided by the applicant and the objectors, it appears that a car, owned by one of the residents of No. 57 Whistler Street, currently parks in the right of way (ROW). Under the terms of the ROW, this is prohibited. It currently occurs mainly due to the carport/garage on No. 55 Whistler Street being forward of the car space in the ROW (meaning the carport can be accessed even with a car parked in the ROW).

The image below shows what the car parking arrangement for No. 57 Whistler Street should be.



Space No. 7 is not currently in this location on site, instead it sits next to space No. 8, and within the ROW. While this situation seems to have existed for an extended period of time, it does not appear to be a formal arrangement and so the request to maintain the space at the rear of the ROW does not appear to be achievable unless the terms of the ROW are changed.

No. 57 Whistler Street should not be relying on a space within the ROW to achieve its requirements. The requests to have this space need to be resolved between the two parties and the terms of the ROW adjusted if an agreement is reached.

In relation to safe access for the proposed space, Council's Traffic Engineers have reviewed the turning circle plans and have determined that the proposed space can be accessed only using the ROW. If this application were to be approved and the development constructed, the current car space within the ROW would need to be clear at all times.

- **Consultation with adjoining neighbours**

Concerns were raised that the applicants had not consulted with adjoining neighbours with regard to the parking issues, and long-standing arrangements for parking at number 57.

Comment:

There is no requirement for applicants to consult with neighbours prior to a DA lodgement,, although it is encouraged.

- **Inadequate documentation**

Concerns were raised that the Statement of Environmental Effects did not adequately address all issues, particularly with regard to the parking and access arrangements.

Comment:

Additional information, plans and documents were submitted during the assessment of this application. Sufficient information is now available to assess the application.

- **Tree removal and planting**

Concerns were raised with regard to the proposed removal of palm trees at the rear of the property. Further concerns were raised with the selection of water gums to be planted in the rear of the property, due to being above a Sydney Water sewer main, and impacts on solar access to numbers 106 and 108 Pittwater Road.

Comment:

Council's Landscape Officers have reviewed the proposed landscape plan and have raised no objections to the tree removal or the selected species for planting. Their full comments are below in this report.

- **Non-compliance with relevant controls**

Concerns were raised with proposed non-compliance with planning controls, including side setbacks and building envelope, open space, landscaping, built form and site coverage.

Comment:

These matters have been discussed in detail below in this report. In summary, while there are non-compliances, the proposal sits in a densely developed area, fits well within this context and the non-compliances do not result in unreasonable amenity impacts.

• **View loss**

The submissions raised concerns that the proposal would result in unreasonable view loss.

Comment:

This matter has been discussed in detail under 3.4.3 Maintenance of Views, below in this report. In summary, the proposal is far below the maximum height limit and the views lost consist of surrounding buildings and vegetation. The proposal will result in a reasonable sharing of views.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to a pair of semi-detached dwellings. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping A Landscape Concept Plan and an Arboricultural Impact Assessment report are provided with the application. The Landscape Concept Plan provides a suitable landscape outcome that enhances the landscape amenity of the site and streetscape with tree and mass planting to landscape areas, and no issues are raised with the scheme. The Arboricultural Impact Assessment recommends the removal of all vegetation within the site to accommodate the proposed development works. Removal of the vegetation is unavoidable and includes one (1) prescribed tree - Weeping Bottlebrush (ie. protected under the DCP) and four (4) trees/groups of trees that are exempt and not requiring Council consent for management or removal. Landscape Referral raise no objections to the development proposal.
NECC (Development Engineering)	2nd Development Engineering referral response A turning path has been submitted. Development Engineering has no objection to the application subject to the following conditions of consent. 1st Development Engineering referral response The applicant proposed a new car parking space at the rear of the property. The car space is connected to a 3.05 metres wide ROW in No. 57 Whistler Street. The size of the car space has been designed in comply with

Internal Referral Body	Comments
	Australian Standard AS2890.1. However, it is unclear that the vehicle can be maneuvered completely within the ROW. As such, a turning path drawing/report, which must be prepared by an qualified Traffic Engineer, must be provided to demonstrate a B85 vehicle can enter and exit the proposed parking space within the ROW completely. Without a turning path report, Development Engineering is unable to assess the application further. P.S. The ROW within No.55, which benefits No. 53, may need to be extinguished and prevent any future conflictions between the owners (a private matter).
NECC (Stormwater and Floodplain Engineering – Flood risk)	The application is accompanied by a Flood Report prepared by Stellen Civil Engineers. This report is based off conservative assumptions to determine the flood affectation for the site. The results show that the existing floor levels and all proposed additions are located above the Flood Planning Level for the site, with the 1% AEP flood level likely to be contained within the existing kerb and gutter on Whistler Street. As a result, no flood related development controls are applied.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to heritage as the subject property is a heritage item, being Item I257 and Item I258 - Pair of houses at 53–55 Whistler Street, Manly and adjoins the C1 - Pittwater Road Conservation Area to its west boundary, Item I256 - Masonic Hall - 51 Whistler Street to its southern boundary and Item I2 - All stone kerbs - Manly municipal area to its eastern boundary. It is also within the vicinity of a number of heritage items: Item I206 - House - 108 Pittwater Road Item I207 - House - 110 Pittwater Road Item I259 - House - 65 Whistler Street
	Details of heritage items affected
	Details of the conservation area and the heritage items as contained within the Manly Heritage inventory are: Item I257 and Item I258 - Pair of houses <u>Statement of significance:</u> Cottage at 53 Whistler Street is of significance for Manly area as a representative example of a Victorian sandstone cottage and for its ability to demonstrate the pattern of Manly's development,

Internal Referral Body	Comments
	particularly that associated with the early development of the flat area north of Manly Village. It is one of a pair of substantial late 19th Century semi-detached sandstone cottages and an important remnant of early development in Manly. Cottage at 55 Whistler Street is of significance for Manly area as a representative example of a Victorian sandstone cottage and for its ability to demonstrate the pattern of Manly's development, particularly that associated with the early development of the flat area north of Manly Village. It is one of a pair of substantial late 19th Century semi-detached sandstone cottages and an important remnant of early development in Manly. <u>Physical description:</u> 53 Whistler Street: One of a pair of late Nineteenth century single storey semi-detached sandstone cottages with hipped roof and awning verandah. Constructed of rock faces ashlar sandstone with hipped roof and central sandstone chimneys. Roof and awning have new zinc coated corrugated metal cladding. Simple timber posts to awning. Evidence would suggest awning originally bull nosed and set higher (flashing). Simple timber cross brace balustrade. Symmetrical façade to both with central entrance door and double hung windows either side. Boarded dividing wall between. Low timber picket fence. 55 Whistler Street: One of a pair of late Nineteenth century single storey semi-detached sandstone cottages with hipped roof and awning verandah. Constructed of rock faces ashlar sandstone with hipped roof and central sandstone chimneys. Roof and awning have new zinc coated corrugated metal cladding. Simple timber posts to awning. Evidence would suggest awning originally bull nosed and set higher (flashing). Cast iron lace balustrade. Symmetrical façade to both with central entrance door and double hung windows either side. Boarded dividing wall between. End of verandah infilled with four-pane fixed glazed sash and boarding in lower half. New tiles to verandah. Low timber picket fence. C1 - Pittwater Road Conservation Area <u>Statement of Significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. <u>Physical Description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the

Internal Referral Body	Comments
	occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop. Item I256 - Masonic Hall <u>Statement of significance:</u> The former Masonic Hall in Whistler Street is of significance for the local area for historic, aesthetic, social and reasons of rarity. The building was originally associated with the local Free Masons Lodge and was designed in accordance with the needs of Masonic ceremonial practices, thus retaining the ability to demonstrate a strong spiritual association with this identifiable historic group. The building's fabric significantly contributes to the understanding of life style and cultural practices around the time of its creation. It makes an important contribution to the streetscape and presents a local landmark. The building is locally rare both in terms of its social significance and its building techniques and architectural style. The Masonic Hall has aesthetic significance at a Local level because of its scale and impact on the streetscape as well as because of the design of its simple but considered street façade. The Masonic Hall is a representative example of an early twentieth century Masonic Hall designed in the Federation Arts & Crafts style and is a representative example of the work of local architect Harold Mead. <u>Physical Description:</u> The building is a simple two-storey brick Basilica form of building with a truncated pediment on the front façade and a simple pitched roof covering the building. This form is typical of smaller Masonic lodges. 1932: A 9 metre long section added to the rear of the building. One-storey high with a hipped roof. Item I206 and Item 207 - House <u>Statement of Significance:</u> This item is of local cultural significance as it demonstrates the pattern of development of Manly and in particular that associated with Pittwater Road. Constructed on the main road it is associated with the development of the area following the introduction of the new tram service. One of a pair, though less intact, is a rare example of its kind and contributes to the significance of the Pittwater Road Conservation Area overall. No's 108 and 110 Pittwater Road are a pair, further comparative analysis required. <u>Physical Description:</u> One of a pair (No's 110 and 108) of unusual late Nineteenth century/early Twentieth century two storey weatherboard terraced houses. Unusual combination of form and materials displaying transition of styles. Central rendered masonry fire wall with arched cut out and embossed ends. Like chimneys scored to imitate ashlar masonry. The main roof is gabled to street with awning roof over verandah, both painted and corrugated metal. Weatherboards

Internal Referral Body	Comments		
	broad profile to front façade and narrow on side walls. Asymmetrical entrance adjacent to fire wall with round headed upper sash in square frame. Circular post support to verandah at No 110. Side casement window to side of No 110 possible later addition (non to No 108). Upper level has French doors with sidelights and highlights opening to verandah. No 108 less intact with introduced metal filigree bracket, infilled balustrade and inappropriate tiling entry to porch.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal seeks consent for alterations and additions to a pair of heritage listed semi-detached dwellings, from late Victorian period. The proposed works include the demolition of the existing rear additions and the construction of two storey rear extensions and new garden landscaping. It is noted that, no alterations have been proposed to the street frontages apart from the front fences.		
	Heritage Design Guidelines require "New design in heritage areas should relate to the predominant scale and grain of the setting. It should respect the height, bulk, density, and grain of the heritage fabric." New infill buildings should generally be no higher than neighbouring heritage buildings.		
	From a heritage point of view, the separation between the heritage items and the new additions is greatly appreciated as this provides a clear definition to the original building, however the bulk and scale of the rear additions will impact the heritage items and the streetscape as the height of the additions is excessive. Heritage recommends a reduction to the overall height; by reducing the floor to ceiling height and also considering to incorporate the proposed roof space into the first floor design.		
Revised comments - 10 February 2022			
Amended drawings, received on 17 December 2021, demonstrate			

Internal Referral Body	Comments
	improvement to the bulk and scale of the proposed development. However, as noted in the previous comments, the new building should not be higher than the heritage building. Therefore, a further reduction to the proposed overall height is required; the proposed building height should not exceed the existing ridge height of RL 12250. Therefore, no objections are raised on heritage grounds subject to two conditions. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? Yes Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 09 September 2021, Amended: 10 February 2022

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections.

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 for each dwelling, with the application (see Certificate Nos. A406056_03 and A406024_03 both dated 30 July 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid, no objections were received.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind tunnelling 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 proposal, for alterations and additions to two semi-detached dwellings will not impact on (a)(i), (ii) and (iii), above, as it located approximately 100m (and two streets back) away from the beach. The site does not contain any known Aboriginal heritage items.

The site does contain built heritage items. Council's Heritage Officer has reviewed the amended plans and has raised no objection to approval, subject to a condition lowering the height of the rear additions to no higher than the ridge of the existing front heritage items.

Given the works and their location in relation to the coast, the consent authority can be satisfied that the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

Taking into account the surrounding coastal and built environment, the bulk, scale and size of the proposed development is acceptable.

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:

Given the scale of the works and their location in relation to the coast, the consent authority can be satisfied that the proposed development will not cause an increased risk of coastal hazards on that land or other land.

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	Proposed	Complies
Height of Buildings:	11m	6.6m	Yes

Floor Space Ratio	FSR: 0.75:1	FSR: 0.7:1 both lots	Yes
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	No
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	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
6.12 Essential services	Yes

Detailed Assessment

2.7 Demolition requires development consent

The proposal includes demolition works on land owned by No. 57 Whistler Street. These works are shown on the survey and the architectural plans. Owner's consent has not been granted by the owners of No. 57 Whistler Street and therefore, the application cannot be approved.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 53 - 295.6sqm 55 - 278.3sqm (total 573.9sqm)	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 150sqm	2 dwellings per 573.9sqm	N/A	Yes
	Dwelling Size: 105sqm	Number 53: 194.6sqm Number 55: 194.7sqm	N/A	Yes
4.1.2.1 Wall Height	N: 9m (based on gradient being flat)	6.6m	N/A	Yes
	S: 9m (based on gradient being flat)	6.6m	N/A	Yes
4.1.2.2 Number of Storeys	3	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	N/A	Yes
	Pitch: maximum 35 degrees	0 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Unchanged, consistent with prevailing setback	N/A	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.1m (based on wall height) S: 2.2m	0.85m 1.31m	59.5% 40.45%	No No
	Windows: 3m	N: 1.1m S: 1.6m	63.3% 46.7%	No No
4.1.4.4 Rear Setbacks	8m	Rear wall - minimum of 7.85m Pergolas - minimum of 4.8m	1.9% 35.3%	No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area	Number 53: 49.6% (146.6sqm) Number 55: 39.4% (109.8sqm)	0.8% 21.2%	No No
	Open space above ground 25% of total open space	0%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 25% of open space	Number 53: 73% (108sqm) Number 55: 64% (70.4sqm)	N/A N/A	Yes Yes
4.1.5.3 Private Open Space	18sqm per dwelling	both dwellings >18sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space for number 55 No spaces for number 53	50% 100%	No No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposed rear additions will overshadow parts of No. 51 Whistler Street for the entire time between 9am and 3pm.

The control states: *for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June)*

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposal will cast additional shadow on the neighbouring building to the south (No. 51 Whistler Street).

The affected windows in No. 51 Whistler Street are particularly vulnerable as they are on the ground floor and are located close to the northern boundary. In addition, the development sits in a relatively dense area and the sites are orientated east-west. Protecting ground floor windows, in a case like this, is very difficult.

The proposed rear additions, at a maximum of 6.6m in height, are well below the 11m limit and comply with the rear set back (at the southern point of the building). These are the two critical controls for overshadowing. The side setback has some impact however, the proposal is so far below the maximum height limit that the impact is minor.

In this regard, while additional shadow will be cast, the proposal is a reasonable response to the constraints of the site.

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

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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.

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

Comment:

View loss concerns have been raised by properties within No. 57 Whistler Street in relation to the proposed building, and by Unit 6/106 Pittwater Road who raised concerns in relation to the proposed tree planting.

No. 57 Whistler Street

The affected views consist of buildings and vegetation to the south of the subject site, including the Masonic Hall.

**No. 6/106 Pittwater Road**

The affected views consist of buildings and vegetation to the east of the subject site, including the current heritage items. Views from other apartments on the first and second floors of No. 106 Pittwater Road that face east, would be similarly affected.

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:

No. 57 Whistler Street

The views are obtained from all windows and balconies on the southern elevation of the first floor. The views are obtained from sitting and standing positions, over a side boundary.

No. 6/106 Pittwater Road

The views are obtained from the kitchen window on the eastern elevation of the first floor. The views are obtained from standing positions, over a rear boundary.

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

Comment:

While the views are clearly important to the residents, they do not include any iconic or valuable elements (eg: the ocean, beach, harbour, North Head, etc). In this regard, the view loss is considered to be minor.

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

Comment:

The critical control relating to view loss in this particular case is the height of the new rear additions. At 6.6m, they are proposed at more than a full storey below the 11m height limit. There is also a condition recommended by Council's Heritage Officer lowering the building by a further 100mm, that could be imposed should this application be approved.

Given the heritage requirements have been resolved, the height of the buildings is reasonable in these circumstances.

Therefore, the proposal results in a reasonable sharing of views.

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

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

The proposal includes the following setback non-compliances:

Side Setbacks: North - 0.85m (2.1m required). South - 1.31m (2.2m required)

Windows: North - 1.1m, South - 1.6m (3m required)

Rear Setbacks: Rear wall - minimum of 7.85m, Pergolas - minimum of 4.8m (8m required)

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.

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.*

Objective 3) To promote flexibility in the siting of buildings.

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.*

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The setback non-compliances apply to the rear additions and will have a minimal impact on the streetscape, particularly due to the heritage requirements being satisfied.

The side setback non-compliances will not impact on privacy as the windows on the first floor of each side elevation are highlight. The rear additions do have large rear facing windows on the first floor, however they are set back 8.0m from the rear boundary and approximately 20m from the neighbouring

building to the rear. The windows are also to a bedroom, which is a low use room compared to kitchen/living areas (these are located on the ground floor in this development).

In relation to overshadowing, the proposal will cast additional shadow on the neighbouring building to the south. The affected windows are particularly vulnerable as they are on the ground floor and are located close to the northern boundary. The proposed rear additions, at 6.6m, are well below the 11m height limit, the development sits in a highly developed area and complies with the rear set back (at the southern point of the building). In this regard, while additional shadow will be cast, the proposal is a reasonable response to the constraints of the site.

The setback non-compliances will not result in unreasonable view loss and sufficient landscaped open space will be provided. In addition, the heritage and streetscape requirements have been met.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

No. 53 Whistler Street provides 49.6% (146.6sqm) total open space.

No. 55 Whistler Street provides 39.4% (109.8sqm) total open space.

The control requires a minimum of 50%.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

While the development has a minor non-compliance with the total open space control, each dwelling will provide more than double the required area of deep soil landscaping. In addition, all of the open space is at ground level.

The development will improve the existing landscaping on the site, with Council's Landscape Officer stating:

"The Landscape Concept Plan provides a suitable landscape outcome that enhances the landscape

amenity of the site and streetscape with tree and mass planting to landscape areas, and no issues are raised with the scheme.

The Arboricultural Impact Assessment recommends the removal of all vegetation within the site to accommodate the proposed development works. Removal of the vegetation is unavoidable and includes one (1) prescribed tree - Weeping Bottlebrush (ie. protected under the DCP) and four (4) trees/groups of trees that are exempt and not requiring Council consent for management or removal."

The open space will adequately enhance the site, create reasonable amenity for the neighbouring properties and assist with stormwater infiltration, habitat for wildlife and native tree canopy, in what is a very built up area.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The proposal provides one car space for No. 55 Whistler Street and no parking for No. 53 Whistler Street.

The DCP required two spaces per dwelling.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The current site has one parking space for No. 55 Whistler Street and no spaces for No. 53 Whistler Street, which does not have vehicle access from a public road or the ROW. The proposal seeks to maintain this arrangement.

In order for the development to comply with the two spaces per dwelling requirement, either the heritage items would have to be demolished or a large portion of the rear of both lots would need to be given over to driveways and parking. Both of these options are impractical.

The proposal will not increase the demand for on-street parking (as the number of dwellings remains the same) and will not require additional driveways to be constructed.

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

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 \$16,660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,666,000.

OWNER'S CONSENT

Context

The proposal includes the demolition of structures that sit on land owned by No. 57 Whistler Street. This is detailed on the survey and architectural plans submitted with the application. No owner's consent has been received from No. 57 Whistler Street and the application was not made pursuant to that lot of land.

Applicant's argument

The applicant has argued that they benefit from a right-of-way (ROW) that allows both vehicle access and the right to have and maintain the structures over the boundary. This, the applicant claims, is sufficient to not require owner's consent from No. 57 Whistler Street.

Are works occurring on No. 57 Whistler Street?

Yes, the proposal seeks consent for demolition works of the structures on and over the shared boundary.

Would these works require development consent to build?

Yes, the works are not exempt development and would require consent to build.

Do they require consent to be demolished?

Clause 2.7 of the Manly LEP 2013 states:

Demolition requires development consent

The demolition of a building or work may be carried out only with development consent.

Note— If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as exempt development, the Act enables it to be carried out without development consent.

As the works are not exempt, they require development consent to be demolished.

Does the ROW negate the need for owner's consent?

Section 4.12 of the Environmental Planning and Assessment Act 1979 provides that:

(1) A person may, subject to the regulations, apply to a consent authority for consent to carry out development.

Clause 49 of the Regulations provides that:

- (1) A development application may be made—*
- (a) by the owner of the land to which the development application relates, or*
- (b) by any other person, with the consent of the owner of that land.*

Section 1.4 of the Assessment Act 1979 provides that:

owner has the same meaning as in the Local Government Act 1993.

The Dictionary to the Local Government Act 1993 provides:

- (a) ...*
- (b) in relation to land other than Crown land, includes—*
- (i) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and*
- (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, and*
- (iii) in the case of land that is the subject of a strata scheme under the Strata Schemes Development Act 2015, the owners corporation for that scheme constituted under the Strata Schemes Management Act 2015, and*
- (iv) in the case of land that is a community, precinct or neighbourhood parcel within the meaning of the Community Land Development Act 2021, the association for the parcel, and*
- (v) every person who by this Act is taken to be the owner, and*
- (c) in relation to land subject to a mining lease under the Mining Act 1992, includes the holder of the lease, and*
- (d) in Part 2 of Chapter 7, in relation to a building, means the owner of the building or the owner of the land on which the building is erected.*

Given the above, the circumstances of this application do not apply to persons benefitting from an easement or ROW.

Conclusion

Owner's consent must therefore be received from the owners of No. 57 Whistler Street in order for the consent authority to determine the application by way of approval. As owner's consent has not been received and is unlikely to be given, the application is recommended for refusal.

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

This report has found that the proposed development satisfactorily addresses all the assessment issues, including those raised in the submissions, with the exception of owner's consent.

The amended proposal is a suitable design for the site and its context. Sitting in a highly developed area, the development, if approved, would provide modern additions in a landscaped setting while preserving the listed heritage items.

However, as part of the existing rear extension, proposed to be demolished, sits on land owned by No. 57 Whistler Street (despite being within a ROW that benefits No. 55 Whistler Street), the application must be made pursuant to No. 57 Whistler Street and owner's consent from No. 57 Whistler Street must be granted. As owner's consent from No. 57 Whistler Street has not been received and is unlikely to be given, the application must be recommended for refusal.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2021/1344 for the Alterations and additions to two semi-detached dwellings including a hard stand parking area on land at Lot 1 DP 1103720,55 Whistler Street, MANLY, Lot 1 DP 742272,53 Whistler Street, MANLY, for the reasons outlined as follows:

1. Pursuant to Clause 49 (1) of the Environmental Planning and Assessment Regulation 2000, the development application has not been made with the consent of the owner/s of all land on which the development occurs.

BASIX COMMITMENTS 53 WHISTLER STREET:

Item	Commitment	Completion Date	Responsible Party
1	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
2	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
3	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
4	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
5	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
6	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
7	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
8	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
9	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
10	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN

BASIX COMMITMENTS 55 WHISTLER STREET:

Item	Commitment	Completion Date	Responsible Party
1	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
2	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
3	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
4	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
5	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
6	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
7	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
8	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
9	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN
10	Water saving devices (showerheads, taps, toilets, etc.)	1/1/2022	DAVIDSON NEWMAN

DEVELOPMENT APPLICATION

53 & 55 WHISTLER STREET, MANLY

PREPARED ON BEHALF OF:

BRETT NEWMAN & LIBBY DAVIDSON

DRAWING SCHEDULE :

DA.100 Cover Sheet, BASIX & Site Analysis Plan 1:200

DA.301 Lower Ground Floor Plan 1:100

DA.302 Ground Floor Plan 1:100

DA.303 First Floor Plan 1:100

DA.304 Roof Plan 1:100

DA.401 North Elevation 1:100

DA.402 East Elevation - Whistler Street 1:100

DA.403 South Elevation 1:100

DA.404 West Elevation 1:100

DA.501 Longitudinal Section A 1:100

DA.601 Existing & Proposed Shadows (June 21 - 0800) 1:250

DA.602 Existing & Proposed Shadows (June 21 - 1200) 1:250

DA.603 Existing & Proposed Shadows (June 21 - 1600) 1:250

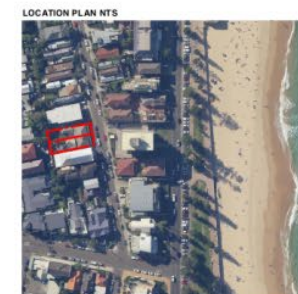
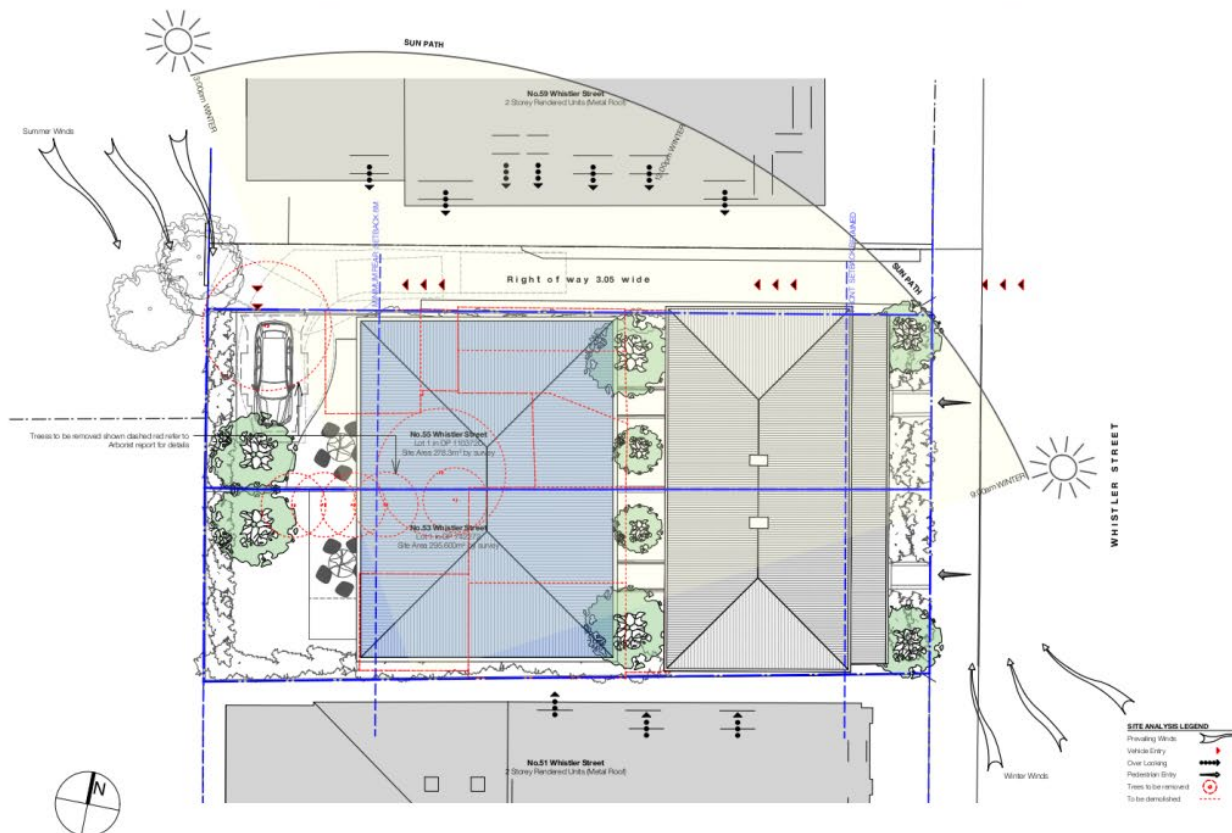
DA.901 Area Calculations 1:300

DA.902 Materials Board NTS

DA.903 Waste Management Plan 1:100

DA.900 Notification Plan Sheet A 1:200

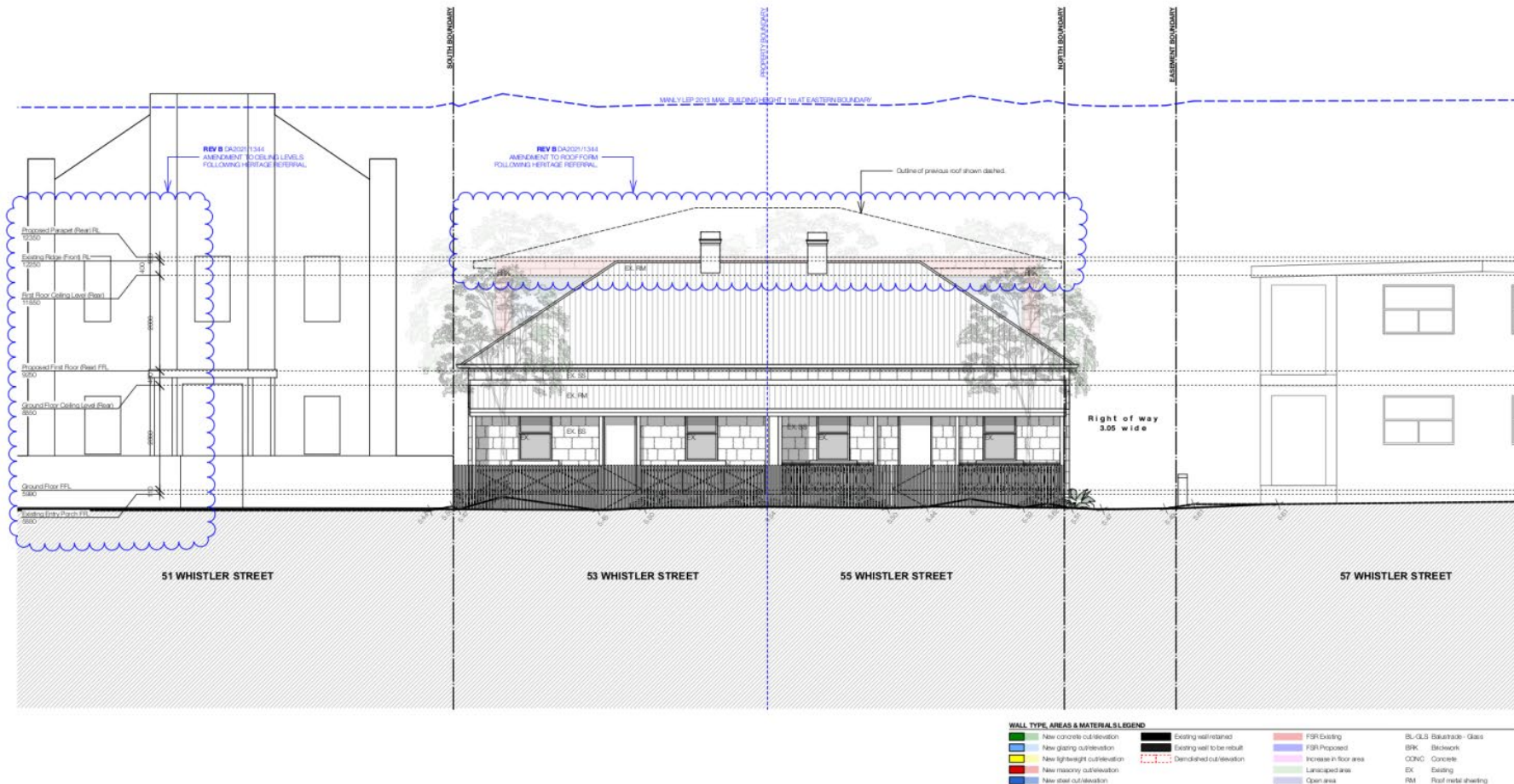
DA.901 Notification Plan Sheet B 1:200



FOR DEVELOPMENT APPLICATION ONLY

madeleine blanchfield architects Mackenzie Blanchfield Architects Pty Ltd Registered Architect 7009 ABN 51 140 481 515 80 Paddington St Paddington NSW 2021 ofo@madeleineblanchfield.com www.madeleineblanchfield.com +61 2 9212 3343	General Notes: All Works To Be In Accordance With Australian Standards, The Building Code Of Australia, Other Relevant Codes And With Manufacturer's Instructions. This Drawing Is Copyright And May Not Be Used Without Written Consent. Do Not Scale Off Drawing. Verify All Dimensions On Site Prior To Construction. To Be Read In Conjunction With All Other Consultant's Drawings. The Architect To Be Immediately Notified Of Any Discrepancies.	Project: 3090 - DAVIDSON NEWMAN MANLY RESIDENCES 53 & 55 WHISTLER STREET, MANLY LOT 1 IN DP 1103720 & LOT 1 IN DP 742272	Drawing: COVER SHEET Scale: NT38A3 Date: APRIL 2021 Drawing: DA.101 Rev: A
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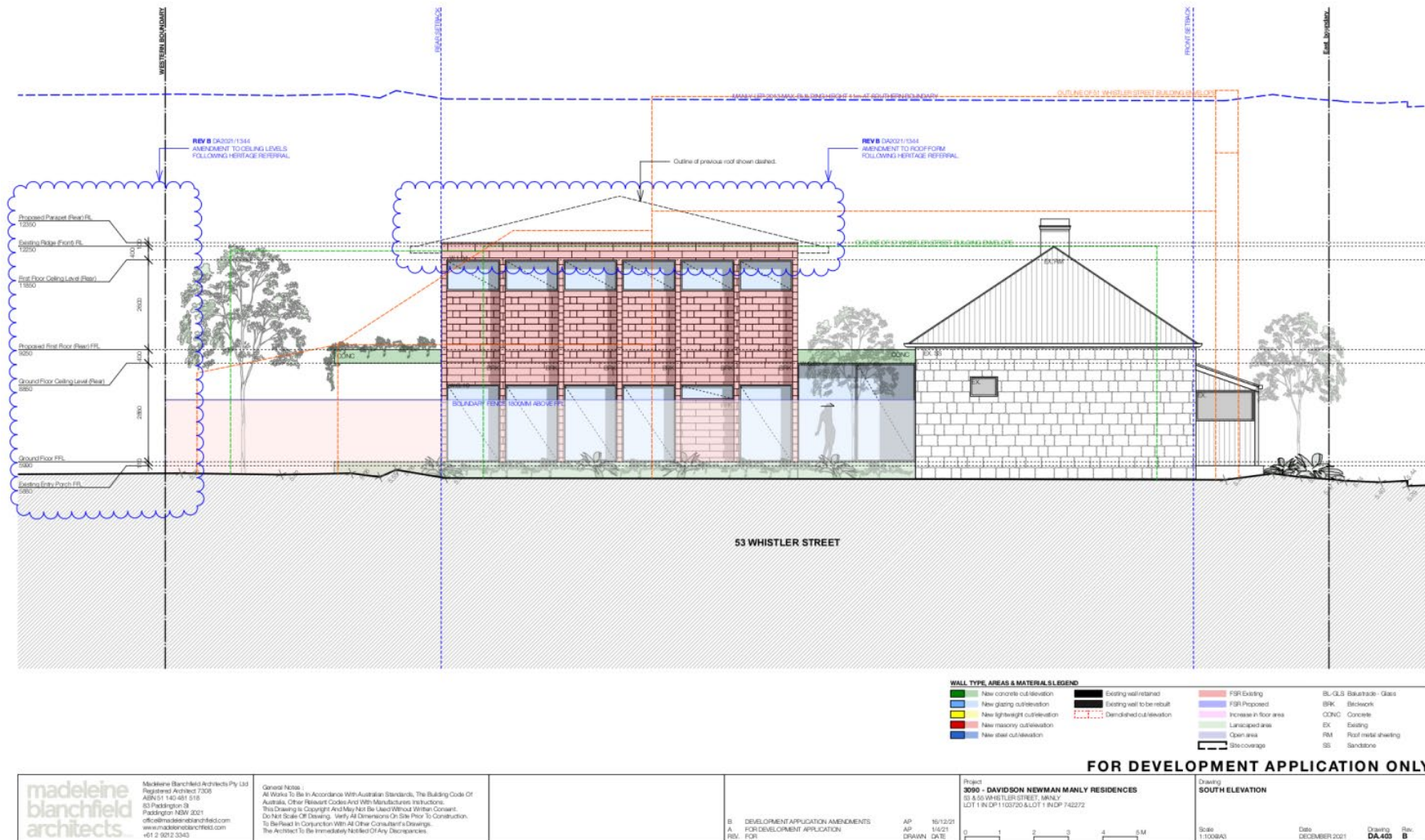


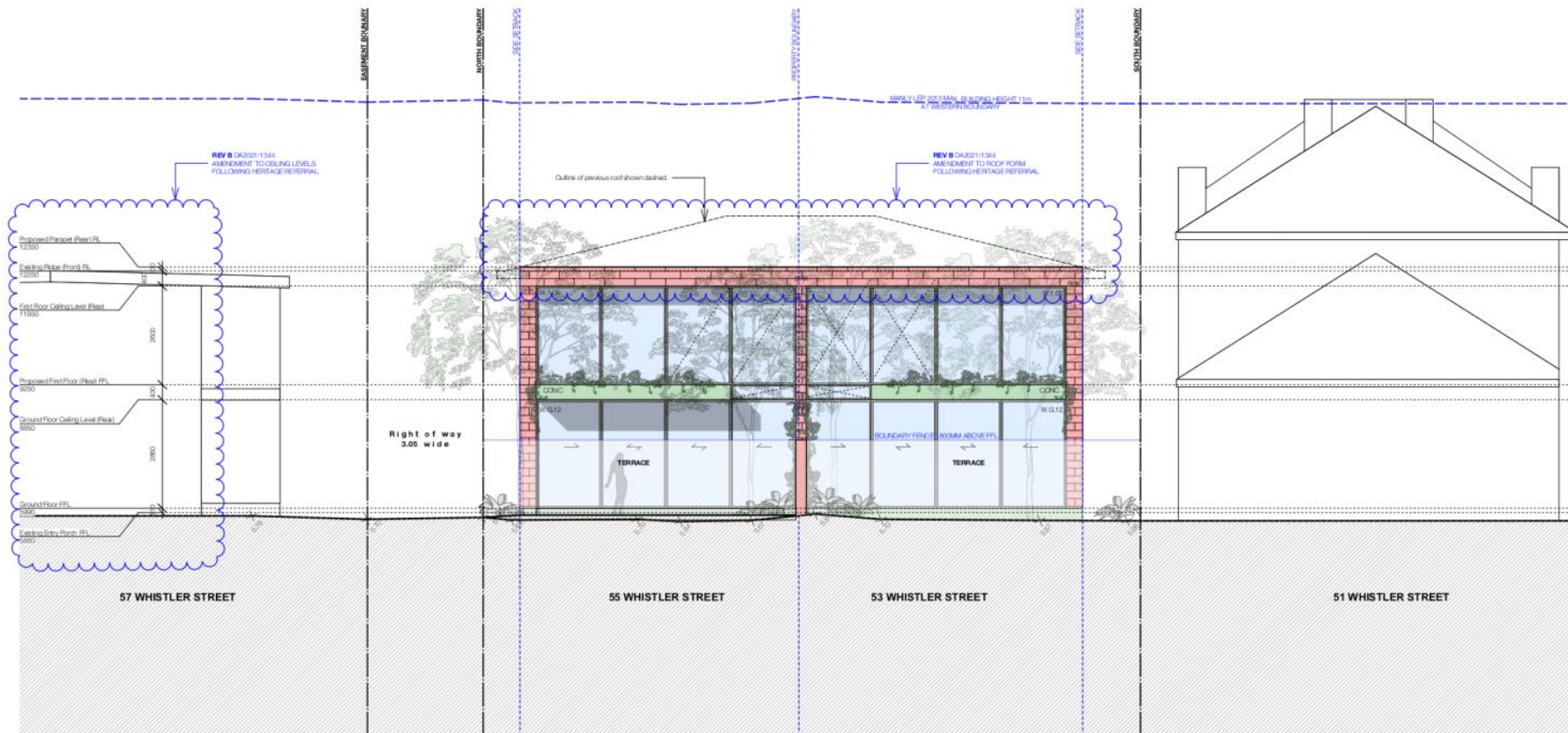


WALL TYPE, AREAS & MATERIALS LEGEND			
 New concrete out-elevation	 Existing wall retained	 FGR Existing	BL-GLS Balustrade - Glass
 New glazing out-elevation	 Existing wall to be rebuilt	 FGR Proposed	BRW Backwork
 New lightweight out-elevation	 Demolished out-elevation	 Increase in floor area	CONC Concrete
 New masonry out-elevation		 Landscaped area	EX Existing
 New steel out-elevation		 Open area	RM Roof metal sheeting
		 Site coverage	SS Sandstone

FOR DEVELOPMENT APPLICATION ONLY

madeleine blanchfield architects Madeleine Blanchfield Architects Pty Ltd Registered Architect 7309 ABN 51 140 481 518 80 Paddington St Paddington NSW 2021 info@madeleineblanchfield.com www.madeleineblanchfield.com +61 2 9212 3343	General Notes: All Works To Be In Accordance With Australian Standards, The Building Code Of Australia, Other Relevant Codes And With Manufacturers Instructions. This Drawing Is Copyright And May Not Be Used Without Written Consent. Do Not Scale Or Drawing. Verify All Dimensions On Site Prior To Construction. To Be Read In Conjunction With All Other Consultant's Drawings. The Architect To Be Immediately Notified Of Any Discrepancies.	Project: 3090 - DAVIDSON NEWMAN MANLY RESIDENCES 51 & 55 WHISTLER STREET, MANLY LOT 1 IN DP 1103720 & LOT 1 IN DP 742272	Drawing: EAST ELEVATION - WHISTLER STREET
B DEVELOPMENT APPLICATION AMENDMENTS A FOR DEVELOPMENT APPLICATION REV FOR	AP 10/12/21 AP 11/02/21 DRAWN DATE	Scale 1:100 (N/A)	Date DECEMBER 2021
	0 1 2 3 4 5 M	Drawing DA402	Rev B





WALL TYPE, AREA & MATERIALS LEGEND			
New concrete out-elevation	Existing wall retained	FFR Existing	BL-GLS Balustrade - Glass
New glazing out-elevation	Existing wall to be rebuilt	FFR Proposed	BRW Backwork
New lightweight out-elevation	Demolished out-elevation	Increase in floor area	CONC Concrete
New masonry out-elevation		Landscape area	EX Existing
New steel out-elevation		Open area	RM Roof metal sheeting
		Site coverage	SS Sandstone

FOR DEVELOPMENT APPLICATION ONLY

madeleine blanchfield architects Madeleine Blanchfield Architects Pty Ltd Registered Architect 7309 ABN 51 140 481 518 82 Paddington St Paddington NSW 2021 office@madeleineblanchfield.com www.madeleineblanchfield.com +61 2 9212 3343	General Notes: All Works To Be In Accordance With Australian Standards, The Building Code Of Australia, Other Relevant Codes And With Manufacturers Instructions. This Drawing Is Copyright And May Not Be Used Without Written Consent. Do Not Scale Off Drawing. Verify All Dimensions On Site Prior To Construction. To Be Read In Conjunction With All Other Consultant's Drawings. The Architect To Be Immediately Notified Of Any Discrepancies.	B DEVELOPMENT APPLICATION AMENDMENTS A FOR DEVELOPMENT APPLICATION REV FOR	AP 10/12/21 AP 11/02/21 DRAWN DATE	Project 3090 - DAVIDSON NEWMAN MANLY RESIDENCES 51 & 53 WHISTLER STREET, MANLY LOT 1 IN OP 1103720 & LOT 1 IN OP 742272	Drawing WEST ELEVATION
				Scale 1:100 (BAS)	
				Date DECEMBER 2021	Drawing DA.404

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2020/1762 - 316 HUDSON PARADE, CLAREVILLE - DEMOLITION WORKS AND CONSTRUCTION OF BOATSHED, RAMP, SLIPWAY, JETTY & STEPS
AUTHORISING MANAGER	Tony Collier
TRIM FILE REF	2022/105081
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevation 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1762 for Demolition works and construction of boatshed, ramp, slipway, jetty & steps at Lot 1 DP 827733, 316 Hudson Parade, CLAREVILLE, Lot 2 DP 827733, 316 Hudson Parade, CLAREVILLE, Lot LIC 559856, 316 Hudson Parade, CLAREVILLE, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1762
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 Lot 2 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 559856, 316 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Demolition works and construction of boatshed, ramp, slipway, jetty & steps
Zoning:	C2 Environmental Conservation C4 Environmental Living
Development Permissible:	No - Zone C2 Environmental Conservation No - Zone W1 Natural Waterways
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council Tony Brian Walls
Applicant:	Rhonda Carr

Application Lodged:	15/02/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/03/2021 to 18/03/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 34%
Recommendation:	Approval

Estimated Cost of Works:	\$ 567,500.00
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Executive Summary

The application seeks to construct a boat shed and associated maritime structures including a jetty, seawall, slip way, boat ramp, berthing area and waterway access stairs.

The application seeks the replacement of the previous boat shed and associated structures which once stood on the land and in doing so, the application is reliant upon existing use rights given that boat sheds and the associated structures are not permissible within the W1 Natural Waterway Zone and E2 Environmental Conservation Zone under the Pittwater LEP 2014. The application is accompanied by documentation that support the claim of existing use rights and the information provided with the application has demonstrated to the satisfaction of Council that the land does benefit from existing use rights. Therefore, a boat shed and associated structures may be rebuilt upon the land (subject to the granting of consent).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the development is partially located over land which is owned by the Council. The remainder of the land on which the development is situated is owned by Crown Lands (seaward of the Mean High Water Mark).

The application is also referred to the NBLPP for determination as the proposed development departs from the building height development standard under Pittwater Local Environmental Plan 2014 by 34% within the W1 Natural Waterway Zone, which has a prescribed maximum building height of 4m.

The design of the boat shed is of a scale that is considered to be generally consistent with the previous structure which stood on the land, and the height increase of the boat shed relative to the water level is a result of the raised flood level to cater for the estuarine planning level for the site. The external dimensions of the proposed boat shed are slightly larger than the previous boat shed which once occupied the site, and Council's recommendation is that the footprint be slightly reduced to match the previous building footprint. This is recommended as a consent condition.

The application is classified as Integrated Development pursuant to the *Fisheries Management Act 1994* and DPI Fisheries has granted its General Terms of Approval for the application. The environmental, coastal, marine habitat and coastal issues have been considered by Council's internal referral departments who are each satisfied the proposal will not result in adverse environmental impacts that would have otherwise been experienced by the retention of the boat shed and associated structures which previously occupied the land.

The application was notified for a period of 14 days in accordance with Council's Community Participation Plan and a total of two (2) submissions were received. The submissions raised concern with the design and scale of the boatshed, environmental and coastal impacts, additional footprint and reclamation of land and the design of the seawall. The issues raised in the submissions have been addressed later in this assessment report.

Council considers that all merit and environmental issues of the application have been resolved, that the appropriate owners consent have been received from Council's Property Team and the Department of Planning - Crown Lands, and therefore the application is recommended for approval to the Local Planning Panel.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for "Demolition works and construction of boatshed, ramp, slipway, jetty & steps".

Specifically, the proposal involves the:

- Demolition of the remaining structures associated with the boatshed which once stood on the land and foreshore area;
- Construction of a boatshed and associated concrete platform/curtilage;
- Construction of a sandstone seawall around the perimeter of the boatshed; and

- Construction of a concrete boat ramp, slip rails, timber jetty, steps and piles to a berthing pen.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - Integrated Development – DPI Fisheries - Fisheries Management Act (s201 Circumstances in which a person (other than a public or local government authority) may carry out dredging or reclamation)

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D3.2 Scenic protection - General

Pittwater 21 Development Control Plan - D15.15 Waterfront development

Pittwater 21 Development Control Plan - D15.18 Seawalls

SITE DESCRIPTION

Property Description:	Lot 1 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 Lot 2 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 559856, 316 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of land located on the western side of side of Hudson Parade. The land directly adjoins the Pittwater waterway and consists of an irregular parcel of land adjoining the waterway, the boundary of which reflected

the previous boat shed and access stairs which stood on the land. The remainder of the development site located west of the Mean High Water Mark (MHWM) is upon Crown Land.

The land on which the development is proposed is legally known as Lot 2 in DP 827733 and is commonly known as No. 316 Hudson Parade. Lot 2 is owned by Northern Beaches Council and the use of the land is subject to a license that is currently being considered by Northern Beaches Council. Lot 1 in DP 827733 contains the residential dwelling and is under private ownership and is also commonly known as No. 316 Hudson Parade.

Lot 2 is an irregular shape which contains access stairs between the foreshore area and the residential dwelling upon No. 316 Hudson Parade. The remainder of Lot 2 is configured to contain an area of land on which a former boatshed sat and accommodated the surrounding curtilage which was associated with the former boat shed.

Lot 2 has area of 52m², with the remaining area within crown land with an approximate license area of 209.5sqm (based on the crown land licence plan).

The area in which the boat shed and structures are proposed is located within the E2 Environmental Conservation Zone and W1 Natural Waterway Zone under Pittwater Local Environmental Plan 2014. Lot 1 containing the dwelling house is zoned E4 Environmental Living.

The site currently has timber stairs leading down to the area of the former boatshed from the residential dwelling to the east. The land contains the footprint of former boatshed that has been demolished since 2018 and some dintel retaining walls which are currently uncompleted. There are timber poles associated with the former jetty and berthing area in the waterway.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development to the east, Refuge Cove Reserve surrounding the boat shed to the east and the Pittwater Waterway to the west. There are rock platforms and the foreshore area to the south and an area of sandy beach to the north. There is another boatshed in the visual catchment of the site 80m to the south.

Map:



SITE HISTORY

The land has been used for a boat shed and associated maritime structures for an extended period of time. The following history is relevant in regards to the proposed development:

- In 1993, a previous owner of No. 316 Hudson Parade dedicated to Council foreshore land at Refuge Cove Reserve, now Lot 2. The transfer was conditional upon a lease being provided over the access way to the foreshore and the section of the original boat shed above the MHWL. A lease was subsequently granted by Pittwater Council to the owner in accordance with this condition.
- The previous lease agreement expired on 4 March 2013. In 2015 the owner of No. 316 Hudson Parade, after purchasing the property, approached Pittwater Council seeking to renew the agreement for a further twenty (20) year term.
- Pittwater Council, at its meeting on 7 March 2016, resolved (the 2016 Resolution) as follows:

C10.1 316 Hudson Parade Clareville - Renewal of Expired Lease

1. *That the report by the Independent Chairperson regarding the re-categorisation of Lot 2, DP827733 be noted.*
 2. *That the land, Lot 2, DP827733 in Refuge Cove be re-categorised from Natural Area to General Community Use.*
 3. *That the General Manager be delegated to negotiate the terms and conditions of a new lease based on the expired lease following the re-categorisation of the land.*
- On 15 November 2016, a Complying Development Certificate (CDC) was issued by an accredited certifier for development on foreshore land, including Lot 2 described as "Repairs and restoration of existing structures". The CDC related to the boat shed that existed on Lot 2 and the adjoining Crown Land.
 - On 14 September 2018, Council served a Stop Work Order following the complete demolition of the existing boat shed. It was Council's view that this work was not carried out in accordance with the CDC, the CDC was not lawfully issued and the works were undertaken without owner's

consent. The Stop Work Order was appealed to the Land and Environment Court (Proceedings No. 2018/00308701). The appeal was subsequently discontinued by the applicant with Council's consent. In connection with the discontinuance of the proceedings, the applicant agreed to surrender the CDC and Council agreed to act on any outstanding Council resolutions made on 7 March 2016 (specifically the 2016 Resolution).

- Item 2 of the 2016 resolution relating to the re-categorisation of the land has been completed by Council.
- On 15 February 2021, the subject development application DA2020/1762 was lodged with Council.
- The owner of No. 316 Hudson Parade has requested that Northern Beaches Council grant a 20 year license over Lot 2 in DP827733 for the use of the community land to facilitate the use of the boatshed, associated structures and access stairs within Lot 2.
- At the ordinary Council Meeting of 26 October 2021 (following deferral of the item at the meeting of 27 April 2021), Council considered the application for a license over Lot 2. At that meeting, the elected Council provided in support to the granting of a twenty (20) year license subject to the recommendations outlined in the minutes for Item 13.1.

History of Development Application

Upon initial assessment of the development application, Council wrote to the applicant requesting:

- additional information in relation to existing use rights;
- requesting owners consent be provided by Northern Beaches Council and Crown Lands for the lodgement of the application;
- request to address the concerns raised by DPI Fisheries with regards to design;
- request for the height of the boat shed to be reduced;
- the submission of a Clause 4.6 variation request;
- request for reduced footprint of the boatshed; and
- addressing matters raised in the initial referral responses from Council's Riparian Team and Coastal Team.

Council subsequently was provided with responses from the applicant which included amended plans and additional information to address each of the above matters. This included a reduction of height and footprint of the boatshed, amended sea wall design, amended estuarine risk management report, amended marine habitat report, clause 4.6 variation request and the required owner's consent from Northern Beaches Council and Crown Lands.

The application was referred to DPI Fisheries and Councils Riparian and Coastal Team to review the information. DPI Fisheries provided a response stating they were satisfied with the proposal and granted General Terms of Approval. Council's Riparian and Coastal team were also satisfied of the additional information.

The amended application was not required to be re-notified as the amended design reduced the size of the proposed structures and addressed the environmental and coastal issues raised by Council's referral bodies.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to updated coastal engineering and risk assessments, amended plans, information regarding existing use rights and an amended Clause 4.6 variation request. This information was submitted to Council and assessed by Council's planners and relevant referral bodies. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of

Section 4.15 Matters for Consideration'	Comments
	Australia (BCA). This matter can be addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

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

Section 4.65 of the Act defines an existing use as:

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

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

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

This necessarily requires the following questions to be answered:

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

Comment

The land is zoned W1 Natural Waterway and E2 Environmental Conservation at present under the Pittwater Local Environmental Plan 2014 (PLEP 2014). The development for the purpose of a boat shed and associated structures is prohibited under the current PLEP 2014.

The Applicant has provided evidence in the form of Legal Advice which explores the history of the use of the land for the purpose of a Boat Shed and the previous relevant town planning schemes applying to the land.

There is evidence by way of historical photographs that the boat shed was erected on the land by 1947. Importantly, the legal advice notes *'In 1945, the Local Government (Town and Country Planning) Amendment Act inserted Part XIIA into the Local Government Act 1919. From 1945, and as at 1947, the carrying out of development on the land was regulated by Ordinance No. 105 Town and Country Planning – General Interim Development ("Ordinance 105"), pursuant to the Local Government Act 1919. That amendment to the Local Government Act anticipated the formation of the Cumberland County Council and ultimately the making of the County of Cumberland Planning Scheme Ordinance and the making of similar schemes by other authorities. Relevantly, for present purposes, the effect of the 1945 amendment was to make lawful the use of the land upon which the Structures were erected for use for the purpose of a boat shed, ramp, concrete base and jetty.'*

Therefore, it is concluded that the boat shed and associate structures existed upon the land at a time when the use of the land was permissible under the relevant planning instrument applicable the time (County of Cumberland Planning Scheme Ordinance).

2. *Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?*

Comment

The applicant (and the Council) has not been able to locate a development consent specifically relating to the boat shed structures. This is partially due to the age of the structures (constructed at least by 1947) and this is not surprising given the time that has passed since the structures were erected.

Therefore, in the absence of paper work relating to development consent, the applicant's legal advice states that it is appropriate to take the position of the *presumption of regularity* based on the steps taken by Council since 1947 in dealing with the land on which the boatshed and structure sits. In particular, the applicant has cited the following events to have occurred since 1947 while the structures stood on the land:

- *In 1957 a permissive occupancy was granted covering the land upon which the Structures were erected within the waterway.*
- *Following subdivision of the original lot, the registered plans from at least 1967 have clearly marked the outline of the Structures.*
- *In 1981, a plan of subdivision was registered which excluded that part of what is now Crown Land on which the Structures were erected from being dedicated public reserve.*
- *In 1993, the previous owners and the Council of the Municipality of Pittwater (as it then was) entered into a lease agreement for use and access of the area for a boatshed and purposes incidental thereto that was located on Crown Land, renewal of which is currently being*

- negotiated with Council.*
- *In 2016 the permissive occupancy was converted into a licence. It is relevant to note that the licence was conditional. The terms and conditions are set out in Schedule 2. Clause 3 of Schedule 2 related to unauthorised structures and specifically identified that there were four unauthorised pylons. It is, in my opinion, instructive that the land owner was able to specifically identify the unauthorised component of the structures, being four pylons only.*
- *On 15 July 2016, a delegate of the Minister Administering the Crown Lands Act provided owner's consent to the lodgement of the CDC for repairs and replacement of the Structures.*

The applicant's legal advice puts forward that the presumption of regularity is dealt with in the court case *Minister for Natural Resources v NSW Aboriginal Land Council (1987) 9 NSWLR 154* where it deals with how the presumption of regularity can be expressed, which is:

"Where a public official or authority purports to exercise a power or to do an act in the course of his or its duties, a presumption arises that all conditions necessary to the exercise of that power or the doing of that act have been fulfilled."

In regards to the above, Council and the Crown have entered into a lease agreement and license agreement for the use of the structures on the land since the structures existed on the land. As recent as 8 February 2016, a 20 year License was granted by Crown Lands for the structures.

Therefore, Council is satisfied that a *presumption of regularity* can be made for structures on the land given the steps that both Crown Land and Council have taken in dealing with boat shed structures on the land to date.

Furthermore, the demolition of the structures in 2018 (as part of the Complying Development Certificate to carry out repairs to the existing structures) is not considered to result in the abandonment of existing use rights.

The applicant's legal advice deals with the question of abandonment in the context of the demolished structures and the relevant circumstances and events which have followed since demolition of the structures, which include stop work orders, Land and Environment Court Proceedings and the Lodgement of a new application seeking consent (following the CDC being deemed invalid). All of these events demonstrate that there was a clear intent of the user of the land to continue the use of the land for the purpose of a boat shed and associated structures. Furthermore, Council's recent in-principle support at the Council meeting of 26 October 2021 to grant a license over the land for the use of the structures reiterates the intentions of the user of the land.

3. *Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?*

Comment

As discussed above, the structures existed in 1947 during a time when applicable planning regime permitted such structures on the land. The structures have existed and been used until the present day.

- **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 portions of the area of the land were physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to that part of the subject site considered to form the 'Unit of Land'.

The applicant's legal advice deals with the 'Unit of Land' to which existing use rights apply. This includes physical markers that include the extent of the jetty structures projecting to the west, which include the extent of the slip rails, jetty, jetty stairs, the revetment walls at the base of the boatshed and concrete ramp. Each of these structures defines the 'unit of land'. This is further complimented by the Crown Lands license which defines a berthing area which forms part of the 'unit of land'.

The applicant's legal advice includes a plan which defines the unit of land based on the physical structures and license boundaries. The proposed development including the boat shed, associated platform, jetty, stairs and berthing area are considered to be within the designated unit of land to which existing use rights apply.

- **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

Height

The planning controls set a maximum height for a boatshed under the Pittwater 21 Development Control Plan (PDCP) and the maximum building height under the PLEP 2014.

The design of the boatshed building itself is of a height consistent with the previous structure, with the increase in height relative to the water level as a result of the need to comply with the estuarine planning levels (increase 500mm). The increase in height relative to the water level is necessary to response to current estuarine planning levels and results in a small increase in height, that is not considered unreasonable or visually excessive.

Boatshed footprint

The PDCP sets a maximum footprint for boatsheds at 4m x 6m. Based on survey data provided for the previous boat shed, the previous boatshed footprint was 6.2m (wide) x 9.2m (long). The proposed boatshed is 6.75m (wide) x 9.745m (long). The proposal is in excess of the current PDCP guidelines for boat sheds (4m x 6m), with the aim of the PDCP control to ensure '*Structures blend with the natural environment*' and '*Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway*'. The proposed boat shed is of a size slightly larger than the previous footprint itself. The applicant has put forward that the new boat shed has a comparable internal floor area of the previous structure, due to the structural walls of the new boatshed being thicker and therefore, resulting in a bigger footprint.

However, Council's controls guide the size of boat sheds based on the external dimensions of the building, not the internal floor area. The intent of the control is to guide bulk and scale of the boat shed and the internal floor area is not relevant to this cause. Therefore, Council cannot see any basis for supporting a footprint larger than the previous structure on the land which measured 6.2m (wide) x 9.2m (long). In this regard, should consent be issued, a condition would be recommended that the external footprint is limited to this size.

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

Change of use is not proposed. See discussion above regarding building bulk and scale.

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 development is not considered to result in any unreasonable amenity impacts for adjoining land owners.

Public foreshore access is maintained around the boatshed and along the foreshore.

The size of the structure will be generally consistent with the previous boatshed which sat on the land, subject to conditions regarding the footprint.

Council's referral bodies are satisfied with the matters relating to the coastal environment and biodiversity values of the site.

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 boat shed will retain reasonable amenity and functionality for the user.

Relevance of the Planning Controls to the assessment

The Lands and Environment Court Judgement *Saffioti v Kiama Municipal Council [2019] NSWLEC 57* sets out that the provisions of the relevant Local Environmental Plan and Development Control Plan (in this case PLEP 2014 and PDCP) are to be taken into consideration in the assessment of a development to which existing use rights apply. The planning controls, where they do not derogate from the establishment of existing use rights, are to be considered by the consent authority in assessment of the application.

To this extent, the development standards and provisions within the Pittwater LEP 2014 and Pittwater DCP have been taken into consideration in the assessment of the development for which existing use rights apply.

Conclusion

The applicant has demonstrated to the satisfaction of Council that there can be a presumption of regularity through the events and actions taken to date by the relevant public authorities and that the use has not been abandoned and, therefore, is a lawful use.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/03/2021 to 18/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Samuel Nicholas Wallock Ms Lucy Caroline Proffitt	318 Hudson Parade CLAREVILLE NSW 2107
Haley Byrne Mr Phillip Anthony Byrne	319 Hudson Parade CLAREVILLE NSW 2107

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

- Objection to the increase in the size of the base of the boat shed (in particular the southern side of the footprint) including any reclamation of additional land and filling of land. Any enlargement subsequently impacting on the foreshore environment and processes including degradation of the beach area to the south. The design of the concrete seawall will negatively impact the coastal process, the previous structure was dry stacked sandstone blocks with large openings to allow wave energy to dissipate.
- The structure should be constructed upon piers as to not impact upon natural foreshore processes.

- The boat shed is out of character with traditional, timber boat sheds due to materials, bulk and scale of the boatshed.
- Existing use rights abandoned, as the structures now demolished. Council should carefully review the issues of existing use rights.
- Public foreshore access to be maintained.
- Council should require removal of the as built dintel walls.

The matters raised within the submissions are addressed as follows:

- ***Objection to the increase in the size of the base of the boat shed (in particular the southern side of the footprint) including any reclamation of additional land and filling of land. Any enlargement subsequently impacting on the foreshore environment and processes including degradation of the beach area to the south. The design of the concrete seawall will negatively impact the coastal process, the previous structure was dry stacked sandstone blocks with large openings to allow wave energy to dissipate.***

Comment

The plans have since been amended to reduce the extent of the boat shed platform, particularly at the southern side of the boat shed. This was also at the request of DPI Fisheries who advised 'no additional reclamation of land' would be supported. The applicant has submitted amended plans reducing the size of the platform, to remain generally consistent with what previously stood on the site. In this regard, DPI Fisheries reviewed the amended plans and supported the application. The area of land designated to the boat shed is also consistent with what is considered to be the unit of land to which existing use rights relate.

Council's Coastal and Catchments team have reviewed the development with regards to impact upon the coastal processes and are satisfied based on the amended design which minimising adverse impacts on coastal processes. The application is supported by Coastal and Marine Damages Report which makes an assessment of longshore drift and concludes that impacts upon the beach to the south of the boat shed have been minimised. Council's Coastal and Catchments Team have reviewed the report and are satisfied.

The design of the seawall was amended to include a stepped sandstone wall that allows for wave energy dissipation, an improved and satisfactory outcome in comparison to the previously proposed non-stepped wall and the dintel walls which exist on the land which are to be demolished.

- ***The structure should be constructed upon piers as to not impact upon natural foreshore processes.***

Comment

The previous boat shed which sat on the land was not constructed on piers. The new design uses the same area of land to support the boat shed to allow the existing state of the foreshore to be maintained, with the area accommodating a boat shed since at least 1947.

The design is supported by DPI Fisheries with regards to marine habitat and the design of the seawall. Council's Coastal and Catchments team are also satisfied the proposal will not give rise to unreasonable impacts upon the foreshore processes.

In this regard, the proposal is suitable for the site given the existing circumstance and historical use of the land for the previous boatshed.

- ***The boat shed is out of character with traditional, timber boat sheds due to materials, bulk and scale of the boat shed. Structure should be no larger than previous footprint and Council should require compliance with 4m LEP height.***

Comment

The boat shed uses timber columns and stone finishes, with glazed doors which allows the landscape to be viewed through the structure. This modern interpretation of a boat shed is common for the Pittwater area and the materials uses are consistent with modern boat sheds in the area (largely stone and timber).

The height is assessed against the requirements of the PLEP 2014 under the Clause 4.6 request and found to be acceptable. The footprint of the boat shed itself would be required via condition to be reduced slightly to ensure it is the same size of the previous structure which stood on the site (6.2m x 9.2m).

- ***Existing use rights abandoned, as the structures now demolished. Council should carefully review the issues of existing use rights.***

Comment

Existing use rights are discussed in detail elsewhere within this assessment report. Council is satisfied existing use rights continue to apply to the land.

- ***Public foreshore access to be maintained.***

Comment

The issue of public foreshore access is discussed throughout the report. Council is satisfied that foreshore access is maintained around the boatshed structure and consistent how the foreshore area has been historically used and accessed when the previous boat shed occupied the land.

- ***Council should require removal of the as built dintel walls.***

Comment

The dintel walls are nominated for removal on the plans and the seawall is to be constructed with sandstone blocks, in accordance with requirements of DPI Fisheries and Council's Coastal and Catchments team.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported subject to conditions This application is for the partial demolition of existing boat shed structures, and the construction of new boat shed, timber jetty, stairs, ramp and slipway. Councils Landscape Referral section has considered the application

Internal Referral Body	Comments
	against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls: - B4.22 Preservation of Trees and Bushland Vegetation. - C1.1 Landscaping. - D3.11 Landscaped Area - Environmentally Sensitive Land. The Statement of Environmental Effects provided with the application notes that no trees shall be removed as a result of the proposed works. This is confirmed on the Architectural Plans as no existing vegetation has been indicated for removal. It is noted that there are some large, significant canopy trees located at the rear of the property close to the proposed works. The works are unlikely to have an impact on these existing trees, however care shall be taken during excavation and construction works, as well as the delivery and removal of material from the site to ensure that these trees are protected accordingly. The protection of these trees are necessary to satisfy control B4.22 and D3.11, as key objectives of these controls seek to <i>"protect and enhance the scenic value and character that trees and bushland vegetation provide"</i>, and to ensure <i>"the bulk and scale of built form is minimised"</i>. The landscape component of the proposal is therefore acceptable subject to the protection of existing trees.
NECC (Bushland and Biodiversity)	Supported subject to conditions This application is for the partial demolition of existing boat shed structures, and the construction of new boat shed, timber jetty, stairs, ramp and slipway. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) - Coastal Environment Area Pittwater Local Environmental Plan (PLEP) - 7.6 Biodiversity Protection Pittwater Development Control Plan (PDCP) - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Internal Referral Body	Comments
	The application does not require the removal of native vegetation and is unlikely to indirectly impact upon nearby biodiversity values. The Landscape Referral response addresses the concerns of the Natural Environment Unit - Biodiversity. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	Supported with conditions <u>Further comments 3/09/21</u> Revised information and plans have been supplied. These have been considered and adequately address outstanding matters subject to conditions being applied. Supported subject to conditions. <u>Further comments 22/07/21</u> It is noted a revised plan has been submitted in response to concerns from Council and Fisheries in regard to the footprint and design of the seawall component of the structure. A number of dot points have not yet been addressed adequately: - A footprint that is similar to the original structures - No reclamation of waterfront land for private development - Provision of public access along the foreshore The application has been assessed in consideration of - Coastal Management Act 2016 - State Environmental Planning Policy (Coastal Management) 2018 - Pittwater LEP 2014 - Pittwater 21 DCP Further, the application has been assessed in consideration of the following: - No navigational concerns from the Transport for NSW-Maritime Division dated 10 May 2021 enclosing dated and signed maps - Refusal from the DPI-Fisheries under the Department of Primary Industries dated 29 March 2021 - Absence of current Consent to lodge DA from the Department of Crown Lands under the NSW Planning, Industries & Environment - Absence of current Consent to lodge DA from Northern

Internal Referral Body	Comments
	Beaches Council The proposal as submitted is not supported due the likely impacts on access along the public foreshore and likely impacts on the marine environment as noted in the Marine Habitat Survey report submitted with the application and the DPI Fisheries response to this proposal. These impacts are inconsistent with the above listed planning controls and legislation. Any application for a boatshed, ramp, slipway, concrete jetty, timber jetty & steps and berthing area at this site requires concurrence from DPI fisheries and must satisfy the following matters: - A footprint that is similar to the original structures - No reclamation of waterfront land for private development - A proposal that is in accordance with the Environmentally Friendly Seawalls Guideline (OEH 2009) - Provision of public access along the foreshore - Address potential impacts to marine habitat
NECC (Riparian Lands and Creeks)	Supported subject to conditions <u>Additional comments 22/07/21</u> See coastal referral comments which cover all of the below. <u>Additional comments 17 June 2021</u> An assessment has been undertaken considering the additional information provided. The application has been assessed in consideration of - Coastal Management Act 2016 - State Environmental Planning Policy (Coastal Management) 2018 - Pittwater LEP 2014 - Pittwater 21 DCP Further, the application has been assessed in consideration of the following: No navigational concerns from the Transport for NSW- Maritime

Internal Referral Body	Comments
	Division dated 10 May 2021 enclosing dated and signed maps Refusal from the DPI-Fisheries under the Department of Primary Industries dated 29 March 2021 Absence of current Consent to lodge DA from the Department of Crown Lands under the NSW Planning, Industries & Environment Absence of current Consent to lodge DA from Northern Beaches Council The proposal as submitted is not supported due the likely impacts on access along the public foreshore and likely impacts on the marine environment as noted in the Marine Habitat Survey report submitted with the application and the DPI Fisheries response to this proposal. These impacts are inconsistent with the above listed planning controls and legislation. Any application for a boatshed, ramp, slipway, concrete jetty, timber jetty & steps and berthing area at this site requires concurrence from DPI fisheries and must satisfy the following matters: - A footprint that is similar to the original structures. - No reclamation of waterfront land for private development. - A proposal that is in accordance with the Environmentally Friendly Seawalls Guideline (OEH 2009). - Provision of public access along the foreshore. - Address potential impacts to marine habitat. This application cannot be assessed due to lack of supporting information and documentation. To adequately assess any risks the proposed works may have to aquatic biodiversity in the area, Council requires, in compliance with section B4.19 Estuarine Habitat of the Pittwater DCP, a Marine Habitat Survey / Aquatic Ecology Report for all works below the mean high water mark. The report must consider controls in both section B4.19 Estuarine Habitat and section B4.16 Seagrass Conservation, and include recommendations to minimise any impacts to seagrass and biodiversity from sediment and erosion, physical disturbances and potential pollution during the demolition and construction phases. A Caluerpa Management Plan may also be required if this noxious macroalgae is found to be located in the vicinity of the subject site. Section B4.16 further states that jetties, ramps, wharves, pontoons and other in-stream structures shall be designed and constructed in accordance with NSW Department of Primary Industries - Fisheries specifications to maximise light filtration to seafloor. Proponents are advised to consult with NSW DPI - Fisheries to discuss the requirements of their proposal. A copy of the Aquatic Ecology Report should be provided to NSW DPI - Fisheries and as integrated development, all relevant approvals and permits from NSW DPI - Fisheries will also be required.
Parks, reserves, beaches,	

Internal Referral Body	Comments
foreshore	Supported subject to conditions The proposed development can be supported with conditions.
Property Management and Commercial	Supported subject to conditions The proposal is for demolition works and construction of a boatshed, ramp, slipway, jetty & steps on Council land. Property has no objection to the proposal subject to the conditions contained in the Parks, Reserves and Foreshores Referral Response dated 17/02/2021, in particular the condition relating to the executing of a licence for the use of Council land prior to the issue of a Construction Certificate.

External Referral Body	Comments
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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 a boat shed associated with the residential use of the land 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 proposed land use.

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

The proposal is not located on land containing coastal wetlands or littoral rainforest.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposal is not located on land in proximity to coastal wetlands or proximity to littoral rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment

The proposal is not located on coastal vulnerability land.

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 application is accompanied by a Marine Habitat Survey which concludes that the proposal will not have a detrimental impact on marine habitat, including any seagrasses.

The application is supported by DPI Fisheries who also conclude that the proposal will not have an unacceptable impact on marine habitat and the design of the new seawall is acceptable with regards to marine habitat.

The area on which the proposed boat shed sits is not an 'undeveloped' rock platform, as there has historically been a boat shed and associated structures in this location as evident by the material supplied by the applicant, a visual site inspection and existing use rights applying to the land. The design of the boat shed uses materials sympathetic to the foreshore location using sandstone finishes, timber supporting posts and glazing to allow the landscape to be viewed through the structure itself. The structure is not adjacent to any known Aboriginal heritage sites and is in the same general footprint

of where the previous structure stood.

The proposal allows continuous foreshore access around the perimeter of the boatshed and provides stairs at the southern edge of the structure where there is a level change between the platform and the beach.

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

Comment

Council is satisfied the proposal has been designed to minimise and avoid the impact to the matters listed in (1) above.

14 Development on land within the coastal use area

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

Comment

Subject to condition, the design of the boat shed will be of a similar scale to the boat shed which previously stood on the land, as to not further detract from the scenic qualities of the foreshore area. The materials and finishes selected for the new boat shed are sympathetic to the surrounds and improve upon the previous dilapidated structure that previously stood in the location. The proposal is not within any areas of known Aboriginal heritage and the structure is in the location of previously disturbed areas of rock platform.

Continuous foreshore access is provided around the boat shed structure and does not further inhibit foreshore access when compared to the boatshed which previously stood in this location. Foreshore access is provided around boatshed and access stairs provided to the southern beach to account for level changes between the beach and platform.

Council has considered the matters listed in (a) and is satisfied the development has been design to avoid and minimise impact. Council has taken into consideration the surrounding built environment and the existing size of the boat shed structure which once stood on the land in assessing the bulk and scale of the development.

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

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

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

Comment

The proposal is not considered to cause in increase in risk of coastal hazards. The application is accompanied by a Estuarine Risk Management Report which concludes the boat shed and associated structure will result in an acceptable level of risk to life, property and the foreshore area.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C2 : No Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C2 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.3 - Height of Buildings	4m* - W1 Zone 8.5m - E2 Zone	5.35m* 5.7m from NGL	34%	No Yes

*Height of buildings measured from 1.17 AHD which is the Highest Astronomical Tide where the building is located behind the MHWM.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	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

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m
Proposed:	5.35m
Percentage variation to requirement:	34%

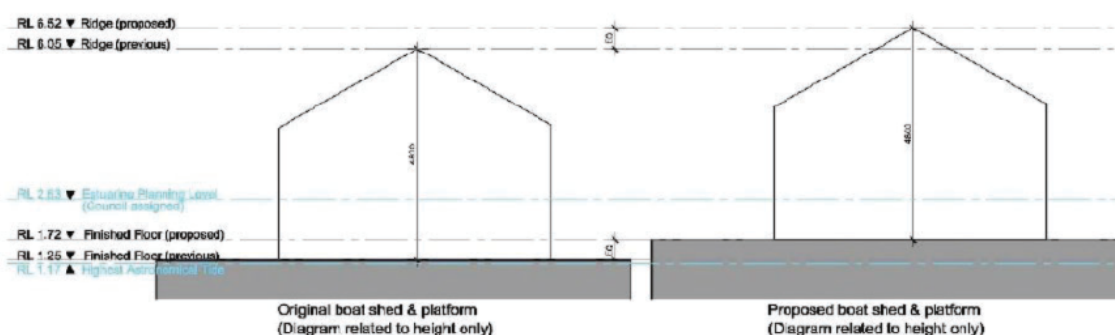


Figure 1 - Applicant's diagram of height of boatshed relative to highest astronomical tide. Left showing previous (now demolished) boatshed, right showing proposed.

Assessment of request to vary a development standard

With regards to existing use rights applying to the development, it has been established in the Land and Environment Court in *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 that a Clause 4.6 variation request is required if the development exceeds the height of buildings development standard.

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

Clause 4.6 Exceptions to development standards

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

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

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

Comment

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of

this clause.

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

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

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

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

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

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

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

Comment

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

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

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

Comment

In the matter of *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.

Applicant's Written Justification

The applicant's written request argues, in part:

Variation

- *Part 4, Clause 4.3 – Heights of Buildings, of the PLEP restricts the height of a building in the W1 Zone to a maximum of 4m.*
- *This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.*
- *NBC interprets the height of waterfront structures to be measured from the highest astronomic tide level which equates to RL 1.17 AHD.*
- *Under this interpretation the highest permissible height of a waterfront structure shall be 1.17 + 4.0 = 5.17 AHD.*
- *The height of the previous boatshed above its platform was 4.8m at a Relative Level of 6.05.*
- *The height of the new structure above its platform is proposed to be 4.8m at RL 6.52*
- *The level of the previous platform was RL 1.25*
- *The level of the proposed platform is RL 1.72*
- *The height of the original structure and that of the new structure is 4.8m*
- *The platform has had to be raised to accommodate the NBC Estuarine Planning Level.*
- *The proposal seeks a variance to the PLEP standard of 1.35m that being 5.35m above the highest astronomical tide level.*

Pittwater DCP

D15.15 Cl(c)(ii) states that:

"Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built"

D15.15 Cl(c)(vi) states that:

"The minimum floor level for proposed boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway"

B3.9 Estuarine Hazard – states that: Floor Levels - Boat shed Facilities

"New boat shed: All floor levels shall be at or above the Estuarine Planning Level"

The proposal seeks a variance to:

- PDCP D15.15 Cl(c)(ii) of 0.3m in height above the platform as per its original height.
- PDCP D15.15 Cl(c)(vi) of – 0.91m in the height of the platform below the Estuarine planning level for the site.

Variations to B3.9.

“Consideration may be given on a merit basis to a floor level of a boat shed at a level lower than the Estuarine Planning Level where it can be demonstrated through an Estuarine Risk Management Report that the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the Estuarine Planning Level.” An Estuarine Risk Management Report has been prepared by Royal Haskoning DHV and is attached to the subject development application.

The report endorses NBCs estuarine planning level of RL 2.63 and conditionally supports the proposed variance in this circumstance to the level of RL 1.72. By right of compliance with the requirements of

B3.9 of the DCP the level of the proposed boatshed platform has been set at RL 1.72 which is 0.55m above the highest astronomical tide height of RL1.17.

The zoning of the land

E2 Environmental Conservation – landward of the mean high-water mark.

W1 Natural Waterways – Seaward of the mean high-water mark (4m height limit)

This application relates to the W1 portion of the site as the proposed boatshed sits well below the building height control in the E2 zone.

a. OBJECTIVES OF THE ZONE

Zone W1 - Natural Waterways

1 Objectives of zone

- To protect the ecological and scenic values of natural waterways.

Comment: The proposed increase in height of the boat shed and lowering of the platform floor

- To prevent development that would have an adverse effect on the natural values of waterways in this zone.

Comment: The proposed increase in height of the boatshed and lowering of the platform floor

- To provide for sustainable fishing industries and recreational fishing.

Comment: The proposed increase of the boatshed and the lowering of the platform floor level

- To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.

Comment: The proposed increase in height of the boatshed and lowering of the platform floor

- To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

Comment: The proposed increase in boatshed height and lowering of the platform level will no

Development Standard objectives

PLEP 4.3 Height of buildings

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

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

Comment: The gabled boatshed has been integral to the character of Pittwater since settlement of the area. A boatshed of similar scale has existed on the site since at least 1947. The proposed boatshed is consistent with the form of many other boatsheds in the locality.

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

Comment: The proposed boatshed is consistent with the height of the previous boatshed and many other boatsheds in the locality.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The proposed boatshed will not cause any overshadowing of neighbouring properties.

(d) to allow for the reasonable sharing of views,

Comment: The proposed boatshed will not cause any view loss to surrounding properties.

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

Comment: The proposed boatshed has been designed to sit sensitively in its topographic setting. As opposed to the previous boatshed the proposed boatshed will have a lower roof angle and broader eaves that in combination will emphasise the horizontal rather than vertical form.

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

Comment: The proposed boatshed will provide better fit with the natural environment than that of its predecessor and will have no impact on any heritage conservation area or heritage item.

The proposed increase in height is consistent with the objectives of the zone and the development standard.

HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE.

The Land and Environment Court has provided guidance as to the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

OBJECTIVES OF THE DEVELOPMENT STANDARD – THE FIRST WAY

The proposed structure is consistent with the objectives of the height of building controls in the PLEP and the DCP21.

While there are tensions between these instruments in as much as the PLEP sets a height of 4 metres, measured by NBC above the highest astronomical tide level and the DCP21 that sets the height at 4.5m above the platform, which is to be set at the site-specific estuarine planning level, the objectives of each instrument are similar and are met by the proposal.

The proposed boatshed is consistent with the desired character of the locality and that of nearby boat sheds.

It will not overshadow or block any views and the amendments to the original design will see it sit sensitively into the landscape thus improving its visual impact on the area.

As the proposed development achieves the objectives of the control it is not necessary or reasonable to require the rebuilt structure to comply with the current standards.

EXISTING USE – THE SECOND WAY

In his Memorandum of Advice Ian Hemmings SC found that lawful existing use has been established and that it has not been abandoned with respect to the proposed development.

Under part 5 Clause 41 of the EP&A Regulation:

41 Certain development allowed (cf clause 39 of EP&A Regulation 1994)

(1) An existing use may, subject to this Division:

- (a) be enlarged, expanded or intensified, or*
- (b) be altered or extended, or*
- (c) be rebuilt, or*

Clause 41(1)(c) enables a development that has established existing use to be rebuilt. As the boat shed use was erected well before the relevant date on which the current planning instruments came into force it is not necessary or reasonable to strictly apply the consequent development standards to the proposal.

SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS.

Sufficient environmental planning grounds as defined by the relevant clauses of Section 1.3 of the EP&A Act have been achieved to justify the contravention of the standard.

The objectives of the standards are met despite the non-compliance patent in the design.

PUBLIC INTEREST

A boatshed and its associated structures:

- *Have existed harmoniously on this site since at least 1947.*
- *Supported and helped form the beach and local estuarine systems in the decades since they were built.*
- *Have established the local boatshed aesthetic of the area and Pittwater in general.*

The resetting of the platform level to meet Council requirements and the maintenance of the height of the prior structure will see the area returned to its former aesthetic.

The structures will help maintain the beach and its estuarine systems.

With the above in mind Council can be satisfied that the proposal is in the public interest as it restores the prior pattern of development, is beneficial to the maintenance of the beach and meets the objectives of the relevant instruments

Council's Comment

The arguments made by the applicant are generally agreed with, insofar as the height of the boat shed relative to the platform on which it sits is consistent with the previous boatshed which sat on the land. The increase in height relative to the water level is a result of the increased platform height that is needed to increase the height of the platform, relative to the estuarine planning level to ensure the reasonable protection of property and the structure itself. The boatshed is considered to be of good design, uses materials sympathetic to the locality and is generally consistent with the boatshed which previously occupied the land, for which existing use rights have been established.

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 W1 Natural Waterway zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment

The boat shed replaces a previous structure of similar height and scale, that stood on the land for a significant period of time. The DCP sets out the desired height of boat sheds relative to the platform level of 4.5m, with the proposal being 4.8m relative to the platform level which is not inconsistent with the general envisaged height of boat sheds under the DCP.

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

Comment

The boat shed is consistent with the height of the previous structure on the land as explained above. There is one boat shed 80m south of the site, however boat sheds are not prevalent in the immediate visual catchment of the site. Therefore, the most relevant comparison is the previous design which once stood on the site.

c) to minimise any overshadowing of neighbouring properties,

Comment

Will not overshadow private property, acceptable overshadowing of foreshore area.

d) to allow for the reasonable sharing of views,

Comment

Will not impact views from privacy properties.

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

Comment

The building sits upon an improved platform that previously consisted of a concrete and rock rubble platform. The new design is built to be consistent with the guidelines for seawalls and has a footprint generally consistent with what previously existed on the site.

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

Comment

The proposal makes use of quality materials that blend into the landscape, including timber posts and sandstone finishes. The building is considered sympathetic to the environment and locality, not inconsistent with the modern boatsheds throughout the Pittwater.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone are:

- ***To protect the ecological and scenic values of natural waterways.***

Comment

The boat shed has been designed to meet the requirements of DPI Fisheries, Council's Coastal Team and use a material palette that is sympathetic for the environment. The boat shed replaces a former boatshed in the same location and therefore is not considered to further detract from the scenic value of what has historically been in the location.

- ***To prevent development that would have an adverse effect on the natural values of waterways in this zone.***

Comment

The development is found to not result in unacceptable impacts on the natural environment including foreshore processes, marine habitat and seagrasses, as assessed by DPI Fisheries and Council's relevant riparian, coastal and biodiversity experts. The rebuilding of the boat shed in the same location will not give rise to additional impacts and will resolve the previously dilapidated state of structures.

- ***To provide for sustainable fishing industries and recreational fishing.***

Comment

Not applicable to the proposal.

- ***To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.***

Comment

The application is accompanied by a Marine Habitat Survey that concludes the proposal will not have detrimental effects to marine habitat or seagrasses. The application does not involve the removal of any trees. The proposal maintains an appropriate outcome with regards to these environmental requirements. Crown Lands has issued Land Owners Consent for the structures

seaward of the mean high water mark and a letter has been provided from Transport for NSW advising no navigational issues with the proposal.

- **To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.**

Council is satisfied that reasonable public access is maintained around the boatshed and does not further inhibit public access around the foreshore when compared to the structures which previously sat on the land. The proposal allows the continued use of the waterway for private access where it has historically been used for the purpose of a boat shed and maritime structures.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterway zone.

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

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

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

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 can be dealt with through a Waste Management Plan, which could form a condition should consent be granted.

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

propertiesComment

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

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

The excavated material can be dealt with through a Waste Management Plan, which could form a condition should consent be granted.

(f) the likelihood of disturbing relicsComment

The site is not mapped as being a potential location of Aboriginal or other relics. A condition could be included for unexpected finds, should consent be granted.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive areaComment

The proposed development has been considered by DPI Fisheries, Council's Riparian, Coast & Catchments and Biodiversity teams, who are each satisfied the proposed development will not result in adverse impacts to the environment or environmentally sensitive areas.

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

The proposed design is considered to have minimised impacts of the development, whilst retaining the existing use rights of the proponent. Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

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

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:***(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and***

- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land*

Comment

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land.

- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development*

Comment

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid and minimise the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.*

Comment

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

Comment:

The proposed development is supported by an estuarine risk management report (which makes an assessment based of the proposal specific to the foreshore location), geotechnical risks forms (in accordance with Council's Geotechnical Risk Policy, prepared by a geotechnical engineer) and architectural plans that demonstrate all geotechnical risks have been taken into account, relative to the foreshore area of the boatshed.

The application has been reviewed by Council's Coast and Catchment Team who are satisfied of the proposal, subject to conditions.

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

Comment

The proposed foreshore location means that storm water will be directed off the structure into the Pittwater Waterway, with no on-site detention or the like required given the location and size of the structure.

(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 Coast and Catchments Team, who is supportive of the proposal, subject to conditions of consent. The application is accompanied by a Estuarine Risk Management Report which prepared by a suitably qualified engineer, which is specific to the foreshore location and makes recommendations to ensure the structure adequacy of the boatshed is achieve to mitigate risk to life and property.

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.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment

The proposed development is for a boat shed, sea retaining wall, slipway, jetty and waterway access stairs.

Development consent must not be granted under this clause unless the consent authority is

satisfied that:

(a) the development will contribute to achieving the objectives for the zone in which the land is located

Comment

The application is reliant upon existing use rights, which is discussed in further detail elsewhere in this report. However, the proposal is considered consistent with the objectives of the W1 Natural Waterways Zone, in particular *"To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore"*, *"To protect the ecological and scenic values of natural waterways"* and *"To prevent development that would have an adverse effect on the natural values of waterways in this zone"*. The structure makes use of timber, sandstone and glazing to provide material palette sympathetic to the area and allows the structure to blend into the surrounds. For the reasons outlined within the assessment report, including the consideration by Council's Biodiversity Team, Coast and Catchment Team and Riparian Team, the application is consistent with the zone objective of the E2 Environmental Conservation zone, in particular *"To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, groundwater resources, biodiversity corridors, areas of remnant native vegetation and dependent ecosystems."*

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

Comment

The structure uses a footprint that is generally consistent with the previous boatshed which once stood in the location and uses stone, timber and glazing to create a relatively lightweight structure in appearance that is sympathetic in the foreshore area and consistent with the styles of boatsheds common along the Pittwater Foreshore.

- ***the development will not cause environmental harm such as:***
 - i ***pollution or siltation of the waterway, or***
 - i ***an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or***
 - i ***an adverse effect on drainage patterns, or***
 - i ***the removal or disturbance of remnant riparian vegetation, and***

Comment

The application has been considered by Council's Coast and Catchments Team, Riparian Team, Biodiversity Team and DPI Fisheries. The application is accompanied by a Marine Habitat Survey which concludes the proposal will not have an adverse impact to the aquatic environment or biodiversity value of the site. Council's relevant referral experts and DPI Fisheries are satisfied the proposed development will not cause any unacceptable environmental harm.

- ***the development will not cause congestion or generate conflict between people using open space areas or the waterway, and***

Comment

The proposal demonstrates continuous foreshore access will be available around the boatshed structure. The area around the boatshed is sufficient for safe and practical public access. The

application is supported by the TfNSW who have advised they have no navigational issues with the proposal.

- ***opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and***

Comment

The proposal will allow for continual public foreshore access, as demonstrated on the plans. Members of the public can traverse around the rear or the front of the boatshed structure and any changes in level have been accommodated by access stairs. Access stairs are provided on the southern edge due to the level change between the beach and boatshed platform, whilst on the northern site the levels match the existing rock shelf.

- ***any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and***

Comment

There are no heritage items or known Aboriginal sites in the immediate vicinity of the site. The application has demonstrated there will be no unacceptable impacts on the natural environment.

- ***in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and***

Comment

The proposal is to rebuild an existing boat shed which once stood in the location of the previous boatshed. The materials selection is considered to give an improved visual appearance to the boat shed, with the previous structure dilapidated and affected by tidal inundation.

- ***sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.***

Comment

The boat shed platform has been set at an appropriate Estuarine Planning Level to account for climate conditions and sea level rise.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- **continuous public access to and along the foreshore through or adjacent to the proposed development,**
- **public access to link with existing or proposed open space,**
- **public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,**
- **public access to be located above mean high water mark,**
- **the reinforcing of the foreshore character and respect for existing environmental conditions.**

Comment

The proposed development will retain continuous public access to and along the foreshore. It is noted that the area is relatively difficult to access and mostly services the adjoining properties along Hudson Parade. The plans nominate the intended path of public access around the rear of the boat shed, however, access across the front of the boat shed is also possible. Stairs have been provided at the southern edge to account for the level change between the beach and the boat shed platform, whilst on the northern side the boat shed platform generally meets the existing rock shelf (40mm level change). The stepped sandstone blocks around the boatshed also provide informal steps/access between the beach and boat shed platform.

The area in which the boat shed is proposed has historically been used as the boat shed, as evident by the boat shed and associated structures which previously stood in the location. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes
D15.18 Seawalls	Yes	Yes

Detailed Assessment

D3.2 Scenic protection - General

The proposed design of the boatshed is considered against the outcomes of the control as follows:

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

Comment

The relevant part of the Bilgola Locality Statement for the Pittwater Foreshore Area includes:

"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 the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment".

The proposed boat shed uses solid timber columns, sandstone finished walls and glazing which is considered to be sympathetic to the area and in harmony with modern examples of boatsheds on the Pittwater Foreshore in the surrounding area, which compliment the architectural style of the locality. The glazing allows the trees and the landscape to be viewed through sections of the boatshed and gives the structure a lightweight feel. The building will be below the height of the canopy trees which sit behind the structure.

- ***Scenic bushland and geographical landforms are the predominant features of Bilgola with the built form being the secondary component of the visual catchment.***

Comment

The materials selected allow the boat shed to blend into the background and the glazing allows the landscape to be viewed through sections of the boatshed. The proposal will sit well below the ridgeline behind and is of a design and footprint generally consistent with the previous boat shed which once stood in its location.

- ***Preserve scenic quality as part of the recreational amenity.***

Comment

The boat shed is intended to enhance the recreational use of the land for the owners, whilst still allow public foreshore access around the boatshed for members of the public who are exploring the foreshore area. Given the proposed boatshed replaces the long standing previous boatshed, the use of the land is consistent with how it has historically been used for recreational purposes.

Overall, the proposed boat shed is of good design, of a scale and size generally consistent with the boatshed which previously stood and will consist of materials that will blend into the landscape. The proposed development is consistent with the aims and objectives of this control.

D15.15 Waterfront development

The rebuilding of the boat shed, slipway, boat ramp, jetty and berthing area permitted under the provisions of existing use rights, as discussed in detail earlier within this report. The application seeks replacement of these structures with levels adapted to meet the requires estuarine planning level of the new boatshed structure.

The design of the structures have been reviewed by DPI Fisheries (General Terms of Approval issued), Transport for NSW (who raised no concern with navigational issues) and Council's Coast and Catchment teams. The design of the jetty, berthing area, boat ramp and slipway are generally consistent with the design of the previous structures which once stood on the land and are therefore supported. The height of the jetty (1.72AHD, matching the boatshed platform) is 1m above the MHW, consistent with the DCP. The width of the jetty is 2m in accordance with the DCP.

In regards to the design of the boat shed structure itself, the following comments are made:

Height

The planning controls set a maximum height for a boat shed under the PDCC at 4.5m, as measured from the platform on which it sits. The proposed boat shed has a height of 4.8m from the platform, however, this is consistent with the previous design of the boat shed which occupied the land. The maximum building height under the PLEP is addressed earlier in this report. Given the height relative to the platform level is consistent with the previous boat shed on the land, this minor departure from the control can be supported in the context of existing use rights applying to the land.

Boatshed footprint

The PDCC sets a maximum footprint for boat sheds at 4m x 6m. Based on survey data provided for the previous boat shed, the previous boat shed footprint was 6.2m (wide) x 9.2m (long). The proposed boat shed is 6.75m (wide) x 9.745m (long). The proposal is larger than the current DCP guidelines for boat sheds (4m x 6m), with the aim of the PDCC control being to ensure '*Structures blend with the natural environment*' and '*Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway*'. Furthermore, the proposed boat shed is of a size slightly larger than the previous footprint itself. The applicant has put forward that the new boat shed has a comparable internal floor area of the previous structure, due to the structural walls of the new boatshed being thicker and therefore, resulting in a bigger footprint.

However, Council's controls guide the size of boat sheds based on the external dimensions of the building, not the internal floor area. The intent of the control to guide the bulk and scale of the boat shed and the internal floor area is not relevant to this cause. Therefore, Council cannot see any planning basis for supporting a footprint larger than the previous structure on the land which measured 6.2m (wide) x 9.2m (long). In this regard, Council recommends a condition of consent that the external footprint is limited to this size (6.2m (wide) & 9.2m (long)).

D15.18 Seawalls

Council's Coast and Catchment Team, DPI Fisheries and Crown Lands have considered the proposed development with regards to the construction of a new sandstone seawall around the boat shed. The proposed seawall replaces the previous rubble seawall which once stood around the boat shed which supported the area of earth/land on which the boat shed stood. The new seawall has been proposed in accordance with the *Office of Environment and Heritage Environmentally Friendly Seawalls Guide* which includes unbonded, stepped sandstone blocks which allows for habitat for aquatic species. The application is accompanied by Marine Habitat Survey which concludes the proposal will not result in adverse environmental impacts to marine habitat in the proximity of site as a result of the development and the seawall is of a design that is conducive to supporting marine habitat.

The application is also accompanied by a Coast and Marine Damages Report prepared by Coastal Engineers Royal Haskoning which was prepared in respect to a new seawall in this location and any additional impacts over the previous rubble seawall which once stood in the location. The report assess the impact of damages to the foreshore area, coastal processes and the impact to longshore sediment transportation as a result of new seawall. With regards to the construction of the seawall in the location, the report concludes *"While they may have a slightly higher elevation than the former boatshed floor level of 1.2-1.3m AHD, their influence as a groyne on littoral draft (or longshore sediment transport) would exhibit no material difference to that compared to the former boatshed and ramp structures."*

As a rubble seawall has historically been used as the supporting structure around the boatshed in this location, the proposed replacement with a new sandstone block seawall generally consistent with the previous footprint is a reasonable solution given the history of structures associated with land and the expert reports conclude that there will be no unacceptable adverse impacts with regards to coastal processes or marine habitat.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$5,675 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$567,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Summarised Conclusion

The application has been considered with regards to existing use rights and the proposal is accompanied by a sufficient level of detail and supporting evidence to allow Council to be satisfied that existing use rights apply to the land.

The merit issues with regards to the boatshed design have been resolved (subject to a recommendation to require a slight reduction in the external footprint of the boatshed) and the coastal, environmental and estuarine issues resolved to the satisfaction of Council's referral bodies and the DPI Fisheries.

The appropriate owners consent have been received from Council's Property Team and the

Department of Planning - Crown Lands and therefore the application is recommended for approval to the Local Planning Panel.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1762 for Demolition works and construction of boatshed, ramp, slipway, jetty & steps on land at Lot 1 DP 827733, 316 Hudson Parade, CLAREVILLE, Lot 2 DP 827733, 316 Hudson Parade, CLAREVILLE, Lot LIC 559856, 316 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-000, Issue J	6/07/2021	Michael Fountain Architects
DA-001, Issue W	1/09/2021	Michael Fountain Architects
DA-010, Issue I	6/07/2021	Michael Fountain Architects
DA-011, Issue J	6/07/2021	Michael Fountain Architects
DA-012, Issue I	2/07/2021	Michael Fountain Architects
DA-013, Issue I	2/07/2021	Michael Fountain Architects
DA-020, Issue K	6/07/2021	Michael Fountain Architects
DA-021, Issue I	6/07/2021	Michael Fountain Architects
DA-040, Issue A	16/08/2021	Michael Fountain Architects

DA-030, Issue D	09/06/2021	Michael Fountain Architects
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Marine Habitat Survey	April 2021	Bio-Analysis
Estuarine Risk Management Report, Ref PA2731	16 April 2021	Royal Haskoning Australia

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
DPI Fisheries - General Terms of Approval - Ref IDA21/93	2021/515426	16 July 2021

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

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$5,675.00 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 \$567,500.00.

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

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

8. License with Council required to be executed

Prior to issue of a Construction Certificate the proposed license with Council must be executed by both parties.

Reason: To ensure the applicant has complied with the Local Government Act 1993 in regards to having authorised tenure over Council land.

9. Amendments to the approved plans

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

- i The boat shed building shall be amended to consist of a maximum external length of 9.2m and external width of 6.2m. In this regard, the approved boat shed footprint is to match the external dimensions of the boat shed which previously stood on the site.
- i The roof shall consist of a colour no-lighter than mid-grey.

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.

10. **Boundary Identification Survey**

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

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

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

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

11. **Working and Access on Reserves Permit**

Works (undertaken by principal contractors working without Council supervision) on Land owned or managed by Council require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

Reason: public safety and the protection of Council infrastructure.

12. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

13. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.63m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- i All structural elements below 2.63m AHD shall be of flood compatible materials;
- i All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.63m AHD or waterproofed to this level; and
- i The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.63m AHD.
- i All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.63m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.63m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

14. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Royal HaskoningDHV dated 16 April 2021 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

15. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 60years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Royal HaskoningDHV dated 16 April 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

16. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

17. **Decking materials**

Decking and pontoon materials are to provide 50% light transmittance.

Reason: To protect aquatic species and estuarine habitat

18. **Boatshed footings**

Boatshed footings are to be constructed in accordance with updated plans and OEH's 'Environmentally Friendly Seawalls: A Guide to Improving the Environmental Value of Seawalls and Seawall-Lined Foreshores in Estuaries'

Reason: Provide habitat in the intertidal zone.

19. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

20. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Dilapidation Report of Land owned or managed by Council**

A dilapidation report established at the commencement of the works shall contain a survey of pre-existing land features including photographic record of the Land under Council's care control and management adjoining the development, detailing the physical condition of items such as, but not exclusively limited to, physical assets such as crossovers, driveways, footpaths, utilities, furniture, play equipment, trees, gardens, lawn areas, bushland, and any rock outcrops.

This dilapidation report shall be submitted to Council and the Certifying Authority prior to commencement of works, and shall be the basis for rectification of any damage to Council's assets as listed in the Post Construction Dilapidation report submitted prior to the issue of the Occupation Certificate.

Any damage to these assets during the works must be replaced like for like to the satisfaction of the Certifying Authority, and shall be subject to acceptance by Council.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets.

22. **Construction Management Plan**

Prior to commencement of works on site, appropriate environmental site management measures must be in place and incorporate the following throughout demolition and construction:

- i) access to and from the site during construction and demolition,
- ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting,
- iii) methods of loading and unloading machinery and building materials,
- iv) location of storage materials, excavation and waste materials,
- v) methods to prevent material being tracked off the site onto surrounding roadways,

vi) erosion, sediment and dust control measures, and

vii) protection of existing trees and vegetation including the tree protection zone, in accordance with AS 4970-2009 Protection of Trees on Development Sites.

During works, the site management measures set out in the above must remain in place and be maintained until the completion of works.

Construction materials must not be stored on Land owned or managed by Council. Safe pedestrian access free of trip hazards must be maintained at all times on or adjacent to any public access routes connected to Land owned or managed by Council.

Reason: to protect the surrounding environment from the effects of sedimentation and erosion from the site.

23. **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

24. **DPI Fisheries Part 7 permit for dredging, reclamation and to harm marine vegetation**

The proponent must apply for and obtain a Part 7 permit for dredging, reclamation and to harm marine vegetation under the FM Act from DPI Fisheries prior to any works on site.

Reason: To protect aquatic vegetation and estuarine habitat

25. **Approval of Works in Public Beach Reserve**

No works are to be carried out from or within the public beach reserve without the written approval of Council or necessary leases or licenses.

Reason: To ensure no damage is done to the public beach reserve

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

27. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,

- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

28. 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.

29. Protection of Council's Public Assets

Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

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

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

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance. Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately Contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: to protect and/or restore any damaged public asset.

30. **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 to local regulations.

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

31. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

32. **Environmental safeguards and pollution control**

Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.

Reason: To protect aquatic vegetation and estuarine habitat

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

33. **No Weeds Imported On To The Site**

No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

34. **Post Construction Dilapidation Report of Land owned or managed by Council**

Rectification works to Council's assets shall be contained in a Post Construction Dilapidation report submitted to Council prior to the issue of the Occupation Certificate.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets.

35. **Removal of All Temporary Structures/Materials and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.

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

Reason: to protect reserve amenity and public safety.

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

36. **Environmental and Priority Weed Control**

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

Reason: Preservation of environmental amenity.

37. **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.

38. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife in accordance.

39. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.

40. **Maintenance of Public Access**

Public access is to be maintained in accordance with the requirements of the Crown Land License issued for the site.

Reason: To ensure ongoing public access to the adjoining foreshore areas

41. **Maintenance of Public Access**

Public access along the foreshore is to be provided and maintained as shown in the updated Plan Drawings DA-001 received Aug 2021.

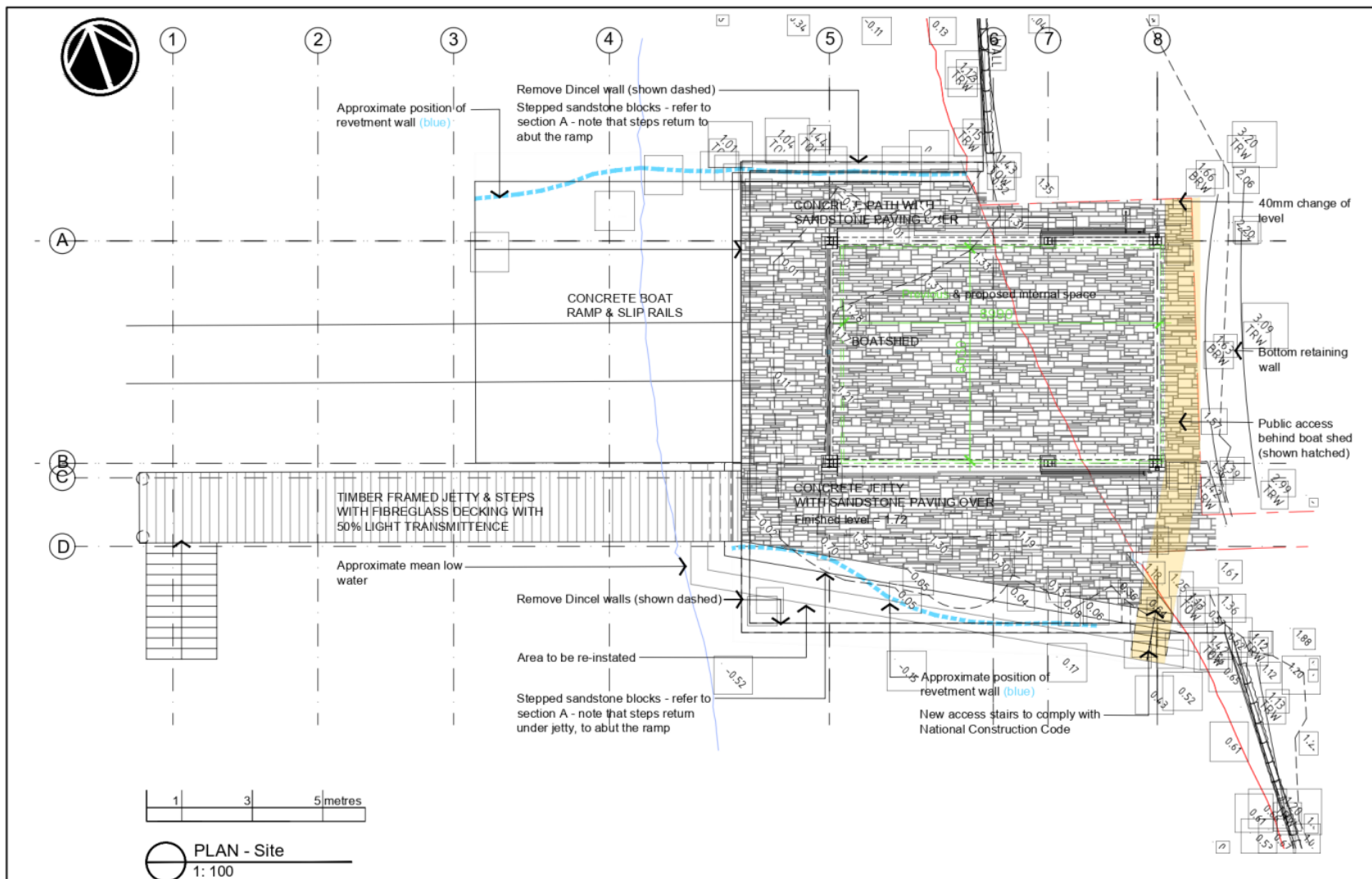
Gates, locks and signage that restrict public access along the foreshore and behind the boatshed are not permitted.

Reason: To allow for public access along the foreshore.

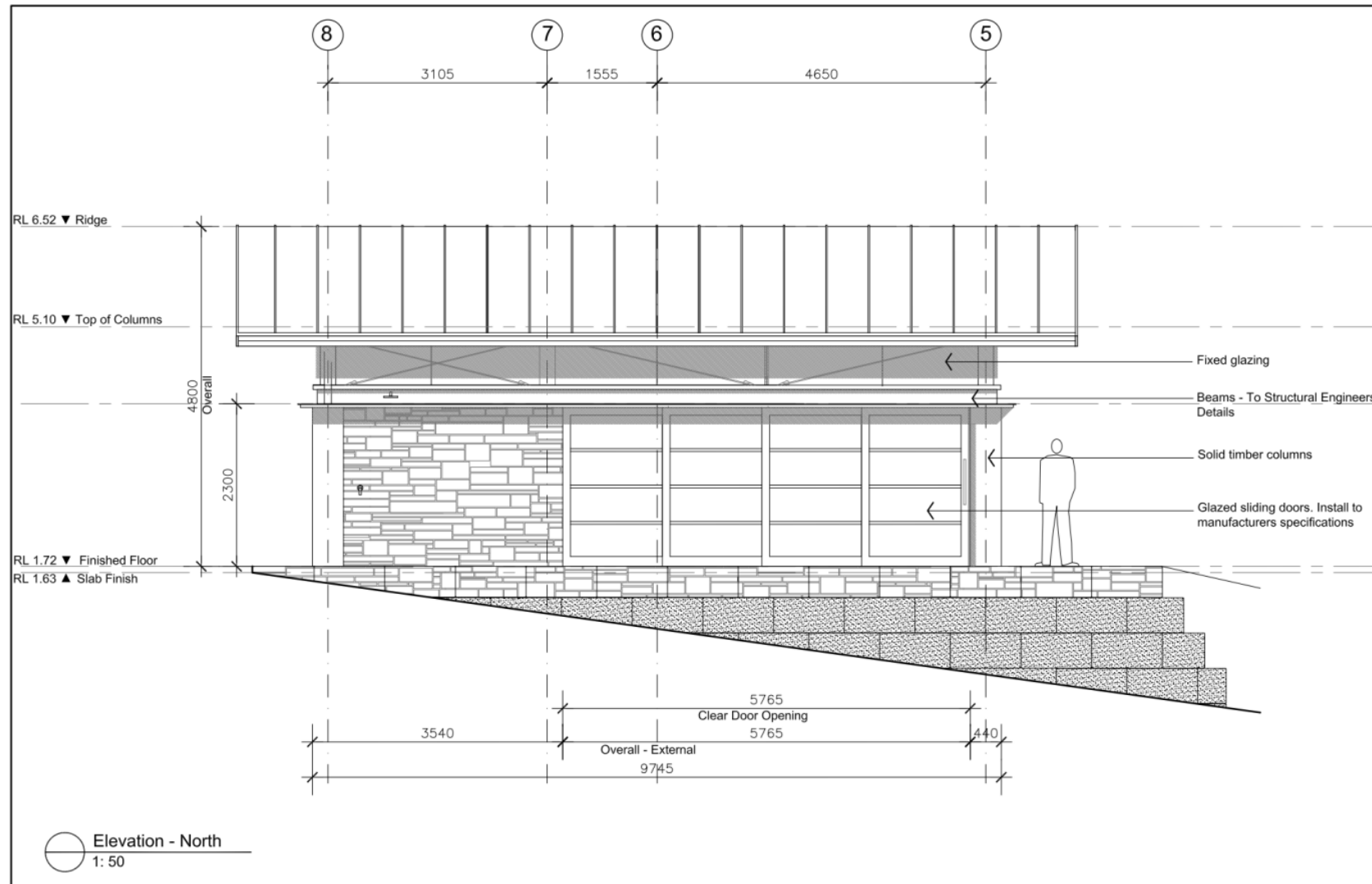
42. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Royal HaskoningDHV dated 16 April 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment and to ensure compliance with section 27 of Coastal Management Act 2016



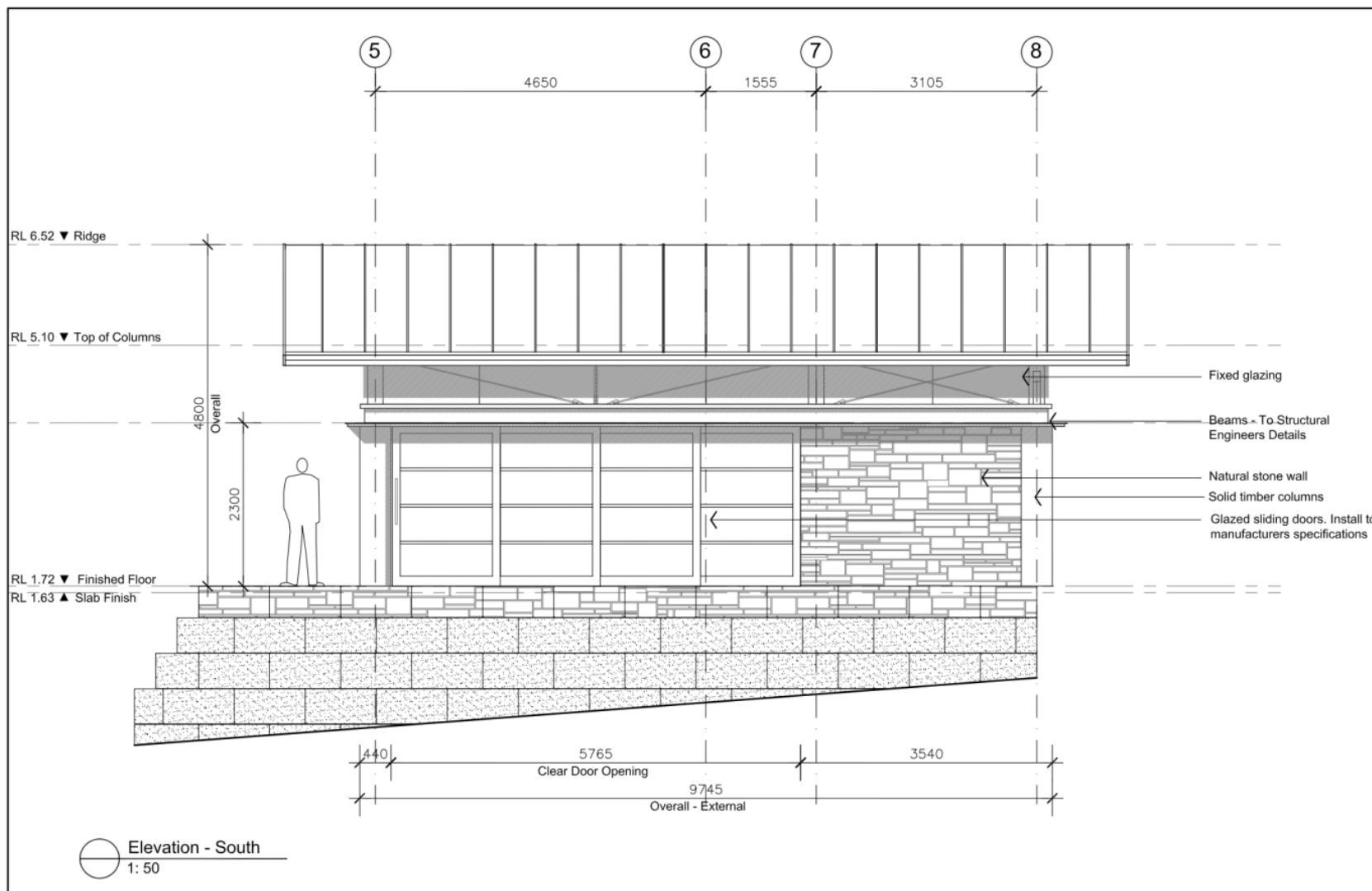
MICHAEL FOUNTAIN ARCHITECTS PTY LTD 17/18 WILSON ROAD - WILSON - NSW 2209 TEL: (02) 9450 3570 FAX: (02) 9450 3571	DATE	23.06.21	THIS DRAWING IS SUBJECT TO COPYRIGHT AND IS NOT TO BE USED OR REPRODUCED FOR PURPOSES OTHER THAN THE CONSTRUCTION OF THE SUBJECT BUILDING ON THE SUBJECT SITE WITHOUT THE CONSENT OF MICHAEL FOUNTAIN ARCHITECT. FIGURED DIMENSIONS TAKE PRECEDENCE. ALL DIMENSIONS ARE TO BE VERIFIED ON SITE PRIOR TO ORDERING ANY MATERIALS AND/OR BUILDING ELEMENTS AND PRIOR TO COMMENCEMENT OF THE AFFECTED WORKS. ANY DISCREPANCIES ARE TO BE REPORTED TO THE AUTHOR IMMEDIATELY. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION UNLESS IT IS ISSUED FOR CONSTRUCTION AND SO MARKED IN THE AMENDMENT COLUMN, AND IS APPROVED AND SIGNED BY THE PRINCIPAL OF MICHAEL FOUNTAIN ARCHITECTS.	Tony Walls Replacement of Marine Structures 316 Hudson Parade Clareville NSW 2107	PLAN - Site + Floor	MICHAEL FOUNTAIN ARCHITECTS PTY LTD 17/18 WILSON ROAD - WILSON - NSW 2209 TEL: (02) 9450 3570 FAX: (02) 9450 3571
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	DATE	06.07.21				
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	DATE	28.07.21				
	DATE	01.09.21				
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	C	Issued for Review	18.08.20			SCALE	DATE	APPROVED	
	D	Issued for 3d	26.08.20			DMS	Sept 2019	DATE FILED IN	
	E	Issued for Development Application	07.12.20			1: 50 @ A3			
	F	Issued for Review	03.06.21			DA NO			
	G	Issued to Council	09.06.21						
	H	Issued for Review	02.07.21			1605	DA-010	i	
	I	Issued for Review	06.07.21						

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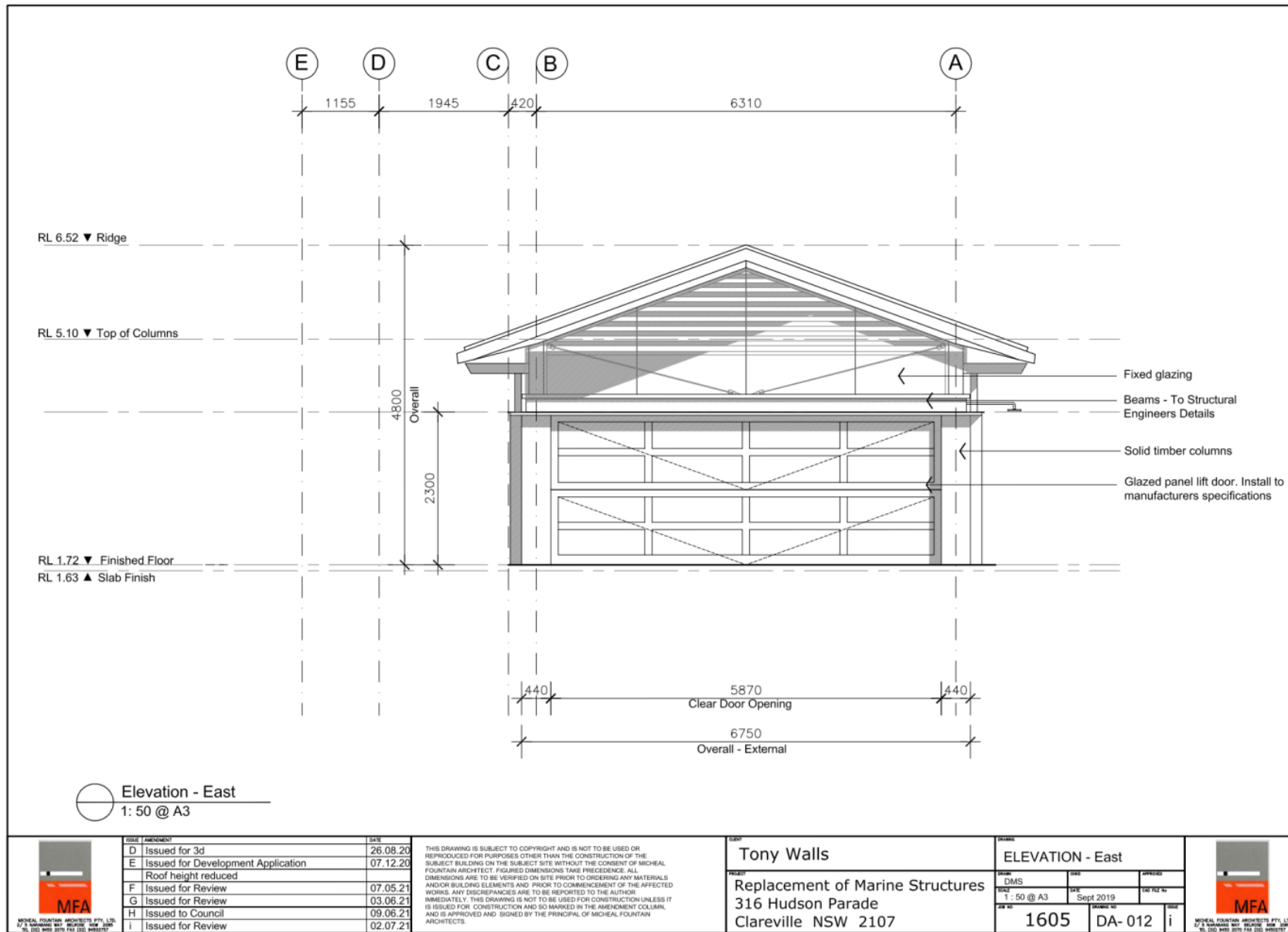
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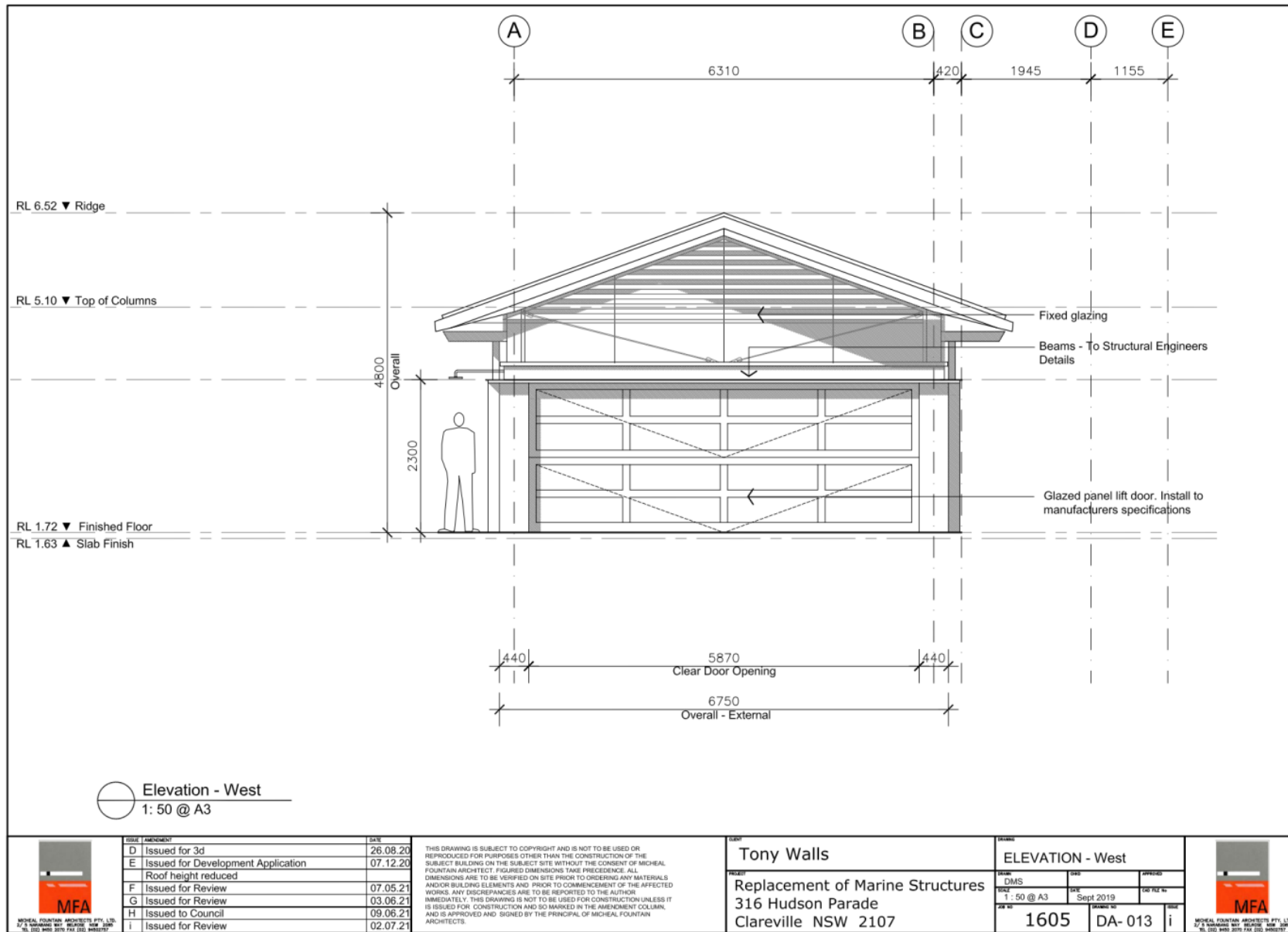


 MICHAEL FOUNTAIN ARCHITECTS PTY. LTD. 27, 4 THURGOOD WAY, PARRAMATTA NSW 2150 TEL: (02) 9450 3570 FAX: (02) 94503577	DATE	DATE	THIS DRAWING IS SUBJECT TO COPYRIGHT AND IS NOT TO BE USED OR REPRODUCED FOR PURPOSES OTHER THAN THE CONSTRUCTION OF THE SUBJECT BUILDING ON THE SUBJECT SITE WITHOUT THE CONSENT OF MICHAEL FOUNTAIN ARCHITECT. FIGURED DIMENSIONS TAKE PRECEDENCE. ALL DIMENSIONS ARE TO BE VERIFIED ON SITE PRIOR TO ORDERING ANY MATERIALS AND/OR BUILDING ELEMENTS AND PRIOR TO COMMENCEMENT OF THE AFFECTED WORKS. ANY DISCREPANCIES ARE TO BE REPORTED TO THE AUTHOR IMMEDIATELY. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION UNLESS IT IS ISSUED FOR CONSTRUCTION AND SO MARKED IN THE AMENDMENT COLUMN, AND IS APPROVED AND SIGNED BY THE PRINCIPAL OF MICHAEL FOUNTAIN ARCHITECTS.	Tony Walls Replacement of Marine Structures 316 Hudson Parade Clareville NSW 2107	ELEVATION - South		
	ISSUED FOR DEVELOPMENT APPLICATION	07.12.20			SCALE	DATE	APPROVED
	Roof height reduced				1: 50 @ A3	Sept 2019	
	ISSUED FOR REVIEW	07.05.21			DA-011		
	ISSUED FOR REVIEW	03.06.21					
	ISSUED TO COUNCIL	09.06.21					
 MICHAEL FOUNTAIN ARCHITECTS PTY. LTD. 27, 4 THURGOOD WAY, PARRAMATTA NSW 2150 TEL: (02) 9450 3570 FAX: (02) 94503577	ISSUED FOR REVIEW	02.07.21					
	ISSUED FOR REVIEW	06.07.21					

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**WRITTEN APPLICATION PROVIDING GROUNDS FOR VARIATION TO DEVELOPMENT STANDARDS
PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

Version 2.

REGARDING RE- BUILDING OF MARINE STRUCTURES ADJACENT TO

316 HUDSON PARADE, CLAREVILLE.

For Mr TONY WALLS, (APPLICANT)

1. OUTLINE – Development Application

This application relates to a development application that seeks Northern Beaches Council (NBC), consent to reconstruct a boatshed and its associated structures under the existing use rights provisions of the EP&A Act and Regulation.

This document will address the provisions of Pittwater Local Environmental Plan, (PLEP), cl4.3 that states that the height of buildings shall be in accordance with the height of buildings map.

The map indicates that the maximum height of a structure on the W1 section of the site shall be 4.0m.

Cl 4.6 of the PLEP allows NBC to grant consent to a development even though it contravenes the PLEP where it can be demonstrated that the standard is unreasonable, unnecessary and that there are reasonable environmental planning grounds to justify the variance.

This document will demonstrate that the height standard is unreasonable and unnecessary in this case and that there are adequate planning grounds to justify the controls variation.

The proposed development will satisfy the objectives of the PLEP, PDGP21 and the relevant state and regional planning policies.

This document will demonstrate that there are sufficient planning grounds to justify the variance , that it will provide a better planning outcome and as such it will be in the public interest.

2. VARIATION

PLEP

Part 4, Clause 4.3 – Heights of Buildings, of the PLEP restricts the height of a building in the W1 Zone to a maximum of 4m.

This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

NBC interprets the height of waterfront structures to be measured from the highest astronomic tide level which equates to RL 1.17 AHD.

Under this interpretation the highest permissible height of a waterfront structure shall be $1.17 + 4.0 = 5.17$ AHD.

MICHAEL FOUNTAIN
ARCHITECTS PTY LTD
2/5 Narabang Way
Belrose NSW 2085
www.mfa.com.au
Tel: 02-9450 2070
Mob: 0418 869 621
ABN: 91 003 962 674

The height of the previous boatshed above its platform was 4.8m at a Relative Level of 6.05.

The height of the new structure above its platform is proposed to be 4.8m at RL 6.52

The level of the previous platform was RL 1.25

The level of the proposed platform is RL 1.72

The height of the original structure and that of the new structure is 4.8m

The platform has had to be raised to accommodate the NBC Estuarine Planning Level.

The proposal seeks a variance to the PLEP standard of 1.35m that being 5.35m above the highest astronomical tide level.

PITTWATER DCP 21, (PDCP)

D15.15 Cl(c)(ii) states that:

"Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built"

D15.15 Cl(c)(vi) states that,

"The minimum floor level for proposed boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway"

B3.9 Estuarine Hazard – states that:

Floor Levels - Boat shed Facilities

"New boat shed:

All floor levels shall be at or above the Estuarine Planning Level.

The proposal seeks a variance to:

PDCP D15.15 Cl(c)(ii) of 0.3m in height above the platform as per its original height.

PDCP D15.15 Cl(c)(vi) of – 0.91m in the height of the platform below the Estuarine planning level for the site.

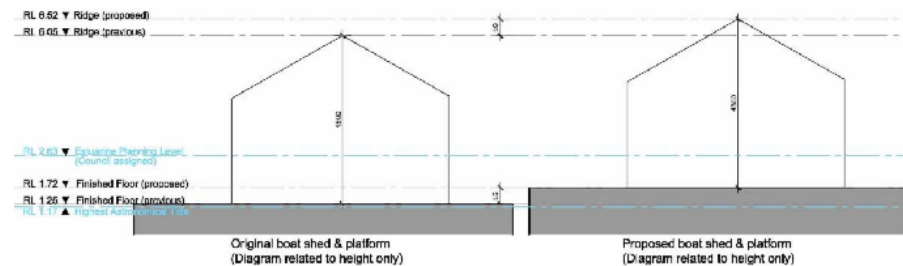
Variations to B3.9.

"Consideration may be given on a merit basis to a floor level of a boat shed at a level lower than the Estuarine Planning Level where it can be demonstrated through an Estuarine Risk Management Report that the boat shed is structurally designed to withstand periodic wave action and tidal inundation up to the Estuarine Planning Level."

An Estuarine Risk Management Report has been prepared by Royal Haskoning DHV and is attached to the subject development application.

The report endorses NBCs estuarine planning level of RL 2.63 and conditionally supports the proposed variance in this circumstance to the level of RL 1.72.

By right of compliance with the requirements of B3.9 of the DCP the level of the proposed boatshed platform has been set at RL 1.72 which is 0.55m above the highest astronomical tide height of RL1.17.



3. JUSTIFICATION

THE ZONING OF THE LAND

E2 Environmental Conservation – landward of the mean high-water mark.

W1 Natural Waterways – Seaward of the mean high-water mark

This application relates to the W1 portion of the site as the proposed boatshed sits well below the building height control in the E2 zone.

a. OBJECTIVES OF THE ZONE

Zone W1 - Natural Waterways

1 Objectives of zone

- To protect the ecological and scenic values of natural waterways.

The proposed increase in height of the boatshed and lowering of the platform floor level will have no effect on the ecological values and positive effect on scenic values of the water way.

- To prevent development that would have an adverse effect on the natural values of waterways in this zone.

The proposed increase in height of the boatshed and lowering of the platform floor level will have a positive effect on the natural values of the waterway.

- To provide for sustainable fishing industries and recreational fishing.

The proposed increase of the boatshed and the lowering of the platform floor level will have no effect on sustainable fishing industries or recreational fishing.

- To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.

The proposed increase in height of the boatshed and lowering of the platform floor level will not cause any impact on the natural environment nor will it cause any obstruction to navigation.

- To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

The proposed increase in boashed height and lowering of the platform level will not have an impact on the opportunity for private access to the waterway or public access to the foreshore.

b. DEVELOPMENT STANDARD OBJECTIVES

PLEP 4.3 Height of buildings

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

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

The gabled boatshed has been integral to the character of Pittwater since settlement of the area. A boatshed of similar scale has existed on the site since at least 1947. The proposed boatshed is consistent with the form of many other boatsheds in the locality.

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

The proposed boatshed is consistent with the height of the previous boatshed and many other boatsheds in the locality.

- (c) to minimise any overshadowing of neighbouring properties,

The proposed boatshed will not cause any overshadowing of neighbouring properties.

- (d) to allow for the reasonable sharing of views,

The proposed boatshed will not cause any view loss to surrounding properties.

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

The proposed boatshed has been designed to sit sensitively in its topographic setting. As opposed to the previous boatshed the proposed boatshed will have a lower roof angle and broader eaves that in combination will emphasise the horizontal rather than vertical form.

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

The proposed boatshed will provide better fit with the natural environment than that of its predecessor and will have no impact on any heritage conservation area or heritage item.

The proposed increase in height is consistent with the objectives of the zone and the development standard.

c. PDCP21 D15.15 - Waterways Locality - Outcomes

Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater. (En)

The proposed increase in boatshed height and the lowering of the platform level below the EPL will not have an adverse impact on the water quality and estuarine habitat of Pittwater.

Public access along the foreshore is not restricted. (S)

Public access through the proposed development will be maintained.

Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners. (S, Ec)

The proposed development will not encroach on navigation channels or adversely affect the use of ferries and service vessels.

Structures blend with the natural environment. (S)

The structures will blend with the natural environment

Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway. (En, S)

The structures are not detrimental to the visual quality, water quality of estuarine habitat of Pittwater

To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development. (Ec)

The proposed structure will achieve this outcome.

Waterfront development which does not comply with the outcomes of this clause are removed. (En, S, Ec)

The proposed structures will comply with this clause.

The proposed development in general and specifically the requested variance in height of the boatshed and the lowering of the level of the platform will achieve the outcomes of the control.

d. STATE AND REGIONAL PLANNING

The additional building height of the boatshed and lowering of the platform below the EPL will not raise any concerns in relation to state and regional planning instruments.

This situation is somewhat unique as is the site and as such the proposed additional building height will not be applicable to other sites in the area, region or state.

4. NUMERIC VALUE OF THE DEVELOPMENT STANDARD

4 Metres

PROPOSED NUMERIC VALUE

5.35 above the highest astronomical tide level.

4.80 metres from the boatshed platform.

5. PERCENTAGE VARIATION

34% above the highest astronomical tide level.

20% above the proposed boatshed platform

**6. HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD
UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE.**

The Land and Environment Court has provided guidance as to the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary:

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable:

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

a. OBJECTIVES OF THE DEVELOPMENT STANDARD – THE FIRST WAY

The proposed structure is consistent with the objectives of the height of building controls in the PLEP and the DCP21.

While there are tensions between these instruments in as much as the PLEP sets a height of 4 metres, measured by NBC above the highest astronomical tide level and the DCP21 that sets the height at 4.5m above the platform, which is to be set at the site-specific estuarine planning level, the objectives of each instrument are similar and are met by the proposal.

The proposed boatshed is consistent with the desired character of the locality and that of nearby boatsheds.

It will not overshadow or block any views and the amendments to the original design will see it sit sensitively into the landscape thus improving its visual impact on the area.

As the proposed development achieves the objectives of the control it is not necessary or reasonable to require the rebuilt structure to comply with the current standards.

b. EXISTING USE – THE SECOND WAY

In his Memorandum of Advice Ian Hemmings SC found that lawful existing use has been established and that it has not been abandoned with respect to the proposed development.

Under part 5 Clause 41 of the EP&A Regulation

41 Certain development allowed (cf clause 39 of EP&A Regulation 1994)

(1) An existing use may, subject to this Division—

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

(c) be rebuilt, or

Clause 41(1)(c) enables a development that has established existing use to be rebuilt

As the boatshed use was erected well before the relevant date on which the current planning instruments came into force it is not necessary or reasonable to strictly apply the consequent development standards to the proposal.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS.

Sufficient environmental planning grounds as defined by the relevant clauses of Section 1.3 of the EP&A Act have been achieved to justify the contravention of the standard

The objectives of the standards are met despite the non-compliance patent in the design.

8. PUBLIC INTEREST

A boatshed and its associated structures:

- Have existed harmoniously on this site since at least 1947.
- Supported and helped form the beach and local estuarine systems in the decades since they were built.
- Have established the local boatshed aesthetic of the area and Pittwater in general.

The resetting of the platform level to meet Council requirements and the maintenance of the height of the prior structure will see the area returned to its former aesthetic.

The structures will help maintain the beach and its estuarine systems.

With the above in mind Council can be satisfied that the proposal is in the public interest as it restores the prior pattern of development, is beneficial to the maintenance of the beach and meets the objectives of the relevant instruments

9. CONCLUSION

The development application which is the subject of this request is for the rebuilding of marine structures that have lawfully existed on the site since at least 1947.

This document has demonstrated that strict compliance with the height provisions of the PLEP is unreasonable and unnecessary in this case and that justification can be seen by right of the restoration of the prior form in accordance with the objectives and outcomes of the current instruments.

The improved design will see the structure achieve better fit with the local built and natural environment which will in turn lead to an orderly and economic use of the land.

With this in mind we request that the development application be approved with the variation in accordance with PLEP 4.6..



Micheal Fountain Architects Pty Ltd

Micheal Fountain. B Arch.

ITEM 5.2**DA2021/1413 - 2 CHALLENGER DRIVE, BELROSE -
CONSTRUCTION OF A TELECOMMUNICATIONS FACILITY (6
NEW SATELLITE DISHES)**

AUTHORISING MANAGER	Tony Collier
TRIM FILE REF	2022/105382
ATTACHMENTS	1 Assessment Report
	2 Site Plan
	3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Development Standards under the Built form controls pursuant to Clause 20 of WLEP 2011 as the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1413 for Construction of a Telecommunications Facility (6 new satellite dishes) at Lot 2790 in DP 465652 Challenger Drive, BELROSE, subject to the conditions set out in the Assessment Report.
-

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	DA2021/1413
Responsible Officer:	Tom Prosser
Land to be developed (Address):	Lot 2790 in DP 46565, No. 2 Challenger Drive, Belrose
Proposed Development	Construction of a telecommunications facility (6 new satellite dishes)
Locality:	C8 Belrose - WLEP 2000
Category of Development:	Category 2
Consent Authority:	Northern Beaches Council
Delegation Level:	Northern Beaches Local Planning Panel
Land and Environment Court:	No
Owner:	Optus Satellite Networks
Applicant:	Optus Satellite Networks
Application Lodged:	20 August 2021
Integrated Development	No
Designated Development:	No
State Reporting Category:	Infrastructure
Notified:	20 August 2021 to 8 September 2021
Advertised:	Not Advertised
Submission Received:	1
Clause 20 Variation:	• Building Height • Rear Setback • Bushland Setting
Recommendation:	APPROVAL
Estimated Cost of Works:	\$1,314,968.97

EXECUTIVE SUMMARY

Development Application (DA2021/1413) seeks approval to the construction of 6 new satellite dishes.

The application is referred to the Northern Beaches Local Planning Panel as the proposal seeks variation to the development standards for Building Height, Rear Setback and Bushland Setting under the Warringah LEP 2000 (WLEP 2000).

One submission was received about the application. However, this submission did not raise issues related to the proposed satellite. The submission provided a suggestion that Challenger Drive should be managed and controlled by Council. This suggestion has been forwarded to Council's Traffic team for consideration.

Council's Biodiversity Officer initially raised concerns about the suitability of the site for the proposed development, and a lack of information to show the avoidance of impact on Biodiversity. These issues have been satisfactorily addressed through additional information in the Biodiversity Development Assessment Report (BDAR) and

minimisation Asset Protection Zone (APZ). The application does not comply with development standards for Building Height, Rear Setback and Bushland Setting. A Clause 20 variation for each of these standards is acceptable on merit, as further discussed in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of a telecommunications facility (6 new satellite dishes). The existing satellite dishes located on the site are to remain.

The applicant has agreed to providing Biodiversity offsets in the form of the following ecosystem credits:

- 16 Sydney North exposed sandstone woodland credits
- 31 *Chalinolobus dwyeri* / Large-eared Pied Bat credits
- 21 *Tetratheca glandulosa* credits

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.

SITE DESCRIPTION

The subject site is legally described as Lot 2790 DP 46565, known as 2 Challenger Drive, Belrose.

The site is irregular in shape and has an area of 28,781.7m².

The site is currently occupied by an existing telecommunications facility. This includes two main buildings, the larger of which is located in the centre and smaller in the

western extent of the site. In the north-eastern corner of the site are six (6) existing large satellite dishes, with multiple smaller dishes located at their base. A large tower is located in the centre of the site. There are multiple smaller outbuildings, internal access roads, and parking facilities associated with the site.



Figure 1 - Site Map

SITE HISTORY

The site has been used as a telecommunications facility for a long period of time. [Earliest date seems to be 1987]

Council records indicate the following recent and relevant applications associated with this property:

CDC2016/0192 – Internal fit out of the existing commercial office.

DA2009/1452 – Alterations and additions to the existing facility for infrastructure systems upgrading work.

DA2009/0811 – Internal modifications.

DA2007/0270 – Demolition of existing services to provide upgrade to the satellite earth station and new roof and other associated building works.

DA2005/0596 – Installation of a satellite dish.

DA2004/1454 – Upgrade works to telecommunications facility.

DA2001/0535 – Removal of 2 existing 75,000 litre underground diesel fuel tanks and the installation of 1 X 40,000 litre underground diesel fuel tank.

DA2001/0163 – Approved On 18 May 2001 For Extension To Existing Building and Installation Of Communication Antennas. The extensions were to the satellite earth station building.

DA2000/4625 – Alterations and additions to the existing exchange facility.

DA1999/2364 – Satellite dish installation.

DA2017/0986 – Installation of three (3) new satellite dish antennas in association with an existing telecommunications facility. Approved by Council on 7 March 2018.

MOD2018/0441 – Modification of DA2017/0986 to increase the approved height of the three (3) approved satellite dishes from 9.5m to 11m.

MOD2020/0200 – This modification application was lodged on 18 May 2020 for the removal of fourteen (14) trees adjacent to the satellite platform.

DA2021/0516 – This application was lodged on 26 May 2021 for the Construction of a storage shed ancillary to existing telecommunications facility.

SECTION 4.15 ASSESSMENT

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 as a telecommunications facility for an extended period of time. The proposed development retains the telecommunications use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	None applicable
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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control table in this report. In summary, subject to conditions for replacement planting, the proposed modification is not considered to adversely impact on the natural and built environment. (ii) The consent will ensure the ongoing efficiency and uninterrupted satellite communications. The proposed development will not therefore have a detrimental social impact on the locality. (iii) The proposed development will not have a detrimental economic impact on the locality considering the industrial nature of the proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights do not apply to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development 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.

One (1) submission was received in response to the notification of this application.

This submission is addressed as follows:

- **Recommendation that Challenger Drive be transferred to the Management and Control of Northern Beaches Council**

Comment:

The request is irrelevant to the scope of this application. As such, this recommendation has been forwarded to Council's Traffic team for separate consideration.

REFERRALS

Internal Referral Body	Comments
Environmental Health	Environmental Health have reviewed the proposal and have no objections, given the nature of the existing site use is unchanged.
Landscape	The development application is for the construction of 6 new satellite dishes at an existing telecommunications facility. The application is assessed by Landscape Referral against Warringah LEP 2000 including clauses 52 Development near parks, bushland reserves and other public open spaces, 56 Retaining distinctive environmental features on sites, and the C8 Belrose North Desired Future Character with particular reference to the Bushland Setting requirement of a minimum of 50 per cent of the site area is to be kept as natural bushland or landscaped with local species. The area of the proposed satellite dishes contains native bushland and/or rehabilitated bushland. The proposed development will require the removal of 2700 sqm of remnant 'Coastal Sandstone Ridgetop Woodland' in good condition and containing a high diversity of native species with high native resilience and low weed invasion. The site was previously cleared in 1985, however, it has successfully regenerated from the native soil seedbank. Removal of the existing native bushland is unavoidable should the development proposal be approved given the nature of the telecommunications facility ground treatment requirements for access and facility maintenance, as well as the requirement for an Asset Protection Zone. The 50% bushland area required

Internal Referral Body	Comments
	under C8 Belrose North Desired Future Character is unable to be met as there is insufficient landscape areas to replace the existing native bushland lost to the development as proposed. To achieve the intent of WLEP 2000 and C8 Belrose North locality setting, the proposed development is reliant of the natural bushland setting of adjoining land, and a variation to the bushland area is sought, which along with meeting the site requirements for an asset protection zone, reduces the capability of the site to support landscaped areas. A Biodiversity Offsets package has been offered in the form of a separate Vegetation Management Plan for the offset site at 1013 Oxford Falls Rd Oxford Falls, as this is assessed under Council's Natural Environment Referral Response - Biodiversity, and the comments are noted. The proposal is therefore supported.
NECC (Bushland and Biodiversity)	The application seeks approval for the construction of 6 new satellite dishes at a telecommunications facility. The application also seeks to establish an Asset Protection Zone (APZ) over the entirety of the site in perpetuity. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: Biodiversity Conservation Act 2016 (BC Act) Warringah Local Environmental Plan 2000 (WLEP) • C8 Belrose North Locality • 52 Development Near Parks, Bushland Reserves & other public Open Spaces • 56 Retaining Unique Environmental Features on Site • 58 Protection of Existing Flora <u>Final Recommendation - 4/01/2021</u> Council's Biodiversity Unit note the submission of an amended Biodiversity Development Assessment Report (BDAR; Fraser Ecological December 2021) and additional information addressing the requests and concerns raised by Council's Natural Environment Unit - Biodiversity team (8/12/2021). On review of the amended submission against the concerns raised by Council's Biodiversity Unit (8/12/2021) the following is noted: • The proposed Draft Voluntary Planning Agreement (17/11/2021) has now been withdrawn; • The BDAR (s5.4) has been amended to include justification for the siting of the proposed satellites within native vegetation in the south-west of the site relating to the operational properties of the satellite dishes: <i>"The proposed number of satellite antennas are required to effectively provide communication services which will be specifically</i>

Internal Referral Body	Comments
	<i>timed with the launch of a new corresponding satellite in 2023. Each of the six proposed satellite dishes need to be a certain distance from each other and have to face a certain angle towards satellites in orbit to provide their operations effectively. The proposed locations of each satellite antenna has been carefully selected to achieve unobstructed views to each satellite within Optus' orbital range, therefore the location of the satellite antennas cannot be altered to retain vegetation".</i> No feasible option to avoid and minimise biodiversity impacts from the siting of the satellite dishes is available to the proposal, however the BDAR has adequately demonstrated that they have been considered and cannot be avoided, but can be minimised through reduction of the proposed Asset Protection Zone (APZ) within the remainder of the site. • The BDAR has been amended to now include biodiversity offsets for all impacted areas of <i>Tetratheca glandulosa</i> habitat. • Concerns relating to the provision of a Vegetation and Bushfire Fuel Management Plan are withdrawn subject to the proposed APZ being reduced to cover only the vegetation in the southwest portion of the property depicted in Figure C of the amended Bushfire Hazard Assessment (Bushfire Planning & Design 22/12/2021). Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls. <u>Updated Recommendation - 8/12/2021</u> Council's Natural Environment Unit - Biodiversity team do not support the application in its current form. Additional justification or amendment is required to the application prior to reassessment as detailed below. The following information has been submitted since previous recommendation: 1. Draft Voluntary Planning Agreement (17/11/2021); and 2. Biodiversity Development Assessment Report (Fraser Ecological 2021). (1) With regard to the Draft Voluntary Planning Agreement (VPA) dated 17/11/2021, Council are unable to accept the proposed VPA in lieu of the required Biodiversity Offset Credits. The Biodiversity Assessment Method (BAM) 2020 allows the impacts of development to be offset by: • retiring the required number of biodiversity credits determined in Section 10.1, with a class of credit identified in Section 10.2 that meets the 'like-for-like' rules under clause 6.3 of the BC Regulation, or • in the case of a development, activity, clearing or biodiversity certification proposal, undertaking biodiversity

Internal Referral Body	Comments
	conservation actions that qualify as biodiversity conservation measures under the offset rules and are listed in the ancillary rules, and the action benefits the entity that is impacted by the proposal. Per the Ancillary Rules: Biodiversity Conservation Actions (OEH 2017); to use a biodiversity conservation action as a measure to offset or compensate for impacts on biodiversity values, the action must: • benefit the threatened species or ecological community impacted by the development of clearing of native vegetation • be selected from the list in these ancillary rules • be delivered through the NSW Government Saving our Species program to ensure biodiversity benefits are achieved, including the management of funding and implementation of the action • be of an equivalent value to the amount calculated by the offsets payment calculator (as in force from time to time) for the retirement of the number of like-for-like biodiversity credits for which the action is intended to be a measure to offset or compensate. Before seeking approval from the consent authority or Native Vegetation Panel, applicants must seek written agreement from OEH to the proposed action being delivered through the NSW Government Saving our Species program. Any Biodiversity Offset obligation must be compliant with the BAM (2020) and Ancillary Rules (OEH 2017), and can not be achieved through the proposed VPA. (2) The Biodiversity Development Assessment Report (BDAR) prepared by Fraser Ecological (2021) in response to the previous recommendation has been reviewed by Council's Natural Environment Unit - Biodiversity. <u>Avoidance of Impacts</u> The assessment of impact avoidance (s5.4) is limited to that of the threatened species, <i>Tetratheca glandulosa</i>, which would be more appropriate in an impact 'minimisation' section of the report. The statement provided within the BDAR in Table 4.5 with regard to Project Location is inadequate. Specifically the statement provided: "<i>The location of the proposed development has been positioned in order to avoid and minimise the potential resulting impacts on biodiversity values within the Subject Site, where possible.</i>" In contrast, the dishes appear to have been located within the only remaining intact native vegetation within the site, and no clear justification for the positioning of the satellites within this area is provided within the BDAR. Alternate options considered by the applicant must be presented

Internal Referral Body	Comments
	and discussed within Table 4.5 of the BDAR to demonstrate why the Project Location is required and justified. <u>Assessment of Impacts</u> The assessment of direct impacts (s5.3.2) and indirect impacts (s5.3.4) is provided within the BDAR. Broadly, Council's Natural Environment Unit - Biodiversity have no objections to the conclusions drawn by the Assessor, subject to these assumptions being accurate and where they relate to fuel loads and cover, they must be supported by the Bushfire Practitioner. Specifically, concern is raised over the following statement made in s5.3.2 of the BDAR "...<i>whilst areas outside the immediate impact area are unlikely to require any APZ vegetation treatment.</i>", which is in conflict with the opinion of the Bushfire Practitioner who states (s2.4) "<i>The site is to be managed as an Inner APZ for perpetuity. Post development, there will be very little remaining vegetation within the site boundary.</i>" Further, the submitted Landscape Plan (DA04a ; Archi Spectrum 2021) depicts the entirety of the southwestern corner of the site as 'New Gravel Area' in clear conflict to the assumptions of the Accredited Assessor and the intention to maintain vegetation (where APZ allows) including the threatened plant species, <i>Tetratheca glandulosa</i>. The conclusions drawn by the Assessor should be reassessed following preparation of a Vegetation & Bushfire Fuel Management Plan and following update of the issues raised below. <u>Vegetation and Bushfire Fuel Management Plan</u> As recommended within Table 5.1.2 of the BDAR, the preparation of a Vegetation Management Plan around the proposed infrastructure to ensure weed control takes place and all native plants including <i>Tetratheca glandulosa</i> are protected is required to be submitted with the application, and to demonstrate that vegetation integrity will be maintained within the adjoining bushland, and as much as possible within the site. This report must be prepared by the Accredited Assessor in consultation with the Bushfire Practitioner to ensure understanding of and compliance with the requirements Appendix 4 of Planning for Bushfire Protection 2019. The following information must be detailed within the report: • The extent of existing vegetation within the site that will require management to achieve the standards of an IPA, and that which the Bushfire Practitioner considers already to meet the requirements of an IPA, • The intent of the proposal to maintain vegetation or 'gravel' the areas surrounding the proposed satellite dishes per (DA04a ; Archi Spectrum 2021),

Internal Referral Body	Comments
	- Measures to maintain in perpetuity, and prevent impact to all areas of <i>Tetratheca glandulosa</i> within the site including permanent fencing and signage, - Measures to selectively clear within IPAs to maintain high-value species or habitat (e.g hollow-bearing trees), - Measures to prevent runoff, erosion and sedimentation both during construction and in perpetuity, including how topsoil will be stabilized long-term without the use of gravel or non locally-native grasses, - Ongoing requirements for weed control and maintenance including a schedule for maintenance, responsibility and reporting requirements. Given the close proximity to the vulnerable <i>Tetratheca glandulosa</i>, and reliance on the measures of the Vegetation and Bushfire Fuel Management Plan for the impact assessment, the plan must be provided to Council's Natural Environment Unit - Biodiversity for review prior to a recommendation on the application being made. In addition to the general considerations listed above, the following concerns are raised with the submitted BDAR, and must be addressed prior to any recommendation made by Council's Natural Environment Unit - Biodiversity. <u>Minimum Information Requirements</u> The Accredited Assessor has submitted a BDAR prepared in accordance with the 'Streamlined Assessment Module - Small Area'. The Natural Environment Unit - Biodiversity direct the Assessor to Table 27 of the BAM (2020) that details the minimum submission requirements. Council's Natural Environment Unit - Biodiversity have continued with its assessment of the BDAR, however where required information was not provided have adopted a precautionary approach. <u>Threatened Species Locations</u> <i>Tetratheca glandulosa</i> was identified by the Accredited Assessor in the southwest corner of the site in close proximity to the proposed infrastructure. The location of the identified <i>T. glandulosa</i> is depicted in Figure 13, 14, 15 and Photograph 6 of the BDAR. Although unclear, Figure 13 and 14 appear to depict a different location from the design overlay in Figure 15, which would appear to place the <i>T. glandulosa</i> within closer proximity to the proposed infrastructure. Additionally, the coordinates depicted within Photograph 6 place the location of the <i>T. glandulosa</i> further north in another location also in the footprint of the proposed infrastructure. A clearly georeferenced map, and mapping file (shp.) is requested. Impacts to the vulnerable <i>T. glandulosa</i> will not be supported where options for redesign are available. <u>Vegetation Zone - Area</u>

Internal Referral Body	Comments
	Although not presented within a map, the BDAR recognises that all vegetation within the site is required to be managed to the standards of an Inner Protection Area (IPA), per the recommendations of the Bushfire Hazard Assessment (Bushfire Planning & Design 2021) The BDAR states that the area impacted is 0.5ha, however area calculations undertaken by the Biodiversity referral team have determined that extent of native vegetation (per 60B of the LLS Act) totals closer to approximately 0.9ha in total including, 0.1ha in the southeast, 0.18ha in the northeast, 0.475ha in the southwest and 0.135ha in the northeast of the site. The Assessor must provide additional justification for the exclusion of the approximately 0.4ha of vegetation that has been excluded from the assessment, or must update the BAM-C to also include this vegetation. <u>Species Polygon - <i>Tetratheca glandulosa</i></u> The BDAR has excluded <i>Tetratheca glandulosa</i> from requiring offset credits on the following basis: <i>"Although this species was recorded onsite it will be retained and protected as part of the Construction Environment Management Plan"</i> <i>Tetratheca glandulosa</i> is listed as a Species Credit under the Threatened Biodiversity Database Collection (TBDC ; Bionet), for which the Unit Of Measurement to determine a Species Polygon is 'Area'. Council's Natural Environment Unit - Biodiversity direct the Assessor to 5.2.3 - 5.2.6 of the BAM, specifically 5.2.5(2): <i>"For fauna species, and flora species assessed by area (as per the TBDC), the species polygon is used to measure the area of suitable habitat on the subject land."</i> The Assessor has confirmed the presence of species within the subject land, and confirmed high condition vegetation in the southwest of the site as supported by a VI Score of 83.8. The suitability of <i>Tetratheca glandulosa</i> habitat was also confirmed by one of Council's Accredited Assessor in September 2021 on attendance of the site. Although it is understood that the Assessor undertook threatened flora surveys in accordance with published guidelines: 1. <i>T. glandulosa</i> is cryptic and easily missed by experienced Ecologists, 2. Seedbank dynamics are poorly known (i.e dormancy) per the Species Profile (OEH 2019), 3. 5.2.5(2) and Box 2 of the BAM require the Assessor to include "the area of suitable fauna/flora species habitat" within the species polygon, which the high-quality

Internal Referral Body	Comments
	vegetation in the south of the site would certainly qualify given the already confirmed presence of the species. No suitable justification is provided in the BDAR for exclusion of this area from a Species Polygon has been provided, and it is considered that based on the above information and the requirements of the BAM that the entire southern portion of the site (approx. 0.57ha) should be included within a Species Polygon, despite the planned retention of individuals identified by the Accredited Assessor. The Accredited Assessor must provide additional justification or update the BDAR accordingly. <u>Original Recommendation - 13/09/2021</u> The following information is required before Natural Environment Unit - Biodiversity can provide a recommendation on the DA: 1) An updated Flora and Fauna Assessment (or BDAR) taking into account the full extent of impacts to native vegetation within the site, including from establishing an APZ over the entirety of the site, which appear to exceed 0.5ha. 2) The Flora and Fauna Assessment references an addendum (<i>Tetratheca glandulosa</i> targeted survey) to be provided. No copy of this document has been received in the DA submission. 3) The proposed soil translocation and 'offset' planting area at 1013 Oxford Falls Road is located within an existing APZ. The proponent or consultant is to engage with the RFS to determine if replanting is allowable under DA consent (DA2017/0429). On receipt of the requested information, NEU-Biodiversity can reassess the application. (1) The submitted Bushfire Hazard Assessment (Bushfire Planning & Design 2021) recommends the entirety of the site to be managed as an APZ in perpetuity to the standards of an Inner Protection Area (IPA) and states that "Post development, there will be very little remaining vegetation within the site boundary". Council's NEU-Biodiversity referral team note this measure has since been conditioned within the NSW RFS referral for the application. The Biodiversity Offset Scheme (BOS) clearing threshold for the site is 0.5ha as noted within the submitted Flora and Fauna Assessment (Fraser Ecological Consulting 2021). The Flora and Fauna Assessment (FFA) accounts only for proposed vegetation removal within the southwest portion of the site, despite the intent to manage other vegetated areas of the site as APZ which appear to be in excess of 0.5ha and would therefore trigger the BOS. Justification is to be provided for exclusion of these areas from the BOS clearing threshold calculations, or a Biodiversity Development Assessment Report (BDAR) is required to be submitted.

Internal Referral Body	Comments
	(2) The FFA (Fraser Ecological Consulting 2021) states that an Addendum to the FFA is to be provided to Council, which includes the results of a targeted survey for <i>Tetratheca glandulosa</i>. No addendum is noted within the submitted documentation, and is yet to be provided. NEU-Biodiversity require the addendum to be submitted prior to making a recommendation. (3) Council's NEU-Biodiversity referral team are broadly supportive of the proposed management actions in the submitted Vegetation Management Plan (VMP), however raise the following concerns with the plan: - Detailed commentary is made about the risks associated with pathogens, however no soil pathogen testing is proposed within the Doner Site. <i>Phytophthora spp.</i> testing must be included within the VMP prior to any soil translocation taking place, and in the event that it is identified the translocation must not take place. - The proposed Recipient Site at Lot 1013 Oxford Falls Road has an APZ over the replanting areas and topsoil translocation area (DA2017/0429), and is therefore likely to contradict the conditions of this DA. It is noted that the area proposed for topsoil translocation appears to have had telecommunications infrastructure removed since the DA (DA2017/0429), however NEU-Biodiversity will not contradict the conditions recommended by the NSW RFS. The proponent is to engage with NSW RFS to determine if replanting and topsoil translocation within the proposed areas are allowable. On receipt of the requested information, NEU-Biodiversity can reassess the application.

External Referral Body	Comments
NSW Rural Fire Service	The New South Wales Rural Fire Service (NSW RFS) has reviewed the plans and documents received for the proposal. In response to this, the NSW RFS has provided a terms of approval letter which is attached to this consent.
Ausgrid	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been

considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

SEPP (Infrastructure) 2007

Ausgrid

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

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation; or*
- *Within 5m of an exposed overhead electricity power line.*

Comment

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

These recommendations will be included as a condition of consent.

Warringah Local Environmental Plan 2000 (WLEP 2000)

Desired Future Character

The WLEP 2000 applies to the subject land and the application is made pursuant to this instrument.

Under WLEP 2000, the subject site is situated within the C8 Belrose North Locality and the proposed development, being development for an innominate land use defined under SEPP (Infrastructure) as a 'telecommunications facility', is classified as a Category 2 Development.

Pursuant to Clause 12 of WLEP 2000, before granting consent for development, the consent authority must be satisfied that the development is consistent with any relevant General Principles of Development Control in Part 4 of WLEP 2000, and any relevant State Environmental Planning Policy described in Schedule 5 (State Policies).

Furthermore, Clause 12 indicates that before granting consent for development, the consent authority must be satisfied that the development will comply with the relevant requirements made by Parts 2 and 3, and the development standards for the development set out in the Locality Statement for the locality in which the development will be carried out.

Finally, Clause 12 states that before granting consent for development classified as Category Two, the consent authority must be satisfied that the development is consistent with the Desired Future Character (DFC) described in the relevant Locality Statement.

The DFC statement for the C8 locality states as follows:

“The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows:

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Middle Harbour.”

Each element of the desired future character statement is discussed as follows:

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

The proposed satellite dishes do not require the significant change of any landform and removal of the existing vegetation will be offset with the replanting that will occur within the vicinity of the development area.

The area surrounding the satellite dishes is gravel, and despite vegetation generally not growing in this area, the area will be open in nature and the gravel will blend in as a natural colour with the setting.

The white colour of the proposed satellite dishes does not match colours of the surrounding landscape. However, the existing dishes on site are a dominant feature and the proposal will not create a conceivable visual change to the surround area, given this established character.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

This component of the DFC requires that new development that is not housing should be limited to low intensity and low impact uses. The statement “*low intensity, low impact uses*” is directly applicable to such uses other than “housing” that may be permissible in the locality, such as the proposed development.

The terms “low intensity” and “low impact” are not defined in the dictionary of WLEP 2000. However, in the matter of *Vigor Master P/L v Warringah Council* [NSWLEC 1128], Commissioner Hussey gave weight to the evidence of the Council Planner who sought to give meaning and understanding to the term “intensity” and “impact”. In this regard, the following characterisation was given:

“Intensity: is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore, “low intensity” would constitute a development which has a low level of activities associated with it.”

“Impact: is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore ‘low impact’ would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

Further, the Commissioner made the important observation that “any development must also satisfy a qualitative assessment as well as the quantitative controls so as to achieve a reasonable degree of consistency with the DFC for the locality”.

The following assessment provides a detailed planning assessment of “low intensity” and “low impact” as it relates to the proposed development.

(a) Is the proposed development a “Low Intensity” use?

Further to the background information above, a “low intensity use” is a use which would be typified as having a low level of activities associated with it. The extent of activities associated with the operation of a particular use is largely determined by the following:

- The amount of traffic movements (cars, delivery and service vehicles),
- The number of pedestrian movements (internal and external).
- The physical size of the business (floor space, height, scale, building footprint amount of landscaping),
- The hours of operation of a business,
- The noise generation of the business,
- The light emitted by the business (internal, floodlighting and signage).

The proposed additional telecommunications satellites do not change the hours of operation of the use or noise generation. Further, the further noise and activity on site relates mainly to the construction and maintenance of the structures. For these reasons and those further in this report, the proposal is a low intensity use.

(b) Is the proposed development a “Low Impact” use?

Further to the background information above, a “low impact use” is a use which would be typified as having a minimal, minor or negligible level of impact and would be unlikely to significantly change the amenity of the locality and can largely be determined by considering the following:

- The amenity of adjoining properties (in terms of privacy, solar access, and visual amenity).

- The bulk and scale of the development and how it relates to the streetscape and adjoining properties.
- The removal of any existing vegetation from the site as result of the proposed development (taking into any proposed landscaping).

The assessment of the application has found that the proposed development is 'low impact' for the following reasons:

- The proposed modification to remove additional trees from the site will not result in any unreasonable change to the natural features of the full site due to replacement species, and the natural open appearance that the gravel will provide.
- The new satellite dishes are well separated from other development and are surrounded by landscaping and vegetation (both on the site and adjacent to the site).

(c) Conclusions on Low-Intensity and Low Impact:

The proposed addition of a six new satellite dishes to the existing approved communication facility is therefore consistent with this element of the DFC statement relating to the requirement for the development to be a low intensity and low impact use.

***A dense bushland buffer will be retained or established along Forest Way.
Fencing is not to detract from the landscaped vista of the streetscape.***

The site is not located adjoining Forest Way.

For the above reason, the proposed development is consistent with this component of the DFC.

Development in the locality will not create siltation or pollution of Middle Harbour.

The proposed development is not considered likely to result in siltation or pollution of Middle Harbour.

Therefore, the development is considered to satisfy this element of the DFC statement.

Conclusions on Consistency with the DFC Statement

Based upon the above assessment, the development is found to be consistent with the DFC statement for the C8 Belrose locality. It is found to involve a low intensity and low impact form of development on the site, with no unacceptable impacts on the natural landforms and native vegetation on the site as a whole.

Built Form Controls for Locality C8 Belrose Locality

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Permitted	Proposed	Compliance
Building Height	8.5m	13m	No*
Front Building Setback	20m	80m	Yes

Built Form Standard	Permitted	Proposed	Compliance
Rear & Side Building Setback	10m	East (Side): 132m West (Side): 36m South (Rear): 1.7m	Yes Yes No
Bushland Setting	50% site area (14,289m ²)	30% site area (8570m ²) Including gravel areas: 57% site area (16,320m ²)	No*

The proposed development satisfies the Locality's Built Form Controls with exceptions to the building height, rear setback and bushland setting controls.

Clause 20 Variation

Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.

- Building Height**

Is the proposal consistent with the general principles of development control?

The applicant has provided the following supporting comments:

"There is adequate visual screening. Surrounding existing vegetation, and a substantial physical separation distance from neighbouring sites and the public domain will limit the visual impact that any varied height may typically impose.

There is a precedent of taller structures on site. There is a 150m tall antenna on-site which exceeds the height limit and establishes a precedent for this site and services as a landmark in the area. Furthermore, a number of other existing satellites measure approximately 16.3 metres, making the new dishes smaller in comparison again."

Comment

It is agreed that a character is formed by the existing telecommunications structures on site, and that screening including vegetation will minimise visual impact.

As a result, the proposal will be visually appropriate given the height and scale of surrounding development. Further, the separation of the satellite dishes from nearby uses ensures there will be no unreasonable amenity impact.

Is the development consistent with the desired future character of the locality?

The applicant has provided the following supporting comment:

"The site is a designated telecommunication facility with new dishes that cannot be reduced in size due to the technical requirements of satellite data transmission. The function of the premises relies on the size of the satellites being as proposed, and it would be to the detriment of the wider Northern Beaches locality and beyond who rely

on effective satellite data transmission were the new satellites to be refused.

There is a precedent of taller structures on site. There is a 150m tall antenna on-site which exceeds the height limit and establishes a precedent for this site and services as a landmark in the area. Furthermore, a number of other existing satellites measure approximately 16.3 metres, making the new dishes smaller in comparison again."

Comment

It is agreed that the visual presentation of the satellite dishes is acceptable due to the existing character established on site, and due to the surrounding topography and vegetation which allows the dishes to sit amongst the natural environment rather than be a dominant built structure.

- **Rear Setback**

Is the proposal consistent with the general principles of development control?

The applicant has provided the following supporting comment:

"The location of the new dishes is a result of site constraints. The unusual shape, land use and existing structures on site limit the location of the new dishes to the south-western portion of the site. To functionally fit, a 10 metre minimum rear setback cannot be reasonably achieved.

Comment

It is agreed that the shape of the lot is unusual and that the location of the satellite dishes within this lot are well separated adjoining uses and is surrounded by vegetation. As such, the proposed non-compliance with the rear setback would not cause any unreasonable amenity impact of visual impact.

Is the development consistent with the desired future character of the locality?

The applicant has provided the following supporting comment:

"Whilst it is acknowledged that the encroachment is into a remaining portion of bushland on site, the overall locality remains a highly dense landscaped space with the natural environment characterising the area."

Comment

It is agreed that the new satellite dishes are surrounded by vegetation and landscaping both on the site and to the rear. It is further noted that the gravel base sufficiently complements the natural setting.

- **Bushland Setting**

The variation to the bushland setting is assessed against the following merit considerations:

Is the proposal consistent with the general principles of development control?

The applicant has provided the following supporting comments:

"On balance the proposed development to increase the telecommunications capacity of the facility is considered to be to the benefit of the broader community and is considered acceptable. This notion was mirrored by Northern Beaches Council within the assessment report of DA2017/0986 which approves a variance to this built form control.

The Flora and Fauna Assessment report prepared and submitted under this development application considers the proposal satisfactory."

Comment

The proposal adjoins land which is densely vegetated, and also maintains vegetation and landscaping to the front and rear of the site. Adding to this, the gravel complements bushland character by providing an open area with natural colours. It is noted that the landscaped area added with the gravel area covers 57% of the site.

The BDAR has demonstrated that there is no feasible option to avoid and minimise biodiversity impacts from the siting of the satellite dishes by demonstrating that impacts have been considered and cannot be avoided. It has been demonstrated that the rear siting location for the dishes is the only operationally feasible remaining location on site, and that any vegetation surrounding the dishes could obstruct communication operations.

Further, impact on Biodiversity and Landscaped character can be reduced through the minimisation of the proposed Asset Protection Zone (APZ), as accepted by the NSW Rural Fire Service.

Is the development consistent with the desired future character of the locality?

The applicant has provided the following supporting comment:

"The bordering undisturbed and undeveloped land to the south and west retains the landscaped character of the area, rendering the removal of the bushland under this proposal largely indiscernible at a greater locality scale.

Offset strategies can mitigate the impacts due to the reduction of bushland by the proposal. These offset strategies include:

- *The replacement of removed flora and fauna habitat on the Belrose site with new trees planted at Optus' Oxford Falls site; and*
- *The development of a Management Plan at the Oxford Falls site to implement a range of management activities to benefit the environment, such as fencing off important habitat areas, undertaking weed and feral animal control, or the establishment of compensatory habitat"*

Comment

It is agreed that the site is surrounded by bushland and that the proposal will maintain an appropriate standing within this bushland by maintaining landscaping and providing gravel to complement the surroundings.

Conditions have also been imposed to mitigate the loss of vegetation.

Further, Council's Biodiversity officer has reviewed the application and is satisfied with the offset strategies (subject to conditions).

Accordingly, the proposed variations to the non-complying building height, rear building setback and bushland setting are supported under Clause 20.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development. The relevant general principles are addressed below.

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	YES	The proposed satellite dishes are well separated from neighbouring uses and would not cause any unreasonable glare or reflection.	Yes
CL42 Construction Sites	YES	The site provides for adequate space for the storage and handling of construction material and equipment.	Yes
CL44 Pollutants	YES	The proposed development will not generate any significant pollutants (odour, liquid, noise etc.) as a result of its operation.	Yes
CL46 Radiation Emission Levels	Yes	A condition has been imposed to require annual testing to ensure compliance with the maximum allowable radiation under <i>Australian Standard AS2772.1(Int):1998</i> .	Yes
CL50 Safety & Security	YES	The site will be adequately secured from unauthorised access, via the use of fencing, gated entry, and security cameras.	Yes
CL54 Provision and Location of Utility Services	YES	The existing and proposed development will be connected to utility services.	Yes
CL56 Retaining Unique Environmental Features on Site	YES	The plants to be removed, to enable the development to take place, will be replaced with locally occurring native species. This will enable the unique characteristic of dense vegetation on the site to be maintained.	Yes
CL58 Protection of Existing Flora	YES	Although the proposal requires the removal of trees, it has been reviewed by Council's Landscape and Natural Environment – Biodiversity sections, who have supported the application subject to conditions. The conditions relate to the requirement of revegetation.	Yes
CL60 Watercourses & Aquatic Habitats	NO	There are no nearby natural watercourses or aquatic habitats. The closest watercourses are ~180m to the west and ~130m south of the site, when measured from the property boundaries.	Yes
CL61 Views	YES	The proposed development will maintain a reasonable sharing of views currently enjoyed by adjoining properties.	Yes
CL66 Building bulk	YES	The development maintains a visual bulk and a scale consistent with that of existing onsite structures and does not visually dominate the street or surrounding spaces due to extensive	Yes

General Principles	Applies	Comments	Complies
		landscaping, the location of the site and the proximity of the development on the land. The development is consistent with the predominant pattern and scale of development in the immediate locality.	

Schedule 8 - Site analysis

Adequate site analysis documentation has been submitted with this application.

POLICY CONTROLS

A monetary contribution of \$13,149.68 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,314,968.97. A condition has been imposed in this regard.

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 2000;
- Codes and Policies of Council.

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

The proposed variations the development standards are supported under Clause 20 of the WLEP.

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

- 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 the application has revealed that the application does not result in any unreasonable impacts on surrounding, adjoining and nearby properties. Accordingly, the recommended for approval.

RECOMMENDATION (APPROVAL)

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Development Standards under the Built form controls pursuant to clause 20 of WLEP 2011 as 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.

THAT the Northern Beaches Local Planning Panel as the consent authority grant **approval** to Development Consent DA2021/1413 granted for Construction of a storage shed ancillary to a telecommunications facility at Lot 2790 in DP 465652 Challenger Drive, BELROSE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 - a - Site Plan	19.07.2021	Archiam Spectrum
DA02 - a - Proposed Location Plan	19.07.2021	Archiam Spectrum
DA03 - a - Section A-A	19.07.2021	Archiam Spectrum
DA04 - a - Landscape Plan	19.07.2021	Archiam Spectrum
DA05 - a - Excavation and Fill Plan	19.07.2021	Archiam Spectrum
DA06 - a - Stormwater Concept Plan	19.07.2021	Archiam Spectrum

Engineering Plans		
Drawing No.	Dated	Prepared By
S0100 - General Arrangement and Foundation Plan	30.07.2021	North CE
S0101 - Foundation Sections	30.07.2021	North CE
S0102 - Foundation Details	30.07.2021	North CE
S0103 - Foundation Sections	30.07.2021	North CE
Stormwater Management (D3, D4, E1)	17 June 2021	Portes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
NSW RFS Letter	25/01/2022	NSW RFS
Bushfire Hazard Assessment	22/12/2021	Bushfire Planning & Design
Biodiversity Development Assessment Report	23 December 2021	Fraser Ecological

Flora and Fauna Assessment	21 June 2021	Fraser Ecological
Geotechnical Investigation	26 May 2021	JK Geotechnics

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	23/07/21	Applicant

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

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

2. Prescribed Conditions

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

- C. 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. Other Authorities conditions

- Ausgrid referral Letter dated 27/01/2021
- NSW RFS Letter dated 25/01/2022

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

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

4. 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
 - vi) 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;
 - (2) 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.
 - (3) 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.
 - (4) 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 stormwatermanagement system.
 - (5) Swimming pools and spas must be registered with the Division of Local Government.

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

5. Testing for radiation levels

Annual testing is to be undertaken and reported to ensure compliance with the maximum allowable level of radiation under *Australian Standard AS2772.1(Int):1998*.

Reason: To ensure compliance with standards.

FEES / CHARGES / CONTRIBUTIONS**6. Policy Controls****Northern Beaches 7.12 Contributions Plan 2021**

A monetary contribution of **\$13,149.68** is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of **\$1,314,968.97**.

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

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

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

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

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

7. Security Bond

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

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

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

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

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

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

8. Preparation of a Tree Removal Protocol

The Project Ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum):

- a pre-clearance survey.
- direct supervision of tree removal.
- protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat.

The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Tree Removal Protocol is to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native wildlife.

9. Installation of Nest Boxes

A minimum of 3 nest boxes (1 Parrot, 1 Microbat, 1 Glider) are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site.

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

10. Delineation of Asset Protection Zones

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries.

APZs are to be limited to the vegetation within the southwest quadrant of the site, in accordance with the recommendations of the bushfire report. No vegetation removal or modification is permitted outside this area for the purpose of bushfire mitigation without prior approval from Council.

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

Reason: To protect native vegetation and wildlife.

11. 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. 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.

12. 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
1783-Sydney North exposed sandstone woodland	Not a TEC	16	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests This includes PCT's: 1083, 1138, 1156, 1181, 1183, 1250, 1253, 1619, 1620, 1621, 1623, 1624, 1625, 1627, 1632, 1636, 1638, 1642, 1643, 1681, 1776, 1777, 1778, 1780, 1782, 1783, 1785, 1786, 1787

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

13. **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	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the
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					impacts from development
1783-Sydney North exposed sandstone woodland	Not a T E C	16	YES	Pittwater, Cumberland, Sydney, Cataract, Wyong, Yengo, or Any IBRA subregion that is within 100 kilometer of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests This includes PCT's: 1083, 1138, 1156, 1181, 1183, 1250, 1253, 1619, 1620, 1621, 1623, 1624, 1625, 1627, 1632, 1636, 1638, 1642, 1643, 1681, 1776, 1777, 1778, 1780, 1782, 1783, 1785, 1786, 1787

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

14. Like for like credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 3 must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table 3 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 3 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and the Certifying Authority prior to release of construction certification.

Table 3 Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri / Large-eared Pied Bat	31	Any in NSW
Tetratheca glandulosa / Tetratheca glandulosa	21	Any in NSW

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

15. Variation rule credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 4 must be retired to offset the impacts of development.

Evidence of the retirement of credits in satisfaction of Table 4 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 4 Species credits required to be retired – variation rules

Impacted species credit species	Number of species credits	IBRA sub-region	Approved variation species credit species that can be used to offset the impacts from development
Chalinolobus dwyeri/Large-eared Pied Bat	31	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Vulnerable (or higher) Fauna
Tetratheca glandulosa/Tetratheca glandulosa	21	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Vulnerable (or higher) Flora

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

16. Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works.

The Project Ecologist must be an accredited assessor under the NSW Biodiversity Conservation Act 2016.

Employment of a Project Ecologist is to provide an engagement letter, which is to be submitted to and certified by the Certifying Authority Prior to issue of Construction Certificate.

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

17. 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 these conditions and the Biodiversity Development Assessment Report (Fraser Ecological 2021).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. 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.

19. Fauna and Tree Hollow Relocation

The Project Ecologist is to be present to:

- a) relocate any displaced fauna that may be disturbed during any tree clearance and/or construction works; and

- b) direct the project arborist to salvage any tree hollows within the development area and place them within areas of retained native vegetation on the site.

Reason: To protect native wildlife.

20. Clearing for Asset Protection Zones – Project Ecologist to Certify

Clearing of vegetation during works for APZ establishment must only occur within the surveyed and permanently marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

APZs are to be limited to the vegetation within the southwest quadrant of the site, in accordance with the recommendations of the bushfire report. No vegetation removal or modification is permitted outside this area for the purpose of bushfire mitigation without prior approval from Council.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

22. Fauna and Tree Hollow Relocation

The Project Ecologist is to certify in writing that:

- a) any fauna that was displaced or disturbed during tree clearing and/or construction works was safely and appropriately relocated; and
- b) any tree hollows were salvaged from trees by the project arborist and placed within areas of retained native vegetation on the site.

Written certification of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect native wildlife.

23. Clearing for Asset Protection Zones – Project Ecologist to Certify

Clearing of vegetation for APZ establishment must only occur within the surveyed and permanently marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

24. 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.

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

25. 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.

26. Maintenance of Asset Protection Zones

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Reason: To protect native vegetation and wildlife.



SITE PLAN
SCALE: 1:1000

ARCHISPECTRUM
Nominated Architect: Martin Bodnarzky | NSW ARB #8012
Suite C5, 8 Allen St, Waterloo NSW 2017 | A.B.N. 40 968 067 144
m: 0419 870 108 | ph: (02) 8399 2807 | e: office@archispectrum.com.au

North CE
M: 0400 680 959
E: bnorth@northce.com.au

Corona Projects
M: 0419 438 956
E: coronaprojects@gmail.com

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DO NOT SCALE DIMENSIONS. ALL DIMENSIONS SHOULD BE VERIFIED ON SITE BEFORE COMMENCEMENT OF ANY WORKS. IN CASE OF ANY DISCREPANCIES, IT SHOULD BE VERIFIED BEFORE CONTINUING FURTHER WORKS.

ISSUE	DATE	DESCRIPTION
A	19.07.2021	DA Issue to Council



PROJECT	SHEET TITLE	SCALE	SHEET SIZE	DWG NO.	REVISION
Proposed Satellite Dishes 2 Challenger Dr, Belrose	Site Plan	1:1000 @ A3	A3	DA01 a	
CLIENT: Optus Satellite Control Centre 2 Challenger Dr, Belrose	DRAWN: Peter S				

APPENDIX A – VARIATION OF DEVELOPMENT STANDARDS

Introduction

Clause 20 of the Warringah Local Environmental Plan 2000 states that:

“...Consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy... [and]... where consent is granted for development that does not comply with one or more development standards, the Council is to ensure that the circumstances of the case and reasons for granting consent (in such a way that does not comply with the development standards) are included in a public register of such consents.”

The following built form controls associated with the C8 locality are being varied and suitably addressed in the following ways:

Building Height

It is acknowledged that the new satellite dishes exceed the 8.5 metre maximum building height specified for the C8 locality. Two will be 11 metres and four will be 14.5 metres. These proposed heights are considered acceptable for the following reasons:

1. The site is a designated telecommunication facility with new dishes that cannot be reduced in size due to the technical requirements of satellite data transmission. The function of the premises relies on the size of the satellites being as proposed, and it would be to the detriment of the wider Northern Beaches locality and beyond who rely on effective satellite data transmission were the new satellites to be refused.
2. There is a precedent of taller structures on site. There is a 150m tall antenna on-site which exceeds the height limit and establishes a precedent for this site and services as a landmark in the area. Furthermore, a number of other existing satellites measure approximately 16.3 metres, making the new dishes smaller in comparison again.
3. There is adequate visual screening. Surrounding existing vegetation, and a substantial physical separation distance from neighbouring sites and the public domain will limit the visual impact that any varied height may typically impose.
4. The pre-lodgement meeting notes state that “the height and character of the dishes is potentially not problematic, as there are already dishes onsite, but you will need to address the cumulative impact of another 6 dishes.” The cumulative impact is considered to be negligible given that the new dishes are smaller than most on site, and they are well separated from surrounding development which reduces their presence.

Rear Setback

The 10 metre rear setback required for development within the C8 locality is not numerically achieved by this proposal. This is considered acceptable for the following reasons:

1. The location of the new dishes is a result of site constraints. The unusual shape, land use and existing structures on site limit the location of the new dishes to the south-western portion of the site. To functionally fit, a 10 metre minimum rear setback cannot be reasonably achieved.
2. Whilst it is acknowledged that the encroachment is into a remaining portion of bushland on site, the overall locality remains a highly dense landscaped space with the natural environment characterising the area.
3. The construction of the new satellites is critical for the successful and efficient function of the telecommunication facility, which is considered an essential service. A numerical setback non-compliance is considered reasonable at the provision of upgraded important infrastructure.

Bushland Area

The 50% minimum bushland area required for the C8 locality is not numerically achieved. This is considered acceptable for the following reasons:

1. On balance the proposed development to increase the telecommunications capacity of the facility is considered to be to the benefit of the broader community and is considered acceptable. This notion was mirrored by Northern Beaches Council within the assessment report of DA2017/0986 which approves a variance to this built form control.
2. The Flora and Fauna Assessment report prepared and submitted under this development application considers the proposal satisfactory.
3. The bordering undisturbed and undeveloped land to the south and west retains the landscaped character of the area, rendering the removal of the bushland under this proposal largely indiscernible at a greater locality scale.
4. Offset strategies can mitigate the impacts due to the reduction of bushland by the proposal. These offset strategies include:
 - The replacement of removed flora and fauna habitat on the Belrose site with new trees planted at Optus' Oxford Falls site; and
 - The development of a Management Plan at the Oxford Falls site to implement a range of management activities to benefit the environment, such as fencing off important habitat areas, undertaking weed and feral animal control, or the establishment of compensatory habitat.
5. Conditions of consent could be applied similarly to those imposed under DA2017/0986, requiring the protection and retention of all trees not proposed to be removed, and for the aforementioned offset strategies.

Visual Impact Assessment

Given the development is significantly smaller than existing developments on the same site, the visual impact to the landscape is minimal. The area is populated with mature trees and vegetation. Although the development requires trees to be removed, substantial vegetation will remain on site and on surrounding sites to hide the view of satellites from public.

The area of the site where the new dishes are proposed does not adjoin any public road and there is significant distance separation, rendering the visual impact from Challenger Drive, Linden Avenue and Crozier Road minimal.

Need for Critical Infrastructure

The subject Optus telecommunications facilities provides critical satellite infrastructure. The major antennas on site send and receive data from satellites in orbit. The smaller antennas are designed to replicate the service a customer receives, and allows Optus to ensure their services working as required. The additional 6 satellites proposed under this development will increase the availability and efficiency of critical infrastructure that assists to meet the telecommunication needs of Sydney.

The number and dimensions of the new satellite dishes cannot be reduced in order for them to function as required. It is therefore stressed that the variation of building height, rear setback and bushland area built form controls application to 2 Challenger Drive, Belrose, should be accepted in order to meet the growing telecommunication needs of the area.

Conclusion

For the reasons stated above, a variation of the subject applicable development standards is considered acceptable as the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.

ITEM 5.3

MOD2021/0848 - 1 & 3 NARRABEEN PARK PARADE, NORTH NARRABEEN - MODIFICATION OF DEVELOPMENT CONSENT DA2019/1478 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN EXISTING RESTAURANT

AUTHORISING MANAGER Phil Lane

TRIM FILE REF 2022/105469

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 the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0848 for Modification of Development Consent DA2019/1478 granted for alterations and additions to an existing restaurant on land at Lot 1 DP 1005148, 1 Narrabeen Park Parade, North Narrabeen and Lot 2 DP 1005148, 3 Narrabeen Park Parade, North Narrabeen, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0848
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 2 DP 1005148, 3 Narrabeen Park Parade NORTH NARRABEEN NSW 2101 Lot 1 DP 1005148, 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2019/1478 granted for alterations and additions to an existing restaurant
Zoning:	R2 Low Density Residential
Development Permissible:	No - Zone R2 Low Density Residential Yes - Zone RE1 Public Recreation
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Department Of Industry - Lands Olga Arslan
Applicant:	Turnbull Planning International Pty Ltd
Application Lodged:	13/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/12/2021 to 22/01/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

This assessment report is submitted to the Northern Beaches Local Planning Panel for the consideration of Modification application No. Mod2021/0848, which seeks retrospective approval for a constructed elevated deck to the southern exterior of the building and deletion of the open fencing approved along the southern elevation. It is noted that the proposed works are located entirely within the Lake Park Reserve and that Council as trustee, and the Department of Planning, Industry and Environment (Crown lands) have granted owner's consent for the modified works.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

Council received one (1) submission during the formal notification period. The objection to the proposal mainly focused on parking and noise.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

Modification of DA2019/1478, which approved alterations and additions to a restaurant, including operational changes relating to trading hours and seating capacity. This modification seeks retrospective approval for a elevated deck to the southern exterior of the building and deletion of the open fencing approved along the southern elevation. The modified deck includes the following dimensions;

- 15.5sqm (+1.6sqm increase),
- 5.84m wide (No change from approval),
- 2.52m depth (+0.12m increase),
- FFL 0.3m above existing ground level (+0.3m increase).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential
Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - D14.8 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 2 DP 1005148 , 3 Narrabeen Park Parade NORTH NARRABEEN NSW 2101 Lot 1 DP 1005148 , 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Detailed Site Description:	The development, being the subject of this application, occurs on two properties being: • Lot 1 in DP 1005148, No. 1 Narrabeen Park Parade; and • Lot 7069 in DP 1058602, No. 1A Narrabeen Park Parade (known as Lake Park Reserve). <u>No. 1 Narrabeen Park Parade</u> The site has an area of 345.3m² with a frontage to Narrabeen Park Parade of 9.82m. The southern boundary is a total of 41.15m in length, with the northern boundary being 36.11m. The site accommodates a single storey brick, timber and metal roofed cafe which occupies approximately 208m² of the site. The cafe is constructed to the northern (side) and western (front) boundaries and partially to the southern (side) boundary. The remainder of the site (to the east) contains a detached garage building with access to the garage gained via an existing driveway from the Council public car parking area. The eastern portion of the site has a shared area with a ground level garage and awning area within the subject Lot 1 and a first floor level balcony over the garage being within the title of Lot 2 in DP 1005148. The original building appears to have been constructed circa 1930, as a single storey structure on the front (west) and side boundaries of the site. The building is curved on its south-west corner. There have been several alterations to the original building, including new window and door openings to the west and south elevations. Constructed of brickwork, the building has a painted facade. There is a parapet surrounding a low pitched metal roof to this structure. Extended to the rear of original building is a single storey timber weatherboard extension, which is setback from the southern boundary by about 1.15 metres. Painted to match the larger brick structure, the extension also has window and double door openings to the southern elevation. At the rear

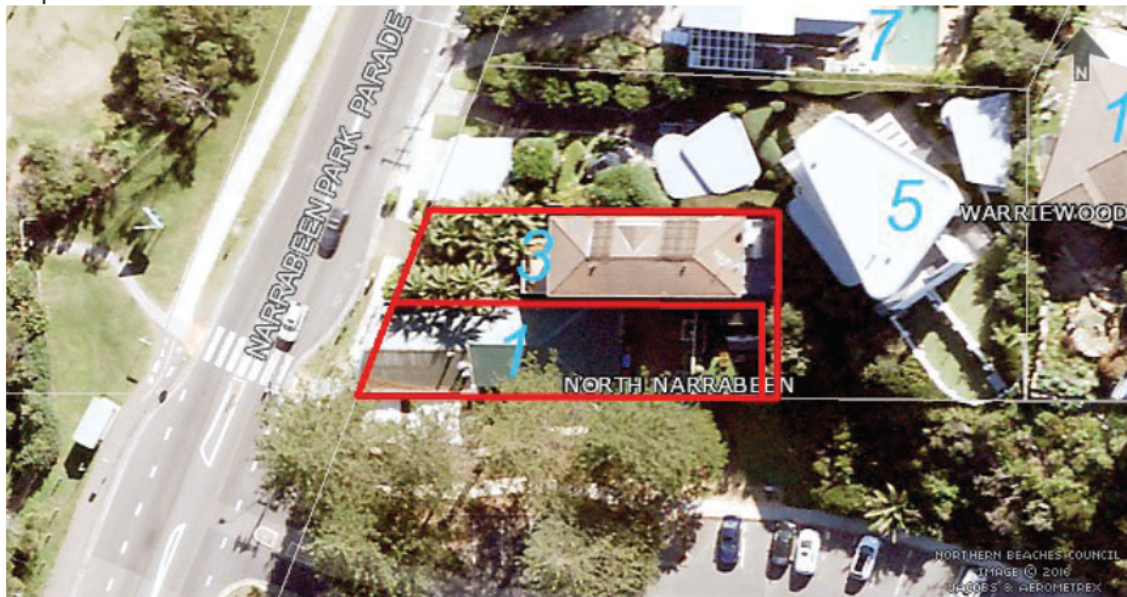
of the building is a timber lean-to element. There is pedestrian access from the rear of the building to a parking area comprising 3 garages. Access to these garages is achieved via the roadway within Lakeside Reserve. Pedestrian access is available across the garage turning area to the adjacent property, 3 Narrabeen Park Parade.

No. 1A Narrabeen Park Parade

The cafe is located adjacent to the northern edge of Lakeside Reserve at 1A Narrabeen Park Parade. The reserve includes the North Narrabeen Rock pool, Lagoon, and public carpark. Immediately adjacent to the site of the proposed works to the south of 1 Narrabeen Park Parade are a group of Norfolk Pines with 3 being in close proximity to the proposal works.

The site is Crown Land, of which Council is the trustee under the Crown Lands Management Act 2016. Both Council and the Department of Planning, Industry and Environment have given owner's consent to the specific works proposed. Stamped plans from the Department have also been provided with the owners consent, which correspond to the plans lodged with the application. The applicable Plan of Management for the land is Pittwater's Ocean Beaches Plan of Management 7.0 North Narrabeen Rock Pool, which was adopted by Pittwater Council in June 2006. This Plan of Management expressly authorises an outdoor eating area in conjunction with the existing commercial outlet adjacent to the reserve.

Map:



SITE HISTORY

The site has been the subject of the following matters:

A1220/73

This Building Application was lodged on 25 June 1973 for renovations to the interior of the existing shop.

The application was approved on 4 September 1973.

DA87/200

This application was lodged for a change use from an existing shop (milk bar) with attached dwelling to a refreshment room (restaurant) with attached dwelling and detached garage. The application was approved on 17 June 1987 subject to conditions.

Granting of Trusteeship

The granting of trusteeship of the Reserve to Pittwater Council from the department of Conservation and Land Management was published in the Government Gazette No. 146 on 18 December 1992.

Access arrangements

On 29 December 1992 Council wrote to the property owner in relation to the granting of a licence over Crown land (being the Reserve) to enable the continuation of existing vehicle access to the rear of the site via the eastern end of the public car park (i.e. in the location of the approved landscaped area) pursuant to a decision at the Ordinary Council Meeting of 14 September 1992.

Building Approval 1038/93

This application was lodged on or around 28 May 1991 for the erection of additions, including double garage at the rear of the site.

The application was approved on 23 November 1993.

On the 4 March 1996, the Council advised the applicant that the outdoor seating was within the boundaries of the reserve. As such, use of the reserve for outdoor seating or use of the land for other activities ancillary to the restaurant was not permissible.

A meeting was held on 17 April 1996 with the relevant officers of the Council to determine the most appropriate course of action available to the applicant. A rezoning application was the outcome of that meeting.

Application to rezone the land

This application was lodged on or around 18 July 1996 and sought approval to rezone two (2) parcels of land (being Lot 1 and the Lakeside Reserve) to allow:

- use of the land occupied by Surfside Cafe, 1 Narrabeen Park Parade, Narrabeen, for restaurant refreshment room purposes;
- use of part of Lakeside Reserve, adjacent to 1 Narrabeen Park Parade, Narrabeen, for outdoor seating associated with a restaurant refreshment room.

The rezoning sought to amend the *Pittwater Local Environmental Plan 1993* in the following manner:

1. That Lot 1, DP 16625, be used for the purposes of a restaurant/ refreshment rooms; and
2. That part of the Lakeside Reserve, incorporating two areas of 4.2 metres x 9.0 metres; and 2.8 metres x 6.4 metres, adjacent to Lot 1, DP 16625, be used for outdoor seating associated with

the adjacent restaurant/ refreshment rooms.

The application was rejected by Council at its meeting of 24 March 1997 for the following reasons:

1. *The rezoning would rely upon carparking within a public reserve to support a commercial use;*
2. *The proposal has potential adverse impacts upon the existing Norfolk Island Pines located within the reserve;*
3. *The rezoning would alienate public open space for commercial purposes;*
4. *The intensification of the approved restaurant within the residential 2(a) zoned land is able to be considered through the Development Application process under the existing use rights provisions of the EPA Act 1979.*

In addition to these reasons, Council also resolved in relation to the existing work in the following manner:

"That the planter boxes placed on Crown Land be moved back to the boundary of the premises so as not to alienate the public open space."

The applicant was advised of this decision by letter dated 14 April 1997.

Compliance Action for the alleged illegal use of outdoor seating

On 3 April 1998 Council issued a Directive ('cease use') Letter with respect to the apparent illegal land use for the purposes of outdoor seating in conjunction with the restaurant at Lot 1, DP 16625 No 1 Narrabeen Park Parade, North Narrabeen (the subject site).

In response, on 22 April 1998 the tenant of the property (Surfside Cafe) requested an extension of time to enable the removal of the outdoor seating. This was rejected by Council and a further Directive Letter was issued on 13 May 1998 requiring the tenant to show cause within 28 days why Council should not proceed to take appropriate legal action.

The matter was subsequently referred to Council's solicitors on 26 June 1998 to commence legal action.

PP0001/17

This application was lodged on or around 30 March 2017 to permit a new 4-storey building comprising 8 residential units, 2 commercial units and basement carparking, by amending the *Pittwater Local Environmental Plan 2014* to:

- rezone the subject lots from R2 Low Density Residential to B1 Neighbourhood Centre; and
- increase the maximum permitted building height from 8.5m to 13m.

At its meeting on 27 June 2017, the Council resolved to reject the proposal.

Outdoor Dining Approval

On 1 September 2017 Council approved a 10m x 4.6m outdoor seating area at the south-western corner of the existing building within the Reserve. The approval expired on 1 September 2020.

The approval includes:

- Operating hours 7.00am to 10.00pm.

- Maximum provision of 10 tables and 40 chairs.

At the time of completing this assessment an outdoor dining license is currently under negotiation with Crown Lands.

Development Application No. 2019/1478

This application was lodged on or around 12 December 2019 for alterations and additions to a restaurant, including operational changes relating to trading hours and seating capacity.

The application was approved by the NBLPP on 04 November 2020.

The approval includes;

Restaurant trading hours including take away meals service (Subject to Condition 30 (b)):

- Wednesday to Sunday midday - 3.00pm
- Wednesdays, Thursdays and Sundays 6.30pm-10pm
- Fridays and Saturdays 6.30pm-11.30pm

The capacity of the premises is limited to 100 patrons, including the Crown Land areas.

Building Information Certificate No. 2021/0111

This application was lodged on or around 07 May 2021 for the unauthorised elevated deck that is subject to this application. This application is under assessment at the time of completing this report.

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 DA2019/1478, 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

Section 4.55(1A) - Other Modifications	Comments
regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: • The modified deck achieves reasonable compliance with the approved built form, • The works will not give rise to any adverse amenity impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1478 for the following reasons: • The modified deck will largely remain within the approved footprint, as discussed in the 'Detailed Description of Development' section of this report, • The works are considered to be of a minimal environmental impact.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the Environmental Planning and

Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

The use of the land as a Restaurant is a prohibited land use under Pittwater Local Environmental Plan (PLEP) 2014. However, the site has Existing Use Rights for the purposes of a restaurant as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. This was established within DA2019/1478 (dated 04 November 2020), as the Applicant had provided evidence in the form of the original consent (87/200) and subsequent approvals (modification to 87/200 dated and 15 November 1990 and an Outdoor Dining Approval granted on 1 September 2017), which revealed that the use of the land commenced as a lawful purpose prior to the coming into force of PLEP 2014 on 27 June 2014.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code and Bushfire Hazard Solutions, dated 25 October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/12/2021 to 22/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Madeleine Melderis	16 Island Parade NORTH NARRABEEN NSW 2101

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

- **Parking,**
- **Noise.**

The matters raised within the submissions are addressed as follows:

- **Parking:** Concern is raised that the increased patron capacity will restrict parking within the immediate area.

Comment:

No changes to parking or the approved patron capacity are proposed under this modification.

This matter does not warrant the refusal of this application.

- **Noise:** Concern is raised that the extended operation hours will result in unreasonable noise impacts.

Comment:

This modification does not seek to alter the approved trading hours.

This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	General Comments No pollution considerations required for this modification which involves the use of an elevated deck at the front of the food business to allow patrons to sit at the front of the business. Outdoor dining already in place. Recommendation SUPPORTED- no conditions
Environmental Health (Food Premises, Skin Pen.)	General Comments Development application proposes to modify approved plans. This includes the use of an elevated deck at the front of the food business to allow patrons to sit at the front of the business. This does not involve the preparation of food for sale or affect the overall function of the kitchen space from a food safety perspective. There are no food safety/hygiene matters for further consideration. Recommendation SUPPORTED- no conditions
Landscape Officer	The application is for alterations and additions to the existing commercial premises under development consent DA2019/1478.

Internal Referral Body	Comments
	The modification proposal seeks approval to maintain the elevated timber deck that has been built over Crown Land. The deck was not built in accordance with the previous development consent, as such this application seeks to modify DA2019/0478, to incorporate the timber deck into the development consent. The built deck is in proximity to three existing large Norfolk Island Pine trees of significance. A Arboricultural Impact Assessment report is submitted with the modification and the trees are identified as T1, T2, and T3. Existing trees T1 and T3 are at some distance from the built deck and the report notes that impact is considered negligible The built deck in close proximity to existing tree T3 is determined in the report as construction in accordance with tree sensitive construction measures by suspending the deck above ground level, mitigating the impact of development encroachment, and the overall tree protection zone coverage and impact is considered negligible with the decking permitting precipitation and irrigation through timber gaps to contact natural ground. Landscape Referral raise no concerns subject to conditions.
NECC (Coast and Catchments)	The Modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Modifications (SEE) report prepared by Turnbull Planning International Pty. Ltd. dated August 2021, the Modification DA

Internal Referral Body	Comments
	satisfies requirements under clauses 13 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. Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified. As such, it is considered that the modification application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed modification relates to the timber deck built on Crown Land. The property is partially affected only by the Low Flood Risk Precinct. There are no applicable flood related development controls.
Parks, reserves, beaches, foreshore	The application is for alterations and additions to the existing commercial premises under development consent DA2019/1478. The modification proposal seeks approval to maintain the elevated timber deck that has been built over Crown Land. The deck was not built in accordance with the previous development consent, as such this application seeks to modify DA2019/0478, to incorporate the timber deck into the development consent. Parks, Reserves and Foreshores Referral raise no concerns as assessed against any impact to public recreation and access.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018).

An assessment under the SEPP was carried out for the original application.

The modification does not include any significant changes to the design of the works, as compliance with the approved built form is retained. In this regard, no further assessment, beyond that already conducted in the report for DA2019/1478, is required.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : No Zone RE1: Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone RE1: Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	Umbrellas: 3.5m Pergola: 2.6m	Deck balustrade: 1.3m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

A restaurant use is prohibited within the R2 Low Density Residential zone.

Zone RE1 Public Recreation

A restaurant is a permitted use within the RE1 Public Recreation zone. Although the development

proposed within the RE1 zone is not a stand-alone restaurant, it is ancillary to a restaurant use.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
R2 Low Density Residential				
Front Building Line	6.5m or established building line (whichever greater)	16m (Pergola)	Unaltered	N/A
Rear Building Line	6.5m	17m (Pergola)	Unaltered	N/A
Side Building Line	2.5m - One Side 1.0m - Other Side	North: No Change South: Nil (Pergola)	Unaltered Unaltered	N/A N/A
Building Envelope	3.5 x 45°	Within Envelope	Unaltered	N/A
Landscape Open Space	40% (138.1m²)	Nil (No change)	Unaltered	N/A
RE1 Public Recreation				
Front Building Line	Merit Assessment	0.7m to 2.1m (Terrace)	Unaltered	N/A
Rear Building Line	Merit Assessment	68.6m	Unaltered	N/A
Side Building Line	Merit Assessment	98.5m	98.38m	Yes
Building Envelope	3.5m x 45°	Within Envelope	Unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	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
C1.13 Pollution Control	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14.2 Scenic protection - General	Yes	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	Yes	Yes
D14.8 Side and rear building line	Yes	Yes
D14.11 Building envelope	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The proposed modification does not involve any alterations to the existing parking arrangement nor does it seek to increase the patron capacity approved under DA2019/1478. In this regard, no further assessment is required.

D14.8 Side and rear building line

Description of non-compliance

The modified deck is located entirely on crown land. As such, a merit assessment against the objectives is carried out below.

Merit Assessment

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

Comment:

The proposal is considered to be generally consistent with the desired character statement in the Pittwater DCP. Further, the proposal will be consistent with the applicable Plan of Management for the Crown land.

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

Comment:

The deck is a relatively light weight and low to the ground structure, that will not create any unreasonable issues with regard to bulk and scale.

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

Comment:

The proposal will not result in view loss.

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

Comment:

No views will be unreasonably impacted upon by the proposal.

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

Comment:

The modified deck will not give rise to any adverse amenity impact.

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

Comments:

The proposed modification will not result in the reduction of any approved landscaped areas. In addition, the application is supported by an Arborist report (Rain Tree Consulting, dated 13 June 2021), which details that the as built structure has been appropriately constructed without any adverse impacts on the nearby Norfolk Pines. In addition, this application has been reviewed by Council's Landscaping division who raised no concerns, subject to conditions.

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

Comment:

A degree of flexibility is considered appropriate in the circumstances, given the plan of management for the crown land specifically calls for a seated eating area in conjunction with the commercial premises.

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

Comment:

The works within the side setback area will not affect any vegetation. The impacts of the overall development on the Norfolk Pines adjacent to the south have been assessed by Council's Landscape Officer and found to be acceptable.

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

Comment:

The site is not in a rural area, and as discussed above, the proposal will not have any unreasonable impacts on existing vegetation in the area.

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

Comment:

The proposal is to the south of the existing building, on the adjacent crown land. The modified deck will not impact on any buffer to residential neighbours.

Given the merit assessment above, the proposed non-compliance to the side setback control is considered acceptable in the circumstances.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

The completed works and use of the area of Crown Land to the south of the subject site has been found to be generally consistent with the relevant requirements, including the applicable Plan of Management for the Crown Land.

Conditions of consent have been recommended in relation to on-going Aboricultural care of the nearby Norfolk Pines and Bushfire certification.

Subject to the conditions below, approval is recommended.

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. Mod2021/0848 for Modification of Development Consent DA2019/1478 granted for alterations and additions to an existing restaurant on land at Lot 2 DP 1005148,3 Narrabeen Park Parade, NORTH NARRABEEN, Lot 1 DP 1005148,1 Narrabeen Park Parade, NORTH NARRABEEN, 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
DA-01 Rev B Site Plan	07 July 2021	o2 Architecture
DA-02 Rev B Ground Floor Plan	07 July 2021	o2 Architecture
DA-03 Rev B Floor Plan	07 July 2021	o2 Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	13 June 2021	Rain Tree Consulting
Bushfire Report	25 October 2021	Building Code & Bushfire Hazard Solutions

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

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

B. Add Condition No. 25A - Bushfire Requirements, to read as follows:

Compliance with the Bushfire Assessment Report dated 25/10/2021 prepared by Building Code and Bushfire Hazards Solutions, Ref 220227.

Details demonstrating compliance are to be provided to Council prior to the completion of works.

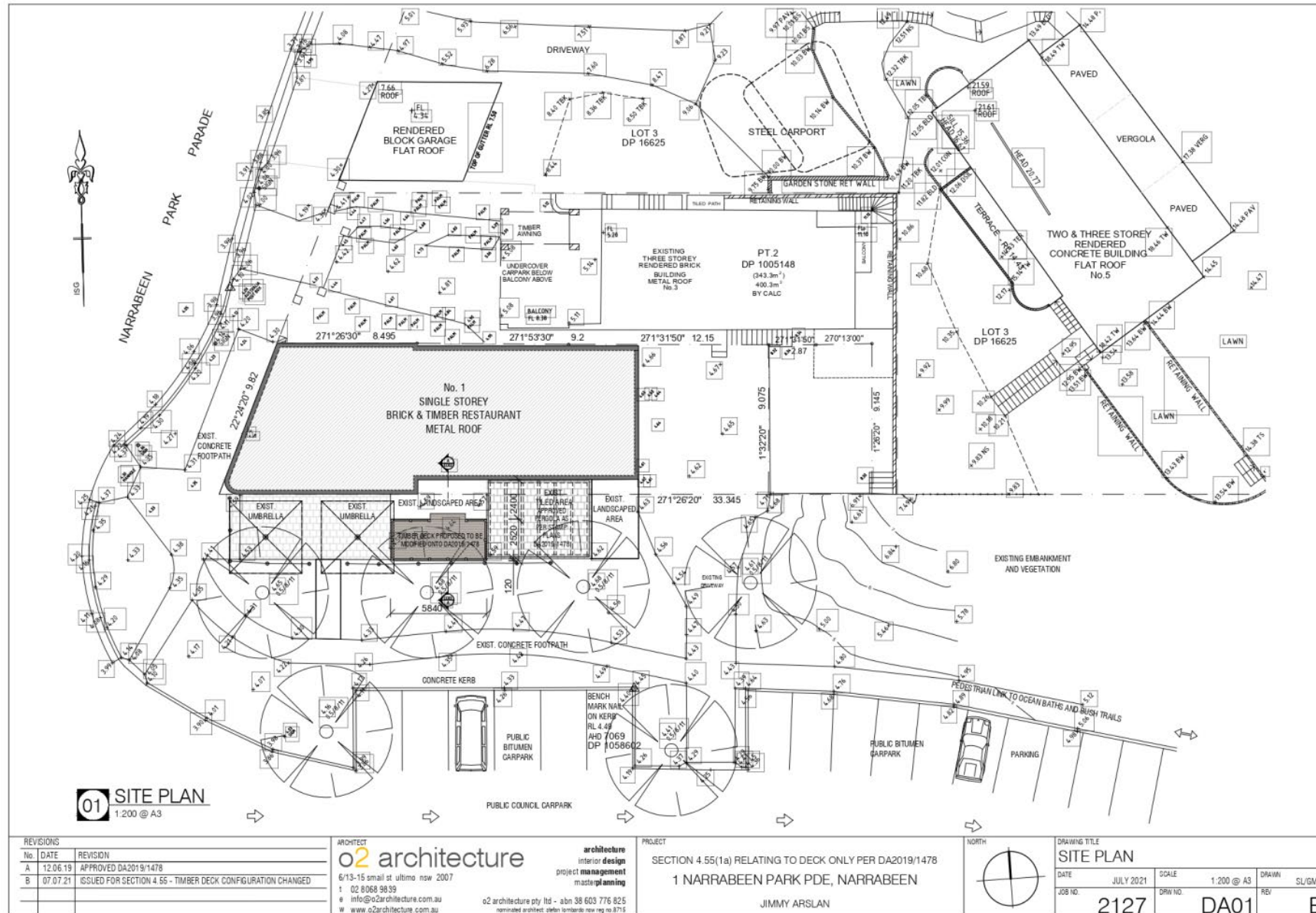
Reason: To ensure adequate provision is made for fire safety and building occupant safety.

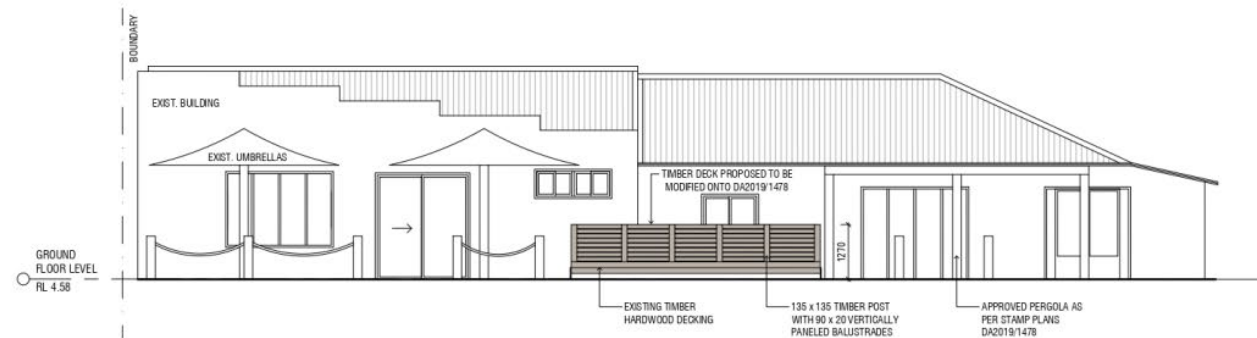
C. Add Condition No. 32A - Arboricultural Care, to read as follows:

As recommended in the Arboricultural Impact Assessment, the following provisions and restrictions shall be carried out:

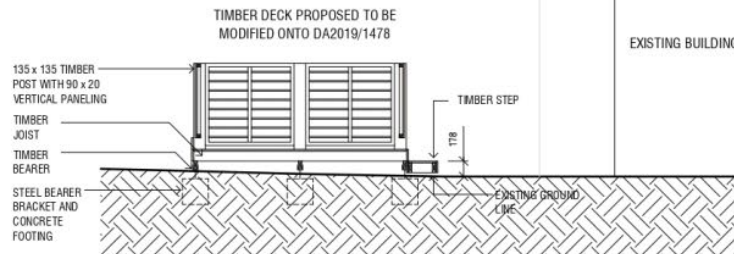
- i) under the direction of a AQF level 5 Arborist, and as scheduled for regular schedules, provide deep natural tree mulch within exposed soil and garden bed areas,
- ii) provide regular irrigation as advised,
- iii) no additional excavation within the tree protection zone is permitted,
- iv) restrict sanitisation of outdoor public use areas within the tree protection zone,

Reason: To ensure the trees are appropriately managed.

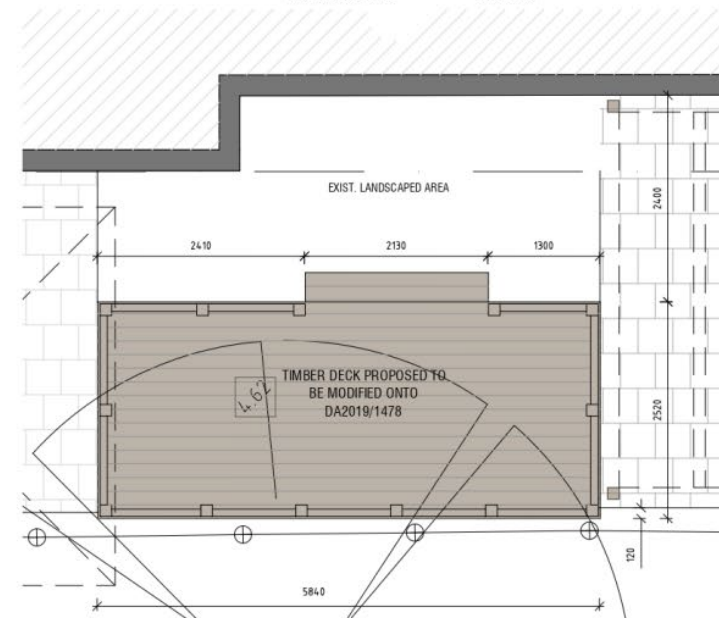




01 ELEVATION
1:100 @ A3



02 SECTION AA
1:50 @ A3



03 GROUND FLOOR PLAN
1:50 @ A3

REVISIONS			ARCHITECT o2 architecture 6/13-15 small st ultimo nsw 2007 t 02 8068 9839 e info@o2architecture.com.au w www.o2architecture.com.au	PROJECT SECTION 4.55(1a) RELATING TO DECK ONLY PER DA2019/1478 1 NARRABEEN PARK PDE, NARRABEEN JIMMY ARSLAN	NORTH 	DRAWING TITLE FLOOR PLAN, ELEVATION & SECTION					
No	DATE	REVISION				DATE	JULY 2021	SCALE	AS DISPLAYED @ A3	DRAWN	SL/GM
A	12.06.19	APPROVED DA2019/1478	o2 architecture pty ltd - abn 38 603 776 825 narrabeen architect stefan lombardo nsw reg no 8715	1 NARRABEEN PARK PDE, NARRABEEN		JOB NO.	2127	DRW NO.	DA03	REV	B
B	07.07.21	ISSUED FOR SECTION 4.55 - TIMBER DECK CONFIGURATION CHANGED									

ITEM 5.4

**MOD2021/1008 - 32 GRANDVIEW PARADE, MONA VALE -
MODIFICATION OF DEVELOPMENT CONSENT DA2021/0372
GRANTED FOR DEMOLITION AND CONSTRUCTION OF A
NEW DWELLING**

AUTHORISING MANAGER Steve Findlay
TRIM FILE REF 2022/105553
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 member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/1008 for Modification of Development Consent DA2021/0372 granted for Demolition and construction of a new dwelling at Lot 2 DP 1106194, 32 Grandview Parade, Mona Vale, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/1008
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 2 DP 1106194, 32 Grandview Parade MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2021/0372 granted for Demolition and construction of a new dwelling
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jason Malcolm Simpson Ruszczyk Katharine Rose Ruszczyk
Applicant:	Jason Malcolm Simpson Ruszczyk
Application Lodged:	12/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/01/2022 to 08/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to amend Development Consent No. DA2021/0372 relating to demolition works and construction of a new dwelling, which was approved by the Northern Beaches Local Planning Panel in June 2021.

The application is referred to the Panel as one of the property owners is an employee of Northern Beaches Council.

Part of the proposed modification seeks retrospective approval for the demolition of pre-existing lower ground and ground floor walls, retaining walls and swimming pool that were proposed to be retained within the original consent. The proposed modification also seeks retrospective approval for the new lower ground floor slab/foundation. The applicant has indicated that these works were required during the demolition process due to site contamination and in order to comply with relevant

Australian Standards and BCA requirements. Statements from the geotechnical and structural engineers have also been provided supporting the applicants position and specifying that blockwork retaining walls are required to be constructed as soon as practicable to stabilise the site and reduce the risk of erosion or collapse.

During the assessment, amended plans were received which made a minor reduction in the height of the dwelling to match the maximum height of the dwelling approved within the original consent (DA2021/0372) and amended the notation on the plans specifying that the existing pool was to be demolished (rather than retained) to fix discrepancies in the plans.

One (1) submission was received in response to neighbour notification. This submission raised concerns with unauthorised works, visual impact of the development, potential view loss, privacy, landscaping and amenity impacts associated with the approved solid fuel heater. These matters have been addressed within the report and are not considered to warrant refusal or further modification of this application.

The proposed modification will maintain the general form, envelope and height of the approved dwelling as approved under DA2021/0372. Overall, the proposed modification will result in a smaller habitable floor area, increase in landscaped area and the resultant development would retain the general form of the approved dwelling, garage and studio. The minor changes are not considered to result in unreasonable amenity impacts to adjoining neighbours or adverse impacts on the character of the approved development.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal represents a minor change to the built form of that approved under DA2021/0372 and the resultant development is suitable and appropriate for the subject site, for the reasons outlined in this report. Overall, it is considered the modification is reasonable and satisfactory on its merits.

Accordingly, it is recommended that the application be approved subject to modified conditions.

PROPOSED DEVELOPMENT IN DETAIL

The s4.55(1A) modification application seeks to modify Development Application No DA2021/0372 approved for demolition and construction of a new dwelling in the following way:

- Demolition of the entirety of existing dwelling and swimming pool. The approval under DA2021/0372 sought to retain portions of the dwelling and swimming pool (Note: these works have already been undertaken)
- New lower ground floor slab/foundation with a minor reduction in proposed floor level
- New stairs and path adjacent to garage
- Reconfiguration of lower ground floor including the addition of a bedroom
- New subfloor plant and storage rooms and watertank
- New window to lower ground floor and minor changes to existing window configuration
- New retaining wall to northern boundary
- Reconfiguration of ground floor including the slight reduction in floor level
- Changes to ground floor window configuration
- Minor reconfiguration of upper floor including the slight reduction in floor level
- Change in materials from rendered and painted brickwork to bagged and painted brickwork
- Change of roof form for the proposed covered walkway
- Minor increase in floor level of garage
- Minor increase in the ridge height of the studio

- Change in window configuration of garage and studio
- Repositioning of cabana

The submitted plans indicate a new pool and pavers within the rear garden. However, as specified on the plans, this new pool is not proposed as part of this modification application and will be applied for under a separate Complying Development Certificate. If approved, a condition is to be imposed on any consent specifying that no new pool is approved.

Overall, the proposed modification would result in a smaller habitable floor area, increase in landscaped area and the resultant development would retain the general form of the dwelling, garage and studio.

Part of the proposed modification seeks retrospective approval for the demolition of lower ground and ground floor walls, retaining walls and swimming pool that were proposed to be retained within the original consent. The proposed modification also seeks retrospective approval for the new lower ground floor slab/foundation. The applicant has specified within their Statement of Modification that:

"During demolition we encountered extreme site contamination, with buried fill of asbestos throughout. The existing building also encountered serious damp issues with the absence of under-slab membrane, absence of damp proof course, no waterproofing membrane or drainage behind retaining walls to habitable rooms, and no manageable termite treatment. In order to comply with the BCA and AS we had to address the latent conditions and existing non compliances. Emergency works were undertaken to remediate the site which involved demolition and removal of the structures that could not comply with the BCA and AS. This resulted in the removal of the few remaining walls that were intended to be kept. Emergency removal was required so that the following was possible.

- *structural certification,*
- *waterproofing certificates,*
- *termite certificates and*
- *design statements from the Builder and Architect that "all work is done to relevant BCA and AS."*

Statements from the geotechnical and structural engineers have been provided supporting this statement and specifying the requirement for blockwork retaining walls to be constructed as soon as practicable to stabilise the site and reduce the risk of erosion or collapse.

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 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.17 Swimming Pool Safety
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 2 DP 1106194, 32 Grandview Parade MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of a single, regular shaped allotment located on the eastern side of Grandview Parade. The site has a frontage of 15.455m along Grandview Parade and a depth of 61.77m. The site has a surveyed area of 941.6m². The site is located within the R2 Low Density Residential zone. Development on the site includes a under construction three-storey detached dwelling house and detached garage and studio approved by Development Consent No. DA2021/0372. The site presently contains a foundation slab and excavation works. The pre-existing pool has also been demolished. The site falls from the rear boundary to the street frontage with a total fall of 9.55m and a slope of approximately 15.5%. The site contains an established, mature Norfolk Island Pine Tree located towards the front of the site and mediums sized trees and shrubs located in a garden bed along the rear boundary. There are no known threatened species of flora or fauna. Adjoining and surrounding development is characterised by low-density residential development within a landscaped setting.

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:

- **DA2021/0372** - Demolition and construction of a new dwelling - Approved by Northern Beaches Local Planning Panel - 02/06/2021 (subject of this modification application)

APPLICATION HISTORY

03/02/2022

Amended plans were received which amended the notation on the plans that the existing pool was to be demolished (rather than retained). It should be noted that the original plans submitted outlined the pool in dotted red outline to represent the demolition however, there was a discrepancy with the text.

11/02/2022

After concerns raised by Council, amended plans were received which reduced the height of the dwelling to match the maximum height of the dwelling approved within the original consent (DA2021/0372).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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 DA2021/0372 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: • The modifications will not change the use of the site, • The modifications will not significantly alter the form of development that was originally approved, • The modifications will not result in increased adverse impacts on the natural environment nor the amenity of surrounding residential properties
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2021/0372 for the following reasons: • The modifications will not change the use of the site, • The modifications will not significantly alter the form of development that was originally approved, • From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.
(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	

Section 4.55(1A) - Other Modifications	Comments
(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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was

Section 4.15 'Matters for Consideration'	Comments
	requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/01/2022 to 08/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Nicholas Jonathan Senior Mrs Danielle Lisa Senior	25 Hillcrest Avenue MONA VALE NSW 2103

The following issues were raised in the submissions:

- Works have already been partially undertaken
- Visual impact
- Privacy
- Views
- No amended landscaping plan
- Impact of chimney flue and smoke from solid fuel heater

The matters raised within the submissions are addressed as follows:

- **Works have already been partially undertaken**

Comment:

Concern has been raised that unauthorised demolition works and the laying of the building slab subject of this modification have already been undertaken.

Part of the proposed modification seeks retrospective approval for the demolition of lower ground and ground floor walls, retaining walls and swimming pool that were to be retained under the original consent. The proposed modification also seeks retrospective approval for the new lower ground floor slab/foundation. The applicant has specified within their Statement of Modification that:

"During demolition we encountered extreme site contamination, with buried fill of asbestos throughout. The existing building also encountered serious damp issues with the absence of under-slab membrane, absence of damp proof course, no waterproofing membrane or drainage behind retaining walls to habitable rooms, and no manageable termite treatment. In order to comply with the BCA and AS we had to address the latent conditions and existing non compliances. Emergency works were undertaken to remediate the site which involved demolition and removal of the structures that could not comply with the BCA and AS. This resulted in the removal of the few remaining walls that were intended to be kept. Emergency removal was required so that the following was possible.

- *structural certification,*

- *waterproofing certificates,*
- *termite certificates and*
- *design statements from the Builder and Architect that "all work is done to relevant BCA and AS."*

Modification Applications are able retrospectively approve changes to approved consents. The original Development Application had a description of works and was notified as "*Demolition and construction of a new dwelling*", and as such the works are consistent with this description of works. The proposed changes under this Modification Application would result in a lesser habitable floor area, increase in landscaped area and the resultant development would retain the general form of the approved dwelling, garage and studio (as approved under DA2021/0372). As such, the already carried out works and the proposed works are able to be approved under this modification application.

- **Visual impact**

Comment:

Concern was raised that the proposed modification would result in an increased visual impact when viewed from the neighbouring property to the east (No.25 Hillcrest Avenue). The proposed modification will retain the approved height and rear setback of the approved dwelling (as per DA2021/0372) and is not considered to result in unreasonable additional visual impacts to adjoining neighbours.

The submitted plans indicate a new pool and pavers within the rear garden. However, as specified on the plans, this new pool is part of this modification application and will be applied for under a separate Complying Development Certificate. If approved, a condition is to be imposed on any consent specifying that no new pool or associated pavers are approved.

- **Privacy**

Comment:

A submission has been received by the adjoining neighbour to the east (No.25 Hillcrest Avenue) in relation to privacy impacts. The submission raises concerns with the rear (east) facing windows of the proposed upper floor addition adjoining the ensuite and walk-in wardrobe. These windows were approved as part of DA2021/0372 and would be generally consistent with this approval. Additionally, these windows are proposed to be setback from the eastern (rear) boundary by an additional 1.0m from that approved under DA2021/0372, resulting in these windows being approximately 20.0m from the rear boundary. Given this spatial separation, these windows meet the requirements of this control which specifies that adjoining properties are to be protected from direct overlooking within 9.0m. In addition, these windows would serve an ensuite and walk-in robe, which are not considered high usage areas. As such, these windows are not considered to result in unreasonable privacy impacts to this neighbour.

- **Views**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP. In summary, the assessment of the original DA2021/0372 raised no concerns with regards to view loss. The proposed modification would keep the general form, envelope and height of the approved dwelling under DA2021/0372 and the proposed minor changes to the built form are not considered to result in unreasonable view loss to adjoining neighbours. District views over the proposed dwelling would be retained from the neighbour to the east.

- No amended landscaping plan**

Comment:

Concern was raised that the modification application was not supported by an amended landscape plan. Specifically, concern was raised with regards to how new landscaping along the rear boundary would protect and/or impact privacy and views.

The proposed modification does not seek to alter the approved landscape plan, and the existing garden bed at the rear of the site is proposed to be retained. No new substantial trees are proposed as part of this application. The matter of privacy and views has been addressed within this report (see sections C1.3 and C1.5).

- Impact of chimney flue and smoke from solid fuel heater**

Comment:

Concern was raised with regards to the proposed solid fuel heater and associated smoke impacts. This solid fuel heater was approved under the original consent and the current application does not seek amendments to this aspect of the proposed development. Conditions were imposed within the original consent by Council's Environmental Health Officer to ensure this heater is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements and that the ongoing use of this heater take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. If approved, these conditions will be retained within any consent.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No objections to approval.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

(SREPs)

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1180596S_02 dated 11/02/2022). The BASIX Certificate is supported by an NatHERS Certificate (see Certificate No.0005833074-01 dated 11/02/2022).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
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Height of Buildings:	8.5m	8.5m	Unaltered	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

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.

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

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

Comment: The proposed works would not impact upon a heritage item, conservation area or archaeological site.

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Garage: 7.6m	unaltered	Yes
Rear building line	6.5m	Cabana: 8.5m	Cabana: 9.6m (Note: New pool is not part of this mod application)	Yes
Side building line	2.5m (N)	North: 1.25m	Cabana: 1.3m Dwelling (unaltered)	No
	1.0m (S)	South: 1.0m	Terrace: 0.5m Dwelling (unaltered)	No
Building envelope	3.5m (N)	Outside envelope	Outside envelope *note: approved non-compliance reduced	No
	3.5m (S)	Outside envelope	Outside envelope *note: approved non-compliance reduced	No
Landscaped area	60% 564.9m ²	45.07% 425.5m ²	51.3% 483.4m ²	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The approved development includes three (3) storeys, where the locality calls for two (2) storey development. The proposed modifications do not alter the approved number of storeys, involve minimal environmental impact, are set below the general tree canopy height, and retain an appropriate balance between respecting the landform and encouraging development. Overall, the the proposed modification would result in a lesser habitable floor area, increase in landscaped area and the resultant development would retain the general form of the approved dwelling, garage and studio. As such, the proposed modifications achieve the intention of the desired character of the area and are acceptable in this regard.

B8.1 Construction and Demolition - Excavation and Landfill

The modification application seeks consent for the authorisation of existing excavation works which extend beyond the scope of the original approval. The application is supported by a geotechnical letter provided by Douglas Partners Pty Ltd which specifies that the works are acceptable from a geotechnical perspective and that the replacement retaining walls should be constructed as soon as possible to reduce the risk of localised instability along the eastern site boundary. The application has been reviewed by Development Engineer who has raised no objection to the proposed modification.

C1.3 View Sharing

In response to the notification of this application, one (1) submission was received from the adjoining neighbour to the east (No.25 Hillcrest Avenue) in relation to view loss. This submission raised concern regarding views to *"properties on Orana Road through to Barrenjoey Road and beyond into Mona Vale"* and *"district views"*. The objector provided a photo of this view of concern as demonstrated in Photo 1 below:

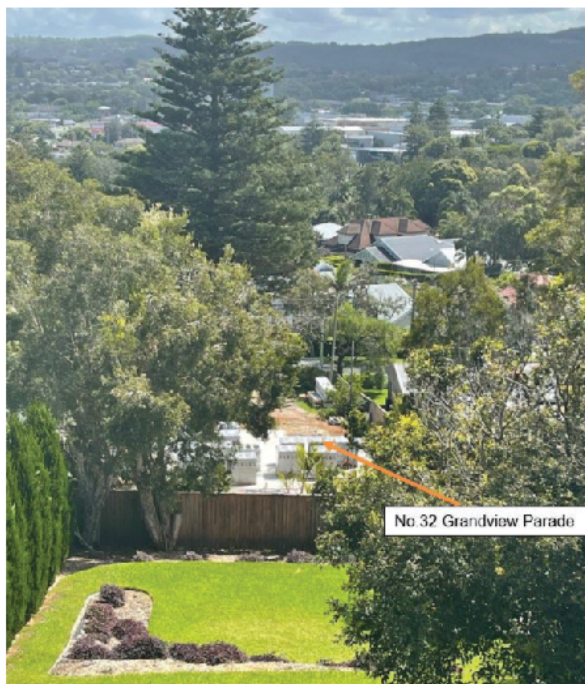


Photo 1 - View from No.25 Hillcrest Avenue over the subject site (photo provided by objector within

submission)

The assessment of the original DA2021/0372 raised no concerns with regards to view loss. The proposed modification will maintain the general form, envelope and height of the approved dwelling under DA2021/0372 and the proposed minor changes to the built form are not considered to result in unreasonable view loss to adjoining neighbours. District view over the proposed dwelling would be retained.

Concern was also raised with regards to proposed landscaping within the rear garden and impacts to district views. The proposed modification does not seek to alter the approved landscape plan, and the existing garden bed at the rear of the site is proposed to be retained. No new substantial trees are proposed as part of this application. Furthermore, the objectives of clause C1.3 View Sharing of P21 DCP specifies that canopy trees take priority over views.

C1.4 Solar Access

Shadow diagrams were not submitted with this application. However, the proposed modification maintains the general form and height of the approved dwelling under DA2021/0372. The modifications would also result in a reduction in building envelope. Overall, the proposed modifications are not considered to result in additional overshadowing impacts and the proposal is seen to be consistent with the objectives of this Clause and is therefore supported on merit.

C1.5 Visual Privacy

The proposed changes to windows are minor and not anticipated to give rise to unreasonable privacy impacts. The general positioning and size of these windows will remain consistent with that approved under DA2021/0372.

A submission has been received by the adjoining neighbour to the east (No.25 Hillcrest Avenue) in relation to privacy impacts. This submission raised concerns with the rear (east) facing windows of the proposed upper floor addition adjoining the ensuite and walk in wardrobe. These windows were approved within the original application (DA2021/0372) and will be generally consistent with this approval. Additionally, these windows are proposed to be setback from the eastern (rear) boundary by an additional 1.0m from that approved under DA2021/0372, resulting in these windows being approximately 20.0m from the rear boundary. Given this spatial separation, these windows would meet the requirements of this control which specifies that adjoining properties are to be protected from direct overlooking within 9.0m. In addition, these windows would serve an ensuite and walk in robe which are not considered high usage areas. As such, these windows are not considered to result in unreasonable privacy impacts to this neighbour.

C1.14 Separately Accessible Structures

A condition was imposed on the original consent to ensure that the detached studio above the garage is not used for the purposes of separate habitation (i.e. secondary dwelling or similar) and cooking facilities, such as stoves and ovens, are not allowed. The proposed modification does not seek to amend the use or floor plan of this studio and this condition will be retained on the consent.

C1.17 Swimming Pool Safety

The proposed modification seeks retrospective approval for the demolition of a swimming pool. The submitted plans indicate a new pool and pavers within the rear garden. However, as specified on the plans, this new pool is part of this application and will be applied for under a separate Complying

Development Certificate. A condition has been imposed specifying that no new pool is approved.

D9.7 Side and rear building line

Description of non-compliance

The control requires development to be setback at least 2.5m from one side boundary, 1.0m from the other side boundary and 6.5m from the rear boundary for structures other than driveways, fences and retaining walls.

North-western side boundary

The proposed modification works will not alter the side setback of the approved dwelling to north-western side setback. The setback, form and scale of the resultant dwelling will be consistent with the original approval. The proposed modifications will increase the side setback of the proposed cabana to 1.3m (from 1.25m). As such, the proposal is considered to meet the objectives of this control, is consistent with the original DA assessment and is therefore supported on merit.

South-eastern side boundary

The proposal will retain the approved setback to the south-eastern side boundary and comply with the 1.0m requirement with the exception of a small portion of the new lower ground floor terrace, which would be setback 0.5m from the south-eastern side boundary. This terrace would be an open structure, of minimal bulk and scale and would not result in any unreasonable amenity or streetscape impacts. As such, the minor additional non-compliance is considered to meet the objectives of this control, is consistent with the original assessment and is therefore supported on merit.

Rear boundary

The proposed development will comply with the 6.5m rear setback control and does not propose any new structures within this setback area. The submitted plans indicate a new pool and pavers within this rear setback area, however, as specified on the plans, this new pool is not subject of this modification application and will be applied for under a separate Complying Development Certificate. A condition is imposed specifying that no new pool and associated pavers is approved as part of this application.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D9.9 Building envelope

The modification will result in a minor reduction in building envelope non-compliance and will not result in an increased building envelope encroachment. As such, the outcomes of the original assessment and consistency with the control objectives are maintained.

D9.11 Landscaped Area - Environmentally Sensitive Land

The original application DA2021/0372 was supported with a total landscaped area of 425.5m² or 45%. The proposed modifications will result in a total landscaped area of 483.4m² 51.3%. Hence, the proposed modifications will result in an improvement to the non-compliance approved as part of the original application and is therefore supported in this instance. The proposed modification does not seek additional of tree or vegetation removal and the landscaping outcome of the site is retained.

It should be noted that the submitted plans indicate a new pool and pavers within the rear garden.

However, as specified on the plans this new pool is not subject of this modification application and will be applied for under a separate Complying Development Certificate. As such, this area was included in the landscaped area calculation for this application. If approved, a condition is to be imposed on any consent specifying that no new pool or associated paving in the rear garden is approved. Nevertheless, if this new pool is considered within the landscaped area calculation, the landscaped area would be calculated at 443.5m² or 47.1% which would still result in an improvement to the non-compliance approved as part of the original application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

The proposed modifications will maintain the general form, envelope and height of the approved

dwelling under DA2021/0372. Overall, the the proposed modification will result in a lesser habitable floor area, an increase in landscaped area, and the resultant development will retain the general form of the approved dwelling, garage and studio. The minor changes are not considered to result in any unreasonable amenity impacts to adjoining neighbours or adversely impact the character of the approved development.

One (1) submission was received in response to the neighbour notification. This submission raised concerns with unauthorised works, visual impact of the development, potential view loss, privacy impacts, landscaping and amenity impacts associated with the approved solid fuel heater. These matters have been addressed within the report and are not considered to warrant refusal or further modification of this application.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance, the proposal represents a minor change in the built form of that approved under DA2021/0372 and the resultant development is suitable and appropriate for the subject site for the reasons outlined in this report.

Accordingly, the application is recommended for approval subject to modified conditions. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant **approval** to ModificationApplication No. Mod2021/1008 for Modification of Development Consent DA2021/0372 granted for Demolition and construction of a new dwelling on land at Lot 2 DP 1106194,32 Grandview Parade, MONA VALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supportingDocumentation 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
4.55_A010 - Demolition Plan	Undated; Received: 03/02/2022	John Bohane Architecture
4.55_A105 Rev.B - LG - Proposed - Lower Ground Floor Plan	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A106 Rev.B - G - Proposed - Ground Floor Plan	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A107 Rev.B - UL- Proposed - Upper Floor Plan	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A302 Rev.A - Site Elevations - East & West	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A301 Rev.A - House - Elevations - North & South	05/10/2021; Received: 11/02/2022	John Bohane Architecture

4.55_A303 Rev.A - House - Elevations - East & West	05/10/2021 ; Received: 11/02/2022	John Bohane Architecture
4.55_A304 Rev.A - Garage & Studio - Elevations - East & West	05/10/2021; Received: 11/02/2022	John Bohane Architecture
4.55_A403 Rev.A - Site Sections - East & West	05/10/2021; Received: 11/02/2022	John Bohane Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Letter	24/01/2022	Douglas Partners
BASIX Certificate (No.1180596S_02)	11/02/2022	Greenview Consulting Pty Ltd
NatHERS Certificate (Certificate No.0005833074-01)	11/02/2022	Greenview Consulting Pty Ltd

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

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

B. Add Condition 3A No Works on Adjoining Land to read as follows:

No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

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

C. Add Condition 3B No Approval for New Swimming Pool to read as follows:

No Approval is granted under this consent for a new swimming pool or associated paving within the rear garden.

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

D. Add Condition 11A Structural Adequacy and Excavation Works to read as follows:

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.

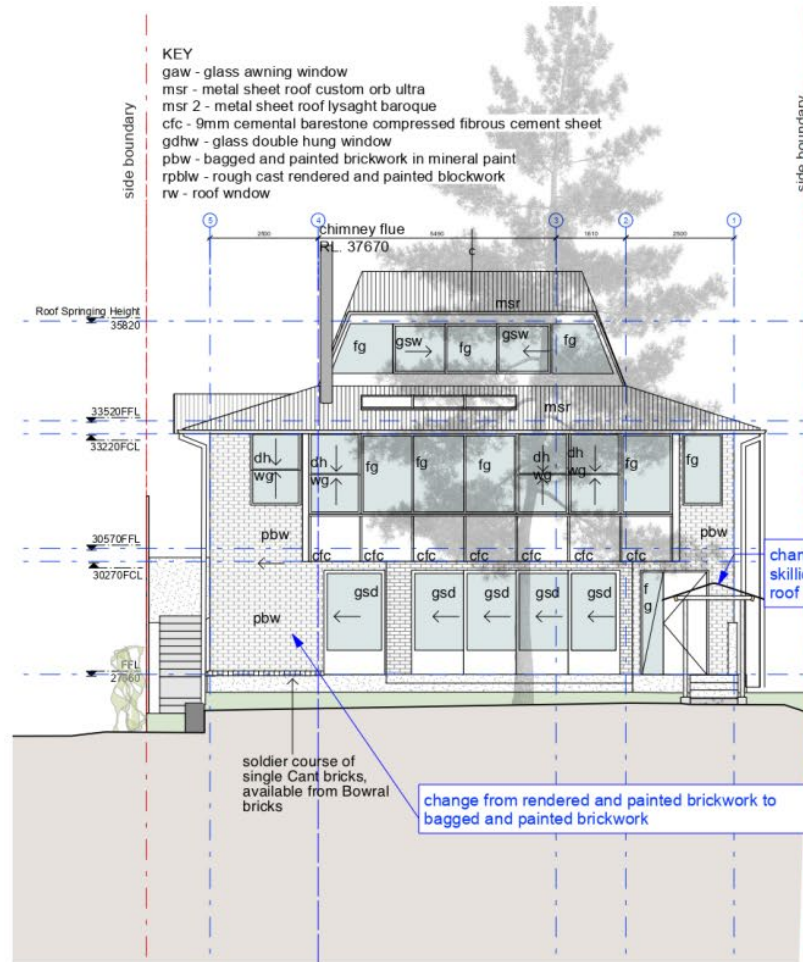
Reason: To provide public and private safety

E. Add Condition 22A Retaining Walls to read as follows:

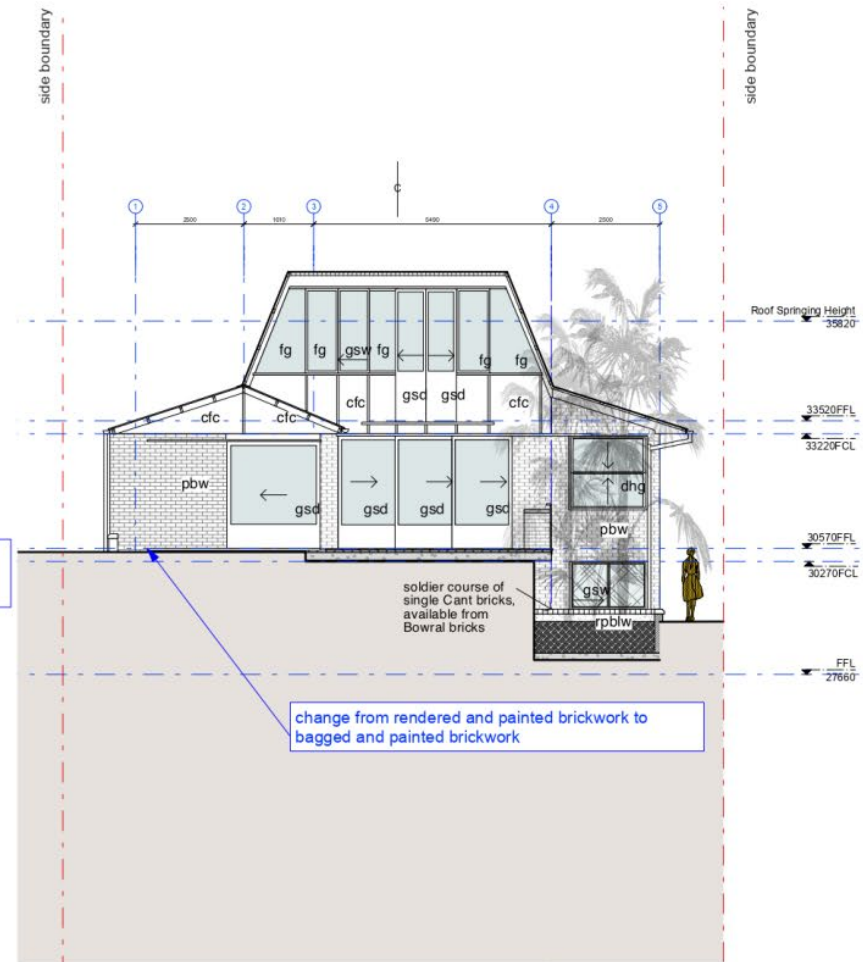
The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety





**House - South Elevation
1:100**



**House - North Elevation
1:100**

COMPLIANCE	INTELLECTUAL PROPERTY	ISSUE DATE	DESCRIPTION	REV
1.00	1.00	1.00	1.00	1.00
2.00	2.00	2.00	2.00	2.00
3.00	3.00	3.00	3.00	3.00
4.00	4.00	4.00	4.00	4.00
5.00	5.00	5.00	5.00	5.00
6.00	6.00	6.00	6.00	6.00
7.00	7.00	7.00	7.00	7.00
8.00	8.00	8.00	8.00	8.00
9.00	9.00	9.00	9.00	9.00
10.00	10.00	10.00	10.00	10.00

**JOHN BOHANE
ARCHITECTURE**

CLIENT
KAZIMIERA & JASON RUSZCZYK
PROJECT NAME
GRANDVIEW RESIDENCE
PROJECT ADDRESS
32 GRANDVIEW PARADE, MONA
VALE, NSW 2103

TITLE
Section 4.55
DRAWN
JH
SCALE
1:100

DRAWING
House - Elevations - North & South
DRAWING NUMBER
4.55_A301
REVISION
A





Technical drawing of a roof structure showing a cross-section. The drawing includes labels for materials and dimensions:

- Materials:**
 - pbw - bagged and painted brickwork in mineral paint
 - rplw - rough cast rendered and painted blockwork
 - rw - roof window
- Dimensions:**
 - 1000 (horizontal distance from left edge to first vertical line)
 - 8000 (horizontal distance between first and second vertical lines)
 - 30 000 (Ridge Height)
 - 22 950 (FFL - Finished Floor Level)
 - 22 650 (FCL - Finished Ceiling Level)
 - 2000 (vertical distance between FFL and FCL)
 - 76 100 (FF - Finished Floor Level)
- Structural Elements:**
 - msr 2 (Main Structural Roof)
 - osd tank (Overhead Storage Tank)
 - rplw (Rough Cast Rendered and Painted Blockwork)
 - msr (Main Structural Roof)
- Other Labels:**
 - side boundary (indicated by a dashed line on the right)

[illegible]

Elevation drawing of a building facade. The drawing includes the following annotations:

- Roof Height:** 36.837' (indicated by a vertical dimension line on the left).
- FR_27.895'** (indicated by a horizontal dimension line on the left).
- FR_32.452'** (indicated by a horizontal dimension line on the left).
- FR_35.197'** (indicated by a horizontal dimension line on the left).
- msr 2** (labeled near the upper window).
- gdhw** (labeled near the upper window).
- gsw** (labeled near the lower window).
- rpblw** (labeled near the lower window).
- 7.50'** (indicated by a vertical dimension line on the left, corresponding to the height of the lower section).

[illegible]

CLIENT
KATARINA & JASON RUSZCZYK

PROJECT NAME
GRANDVIEW RESIDENCE

PROJECT ADDRESS
32 GRANDVIEW PARADE, MONA
VALE, NSW 2103

STATUS	
Section 4.55	
DRAWN	CL
BY	JH
SCALE	N
1:50 @ A2	

DRAWING
Garage & Studio - Elevations - East &
West

DRAWING NUMBER
4.55 A304

REVISED
A

ITEM 5.5**DA2021/2472 - PITTWATER ROAD, MANLY - USE OF LAND
FOR A MUSIC EVENT INCLUDING TEMPORARY
INSTALLATION OF A STAGE, FENCING, TOILETS, BAR AND
FOOD STALLS - KEIRLE PARK**

AUTHORISING MANAGER Rodney Piggott
TRIM FILE REF 2022/105585
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 the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2472 for Use of land for a music event including temporary installation of a stage, fencing, toilets, bar and food stalls - Keirle Park at Lot 10 DP 1177, Pittwater Road, MANLY, Lot 11 DP 1177, Pittwater Road, MANLY, Lot 12 DP 1177, Pittwater Road, MANLY, Lot 13 DP 1177, Pittwater Road, MANLY, Lot 14 DP 1177, Pittwater Road, MANLY, Lot 15 DP 1177, Pittwater Road, MANLY, Lot 16 DP 1177, Pittwater Road, MANLY, Lot 18 DP 1177, Pittwater Road, MANLY, Lot 3 DP 1079222, Pittwater Road, MANLY, Lot 1 DP 1079502, Pittwater Road, MANLY, Lot 2 DP 537807, Pittwater Road, MANLY, Lot 1 DP 177459, Pittwater Road, MANLY, Lot 8 DP 1177, Pittwater Road, MANLY, Lot 9 DP 1177, Pittwater Road, MANLY, Lot 19 DP 1177, Pittwater Road, MANLY, Lot 20 DP 1177, Pittwater Road, MANLY, Lot 5 DP 1177, Pittwater Road, MANLY, Lot 6 DP 1177, Pittwater Road, MANLY, Lot 7 DP 1177, Pittwater Road, MANLY, Lot 1 DP 535058, Pittwater Road, MANLY, Lot 1 DP 931708, Pittwater Road, MANLY, Lot 2 DP 928762, Pittwater Road, MANLY, Lot 17 DP 1177, Pittwater Road, MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2472
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 10 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 11 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 12 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 13 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 14 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 15 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 16 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 18 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 3 DP 1079222, 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 1079502, 0 Pittwater Road MANLY NSW 2095 Lot 2 DP 537807, 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 177459, 0 Pittwater Road MANLY NSW 2095 Lot 8 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 9 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 19 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 20 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 5 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 6 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 7 DP 1177, 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 535058, 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 931708, 0 Pittwater Road MANLY NSW 2095 Lot 2 DP 928762, 0 Pittwater Road MANLY NSW 2095 Lot 17 DP 1177, 0 Pittwater Road MANLY NSW 2095
Proposed Development:	Use of land for a music event including temporary installation of a stage, fencing, toilets, bar and food stalls at Keirle Park, Manly
Zoning:	Manly LEP2013 - Land zoned RE1 Public Recreation Manly LEP2013 - Land zoned RE2 Private Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Zaccaria Concerts & Touring

Application Lodged:	21/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other



Notified:	19/01/2022 to 16/02/2022
Advertised:	19/01/2022
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 253,000.00

EXECUTIVE SUMMARY

The development application seeks approval to the temporary use of Keirle Park, Manly for a one day music event called "By the C". The event will have a patron capacity of up to 8,000 Persons. The event is scheduled to be held on Sunday 20 March 2022.

The subject site is zoned RE1 Public Recreation under the provisions of the Manly Local Environmental Plan 2013 (MLEP 2013), and the proposed development is permissible with consent.

The public exhibition period generated no submissions.

The application proposes to utilise Council land (Keirle Park). As the application proposes to operate on Council land, the application is referred to the Northern Beaches Local Planning Panel.

Council is currently awaiting outstanding external referral responses from NSW Police, Transport for NSW (TfNSW) and NSW Health. Council is satisfied that the proposed development can be supported, given previous responses from these referral bodies for outdoor music events at this site that have been considered in the assessment report. Any referral responses received prior to the Northern Beaches Local Planning Panel on the 2 March 2022 will be addressed via supplementary memo to the panel.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be determined by way of approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the use of the playing fields at Keirle Park for an outdoor music event called "By the C" on 20 March 2022.

Proposed Operational Details:

- Date: Sunday 20 March 2022
- Event Duration: 12pm - 10pm (Final musical act to finish 9pm)
- Bars and food serving: 12pm - 8:30pm
- Patron Capacity: 8,000.
- Staff: 400

Event bump-in works will be carried out in preparation for the event from 17 March to 19 March 2022. These works include setting up the various structures associated with the music event, such as the stage, the installation of toilets, construction of a bar and food service areas, positioning of food services, provision of free water stations, and erection of temporary structures for medical services, box office and backstage rooms. Temporary fencing will be erected around the site of the music event.



Intermittent sound checking will occur from 5pm to 8pm on Saturday 19 March and from 10am on the day of the event (20 March).

Works will be carried out to remove all structures on 22 March 2022.

The proposal includes a COVID- 19 Safety Plan, Traffic Management Plan, Security Management Plan, Event Health Plan, Turf Protection Plan, Acoustic Report/Plan, Event Management Plan, Waste Management Plan, Flood Management Plan and Emergency Management Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 104 Traffic-generating development)

Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.8 Waste Management

SITE DESCRIPTION

Property Description:	Lot 10 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 11 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 12 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 13 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 14 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 15 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 16 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 18 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 3 DP 1079222 , 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 1079502 , 0 Pittwater Road MANLY NSW 2095 Lot 2 DP 537807 , 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 177459 , 0 Pittwater Road MANLY NSW 2095
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	Lot 8 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 9 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 19 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 20 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 5 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 6 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 7 DP 1177 , 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 535058 , 0 Pittwater Road MANLY NSW 2095 Lot 1 DP 931708 , 0 Pittwater Road MANLY NSW 2095 Lot 2 DP 928762 , 0 Pittwater Road MANLY NSW 2095 Lot 17 DP 1177 , 0 Pittwater Road MANLY NSW 2095
Detailed Site Description:	Keirle Park is located on the western side of Pittwater Road. It is a grassed area used as playing fields and various recreational and community facilities (tennis courts, senior citizens centre, croquet fields, etc.). It adjoins Manly Lagoon to the north, Manly Golf Course to the west and south. Keirle Park has an area of 4.647 hectares (source: Keirle Park Plan of Management). It comprises the following allotments: Lots 5 - 20 Section 6 DP 1177, Lot 1 DP 1079502, Lot 2 DP 537807, Lot 1 DP 535058, Lot 1 DP 971708 and Lot 2 DP 928762. Keirle Park is owned by Northern Beaches Council and is classified as Community Land under the Local Government Act 1993.

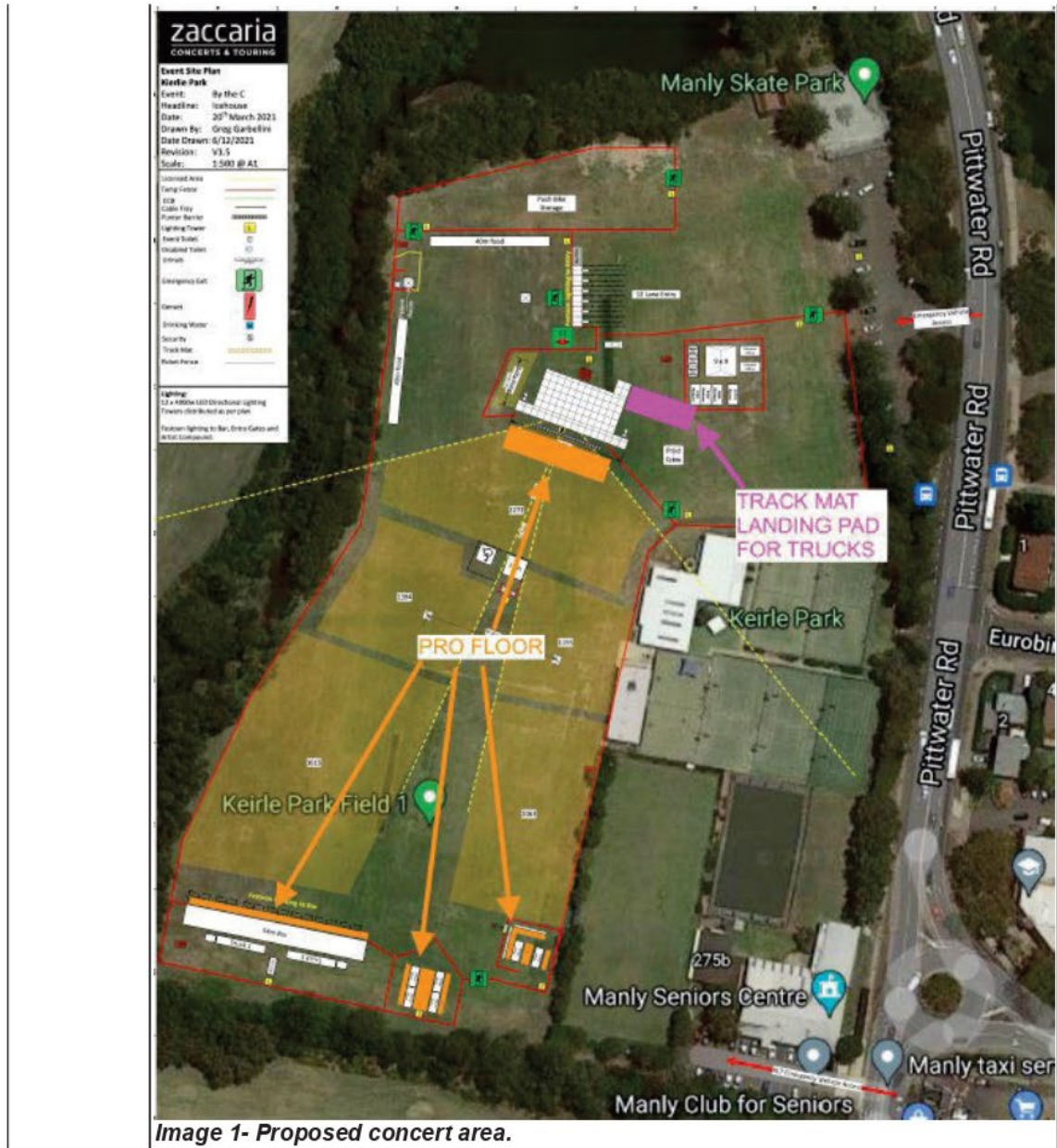


Image 1- Proposed concert area.

Map:



SITE HISTORY

The land has been used for community purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

On 23 May 2003 Council approved DA 185/2002 for alterations and/or additions to an existing Club at the site.

On 8 July 2008 Council approved DA 496/2007 for the construction of a single storey sports facility building at the site.

On 6 March 2019 Council approved DA2019/0054 for the use of land for a music event including temporary installation of a stage, fencing toilets, bar and markets. The music event, known as "The Drop", occurred on 23 March 2019.

On 6 March 2020 Council approved DA2019/1195 for the use of land for a music event including temporary installation of a stage, fencing toilets, bar and markets. The music event was known as "The Drop Festival".

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

Section 4.15 Matters for Consideration	Comments
	13 April 2018. The subject site has been used for community purposes for an extended period of time. The proposed development retains the community 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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to waste management. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.

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

LOCAL GOVERNMENT ACT 1993

The site is classified as “community land”. Section 36 of the LG Act requires the preparation of a Plan of Management for all community land. The Keirle Park Plan of Management applies to the subject site.

Section 35 of the LG Act requires that the land be used and managed in accordance with the Plan of Management.

The Keirle Park Plan of Management includes a number of Objectives and then describes the means of achieving the Objective. Objective 14 is to:

“Retain opportunities to use open space for special events or projects and for future activities if need becomes apparent.”

The proposed music event is considered to be a special event and is consistent with the desired use of the site.

The means of achieving this Objective are:

- “1. Consider the making or renewal of leases, licences or any other estate or permit, as appropriate.*
- 2. At each lease, licence or permit renewal consider the need to continue the activity.”*

It is considered that the proposed music event is consistent with these broadly-worded means of achieving the Objective.

The proposal is consistent with other provisions of the Keirle Park Plan of Management.

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 19/01/2022 to 16/02/2022 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	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 to protect persons using/ attending the event and to facilitate their egress from the site in the event of an emergency or fire.
Environmental Health (Acid Sulphate)	General Comments Application is a for a music festival. As such, Acid sulphate soils are unlikely to be disturbed. Recommendation Supported - no conditions
Environmental Health (Industrial)	General Comments Application is for a music festival on Sunday 20 March. Performances will run from 12.00 p.m. to 9.00 p.m with setup and system checks prior. The applicant has provided an Event Noise Management Plan by Lloyd George Acoustics Pty Ltd dated 25/11/21 (reference: 21116854-01). The Management Plan undertakes modelling of potential noise impacts and has set limits for the event and proposes a number of recommendations. Recommendation Supported - subject to conditions
Environmental Health (Food Premises, Skin Pen.)	General Comments

Internal Referral Body	Comments
	Application is for a music festival on Sunday 20 March. This referral response is specifically concerned with the planned food stalls and their requirement to comply with the relevant regulations ensure adequate food safety outcomes. To protect public health, Environmental Health also recommend appropriate conditions regarding sanitary facilities. The proposal is supported with the recommendation to include appropriate conditions of consent in the approval. Recommendation The proposal is Supported - subject to conditions
NECC (Bushland and Biodiversity)	The Biodiversity Referrals Body raises no objections to the proposal, subject to conditions. The proposal has been assessed against MLEP Clause 6.5 (Terrestrial Biodiversity). The vegetation along the northern and western boundaries of the proposed festival is mapped as Swamp Oak Floodplain Forest (OEH 2016), an Endangered Ecological Community listed under both the NSW Biodiversity Conservation Act 2016 (BC Act 2016) and the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999). The proposal is for a temporary festival at Keirle Park within modified and managed parkland immediately adjacent a tributary of Burnt Bridge/Manly Creeks and protected riparian vegetation. The event proposal does not include any removal of native vegetation. Any perimeter fencing adjoining bushland along the northern, western and southern boundaries of the festival site must be a minimum of 5 metres from the dripline (canopy) of existing trees. Subject to recommended conditions, the proposal is unlikely to result in long-term impact to wildlife habitat or terrestrial biodiversity at the site.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13, 14 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As this site drains into Manly Lagoon, the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to creeks or the lagoon. No utilities or services are

Internal Referral Body	Comments
	to be placed in the riparian corridor, all services and utilities must remain within in the fenced area as illustrated in the Statement of Environmental Effects prepared by Zaccaria Concerts and Touring . This application, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Manly Lagoon and its surrounding environment if conditions are adhered to.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is for the utilisation of Keirle Park for a music festival with up to 8,000 patrons. Keirle Park is subject to high levels of flood hazard. The applicant has provided a comprehensive Flood Risk Management Report prepared by Northern Beaches Consulting Engineers - dated 10 December 2021. Provided the recommendations of the Flood Risk Management Report are implemented the risk to life can be appropriately managed and the application is supported, subject to conditions.
Parks, reserves, beaches, foreshore	The development application is for the temporary use of Keirle Park for a music festival known as By The C. Keirle Park is public reserve land zoned RE1 Public Recreation. Under the Manly Local Environmental Plan 2013, the objectives of the zone include: to enable land to be used for public open space or recreational purposes; to provide a range of recreational settings and activities and compatible land uses; to protect and enhance the natural environment for recreational purposes; to protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean; and to ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses. Keirle Park is contained within public land bounded by Pittwater Road, Manly Lagoon and the creek foreshore, and the Manly Golf course. The proposal includes erection of 2 metre high fencing as indicated on the plans to create a safe work space and delineate the festival zone, and removal at the completion of the event. The fencing shall be aligned such that public access outside of the fencing is continuous and not interrupted from gaining access to the public reserve areas outside of the fencing. The event is predominately upon Keirle Park playing field No. 1. Various structures such as the stage, lighting tower, sheds, event facilities, and fencing are to be erected temporarily and the construction supports includes concrete blocks and otherwise pads that are placed on the existing surface, as illustrated in the Master Set and other associated structural design documents. No excavation of the existing ground surfaces is proposed nor permitted, and conditions of consent shall be imposed.

Internal Referral Body	Comments
	A Turf Protection Plan is submitted and the protection measures as outlined are acceptable and conditions of consent shall be imposed to protect the existing playing field grass surface, in accordance with the submitted Turf Protection Map. Parks Reserves and Foreshores Referral raise no concerns, subject to conditions of consent as imposed, including the requirement to apply for a Working and Access on Reserves Permit.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as it is within the vicinity of heritage items I154 - Group of 2 storey residential flat buildings - Eurobin Avenue I166 - Row of Norfolk Island Pine Trees (Araucaria heterophylla) - Lagoon Park I214 - Former tram depot complex and associated buildings - Pittwater Road (corner of Balgowlah Road)
	Details of heritage items affected
	Details of the items as contained within the Manly inventory is as follows: Item I154 - Group of 2 storey residential flat buildings <u>Statement of significance:</u> A fine example of flat buildings. <u>Physical description:</u> Two to three storey brick flats. Item - I166 - Row of Norfolk Island Pine trees (Araucaria heterophylla) <u>Statement of significance:</u> Listed for its aesthetic importance. <u>Physical description:</u> A row of Norfolk Island Pine trees planted between the boundary of private allotments and the Lagoon Park. Visually prominent landscape elements. I214 - Former tram depot complex and associated buildings <u>Statement of Significance</u> Listed as a major significance due to its association with the development of trams/transport in Manly, the complex demonstrates the scale and facilities required in small tram depots. One of two sites remaining associated with trams. <u>Physical Description</u>

Internal Referral Body	Comments		
	The remaining buildings on site are those constructed in 1911 as the office block and tram shed. The single storey brick office building on the east side of the depot has been substantially altered and partly re-roofed. The original roof with ridge tiles survives along the wing at the rear. The tram shed has been substantially altered - its northern and western walls and roof have been replaced, although the steel structure and other brick walls survive. All tram tracks appear to have been removed		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for a musical festival at Keirle Park in Manly. This proposal includes the use of the space and the erection of temporary facilities such as fencing, the stage and related amenities. The heritage items are located to the east of the park, across Pittwater Road. The pine trees are within Lagoon Park while the heritage item in Eurobin Avenue covers all properties along the northern side of the street. The former tram depot is south of the other heritage items at the SE corner of Pittwater and Balgowlah Roads. As the musical festival is a temporary event and is separated from the heritage items via Pittwater Road, there is considered to be no impact to the heritage items or their significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of MLEP.		
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
Further Comments			
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 5 January 2022			

Internal Referral Body	Comments
Traffic Engineer	The Traffic Management Plan prepared by the Traffic Plan Professionals dated 15 November 2021 has been reviewed and compared to those for previous events held at this location. The TMP is divided into bump-in/bump-out and event plans address the various stages of the event. Several of the assumptions made in the proposed plan are not supported, but can be addressed through conditions of consent. There is to be no event parking in the local streets surrounding the event site, with the applicant to direct patrons to parking at various nearby locations, including but not limited to, Park'n'Ride Manly Vale, Council's public parking areas and pay parking stations in Manly and Dee Why. The bulk of patrons are to be directed to arrive by public transport services, and as such the applicant is to liaise with the transport providers to increase services to and from the event at appropriate frequency to manage the number of patrons expected at the event. Variable Message Signs are to be located on all approaches to the event site to the satisfaction of Council's Transport Manager with Concurrence from TfNSW. The application is supported subject to the compliance with the conditions provided.
Waste Officer (Council Land)	Updated Waste Services Referral (Based on correspondence with Applicant, council ref. 2022/066987) Recommendation – Support, subject to conditions: - Standard Northern Beaches Council Event Waste Management Guidelines plus: · The sale or distribution of packaged water is prohibited. This includes water in steel and aluminium cans, plastic and glass bottles and cardboard tetra packs. · Festival hire water stations must be hired for the event with adequate capacity for the anticipated crowd size. · “Bio-plastic” or biodegradable plastic products must not be sold or distributed at the event such as cups, bowls, cutlery and straws. Paper/Cardboard serving ware is fine. Bamboo or wooden cutlery is fine. · Single use plastic glasses/cups (including wine glasses) are prohibited. All drinks served from bars throughout the event site are served in aluminium cans (excluding water) or paper cups or reusable system plastic cups such as Globelet. · Any item individually wrapped in plastic (including cutlery) is



Internal Referral Body	Comments
	prohibited from being distributed. · Coffee cannot be served with plastic lids, coffees to be sold without a lid or a paper pulp lid is to be sourced. · Two weeks or more prior to the event, the applicant must provide Council with a completed Waste management continuation sheet, which lists all stallholders, event sponsors and other onsite vendors etc. and their expected waste and recycling material. The event organiser is supplying waste bins and associated servicing and removal of waste.

External Referral Body	Comments
NSW Police – Crime Prevention Office (Local Command matters)	Council is yet to receive comment from NSW Police. The previous events approved at Keirle Park under DA2019/0054 and DA2019/1195 were both supported by NSW Police, subject to conditions. Previous conditions have been included as part of this recommendation, and any relevant conditions received before determination of this application will be included in a supplementary Memo.

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 community 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 community land use.



SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

Roads and Maritime Service (RMS)

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

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings
Commercial premises	10,000m ² in area	2,500m ² in area
Commercial premises and industry	15,000m ² in area	4,000m ²
Drive-in take away food outlets	200 or more motor vehicles	Any size of capacity
Educational establishments	50 or more students	Not applicable
Hospital	200 or more beds	100 or more beds
Industry	20,000m ² in area	5,000m ² in area
Land fill, recycling facilities, waste transfer station	Any size or capacity	Not applicable
Motor showrooms	200 or more motor vehicles	50 or more motor vehicles
Parking	200 or more motor vehicles	50 or more motor vehicles
Places of assembly or places of public worship	200 or more motor vehicles	50 or more motor vehicles

Premises licensed under the <i>Liquor Act 1982</i> or the <i>Registered Clubs Act 1976</i>	200 or more motor vehicles	50 or more motor vehicles
Refreshment rooms	200 or more motor vehicles	300m ²
Service stations (including service stations which have retail outlets)	200 or more motor vehicles	Any size or capacity
Shops	2,000m ²	500m ²
Shops and commercial premises	4,000m ²	1,000m ²
Subdivision of land	200 or more allotments where the subdivision includes the opening of a public road	50 or more allotments
Tourist facilities, recreation facilities, showgrounds or sportsgrounds	200 or more motor vehicles	50 or more motor vehicles
Transport terminals, bulk stores, container depots or liquid fuel depots	8,000m ²	Not applicable
Any other purpose	200 or more motor vehicles	

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

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

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

Comment:

Council is yet to receive a written response from TfNSW, despite this Council notes that the previous two outdoor concerts at Kierle Park were supported by TfNSW. Any comment from TfNSW received before determination of this application will be incorporated into the Council's final recommendation and a separate memo will be prepared for the LPP.

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 proposal has been assessed against the above. The application is unlikely to have any significant impact upon coastal environmental values and water quality. Nor will it have any adverse impact upon adjoining or nearby public open spaces including the beach and foreshore.

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

Comment:

The proposal is considered to have minimal or no impact in any of these areas.

14 Development on land within the coastal use area

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



Comment:

The proposed development is not of a permanent nature and is unlikely to have any significant impact on the points listed 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 works are considered to have a negligible impact on the surrounding environment and is unlikely to cause an increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does not comply / 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

Compliance Assessment

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.6 Riparian land and watercourses	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

6.21 Noise impacts—licensed premises

The application proposes to serve alcohol through to patrons through pop-up bars from 12pm to 8:30pm on the day of the event. The proposal incorporates acoustic measures as part of the development, as detailed in the plans and Acoustic Report. The mitigation measures are summarised as follows:

- System checks will only occur during a prescribed time-period
- The Event will finish at a prescribed time to minimise impact to residential premises (last music act finishing at 9pm, gates closing at 10pm)



- A sound level meter will be located at the front-of-house mixing desk showing the actual and allowable noise levels;
- The event management will nominate a person responsible for ensuring the noise limits are adhered to. The production crew will be instructed to ensure that any request to reduce the PA volumes by the nominated person is acted upon immediately;
- An information sheet will be sent to affected residents. Residents within the 65 dB LAeq(5min) contour (Figure 3-1) is generally used. The information provided to residents will state the start and finish times for the Event; the noise monitoring program being undertaken; and details of the noise complaints and information line.

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

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes
5.4.4 Riparian Land and Watercourses	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposal includes an acoustic report prepared by a qualified Acoustic Consultant (Lloyd George Acoustics). The Acoustic report identifies that the proposal will generate noise during the event (12:00pm to 10:00pm), and for system checks from 3:00pm to 6:00pm the day before the event and 10:00am to 12:00pm on the day of the event.

The report adopts a maximum noise level of L_{max} of 75 dB (A) which has been adopted from the NSW Noise Guide for Local Government (NSW EPA, 2013). To address concerns over long periods of low frequency music noise the Noise Management Plan uses a level of L_{max} 95 dB(C) as an upper limit.

The residential property that are at most risk of noise impact during the event is shown to be the residential flat building at 1 Eurobin Street, Manly to the east of Keirle Park.



Image 1 - Maximum noise levels (dB (a)) during event and impact to neighbouring residential properties. Image taken from Acoustic Report

The Acoustic report includes a number of Noise mitigation recommendations, which include a complaints mechanism and the ability to provide additional noise monitoring in response to any complaints received during the event. As noted previously within the report, Council's Environmental Health Officer has reviewed the proposal and has raised no objections subject to conditions that are included in the recommendation of this report.

3.8 Waste Management

The proposal includes a Waste Management Plan that details the methods in which waste will be collected, stored and disposed of with an emphasis on maximising recycling. Waste Management contractors have been engaged for the event.

The proposal has been reviewed Waste Officer, Council's waste officer supports the proposal, subject to conditions included in the recommendation of this report.

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 \$2,530 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$253,000.

CONCLUSION

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

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

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

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

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

An assessment of the proposed development has found the proposal has sufficient merit, has addressed the relevant planning and environmental issues and is a suitable and appropriate development for the site and locality.

The proposal is assessed as being consistent with Manly LEP 2013 and the general principles of Manly DCP 2013 as well as the relevant SEPP's.

The report addresses all relevant considerations within this report and conditions have been imposed in relation to the operational aspects of the music event to ensure the event takes place in line with the public interest.

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 DA2021/2472 for Use of land for a music event including temporary installation of a stage, fencing, toilets, bar and food stalls - Keirle Park on land at Lot 10 DP 1177, 0 Pittwater Road, MANLY, Lot 11 DP 1177, 0 Pittwater Road, MANLY, Lot 12 DP 1177, 0 Pittwater Road, MANLY, Lot 13 DP 1177, 0 Pittwater Road, MANLY, Lot 14 DP 1177, 0



Pittwater Road, MANLY, Lot 15 DP 1177, 0 Pittwater Road, MANLY, Lot 16 DP 1177, 0 Pittwater Road, MANLY, Lot 18 DP 1177, 0 Pittwater Road, MANLY, Lot 3 DP 1079222, 0 Pittwater Road, MANLY, Lot 1 DP 1079502, 0 Pittwater Road, MANLY, Lot 2 DP 537807, 0 Pittwater Road, MANLY, Lot 1 DP 177459, 0 Pittwater Road, MANLY, Lot 8 DP 1177, 0 Pittwater Road, MANLY, Lot 9 DP 1177, 0 Pittwater Road, MANLY, Lot 19 DP 1177, 0 Pittwater Road, MANLY, Lot 20 DP 1177, 0 Pittwater Road, MANLY, Lot 5 DP 1177, 0 Pittwater Road, MANLY, Lot 6 DP 1177, 0 Pittwater Road, MANLY, Lot 7 DP 1177, 0 Pittwater Road, MANLY, Lot 1 DP 535058, 0 Pittwater Road, MANLY, Lot 1 DP 931708, 0 Pittwater Road, MANLY, Lot 2 DP 928762, 0 Pittwater Road, MANLY, Lot 17 DP 1177, 0 Pittwater Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Event Site Plan	6 December 2021	Greg Garbellini
Event Evacuation Plan	1 December 2021	Greg Garbellini
Event Site Plan	6 December 2021	Greg Garbellini
Sh-1/ ISO Skeleton Render/ Front Skeleton Render	14 August 2017	H. McConchie
Sh-2/ ISO Skinned Render/ Front Skinned Render	14 August 2017	H. McConchie
Sh-3/ leg Dimensions/Apex Dimensions	14 August 2017	H. McConchie
Sh-4/ Stage Deck Dimensions/ Trim Heights	14 August 2017	H. McConchie
Sh-5/ Expanded Top/ Expanded Front	14 August 2017	H. McConchie
Sh-6/ Section plan below stage	14 August 2017	H. McConchie
Sh-7/ Roof frame plan	14 August 2017	H. McConchie
Sh-8/ Front Elevation	14 August 2017	H. McConchie
Sh-9/ Side Elevation	14 August 2017	H. McConchie
Elevations/ Revision 2	6 October 2010	Nomad Modular Building
Wall frame layout/ Revision 2	6 October 2010	Nomad Modular Building
Plan/ Revision 2	6 October 2010	Nomad Modular Building

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic Management Plan	15 November 2021	Traffic Plan Professionals
Security Consultant Plan	N/A	Ashleigh Brett
Risk Management Plan	N/A	Zaccaria Concerts and Touring
Event Noise Management/ Reference: 21116854-01	N/A	Lloyd George Acoustics
Flood Risk Management Report	10 December 2021	Hannah Stublely
Event Management Plan	23 July 2021	Zaccaria Concerts and Touring
Event Health Plan	N/A	Event Health Management
Emergency Management and Evacuation Plan	N/A	Zaccaria Concerts and Touring
Covid-19 Safety Plan for Large Events	N/A	Event Health Management

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	25 November 2021	Clean Vibes Pty Ltd

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) 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.

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.



4. **Limitation on this Consent – One Event Only**

This consent is for a one off event, being "By the C" to be held during the following dates:

- (a) Bump-in (start to end of set-up) from 17 to 19 March 2022.
- (b) Event date - 20 March 2022
- (c) Bump-out (finish, removal of all structures and departure) from 22 March 2022

Any future event will need to be the subject of a separate development application.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$2,530.00 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 \$253,000.00.

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition



work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 3.7m AHD unless adequately protected from floodwaters in accordance with industry standards.

Notification of Emergency Services

The applicant must demonstrate that they have notified the relevant NSW State Emergency Service personnel of the proposed event and have provided a copy of the approved Flood Risk Management Report prepared by Northern Beaches Consulting Engineers dated 10 December 2021.

Flood Refuge Access Arrangements

In addition to written permission the applicant must demonstrate that they have appropriate access arrangements established for the identified flood refuge locations.

Roles and Responsibilities

Prior to the issue of the construction certificate the applicant must nominate the names and contact details for the Flood Evacuation Coordinator and Flood Evacuation Assistant. The contact details must be provided to Council.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

8. **Traffic Management Plan**

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

Due to heavy traffic congestion adjoining the site, 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 prior to submission of the TMP.

The TMP must address following:

- i. Make provision for parking onsite.
- i. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity



- of the site are not permitted unless approved by Council
- i Include a Traffic Control Plan(s) prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- i 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
- i Proposed protection for Council and adjoining properties
- i Location and capacity of rideshare pick up and drop off (PUDO) zones and the management of these areas.
- i Pedestrian management plans to address the peak event discharge on closing.
- i Public Transport Management plans endorsed by TfNSW and Keolis Downer (service provider region 8).

The TMP 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 Traffic Management Plan is submitted.

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

9. **Sanitary Facilities**

The minimum number of sanitary facilities to be provided is to be in accordance with Event Starter Guide, NSW Department of Premier and Cabinet (2018). Details demonstrating compliance to be provided to the Principal Certifying Authority.

Reason: To provide a hygienic sanitary services and protect public health.

10. **Utilities and Services**

Utility and service lines are not to be located within riparian zones, unless they:

- a) Do not require access tracks for maintenance or other purposes; and
- b) Do not restrict existing vegetation or rehabilitation.

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

Reason: Protection of waterways and riparian lands.

11. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT****12. Working and Access on Reserves Permit**

Works (undertaken by principal contractors working without Council supervision) on land owned or managed by Council require a "Working on Reserves" permit prior to commencement.

Applications can be obtained from Council's website or the Parks and Recreation business unit.

Council reserves the right to cancel the event should weather conditions occur that are likely to damage the playing fields and surrounds such that proceeding use of the land by organised sports competitions are impacted.

The Working and Access on Reserves Permit from Council shall either provide a calculated Bond for any damage to Council's assets, or alternatively at Council's discretion, Council shall rectify damaged assets, and require a monetary contribution for the application for all such works.

Details demonstrating Permit approval are to be submitted to the Certifying Authority prior to commencement.

Reason: Public safety and the protection of Council infrastructure.

13. 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 land under Council's care, control and management, 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.

14. Erection of Temporary Fencing for Event

Temporary 2 metre high fencing shall be erected along the alignment as shown in the approved Master Set plans and associated structural design documents. The fencing shall be aligned such that public access outside of the fencing is continuous and not interrupted from gaining access to the public reserve areas outside of the fencing.

All fence panels are to be supported by base pads as illustrated on the design documents, and no excavation of the existing ground surface is permitted.

The applicant shall remove the fencing at the completion of the event in accordance with the proposed dates as identified in the Statement of Environmental Effects, and any damage to the existing ground surface shall be rectified to the satisfaction of Council.

15. Traffic Management Plan

The developer shall apply for a Road Occupancy Licence (ROL) from the RMS Transport Management Centre (TMC) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.



Reason: To inform the relevant Roads Authority of proposed disruption to traffic flows.

16. Registration of Food Businesses

All food business trading at the event must:

a: Be in possession of a current and valid approval issued by Northern Beaches Council under section 68 of the Local Government Act 1993,

or

b: lodge the relevant application form (and pay the prescribed application fee) to Northern Beaches Councils Environmental Health Team for approval to trade at the event no less than fourteen (14) days from the date of the event.

Event organiser to provide a list of all the food premises trading at the event no less than seven (7) days from the date of the event to Northern Beaches Council's Environmental Health Team.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. Erection of Event Structures and protection of existing Ground Surfaces

The erection of the proposed structures including Stage, Lighting Tower, Sheds and other associated structures shall be in accordance with the approved Master Set and associated structural design documents, including structure support by concrete blocks and other pads that are placed on the existing surface. No excavation of the existing ground surfaces is permitted.

- Forklifts will be as compact as possible, and fitted with grass tyres when achievable to prevent tearing up of the turf.
- Golf buggies with utility trays shall be utilised on site for site crew.
- Track matting shall form a landing pad at the back of Stage, and in areas that require heavy vehicle movement during bump in/out.
- A dedicated matting track zone shall be provided for the material delivery for the Stage structures and materials, that shall start at the point for the emergency vehicle access area within the carpark and to the Stage area zone required for movement of structures and materials .
- Pro-Floor shall be placed in areas with heavy foot traffic such as in front of Toilets, Bars and front of Stage.

18. Protection of Council's Public Assets

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as playing field surfaces, linemarking, furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****19. Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed.

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

Reason: To protect wildlife habitat.

20. Disabled Parking Spaces

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

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

Reason: To ensure compliance with Australian Standards.

21. Implementation of Flood Risk Management Report Recommendations

The applicant must demonstrate that they have implemented the recommendations outlined in the Flood Risk Management Report prepared by Northern Beaches Consulting Engineers prepared 10 December 2021. This includes but is not limited to:

- Installation of on-site rainfall monitoring equipment
- Installation of appropriate flood warning signage

Reason: To ensure that the applicant has implemented the relevant recommendations from the Flood Risk Management Report prepared by Northern Beaches Consulting Engineers prepared 10 December 2021

22. Provision of adequate public transport capacity

The applicant is to provide suitable capacity for access by either event shuttle services or additional public transport service capacity on route services operating in the vicinity.

The applicant is to cater for at least 60% of attendees arriving by and 75% of attendees departing the site by public transport.

Written confirmation of compliance with this requirement from an approved transport service provider is to be submitted to, and approved by Council prior to the issue of any occupation certificate.

Reason: Reduce the impact on parking around the perimeter of the event site

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**23. Temporary Lighting**

All temporary lighting is to be orientated so that direct illumination of vegetation areas is avoided and light spill minimised. Shielding of lights to reduce unnecessary light spill should be considered.

Photographic evidence of compliance is to be provided to the Principal Certifying Authority.

Reason: To minimise light pollution impacts on nearby wildlife and their habitats.

24. Rectification of damaged existing Council Assets and Playing Field Surfaces



At the conclusion of the Event, all temporary fencing, signage, structures, sediment controls and rubbish are to be removed from the site.

Handover following conclusion of the Event is subject to acceptance from Council. Any identified damage to the existing Council assets and ground surfaces as determined by Council shall be rectified by the applicant to the satisfaction of Council, and all associated rectification costs shall be borne by the applicant.

25. **Traffic Management**

Traffic, parking and pedestrian safety is to be managed in accordance with the Traffic Management Plan submitted by Traffic Plan Professionals Pty Ltd, recommendations of the Local Traffic Committee, Council's Transport Manager and directions from NSW Police.

A physical barrier is to be placed along the Pittwater Road corridor to prevent pedestrians crossing the road at points other than the authorised crossing control points.

Reason: To ensure safety and safe movement of vehicles and pedestrians

26. **Existing Bus Stop - operation and management**

Location of existing bus stop on Pittwater Road adjacent to the site frontage must remain in their current locations. Marshals are to be provided to manage the arrival and departure at the event site.

Reason: To ensure services are not relocated at any stage during the event and queues are managed effectively.

27. **Road Occupancy Licence (ROL) from Roads and Maritime Services**

The developer shall apply for a Road Occupancy Licence (ROL) from the RMS Transport Management Centre (TMC) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant Roads Authority of proposed disruption to traffic flows.

28. **Fire Safety Matters and Emergency Egress**

1. The event organisers are to provide suitable fire extinguishers and fire blankets (and where required, other firefighting essential services), on site for the duration of each event day. Such fire safety provisions are to be located in key areas around the outdoor event space (ie. Stages, Screens, Bars, Offices, Generators, and Mobile Food Stalls etc), and be placed in all high risk areas, be well signposted, and in key locations as per the applicants Fire Safety Plan.

2. All exits and pathways to exits are to be clearly marked, accessible at all times and 'site wardens' are to be engaged to ensure clear pathways are maintained in the event of an emergency occurring.

3. A back-up emergency lighting system should be made available to ensure lighting is provided to the degree necessary, for all required 'egress pathways and exits'.

Reason: To protect persons using/attending the event and to facilitate their egress from the site



in the event of an emergency or fire and to restrict the spread of fire.

29. **Structural Certification**

Prior to use of the temporary stage and associated roofing, the temporary lighting and speaker towers and the temporary fencing system, a Structural Engineers Certificate is to be provided to Council certifying that these structures have been erected in compliance with the design documents and in accordance with the Building Code of Australia and any relevant Australian Standards.

30. **Noise Management**

The Event must comply with the following noise requirements:

1. Amplified music to cease at 9pm;
2. A Council allocated officer is to be provided with a contact name and phone number to the sound management staff/contractor on the day to ensure direct communication to deal with any complaints or issues that may arise; and
3. Compliance with all recommendations contained within the Acoustic Assessment and Noise Management Plan by Noise Consulting & Management Pty Ltd ref 3520 21 Jan 2019 and Section 5.1 within the Statement of Environmental Effects (SEE) submitted with the DA including but not limited to the following requirements:
 - i Resident notification letter to be sent out with contact details for feedback and hotline number as per the area suggest in the Noise Management Plan;
 - i Noise to be limited to 75 dB LAeq(5min) & 90 dB LCeq(5min), as measured at any residential receiver;
 - i Dedicated and monitored hotline set up for event day with all calls being logged;
 - i Noise monitoring on event day by a qualified acoustic engineer at FOH and affected areas;
 - i The event management to nominate a person responsible for ensuring the noise limits are adhered to. Any request to reduce the PA volumes by the nominated person are to be acted upon immediately;
 - i Sound checks are to be performed ahead of time to ensure acceptable limits are adhered to;
 - i A sound level meter is to be located at the front-of-house mixing desk showing the actual and allowable noise levels; and
 - i A report it to be submitted to Northern Beaches Council post event with the results of noise monitoring and any complaints received.

Reason: To minimise the noise impact on residential receivers. (DACHPGOG5)

31. **Food Storage**

As per Northern Beaches Council Temporary Food Stall Requirements, for events that will last 4 hours or longer Cool rooms are to be provided for the storage of potentially hazardous food that is unable to be stored in powered refrigerators/freezers. A maximum of two stalls to share a cool room within 5 metres of entry point of stall.

Reason: Food Safety.

32. **Cleaning and maintenance of toilets during the event**

Dedicated cleaner(s) shall be allocated to ensure continual service, cleaning and maintenance of the event toilets to minimise , blockages and spills, and ensure adequate water supply ,toilet paper and liquid soap at all times.

Reason: To provide a hygienic sanitary services and protect public health.



33. **Perimeter Fencing**

Perimeter fencing is to be erected between the festival area and vegetation on the northern, western and southern boundaries of the reserve. The fencing must be a minimum of 5m from the dripline (canopy) of existing trees.

Details demonstrating compliance, including photographic evidence, is to be submitted to the Principal Certifying Authority.

Reason: Protection of native vegetation including threatened ecological communities.

34. **Flood Emergency Response Recommendations**

1) All recommendations of the Flood Risk Management Report prepared by Northern Beaches Consulting Engineers prepared 10 December 2021 should be complied with for the duration of the proposed festival, including bump in, festival day and bump out.

2) An appropriately qualified engineer with experience in floodplain management should be engaged by the applicant to provide advice and interpret appropriate response action if the 'Flood Watch' alert threshold is reached for Bump In, Day of Event or Bump Out.

3) Sufficient copies of the approved Flood Risk Management Report prepared by Northern Beaches Consulting Engineers prepared 10 December 2021 should be made available on-site during Bump In, Day of Event and Bump Out. The Flood Risk Management Report prepared by Northern Beaches Consulting Engineers prepared 10 December 2021 should be attached the event's Emergency or Evacuation Plan.

4) The Flood Evacuation Coordinator and Flood Evacuation Assistant should be fulfilling their responsibilities outlined in the Flood Risk Management Report prepared by Northern Beaches Consulting Engineers prepared 10 December 2021 at all times.

Reason: To ensure that the requirements of the Flood Risk Management Report are adhered to and that flood risk to life is appropriately managed.

35. **Maximum capacity**

The maximum number of patrons permitted at the event is 8,000 persons.

Reason: To limit the patronage at the site in accordance with the documentation submitted with the development application.

36. **Community Notification**

The event organisers are required to notify all residents, businesses and relevant sporting clubs within a minimum 500 metre radius of the event (from the main stage). The notification is to include the following:

- Bump in dates and times
- Event date and times
- Bump out dates and times
- A contact number that is accessible the whole length of the event from bump in to bump out.

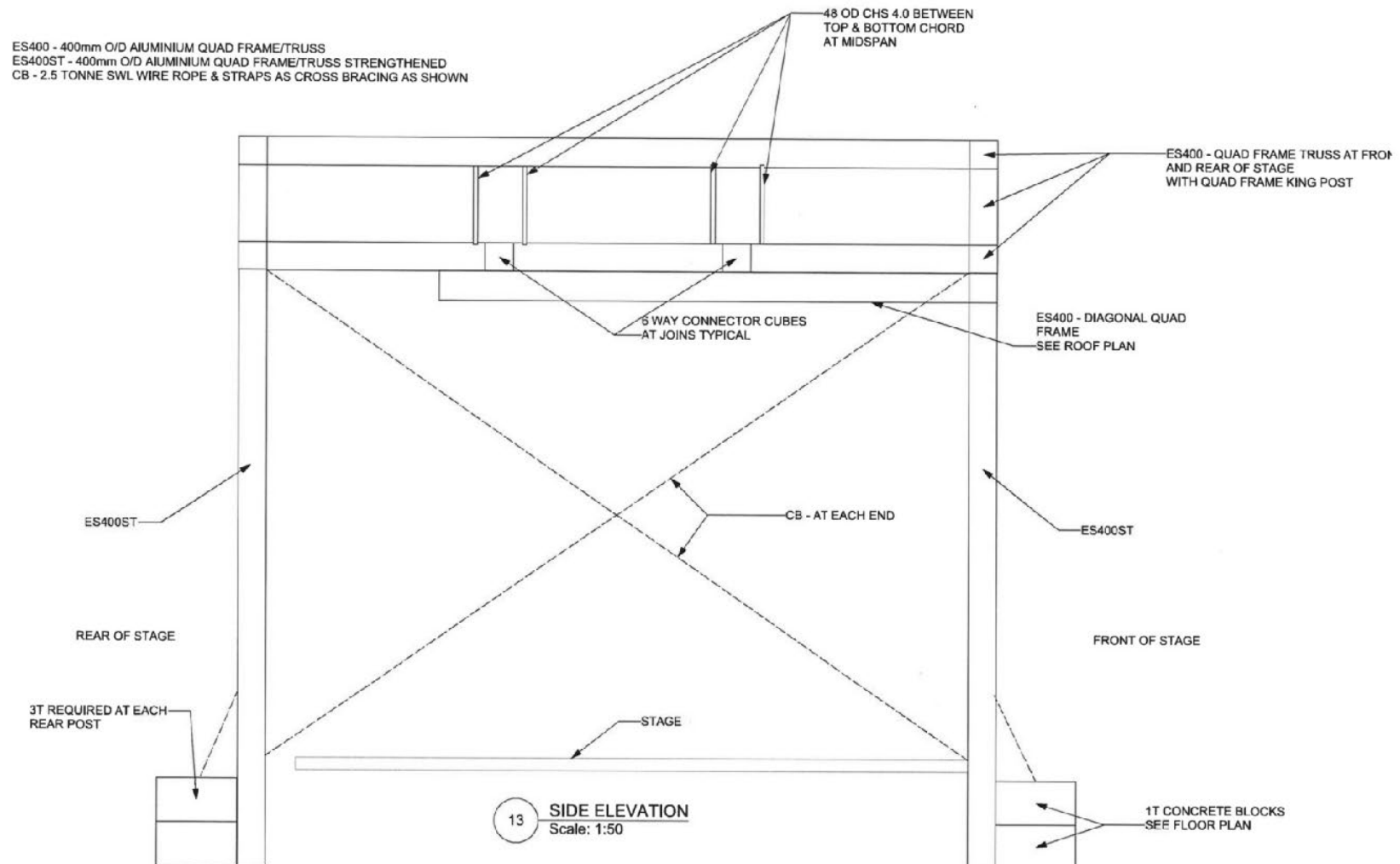
Reason: To ensure clear public communication and notification of the event.





[illegible]

 ECLIPSE LIGHTING AND SOUND Eclipse Lighting and Sound 45 Corrington Street Queanbeyan NSW 2620 (02) 6299 6811 - info@eclipseix.com.au	<u>CLIENT</u>	<u>Project</u> 13m x 9m Apex Stage with Skins	<u>Sheet</u> Sht-8 Engineering 3 14th August 2017 H. McConchie
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