



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 16 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 16 March 2022

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 2 March 2022	
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4.1	DA2021/1805 - 4 Alexander Street, Collaroy - Demolition works and construction of a seniors housing development	5
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	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. These applications do not satisfy that criterion.	
5.1	DA2021/1766 - 18 Alexander Street, Collaroy - Demolition works and construction of a housing development comprising five (5) self-contained apartments including basement car parking pursuant to SEPP (Housing for Seniors or People with a Disability) 2004	229

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 MARCH 2022

RECOMMENDATION

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

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/1805 - 4 ALEXANDER STREET, COLLAROY - DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/140039
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - Clause 40(3) 4 Clause 4.6 - Clause 40(4)(b) 5 Design and Sustainability Advisory Panel Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel for the following reasons:

- it is the subject of 10 or more unique submissions by way of objection.
- it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/1805 for demolition works and construction of a seniors housing development at Lot A DP 379308, 4 Alexander Street COLLAROY, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1805
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot A DP 379308, 4 Alexander Street COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a seniors housing development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	East Coast Property Development Pty Limited
Applicant:	East Coast Property Development Pty Limited
Application Lodged:	07/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	23/02/2022 to 02/03/2022
Advertised:	27/10/2021
Submissions Received:	63
Clause 4.6 Variation:	4.3 Height of buildings: 5.8%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 5,246,223.00

EXECUTIVE SUMMARY

The development application subject of this Assessment Report relates to a proposal for the construction of a seniors housing development comprising five (5) self-contained dwellings. The application is being report to the Northern Beaches Local Planning Panel for determination due to the extent of public interest, the applicability of the State Environmental Planning Policy (Design Quality of Residential Apartment Development), and as the proposal seeks to breach development standards under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) by more than 10%.

The application is made pursuant to SEPP (HSPD), which at the time of lodgement, was the prevailing environmental planning instrument applicable to this type of development that would otherwise be prohibited under the WLEP 2011.

The exhibition of the application attracted submissions from 61 households, including 51 submissions who were in support, and ten (10) who objected to the proposal. The submissions in support largely revolved around the benefits of providing denser and focused residential accommodation in this location. The submissions received objecting to the proposal raised concerns about impacts on the amenity of surrounding properties, including solar access, views, visual and acoustic privacy and on-street car parking.

The matters raised in the submissions are detailed in this report, and in summary it is found that those particular matters are not of such severity that would warrant the refusal of the application.

The proposal seeks to vary two (2) development standards pursuant to the SEPP (HSPD), including; Clause 40(3) relating to the width of the site frontage (190mm under the minimum) and Clause 40(4)(b) relating to the two-storey limitation in any one place. These variations are considered under Clause 4.6 of the Warringah Local Environmental Plan 2011 and, based on the applicants justification and written statement, are supported.

The proposal has been generally supported by Council's Design and Sustainability Advisory Panel, with modifications arising out of the review, which have been incorporated into the revised plans. Those plans were re-notified to surrounding properties.

During the course of this assessment, the applicant filed a Class 1 Appeal in the Land and Environment Court of NSW against Council's 'Deemed Refusal' of the application. At the time of writing this report, no conciliation conferencing had occurred in relation to this appeal.

The proposed development generally complies with the applicable planning controls under SEPP HSPD and the WLEP 2011. However, the proposal does not satisfy the flood planning and waste management requirements under the Warringah Development Control Plan 2011. The proposal cannot be conditioned to satisfy these flood and waste management matters, hence the application cannot be supported and is recommended for **REFUSAL**.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the construction of a seniors housing development comprising five (5) apartments made pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Specifically, the proposal involves the following:

- Demolition of all structures on-site including dwelling, sheds, driveway and fencing.
- Removal of nine (9) trees for the site, (eight (8) of which are exempt due to height, species or being dead, and one (1) identified as a native canopy tree in poor health with low landscape significance, and a short useful life expectancy.
- Excavation works to a maximum depth of approximately 2.7m.
- Construction of a part-two / part-three storey development comprising of five (5) x three (3) bedroom apartments over a partial basement level containing nine (9) car parking spaces, generally to be finished in off-form concrete, textured render, metal cladding, sandstone cladding and aluminium framed glazing.
- Planting of 15 new trees, 180 new shrubs, hedges and accent plants and new grasses and groundcovers throughout.

The apartments are all in the large range, being between 126m² and 151m², equating to an overall FSR of 0.65:1.

During the course of this assessment, revised plans were received in response to comments received from Council's Development Engineers, Waste Officer and Design and Sustainability Advisory Panel. The additional information submitted in relation to flooding and waste have not resolved to the concerns to the satisfaction of Council's Development Engineers or Waste Management sections.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - E11 Flood Prone Land

SITE DESCRIPTION

Property Description:	Lot A DP 379308 , 4 Alexander Street COLLAROY NSW 2097
Detailed Site Description:	The subject site is legally identified as Lot A in Deposited Plan 379308 and is known as 4 Alexander Street, Collaroy. The site falls within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011. The site is generally rectangular in shape with a width of

24m and a depth of 51m equating to an surveyed area of 1,199sqm. The northeastern corner of the site adjacent to Alexander Street is dissected by a different small lot measuring approximately 4m in width by 16m in depth.

The site presently accommodates a large single storey detached dwelling house with two large sheds to the rear of the site. The site has paving throughout and is generally in a dilapidated state, likely due to it being vacant.

The site is bound by other detached dwelling houses in the R2 zone to the south and west, and the majority of those sites are on allotments smaller than the subject site. North and east of the site is land zoned for B2 Local Centre uses, accommodating a heritage listed cinema, shop top housing developments and other commercial offerings.

Topographically the site is reasonably flat with a rise of approximately 3.5m over a 50m distance from front to rear (north to south). There are no noteworthy topographical features on the land.

The site has vegetation throughout, particularly a cluster of trees located in the southeastern corner of the site. As described elsewhere in the report, all but one of the trees on the site is identified as 'exempt'. The one other tree is native, but has been found to be in a poor condition.

Map:



SITE HISTORY

The land has been used for residential purposes for a long period of time and the dwelling has existed on the site since at least 1943.

Prelodgement Meeting - Planning Proposal

A prelodgement meeting for a Planning Proposal (PLM2020/0114) was held with Council in 2020 to discuss the option of rezoning the site from R2 Low Density Residential to B2 Local Centre. Council was not supportive of the proposal to rezone the land and no further actions were taken by the applicant.

No prelodgement meeting was held in respect to the current 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	Warringah Development Control Plan applies to this proposal. The proposal does not satisfy the flooding requirements under the WDCP 2011.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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 has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered suitable for the proposed development based on the failure to satisfy the flooding requirements for the development under the WDCP 2011.
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 assessment revealed that the proposed development does not satisfy the flooding requirements and would place future occupants of the development at risk, hence it would be contrary to the public interest to approve the application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/02/2022 to 02/03/2022 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 63 submission/s from:

Name:	Address:
Mrs Diana Louise Sier	113 Carawa Road CROMER NSW 2099
Marc Ernest Sier	5 / 1 Eastbank Avenue COLLAROY NSW 2097
Mr William John Buckle	29 Beach Road COLLAROY NSW 2097
Mr Terence Patrick Donoghue	18 Eastbank Avenue COLLAROY NSW 2097
Mr Steven Gamble	20 Coutts Crescent COLLAROY NSW 2097
Mr Craig Jervis	24 Alexander Street COLLAROY NSW 2097
Mr Robert Jeffrey Robinson	114 Claudare Street COLLAROY PLATEAU NSW 2097
Araquem Paiva Ferreira Junior	12 / 119 Oaks Avenue DEE WHY NSW 2099
Mr William Joseph Barden	67 Brighton Street CURL CURL NSW 2096
Annabelle Sue Chapman	15 Ralston Road PALM BEACH NSW 2108
Mr James Anthony Jennings	10 Summit Avenue DEE WHY NSW 2099
Hannah Walsh	Address Unknown
Mr Mitchell Pax Trim	4 / 1172 Pittwater Road NARRABEEN NSW 2101
Craig Bannister	20 Bonner Avenue MANLY NSW 2095
David Morgan	28 Mildred Avenue MANLY VALE NSW 2093
Tim Donlan	3 / 40 Ocean Street NARRABEEN NSW 2101
Mr Cameron Stewart Lanceley	12 Eastbank Avenue COLLAROY NSW 2097
Mr Timothy Michael Parker	10 Cumberland Avenue COLLAROY NSW 2097
Mr Timothy James Trelayne Brown	14 Pine Street MANLY NSW 2095
Mr Lucas Allan Laxale	94 Park Street MONA VALE NSW 2103
Mr Michael Thomas Adams	4 / 21 - 21 Pine Avenue BROOKVALE NSW 2100
Mr Jake Gordon Butcher	6 Waterview Street MONA VALE NSW 2103
Mr Kenneth Charles Talbot-Sapsford	7 Mariposa Road BILGOLA PLATEAU NSW 2107
Mr Christopher Mark Montgomery	10 Ocean Grove COLLAROY NSW 2097
Mr Graham Leslie Atkins	4 Whitney Street MONA VALE NSW 2103
Mr Adam William Bate	9 / 27 Ocean Avenue NEWPORT NSW 2106
Mr Nicholas Alexander Williamson	4 Judith Place CROMER NSW 2099
Mr Bruce Ian Nicholas	18 James Wheeler Place WHEELER HEIGHTS NSW 2097
Jason Jenkins	20 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097

Name:	Address:
Mr Stephen Colin Crawford	6 Bushrangers Hill NEWPORT NSW 2106
Luke Preston	Address Unknown
Ms Anita Irma Gibbs	5 Eastbank Avenue COLLAROY NSW 2097
Mr Manus John McFadyen	8 / 4 Queens Parade NEWPORT NSW 2106
Sue Williams	Address Unknown
Mr Milford Mackay James	68 A Binburra Avenue AVALON BEACH NSW 2107
Mr Aaron James Johnstone	9 Fuller Street COLLAROY PLATEAU NSW 2097
Jenna Louise Nicholas	18 James Wheeler Parade COLLAROY NSW 2097
Mr James Dakin	1 Brissenden Avenue COLLAROY NSW 2097
Mr Peter Gordon Jenkins	1 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097
Ivan Tulich	15 / 1 Eastbank Avenue COLLAROY NSW 2097
Withheld Withheld	COLLARROY NSW 2097
Withheld Withheld	7 Eastbank Avenue COLLAROY NSW 2097
Eleanor Lamb	1 Alexander Street COLLAROY NSW 2097
Mr Leslie George Galbraith	146 Barrenjoey Road MONA VALE NSW 2103
Mr Russell Dominic Pettit	23 Banksia Street DEE WHY NSW 2099
Joshua Louder	12/65 Holtermann Street CROWS NEST NSW 2065
Mr Mark Deere-Jones	26 Garden Street NORTH NARRABEEN NSW 2101
Dr Wade Brett	3 Eastbank Avenue COLLAROY NSW 2097
Mrs Angela Marguerite Brown	10 McNamara Road CROMER NSW 2099
Ms Carol Pamela Crawford	11 / 22 - 26 The Avenue COLLAROY NSW 2097
Mr Brian Leslie Frederick Curtis	11 / 22 - 26 The Avenue COLLAROY NSW 2097
Mr Bruce Davison	15 Alexander Street COLLAROY NSW 2097
Ray Smith	1123 Pittwater Road COLLAROY NSW 2097
Mr David Hugh Macintosh	12 Beach Road COLLAROY NSW 2097
John Corr	15 / 32 - 34 Bonner Avenue MANLY NSW 2095
Andreas Lehr	20 Alexander Street COLLAROY NSW 2097
Michael Healey	3 / 1 Alexander Street COLLAROY NSW 2097
Les Walden	66 Castle Circuit SEAFORTH NSW 2092
Mrs Natasha Rose Howell	7 Athene Place COLLAROY PLATEAU NSW 2097
Michael Birch	18 / 4 8 Darley Road MANLY NSW 2095
Michael Thomas	88 Cutler Road CLONTARF NSW 2093
Mr Miguel Angel Ranzetta Ms Jacquelyn Archer	7 Alexander Street COLLAROY NSW 2097

Name:	Address:
Georgina Ann Redfern	C/- McGrath Property Management Shop 4 1073 Pittwater Road COLLARROY NSW 2097
Withheld	COLLARROY NSW 2097

First Public Exhibition

During the first round of exhibition of the development application, a total of 61 submissions were received, with 51 of those submissions being in support of the application and ten (10) raising concerns.

The 51 submissions in support generally wrote of the need for additional seniors housing and were supportive of the proposed built form.

The issues raised in the ten (10) submissions objecting to the proposal are as follows:

- Amenity - Solar access, visual and acoustic privacy, view loss including height poles
- SEPP (HSPD) in R2 zone
- Building height, setbacks and visual bulk
- Construction impacts
- Car parking
- Vegetation impacts

The matters raised within the submissions are addressed as follows:

- **Amenity - Solar Access, Visual and Acoustic Privacy, View Loss and Height Poles**

Comment

Concerns were raised in submissions received that the proposal may impact on the amenity of existing residents by way of loss of sunlight, increased visual and acoustic intrusion and a loss of views. Some submissions have requested height poles to be erected.

These matters are all individually discussed elsewhere in this report. In summary, the development is found to have no unreasonable impacts to solar access of neighbouring properties and affords an appropriate degree of visual and acoustic privacy to neighbours. The assessment determined that height poles are not warranted in these circumstances, as the views to be impacted are best described as "outlooks" of the site itself and neighbouring properties in Alexander Street to the west. The outlooks that will be impacted/lost are understood and further clarity is not required to make a proper assessment.

On balance, the concerns raised in regards to the above matters do not warrant the refusal of the application.

- **SEPP (HSPD) in R2 Low Density Residential Zone**

Comment

Submissions received raised objection in relation to a seniors housing development in the R2 Low Density Residential zone.

Development of this kind is permitted in the R2 zone pursuant to the SEPP (HSPD) which prevails over Council's Local Environmental Plan.

This matter does not hold determining weight in the assessment of the application.

- **Building Height, Setbacks and Visual Bulk**

Comment

Concerns were raised in the submissions that the building is too tall and too close to the boundaries of the site.

These matters are discussed in detail under the relevant parts of this report. In summary, the setbacks proposed are acceptable and significantly greater than what a single dwelling would need to provide, and the building height is technically compliant with the prevailing standards, and only exceeds Council's LEP controls for the lift shaft. On balance, these concerns do not warrant the refusal of the application.

- **Construction Impacts**

Comment

Concerns were raised in submissions that the demolition, excavation and construction of the development may give rise to impacts upon neighbours.

Some construction impacts are inevitable. The demolition of a building and excavation of a site does create noise and can cause dust to be created. Similar impacts can occur in relation to the construction. However, these impacts can be mitigated and managed by appropriate measures being employed through the conditions of consent, this requiring the relevant standards to be met and practices to be followed.

- **Carparking**

Comment

Concerns were raised in submissions that the development will lead to increased parking congestion in the street.

The proposal provides for a compliant provision of carparking, and residents will be exempt for any Parking Permit Scheme. It is not considered that the development will unreasonably impact on the existing provision of carparking in the street.

- **Tree Removal and Vegetation impacts**

Comment

Concern were raised that the proposal is removing trees and an excessive amount of vegetation from the site.

The site presently accommodates nine (9) trees and a large amount of bush/scrub overgrowth. Of the nine trees, eight (8) have been identified as "Exempt" and can therefore be removed without Council approval. One of the trees is a native canopy tree that is identified as being in poor health and is of low significance, and is recommended for removal by the applicants Arborist.

Council's Landscape Officer also raises no objection to the proposed tree removal for the reason stated above. It is considered that upon completion of the development, a more cohesive and mature landscaping of the site will occur, which will be significantly better (in terms of quantum, quality and variety) than the existing vegetation on site.

Second Public Exhibition

The second round of exhibition attracted no new submissions.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	The proposal was presented to the DSAP on 25 November 2021. Generally, the panel were supportive of the character, bulk and scale, layout and design of the proposal. A number of recommendations were made by the Panel, which are detailed in the attached DSAP Report. The applicant made the following amendments in response to the DSAP comments (as shown in red highlights in the plans): 1. <i>Bin storage area and hydrant booster relocated to within proximity of the main entrance providing convenient access for the residents and waste contractors.</i> 2. <i>Double bin storage doors replaced with a single 1200mm wide door.</i> 3. <i>The bin storage area has been sized to accommodate 7 x 240 Litres residential bins with a 1m wide isle.</i> 4. <i>Apartment G.01 and the entrance pathway have been reconfigured to address the concern raised by DSAP in relation to the proximity of the entrance pathway to the windows of Bed 3. The reconfiguration and introduction of the courtyard has not only appropriately address privacy but has also facilitated enhance solar access to this apartment through the redistribution of floor space.</i> 5. <i>Direct street access is provided to the front courtyard of Unit G.01 as suggested by DSAP.</i> 6. <i>Apartments 1.01 and 2.01 have been reconfigured to reflect the modified floor plan layout of G.01.</i> 7. <i>The introduction of additional east and west facing fenestration to Apartment 2.01 to enhance cross ventilation and the reconfiguration of the kitchen to enhance circulation.</i>

Internal Referral Body	Comments
	8. <i>A minor increase in the depth of the awning to the balcony of Apartment 201.</i> 9. <i>An increase in the amount of rooftop PV as suggested by DSAP.</i> The applicant advises that the only recommendation that has not been incorporated into the revised plans is in relation to the skylights. The Panels concern was as follows: <i>"Skylights to Units 1.02 and 1.03 are inadequate. These should be changed to operable clerestory windows designed to optimise passive shading with appropriate overhangs and/or shading devices. It would appear quite easy to achieve this given the blank walls of Bedrooms 1 and 3 in Unit 2.01."</i> The current design, which incorporates skylights for both units, is considered satisfactory.
Building Assessment - Fire and Disability upgrades	Supported, with conditions The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Acid Sulphate)	Supported, with conditions Detailed site investigation describes a low risk of acid sulfate soils (ASS) being present at the site. Given the "Class" (4) of the site, and the extent of the excavations, the results of the soil samples demonstrate: · a (close to) neutral pH in field, unlikely presence of ASS; · $pH_{FOX} > 4.4$, unlikely PASS (potential Acid Sulfate Soils); yet · the difference between pH_F and pH_{FOX}, being > 1, may indicate the presence of PASS (Potential Acid Sulfate Soils). Given that sand is the predominant soil beyond 0.5 BGL, we have only minor concern of PASS presence and support the development proposal with a condition.

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	Supported, with conditions Proposal is supported. Detailed site investigation demonstrates some contaminants that to be removed from the site by way of remediation according with standard industry practices and relevant legislation e.g. SEPP 55, Contaminated Land Management Act 1997, waste regulations and asbestos removal guidelines.
Landscape Officer	Supported, with conditions This application is for the demolition of an existing residential dwelling, and the construction of a new housing development for seniors or people with a disability. The proposed development comprises of five three-bedroom apartments, with underground parking and new landscape works. Councils Landscape Referral section has assessed for compliance with the following relevant controls and policies: • State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004 - <i>Clause 33 Neighbourhood amenity and streetscape</i>; and <i>Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings</i>, • Seniors Living Policy - Urban Design Guidelines for Infill Development - <i>Clause 2 Site Planning and Design</i>; and <i>Clause 3 Impacts on Streetscape</i>, • Warringah Local Environmental Plan 2011, • Warringah Development Control Plan 2011 - <i>D1 Landscaped Open Space and Bushland Setting</i>; and <i>E1 Preservation of Trees and Bushland Setting</i>. The Statement of Environmental Effects provided with the application notes that a number of existing trees are to be removed as a result of proposed works, and for this reason, an Arboricultural Impact Assessment has been provided. This Arboricultural Impact Assessment has identified a total of nine trees, all of which are located within the site boundaries and are proposed to be removed. Majority of the existing trees within the site are located along the eastern boundary, largely towards the rear of the site. It is noted that an additional two trees located towards the southern boundary at the rear of the site are shown on the Site Survey, however these have not been assessed by the Arboricultural Impact Assessment as they have previously been removed. Of the nine trees identified in the Arboricultural Impact Assessment, eight trees, Trees No. 1, 2, 3, 4, 5, 6, 8 and 9, have been identified as being exempt either due to height, species or being dead, and can therefore be removed without Council's approval. The remaining tree, Tree No. 7, is a native canopy tree that has been identified as being in poor health with low landscape significance and a short useful life expectancy, and for this reason has been proposed to be removed. Due to the current condition of this tree, and that the Landscape Plan

Internal Referral Body	Comments
	has proposed several replacement tree plantings, no major concerns are raised with its proposed removal. It is further noted that a number of additional trees are located outside of the site boundaries in adjoining properties, however these appear to be largely clear of proposed works and not are not anticipated to be negatively impacted. The retention of these trees is vital to satisfy control E1, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", "to effectively manage the risks that come with an established urban forest through professional management of trees", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". A Landscape Plan has been provided with the application, with proposed works including the in-ground and on-slab planting of trees, shrubs, accents, grasses and groundcovers. Generally, the proposed landscape works appear to be beneficial as it is evident proposed works seek to enhance the landscape amenity of the site, whilst ensuring compensatory canopy trees are incorporated to replace those trees removed. In addition, the significant planting in the side and rear setbacks, alongside the use of on-slab planters with spill over planting, provides valuable built form mitigation and softening, particularly when viewed from neighbouring properties. To further reinforce the proposed planting scheme and mitigate the bulk and scale of the built form, it is recommended that an additional tree be incorporated into the front setback, alongside those already proposed, adjacent to the pedestrian entryway in the north-west corner of the site. This is particularly important considering the proposed works seek to increase the overall scale and height of the built form when compared to that of the existing dwelling. Slight concern is also raised with some of the proposed plant species, specifically the use of <i>Rhaphiolepis indica</i> 'Snow Maiden' as this has been identified as an environmental weed and is therefore considered undesirable. For this reason, it is recommended that this be substituted for a native alternative. Moreover, slight concern is raised with the use of <i>Elaeocarpus reticulatus</i> not because of the species, rather the mature height of this tree and its potential to further impact solar access on the adjoining properties to the east. For this reason, it is recommended that this tree be substituted for a smaller tree or shrub, providing greater solar access to the adjoining property, whilst simultaneously providing built form mitigation and valuable privacy screening. Rather than the need for the applicant to re-submit an amended Landscape Plan, the need for the above species change can be addressed through conditions of consent. The completion of these landscape works, inclusive of the required species change, is necessary to satisfy control D1, as key objectives of this control include "to enable planting to maintain and enhance the streetscape", "to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the dwelling", as well as "to enhance privacy between buildings".

Internal Referral Body	Comments
	In terms of the State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004, with respect to <i>Clause 33 Neighbourhood amenity and streetscape</i>, development should, according to sub-clause (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, sub-clause (f) retain, wherever reasonable, major existing trees, and, sub-clause (g) be designed so that no building is constructed in a riparian zone. In addition, with respect to <i>Clause 34 Visual and acoustic privacy</i>, development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by (a) appropriate site planning, the location and design of window and balconies, the use of screening devices and landscaping. Upon further review of the proposal, it is evident that sub-clause (e) of Clause 33 has been satisfied, as the proposed landscape scheme seeks to utilise a variety of locally native canopy trees, alongside shrubs and understorey planting that relate to the broader landscape character of the locality, whilst being sympathetic to those in the immediate vicinity. Sub-clause (g) has not directly been satisfied as the proposal seeks to remove all trees within the boundary, however, as these trees have been identified as exempt and are not significant in nature, no major concern is raised. Similarly, sub-clause (g) has indirectly been satisfied as proposed works are not located within a riparian zone. The landscape component of Clause 34 has also been fulfilled, as the Landscape Plan demonstrates significant screen planting is to be incorporated on the ground floor along each boundary, as well as in raised on-slab planters on the first and second floors to prevent overlooking of neighbouring properties. Additionally, under the State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004, with respect to <i>Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings</i>, a consent authority must not refuse consent to the development application made pursuant to this chapter for carrying out of development for the purpose of self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds: (c) landscaped area if - (i) in the case of a development application made by a social housing provider - a minimum 25 square metres of landscape area per dwelling is provided, or (ii) in any other case - a minimum 30% of the area of the site is to be landscaped, (d) deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres. The Landscape and Architectural Plans provided illustrate a total landscape area of 30%, of which 19% is deep soil. This is compliant with the minimum requirements outlined in sub-clause (c) (ii) and (d), with a significant area dedicated to deep

Internal Referral Body	Comments
	soil planting. A large portion of the rear setback has been dedicated a deep soil zone, with a minimum dimension of approximately 3 metres at its smallest, and 4 metres at its largest. In addition, a large deep soil zone has also been allocated within the front setback. This area provides valuable deep soil area to establish large canopy trees which are necessary to mitigate and soften the bulk and scale of the dwelling. Considering the above information, the proposal appears to be compliant against the State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004. Furthermore, with relation to the Seniors Living Policy 'Urban Design Guidelines for Infill Development', the objectives of this policy are largely synonymous with that of the State Environmental Planning Policy. The two primary clauses that relate to landscape include <i>Clause 2 Site Planning and Design</i>; and <i>Clause 3 Impacts on Streetscape</i>. The objectives of Clause 2 include "to retained existing natural features of the site that contribute to the neighbourhood character", "to provide high levels of amenity for new dwellings", "to maximise deep soil and open space for mature tree planting, water percolation and residential amenity" as well as "to minimise the physical and visual dominance of car parking, garaging and vehicular circulation". The key objectives of Clause 3 include "to minimise impacts on the existing streetscape and enhance its desirable characteristics", "to ensure that new development, including the built form, front and side setbacks, trees, planting and front fences, is designed and scaled appropriately in relation to the existing streetscape". As discussed above, the proposed landscape works seek to compensate tree removal with the planting of new native canopy trees, as well as improve the overall amenity of the site through the implementation of layered planting to enhance the privacy of the site and its immediate neighbours. For this reason, the proposal appears to be compliant and achieve the key objectives of this design policy. The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape plans provided, inclusive of the required species changes.
NECC (Coast and Catchments)	Supported, with conditions This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 14 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies.
NECC (Development Engineering)	Not Supported

Internal Referral Body	Comments
	Updated Comments 4/3/22 An assessment of the Overland Flood Report and amended architectural plans, the Woolacotts Flood report has confirmed that the 1 in 100 AEP level is 4.73m AHD. This is derived from the ponding level at the intersection of Alexander Street and Pittwater Road and aligns with Councils flood mapping from the Council LGA study. The Woolacotts report has two recommended options as follows: Option 1 – Flood Gate <i>Install flood gates to the entry points at all site access openings. The top of flood gate is to be equal to the Flood Planning Level (FPL).</i> <i>As detailed within Northern Beaches Council Local Environment Plan (LEP) 2011, The Flood Planning Level (FPL) is considered as the 1% AEP top water level +</i> <i>500mm freeboard. Based on the ponding external to the site within the intersection, we consider the FPL for the proposed site as RL 4.73.</i> <i>The architectural plans prepared PBD Architects with revision B dated 17/02/2022 are deemed acceptable in terms of appropriately addressing the flood impacts.</i> Option 2 – Ground Floor Levels <i>The ground floor level of the proposed development is to be raised equal to the FPL (RL 4.73).</i> <i>To ensure protection of the proposed development from the risk of inundation from</i> <i>localised overland flow, the proposed retail and habitable floor levels are to be a</i> <i>minimum +150mm above the highest adjacent existing boundary level, and no less than the FPL detailed above.</i> <i>A DRAINS analysis is undertaken to determine whether the proposed system has sufficient capacity.</i> Comments: The fundamental issue with option one is that as the amended architectural plans detail the FFL of ground floor unit one as RL 2.78 which does not comply with the flood controls as outlined in

Internal Referral Body	Comments
	Section E11 of the WDCP 2011 which require in clause C1 all new floor levels to be at or above the FPL and or the PMF. The plans detail flood gate protection to this unit which is not in accordance with the DCP controls. Option two may be acceptable to Council. The recently LEC approved development (DA2020/1453) at 4 Collaroy Street & 1 Alexander street has all habitable unit floor levels well above the FPL. Additionally, the flood report has not addressed clauses A1 and A2 that requires demonstration that there are no adverse impacts of the development on flood levels , no adverse impacts on surrounding properties and no net loss of flood storage. Also Council require the submission of the DRAINS hydrological/hydraulic model for review as referenced in the Woolocotts flood report. The application is not supported. Comments 7/2/22 The proposed stormwater report prepared by C & M consulting engineers was reviewed and the following further information is required: 1) Submission of a stormwater drainage plan detailing the provision of On Site Detention in accordance with Council water management policy for development. 2) Submission of a DRAINS model for Council review including design summary parameters. Please note the pre existing condition is to be set at state of nature. Additionally Councils overland flow mapping indicated the property is affected by overland flow and as such a Overland flow hydrological/hydraulic study is to be provided in accordance with the design parameters and relevant chapters of Australian Rainfall and Runoff 2019. Councils preferred model is DRAINS and the study is also to be in accordance Councils Water Management Policy for Development.
NECC (Water Management)	Supported, with conditions The application meets the minimum requirements of the relevant Environmental Planning Instruments and policies. Stormwater harvesting (rainwater tanks) and reuse for irrigation of the landscape area is highly recommended.

Internal Referral Body	Comments																	
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS																	
	Discussion of reason for referral																	
	The proposal has been referred to Heritage as the subject property adjoins a heritage item																	
	Item I22 - Collaroy Cinema (facades and interiors) - 1097 Pittwater Road, Collaroy																	
	Details of heritage items affected																	
	Details of the item as contained within the Warringah inventory is as follows:																	
	<u>Statement of Significance</u> A rare surviving example of an inter-war art deco cinema. Displays high integrity of fabric & use. One of few operating art deco cinemas in Sydney. Historically provides evidence of the early recreational & social role of the Collaroy commercial area.																	
	<u>Physical Description</u> Smooth rendered masonry cinema building with high stepped parapet and "streamlined" decorative detailing. Building curves around the corner. Corrugated iron roof. Prominent cinema sign, similar to original.																	
	Other relevant heritage listings																	
	<table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td></td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register			RAIA Register of 20th Century Buildings of Significance	No		Other	N/A
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Other	N/A																	
Consideration of Application																		
The proposal seeks consent for a new part 2 and part 3 storey seniors living development. The heritage item is located immediately to the east of the site at the corner of Alexander Street and Pittwater Road. The heritage item has a detailed presentation to these streets and a plain rear presentation towards the subject site.																		
The proposal has adopted a much larger setback to Alexander Street than the heritage item which has a nil setback. This larger																		

Internal Referral Body	Comments
	front setback is supported by Heritage as it reduces visual impact to the heritage item from the east and west as well as allows room for some landscaping to soften the new development. It is noted that there is a partial three storey component to the development however it is setback further into the site and its proposed roof heights remain below the main roof height of the heritage item. This means the new upper most level wont be visible from the east above the heritage item and Heritage raises no objections to this component. The proposal also a large eastern setback at the front of the site where it adjoins the heritage item due to the proposed driveway and the irregular lot subdivision (Lot B in DP 379308). This approach is supported by Heritage as it means there is sufficient space afforded to the item and the building bulk has been pulled away from it. Lastly Heritage notes that the overall design of the building has picked up some design element from the Art Deco styling of the heritage item, particularly in the rounded corners and horizontal lines in the concrete. Heritage raises no objections to this approach. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of WLEP. 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: 9 October 2021
Traffic Engineer	Supported, with conditions The proposed development involves the demolition of the existing dwelling house on site and the construction of a new seniors living residential development, comprising a total of 5 x three (3) bedroom dwellings. Traffic: · Traffic generation as per the updated TfNSW traffic generation guidelines TDT 2013/04a: - 0.4 peak hour vehicle trips per dwelling. $0.4 \times 5 = 2$ vehicle trips / peak hour

Internal Referral Body	Comments
	- Existing traffic generation about 1 vehicle/hour - Therefore nett increase in traffic due to the development = $2-1= 1$ vehicle /hour Traffic impact is not significant. · Demolition and Construction Traffic Management Plans are required. Public transport availability Available on Pittwater Road about 180 m from the subject site. Parking: · Required - As per SEPP 0.5 space / bedroom, So required number of spaces = $0.5 \times 15 = 7.5$ · Provided: - Proposing 9 spaces. Includes 7 accessible compliant parking and 2 spaces with a 3.8m width. Parking requirements are satisfied. Access and circulation swept paths: · Access: - Vehicular access to the basement parking area is provided via a new driveway located off Alexander Street. - The driveway width is 3.6 m. - Exit/Entry in a forward direction

Internal Referral Body	Comments
	· Swept paths - Not provided. Swept paths are required and need to be provided by considering accessible vehicle standards. Pedestrian safety: Vehicular entry and building entry are separated. No safety concerns. Servicing: Normal domestic waste collection applies. On-street waste collection is deemed acceptable. Ongoing All facilities should be maintained throughout the lifetime of the project. Conclusion Given the above, the development proposal can be approved with conditions.
Waste Officer	Waste Management Assessment Recommendation – Refusal. The resolution of the following waste issues will be reported to the Panel separately. This proposal does not comply with Northern Beaches Council's Waste Management Guidelines. To comply with these guidelines the following requirements must be met. Specifically - Chapter 4 – Ongoing Waste management for three or more dwellings, including: Residential waste storage room design and access Access to the bin storage room is to be a flat, smooth path with a non-slip surface (concrete is good) with a maximum gradient of 1 in 8. Any doors fitted on the waste storage area, pathway and access must be:

Internal Referral Body	Comments
	a) Able to be latched in an open position for servicing without obstructing access and manoeuvring of bins b) Unobstructed by any locks and security devices c) Openable in an outward direction. The doors to the bin storage area must not open in the path of pedestrians or service staff accessing the bin storage area. To improve access, the applicant may choose to: Replace the double doors that accesses the bin storage area with a single 1200mm wide door that can be latched in the open position to the wall that backs on to the garden providing unobstructed access to service staff needing to manoeuvre bins. Bin Storage and Bin allocation The residential waste storage area must be able to accommodate 7 x 240 litre residential bins: 2 x garbage, 2 x paper recycling, 2 container recycling bins, 1 x vegetation bin. The dimensions for each bin are: · Depth: 750mm · Width: 600mm · Height: 1080mm The room can be designed so that there is an isle a minimum of 1m wide between each row of bins or between a single row of bins and a wall. The current waste storage room configuration requires some bins to be double stacked in the room. Stacked bins are inaccessible to residents wanting to dispose of waste. It is unacceptable for the waste collection staff to have to shuffle bins around to access the bins needed for collection. Bin Room Facilities A tap for washing out the waste storage room is to be provided. The tap must not obstruct aisles, access ways and placement of bins. Wash water to be drained to the garden or sewer. The Waste storage area must not be used to store any other items including bulky goods and can't be used for any other infrastructure including gas meters, water meters, air con plant, etc.

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. It has been identified that the site may have some minor contaminates, however Council's Environmental Health officer is satisfied that these can be safely removed as required via condition. In this regard, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a part-two/part-three storey seniors housing development, comprising five (5) self-contained dwellings and basement car parking.

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 the Development Application stage. This documentation has been submitted by the Applicant.

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 (ADG).

DESIGN REVIEW PANEL

The proposal was reviewed by Council's Design and Sustainability Advisory Panel (DSAP), noting that Council does not have a SEPP 65 Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment

The proportions, architecture and landscape response of the proposal is considered to be contextually appropriate for the site which acts as a transitional barrier between the Local Centre and cinema to the east, and the detached dwellings to the west. In that sense, it is found that the design appropriately responds to the built and legislative context of the land and will positively contribute to the overall neighbourhood character.

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

Whilst the proposed land use is different to the neighbouring low density residential land uses, being a medium density type of development, it must be acknowledged that despite the nature and scale of the

building, a detached dwelling house could be constructed of greater dimensions on the same site. In that respect, the proposal provides significantly greater side and rear setbacks than what is required on the site, and is lesser in height (generally) than what could be constructed under the LEP. The site is also larger than many adjoining properties, which inherently lends itself to accommodate a building larger than those on neighbouring sites.

Given the above, the scale and proportions of the building are assessed as being acceptable. The facade detailing, fenestrations and landscaped solution further enhance the design of the proposal and ensure that the building will be congruous with 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 provision of five (5) apartments on the site is considered to be a reasonable density given the fact that the apartments are all well appointed and generous in size, and given the location of the site being proximate to services, public transport and recreational areas.

Principle 4: Sustainability

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

Comment

The proposal provides a satisfactory degree of passive sustainability measures, including good solar, cross-ventilation and shading and also includes built sustainable solutions such as water harvesting and photovoltaic cells on the roof.

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, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks.

Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment

The building is surrounded by landscaping on all sides in a manner which is more formalised than most other buildings in Alexander Street. The quality of proposed landscaping is considered to be high and will enhance the site and the wider streetscape and character. The landscaping will also enhance the quality of accommodation afforded to future residents.

Principle 6: Amenity

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

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

Comment

As described in the following assessment against the provisions of the ADG, the development will provide a high level of amenity to future occupiers without unreasonably compromising the amenity of neighbours.

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 level of documentation submitted at DA stage is satisfactory and sufficient to show that the building is capable of providing a safe environment for residents and the public.

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 development is situated in a zone that is dominated by detached dwelling houses, and sits adjacent to a zone that accommodates (inter alia) shop top housing developments. The addition of five (5) x three (3) bedroom apartments is considered to provide diversity commensurate to the dominant housing typology and will afford an appropriate level of social interaction.

Principle 9: Aesthetics

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

textures.

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

Comment

For the reasons detailed throughout this report, the development as a whole is considered to exhibit a good standard of architecture in terms of its massing, proportions and materiality, will enhance the streetscape and character of the locality, and is of good design that will afford a high level of amenity for future occupants without being to the detriment of existing neighbours.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The development is sited appropriately on the land commensurate with the prevailing planning controls and contextually relates to the setbacks and heights of adjacent buildings.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The development is orientated northwards to the street to optimise solar access within the development and to 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?	Consistent The proposal has a fence along the front boundary to provide security without creating a sense of enclosure on the public footpath.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Inconsistent (satisfactory on merit) No communal open space is provided in the development, however that shortfall is deemed acceptable because of the generously proportioned private balcony and garden areas, and because of the

		developments proximity to the beach and beach reserves.												
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 rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <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> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Consistent 19%
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <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> </tbody> </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	Consistent At Level 1, the development provides side setbacks of 3.0m and rear setbacks of 12.0m which, when coupled with neighbouring building setbacks, exceed the minimum required separation distances (6.0m). Unit 1.01 to the front of the building is generally north facing and has hard screening to its flank edges. Units 1.02 and 1.03 to the rear have landscaping and fencing between their flank windows and side boundaries. Unit 2.01 on the topmost floor of the development has side setbacks of 6m to the west, 8.7m to the east (from primary windows) and 12.9m to the rear (from the outer edge of the
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												

		balcony). These distances are all significantly in excess of the required setbacks under the SEPP, and are significantly greater than the setbacks that would be required under the DCP (0.9m to the sides, and 6.0m to the rear). The south facing balcony from Apartment 2.01 is not considered likely to impact on neighbouring amenity given that it is only accessible from bedrooms, is not the primary outdoor area of the apartment and will have landscape screening. The spatial separation afforded to occupants and neighbours, combined with the building layout and the landscape treatment result in there being no unreasonable visual privacy impacts.
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
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent
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	Consistent

	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.	
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Consistent The project architect contends that 100% of the proposed apartments will receive the requisite amount of solar access between 9am and 3pm on the winter solstice. Concern was raised by Council's DSAP as to whether this was accurate, or whether it was reliant on solar access via skylights (particularly for Units 1.02 and 1.03). The kitchens and living rooms of these two apartments have windows on both the southern, and eastern and western (respective) facades. Given that the adjacent site to the west accommodates a single storey house, and that the site to the east is undeveloped (commensurate to its potential), the proposal is considered to comply. In the event that these two neighbouring sites were developed to a similar capacity as this building, it is possible that the level of solar access to this

		building would decrease. However, that decrease is not considered to be tantamount to harming amenity as the units are all generously proportioned and have windows on at least three sides allowing light penetration into the building. The gardens would remain in the sun. The provision of skylights, whilst not considered a primary light source under the ADG, do in reality provide a high level of solar access to ensure that apartments are not dark.										
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent										
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										
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent										
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><thead><tr><th colspan="2">Minimum ceiling height</th></tr></thead><tbody><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30</td></tr></tbody></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30	Consistent
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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
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										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent										
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent										
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent										
	Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	Consistent										
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent										
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Consistent										

	<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> The minimum balcony depth to be counted as contributing to the balcony area is 1m	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	
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Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
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3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Consistent															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <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> At least 50% of the required storage is to be located within the apartment.	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					
Dwelling Type	Storage size volume																
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
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3+ bedroom apartments	10m ²																
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent The proposal includes a secondary bedroom located adjacent to the driveway, and a master bedroom located above the driveway. It is not anticipated that occupants of the development would come and go in the later hours of the night / morning on such a frequent basis that it would cause a nuisance to future occupiers of other															

		apartments. Appropriate sound attenuation through quality windows and landscape buffering are considered sufficient to ameliorate any occasional acoustic nuisance.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent The one ground floor apartment is surrounded by fencing and has a private garden to the front. The driveway and pathway to the site benefit from passive surveillance from other units. It is considered that the apartment achieves an appropriate degree of amenity and safety.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The building is considered to be a high quality design that appropriately transitions in scale between the heritage listed cinema building and the low-density residential neighbourhood to the west.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent
Planting on	When planting on structures the following are	Consistent

Structures	recommended as minimum standards for a range of plant sizes:				
	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
	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
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A The existing building on site does not appear to be in a condition that would warrant it capable of adaptive reuse for a seniors housing 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.				N/A No mixed use development is proposed.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design				N/A The proposal does not include any signage or

	and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	awnings over the public domain.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment

The development application is not being recommended for refusal on any of these grounds.

(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 development application is not being recommended for refusal on any grounds of the ADG.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1232829M dated 07 September 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006428810 dated 07 September 2021).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	45	46

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for the construction of five (5) self-contained dwellings for seniors or people with a disability. An assessment against the relevant provisions of SEPP (HSPD) follows.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows:

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment

The development seeks to provide five high-quality dwellings for seniors or people with a disability on an unusually large parcel of land in an accessible location. Notwithstanding any numerical non-

compliances as discussed later in this report, the premise of the application is supported and on balance the proposal is considered to achieve the aims of the SEPP (HSPD).

Chapter 2 – Key Concepts

Comment

The development is appropriately described as in-fill self-care housing falling under the umbrella term of self-contained dwellings, as permitted under the SEPP (HSPD).

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP (HSPD) contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of (SEPP HSPD) outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The development provides satisfactory access to shops, banks and other retail and commercial services as required, as well as community services and recreation facilities, and a GP. The site is proximate to the Collaroy Beach local centre area.	YES
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The site is located within 400m of a bus stop that is regularly serviced throughout the day and not. The adjoining commercial area also accommodates a number of services and uses that will contribute to the amenity of residents.	YES
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not located within bushfire prone land.	N/A
28	(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or	The site is capable of being connected to a reticulated water system and sewerage infrastructure. Evidence of this infrastructure is detailed on the accompanying survey plan.	YES

Development Criteria			
Clause	Requirement	Proposal	Complies
	disposal of sewage.		
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	This clause applies as Clause 24 (Site compatibility certificate) does not apply. The site is situated within an urban context comprised by commercial developments to the north and east and low density residential developments to the south and west. The transitional scale of this development in terms of its proportions and density represent an appropriate development for the vicinity given existing uses. The provision of landscaped area is generally consistent with what can reasonably be expected to be provided on adjacent sites. The proposed development, by virtue of its proportions, form and character is not considered likely to prejudice the amenity or development potential of surrounding sites.	YES
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis is provided in the submitted architectural plans and Statement of Environmental Effects.	YES

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 of SEPP 9HSPD), in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP (HSPD). A detailed assessment of the proposal against the requirements of Seniors Living Policy is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.	Proportionately, the subject development site is larger in area than the adjoining residential sites to south and west. Therefore, whilst the scale of the development is

Section	Requirements	Comment
	Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	larger than a traditional dwelling house, the land it sits on is also larger, which enables the development to be visually congruous with neighbouring properties. Further, the transitional nature of the site being between a detached house, a heritage listed cinema complex and large shop top housing developments lends itself to accommodating a development of a greater scale than the houses to the west, but a lesser scale than the commercial and residential blocks to the east. The WLEP 2011 and WDCP 2011 do not have any specific locality statements as such, but rather seek to define an appropriate character through the applicable built form controls. An assessment of these factors can be found later in this report under Part B of the WDCP 2011.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	The proposal is a well-designed residential building integrated within a landscaped setting. The landscaped characteristics of the proposal, combined with the material palette and proportions of the development ensure that any negative impact on neighbourhood character is minimise. The car parking entrance is considered to be appropriately discreet commensurate to other solutions along the street. Parking and circulation is hidden from public view.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	The primary desirable characteristic of Alexander Street is the landscaped frontages of houses, however this character has somewhat been eroded by the dominance of car parking both within those frontages, and on the street. The design of the development ensures that the frontage of the site is densely landscaped and does not

Section	Requirements	Comment
		provide any car parking within the frontage. In that respect, the proposal enhances the desirable characteristics of the streetscape and minimises the dominance of driveways and car park entries in the streetscape.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	The proposal is not found to have any unreasonable impacts on neighbours as expanded upon (where necessary) in the WDCP 2011 section of this report and in the below table against the criterion of Division 2 of the SEPP.
5. Internal site amenity	Objectives of this section are to: - Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	Appropriate internal amenity and circulation is provided for occupants and their guests.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP (HSPD), a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of the SEPP.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP (HSPD).

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The design recognises the prevalence of landscaping along Alexander Street which contributes to a low-scale and residential appearance.	YES
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	Whilst the adjacent cinema building is a listed heritage asset (externally and interiors), the western facade of that building facing the site is in poor condition and does not contribute to its heritage value. The development of this site and new landscaping can only enhance the existing facade.	YES
	c. Maintain reasonable neighbour amenity and	The development provides reasonable neighbour amenity and is of an	YES

Control	Requirement	Proposed	Compliance
	appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors. d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.	appropriate residential character as established elsewhere in this report under the provisions of the Apartment Design Guide pursuant to SEPP 65. The proposed front building line is consistent with the established pattern of buildings in the streetscape, and with Council's DCP. The landscape plan has been assessed as satisfactory and, subject to conditions recommended by Council's Landscape Officer, the planting will be in sympathy with the streetscape. See comments from Council's Landscape Officer. Achieved.	YES YES YES YES
CL34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:	The development is considered to provide an acceptable level of visual and acoustic privacy to both occupants of the development itself, and to neighbouring buildings.	YES

Control	Requirement	Proposed	Compliance
	(a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Whilst Apartment 2.01 (the top floor unit) does have a large (30sqm) south facing balcony that looks towards neighbouring properties, that balcony is secondary to the large (50sqm) north facing balcony on the other side of the apartment. The balcony is also only accessible from bedrooms. Further, sightlines from this balcony to neighbouring heights are heavily obscured by existing vegetation, and will be further obscured once the vegetation required to be planted under this consent establishes.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	This matter is discussed in greater detail elsewhere in this report under the Apartment Design Guide's assessment criteria but in summary, the proposal is considered to provide acceptable solar access appropriately designed for the climate.	YES
CL36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Council's Development Engineers are satisfied with the proposed stormwater solution.	YES
CL37 Crime prevention	The proposed development should	Access to the development is via a secure lobby. The front	YES

Control	Requirement	Proposed	Compliance
	provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	garden areas and access pathways are overlooked by the apartments within the development itself which provide for nature passive surveillance of the surrounding area. The individual apartments can be designed with 'peep holes' in the doors to see who is standing at them.	
CL38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The site is afforded a reasonably level footpath from its frontage to the Pittwater Road shops, amenity and bus stops. That pedestrian environment is considered to be appropriately safe and comfortable for pedestrians. Internally within the site an adequate provision of safe and easy-to-navigate pedestrian amenity is provided.	YES
CL39 Waste management	The proposed development should be provided with waste facilities that	The waste storage room will provide appropriate recycling facilities as required.	YES

Control	Requirement	Proposed	Compliance
	maximise recycling by the provision of appropriate facilities.		

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP (HSPD), a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP (HSPD).

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1,199 sqm	Yes
Site Frontage	20 metres	19.81 metres	No (See Clause 4.6 discussion elsewhere in this report)
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Less than 8.0 metres	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height	Part-two / Part-three storeys in height adjacent to eastern boundary	No (See Clause 4.6 discussion elsewhere in this report)
	A building located in the rear 25% of the site must not exceed 1 storey in height	The rear 25% of the site only accommodates a portion of the building that is one storey in height, topped with a balcony which is not counted as a storey.	Yes

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings	Capable of complying as secured via condition.	YES

Control	Required	Proposed	Compliance
	must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.		
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Capable of complying as secured via condition.	YES
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	Capable of complying as secured via condition.	YES
Private car accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a	Capable of complying as secured via condition.	YES

Control	Required	Proposed	Compliance
	power operated door to be installed at a later date.		
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Capable of complying as secured via condition.	YES
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Capable of complying as secured via condition.	YES
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Capable of complying as secured via condition.	YES
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of complying as secured via condition.	YES
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of complying as secured via condition.	YES
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Capable of complying as secured via condition.	YES
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Capable of complying as secured via condition.	YES
Ancillary items	Switches and power points must be provided in accordance with	Capable of complying as secured via condition.	YES

Control	Required	Proposed	Compliance
	AS4299.		
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Capable of complying as secured via condition.	YES
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Capable of complying as secured via condition.	YES
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Capable of complying as secured via condition.	YES
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Capable of complying as secured via condition.	YES
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Capable of complying as secured via condition.	YES
Garbage	A garbage storage area must be provided in an accessible location.	Capable of complying as secured via condition.	YES

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 of SEPP HSPD states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained

dwelling

In accordance with Clause 50 of SEPP (HSPD) a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP (HSPD).

Control	Required	Proposed	Compliance
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	The development has a building height (measured from the underside of the topmost level ceiling to the ground level immediately below) of less than 8.0 metres.	YES
Density and Scale	0.5:1	0.65:1.	NO
Landscaped Area	30% of the site area is to be landscaped	The site provides a landscaped area of 365sqm, equivalent to 30% of the site area.	Yes
Deep Soil Zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	The site provides a deep soil zone of 230sqm equivalent to 19.1% of the site area. Two thirds of deep soil zones are located to the rear of the site.	YES
Solar Access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	This matter is discussed in greater detail elsewhere in this report under the Apartment Design Guides assessment criteria. In summary, the proposal is considered to provide acceptable solar access appropriately designed for the climate. The proposal is not being recommended for refusal on this basis.	YES
Private Open Space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in	Each dwelling is afforded significant private open space in the forms of balconies, terraces and gardens,	YES

Control	Required	Proposed	Compliance
	part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area	varying from 31sqm to 199sqm.	
Parking	(i) 0.5 car parking spaces for each bedroom where the development application is made by a person other than a social housing provider.	15 bedrooms provided requiring eight car parking spaces. Nine spaces provided.	YES
Visitor Parking	None required if less than 8 dwellings	Five dwellings proposed.	N/A

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

Since the lodgement of this development application on 7 October 2021, the new State Environmental Planning Policy (Housing) 2021 ("Housing SEPP") was adopted and supersedes the SEPP (HSPD).

The new Housing SEPP includes standards for seniors housing development, however as the application was lodged prior to the coming into force of the new instrument (being 26 November 2021) a savings provision pursuant to Schedule 7 states that the former provisions of a repealed instrument (being the SEPP (HSPD)) continue to apply.

Accordingly, an assessment against the provisions of the Housing SEPP is not required in this instance.

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 and provided no requirements.

Transport for NSW (TfNSW)

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

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

TfNSW has reviewed the application and raises no objection to the application as it is unlikely to have a significant impact on the classified road network.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

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

Comment

The proposed development does not change any existing access arrangements to Collaroy Beach and will not be visible from the ocean. The development does not overlook the beach nor will it overshadow the beach. The development is not considered likely to have any impacts on coastal processes or the users of the beach.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings*	8.5m	Parapet: 8.5m	-	Yes

		Lift overrun: 9.0m	0.5m	No*
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*Note: Clause 50 of the SEPP (HSPD) prevails over Clause 4.3 of the WLEP 2011 and provides for a maximum building height of 8.0m (measured to the underside of the top-most ceiling).

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

SEPP (HSPD) CLAUSE 40(3) ASSESSMENT

Clause 40 of SEPP (HSPD) incorporates Development Standards pertaining to minimum sizes and building height for seniors housing developments.

Of note in this Clause is subclause (3) which reads:

(3) Site Frontage: *The site frontage must be at least 20 metres wide measured at the building line.*

The proposed development breaches this development standard as the width of the site frontage measured at the building line is 19.81m, which herein is the subject of this Clause 4.6 exception assessment:

Development Standard:	SEPP (HSPD) cl.40(3)
Requirement:	The site frontage must be at least 20 metres wide measured at the building line
Proposed:	19.81 metres
Percentage Variation to Requirement:	0.95% or 0.19 metres

Assessment of Request to Vary a Development Standard

The following assessment of the variation to SEPP (HSPD) Clause 40(3) development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment

SEPP (HSPD) Clause 40(3) development standard is not expressly excluded from the operation of this clause.

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

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

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

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

Comment

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the

development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- that the objectives and purposes of the standard are achieved.
- that the proposal complies and exceeds the requirements of the setback controls under the WDCP 2011.
- that strictly enforcing compliance with the control would not promote the orderly or economic development of the land.
- that by allowing the variation to be approved, Council will be promoting good design of seniors housing in an appropriate location.

The grounds raised by the applicant are concurred with and it is assessed that the 190mm variation

sought will not be discernible and will have no adverse impact. The site widens to 24.0m where adjacent to shop top housing developments to the east which provides a spatial separation far greater than what is required under the DCP (0.9m).

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 SEPP (HSPD) Clause 40(3) development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

SEPP (HSPD) Clause 40(3) does not contain any specific objectives pertaining to the requirements of the control. It can only be assumed that the intent of the control is to ensure that development denser than a single dwelling house is on a site wide enough to cater for the access and services required for such a facility. The prescribed width could also be assumed as necessary to ensure that the side boundary setbacks of the development are compatible with and congruous to those of adjoining dwelling houses.

In the absence of any specific objectives or any comparable objectives, it is concluded that the proposed variation achieves the assumed intent of the standard.

Zone Objectives

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

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

Comment

The development provides for five (5) new dwellings on a large lot and is surrounded by a landscaped curtilage. Notwithstanding the variation sought to Clause 40(3), the proposal

maintains a low density appearance and is contextually compatible with the street.

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

The proposal provides for residential accommodation in a residential zone. The proposed apartments and site provide sufficient services and facilities to cater for the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment

The development provides an appropriate provision of well designed landscaping and has a compliant degree of open space and deep soil zones in accordance with the SEPP that will enhance the site and the overall street, and will over time, partially screen the development from public view.

It is considered that the development satisfies this objective.

Conclusion

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the SEPP (HSPD) cl. 40(3) Development Standard is assumed by the Local Planning Panel.

SEPP (HSPD) CLAUSE 40(4)(b) ASSESSMENT

Clause 40 of the SEPP (HSPD) incorporates Development Standards pertaining to minimum sizes and building height for HSPD developments.

Of note in this Clause is subclause (4)(b) which reads:

(4) Height in zones where residential flat buildings are not permitted If the development is

proposed in a residential zone where residential flat buildings are not permitted—

.....

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must not be more than 2 storeys in height

note: *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

Development Standard:	SEPP (HSPD) cl.40(4)
Requirement:	No more than two storeys in height adjacent to a boundary
Proposed:	Part two / Part three
Percentage Variation to Requirement:	100% (one storey)

Below are two figures taken from the applicant's Clause 4.6 variation request which show (with red bolded line) the portion of buildings adjacent to a boundary that are more than two storeys in height:

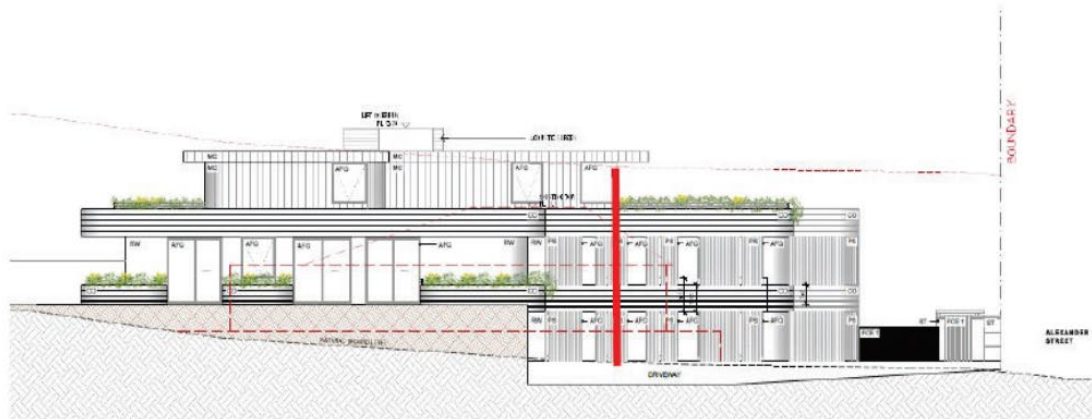


Figure 1 - Plan extract showing the 3 storey building height as viewed from the east

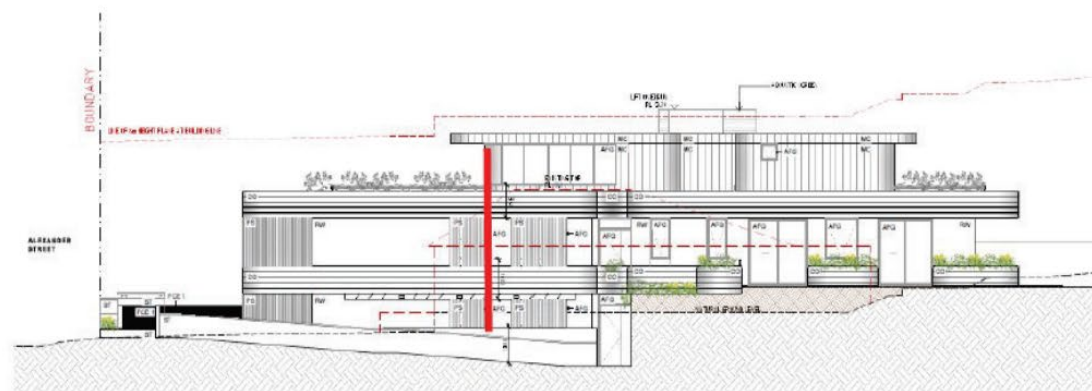


Figure 2 - Plan extract showing the 3 storey building height as viewed from the west

Assessment of Request to Vary a Development Standard

The following assessment of the variation to SEPP (HSPD) Clause 40(4)(c) development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

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

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

Comment:

SEPP (HSPD) Clause 40(4)(c) development standard is not expressly excluded from the operation of this clause.

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

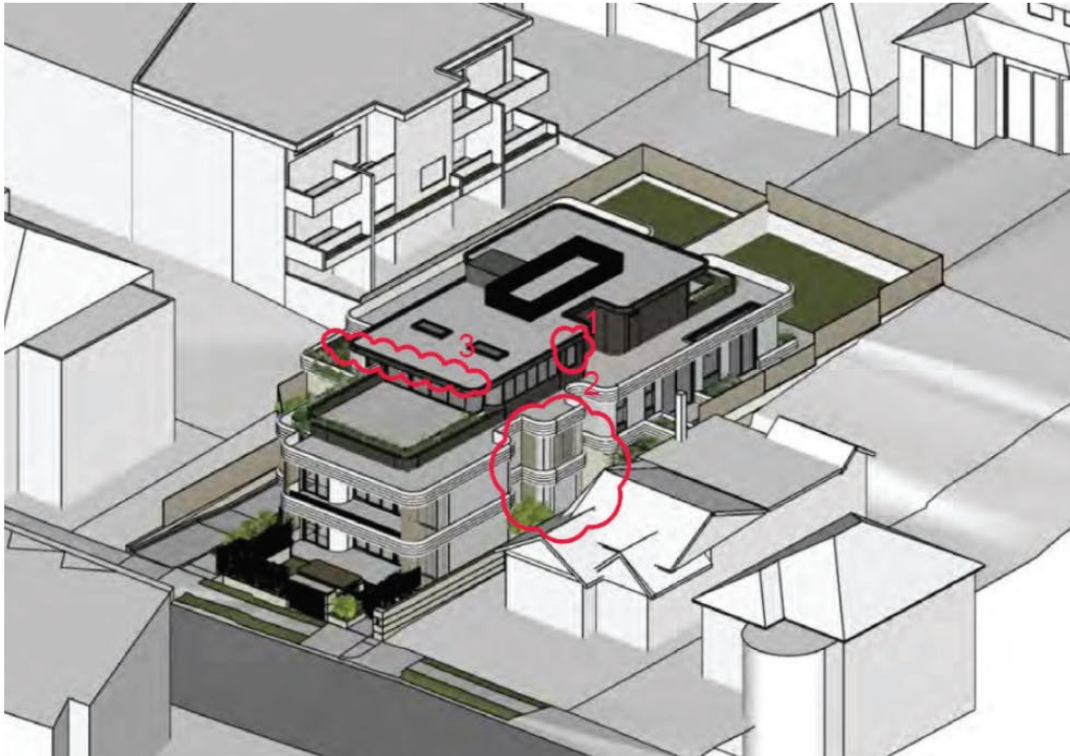
- that the objectives and purposes of the standard are achieved.
- that the underlying purpose of the standard is not relevant to the development.
- that the proposal complies with the setback controls under the WDCP 2011.
- that the building height (except for the liftshaft) complies with the WLEP 2011.
- that the WDCP 2011 does not contain a storey limit control. A three storey dwelling could be constructed on the site.
- that the non-compliance is not directly attributable to any impacts on adjacent land.

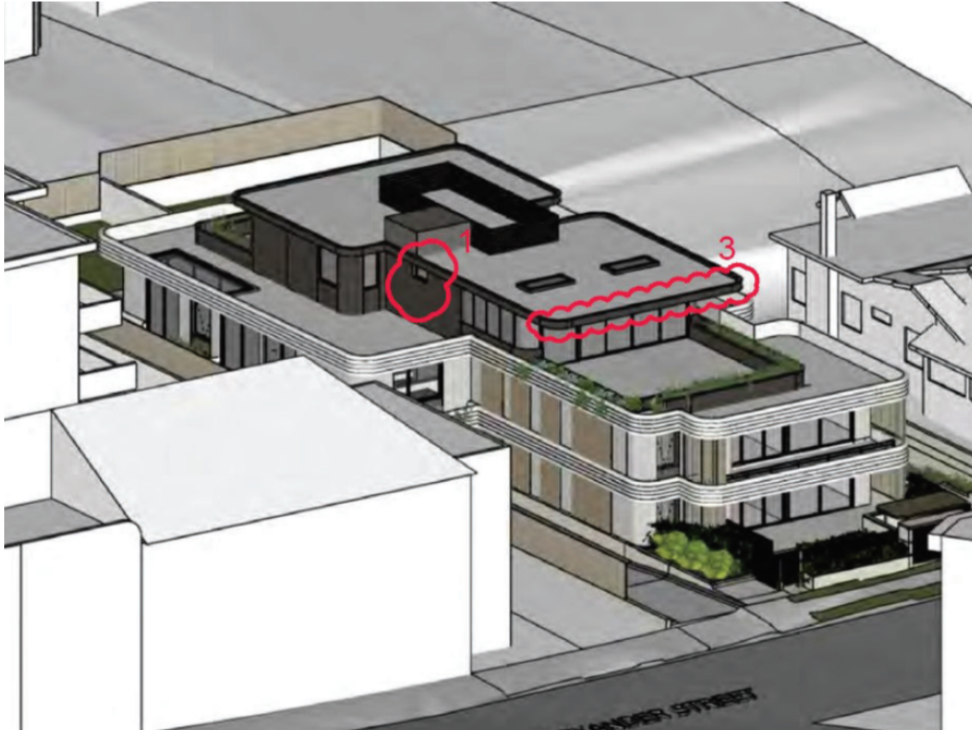
The topmost floor of the proposed development is the offending portion of the building with respect to cl.40(4)(b). That floor is stepped in from the outer edges of the floor below and finished with a different facade material to visually break up the building. The extent of areas where the building is perceived as three (3) storeys when adjacent to a boundary is relatively minor compared to the totality of the building. It is concurred with that there is no meaningful planning reason to ensure compliance with the control is maintained as the building is well designed and set off the boundaries significantly greater than what is required.

The building does not appear to have an abrupt change in height. The change in height is negotiated

sensibly with the topography of the land, materiality and terraces.

For clarity, the submitted 'birds eye shadow diagram' provides a good three dimensional depiction of the offending elements (NB: red highlights are not relevant to this discussion):





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 SEPP (HSPD) Clause 40(4)(b) development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

SEPP (HSPD) Clause 40(4)(b) does not contain any specific objectives pertaining to the requirements of the control. The control states that "[T]he purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape."

In the absence of any specific objectives, it has been determined that an assessment of the proposal against the underlying objectives of the Clause 4.3 Height of Building development standard is necessary, as it is the most relevantly aligned development standard pertaining to height.

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

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

Comment:

The proposed development predominantly appears as a two (2) storey structure around the perimeter of the building with a recessed third floor. The architectural typology of the proposal is consistent with a typology that could be expected to be found in a residential street.

The height of the development is generally consistent with neighbouring properties, if not lesser. The majority of the building height sits below the 8.5m building height control (under WLEP 2011) with the exception of the lift shaft which reaches 9.0m. The height of the development remains congruous with residential properties on sloping sites.

The site itself is larger than most surrounding sites within the R2 zone, which ensures that whilst the proportions of the building are larger than that of a dwelling house, they are proportionally and contextually appropriate given the increased land size.

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

Comment:

The R2 zone is subject to a 6.5m front building setback control which, generally, development along the street follows. The proposal provides for a 14.5m setback at ground level, and a 28.7m setback at first floor level to the front boundary. These significant setbacks minimise any perceived visual impact of the development.

The works overall are not found to result in any detrimental disruption of views, loss of privacy or loss of solar access to neighbouring properties.

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

Comment:

As described throughout this report, the proposal is well designed and is of a reasonable density and proportions commensurate to the lot size and proximity to local centre facilities. These proportions and the overall architecture of the proposal are found to be enhancing to the Alexander Street streetscape and do not compromise the scenic quality of the environment.

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

Comment:

For the reasons described above pertaining to the front setback distances, combined with the details of the Landscape Plan, it is considered that from the streetscape the buildings overall proportions would not be readily visible, and even less-so when the vegetation matures over time. From Alexander Street the building has an appropriate visual impact.

Zone Objectives

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

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

Comment:

The development provides for five new dwellings on a large site surrounded by a landscaped curtilage. The proposal maintains a reasonably low density without impacting on the amenity of neighbours and provides for new housing.

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:

The proposal provides for residential accommodation in a residential zone. The proposed apartments and site provide sufficient services and facilities to cater for the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

The development provides a compliant provision of landscaped open space in accordance with the SEPP.

It is considered that the development satisfies this objective.

Conclusion

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the SEPP (HSPD) cl. 40(4)(b) Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	< 7.2m in any one point		Yes
B3 Side Boundary Envelope	east - 4.0m	No encroachments		Yes
	west - 4.0m	No encroachments		Yes
B5 Side Boundary Setbacks	east - 0.9m	Basement - 1.5m First floor - 3.0m to 8.8m Second floor - 6.7 to 8.8m		Yes Yes Yes
	west - 0.9m	Basement - 1.5m First floor - 3.0m Second floor - 6.2m		Yes Yes Yes
B7 Front Boundary Setbacks	north - 6.5m	Bin & Booster enclosure - nil Terrace - 6.6m Building - 9.7m	100%	No Yes Yes
B9 Rear Boundary Setbacks	south - 6.0m	Ground floor - 11.9m First floor - 15.7m		Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (479.6m ²)	30% (365m ²)	24.2%	No*

*Note: SEPP (HSPD) landscape area controls prevail over Council's DCP and therefore no further assessment on this non-compliance is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	No	No

Detailed Assessment

B7 Front Boundary Setbacks

Description of Non-compliance

Whilst the whole of the building complies with the prescribed 6.5m front boundary setback control, the residential waste room encroaches within this setback, which was done by the Applicant in order to comply with Council's waste requirements, and therefore does not comply with Clause B7.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To create a sense of openness.*

Comment

The waste storage room is an open structure bound by landscaping and required booster hydrants at the street facing elevation. The proportions of the structure are minor compared to that of the overall development and, give those proportions, will appear subservient to the landscaped frontage of the site. On that basis a sense of openness is retained.

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

Comment

Other properties along Alexander Street and other nearby roads have a variety of structures located within the front setback area and thus the proposed open style waste storage room maintains the visual continuity and pattern of buildings in the street.

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

Comment

The proposal as a whole is a significant enhancement to the visual quality of the street by virtue of the high quality architectural design and landscape plan.

- *To achieve reasonable view sharing.*

Comment

The development as a whole is not found to result in any unreasonable impacts on reasonable view sharing.

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

C3 Parking Facilities

The car parking ratio provided under SEPP (HSPD) prevails over Appendix 1 of the WDCP 2011 but in any event, the proposal complies with both ratios and is therefore considered to provide an appropriate provision of car parking facilities.

C9 Waste Management

The application is accompanied by a detailed on-going waste management plan, however no details of the material disposal from the demolition of existing structures, or excavation of land has been provided and therefore, a condition of consent is recommended requiring such to be provided to the private certifying authority prior to the issue of construction certificate.

D1 Landscaped Open Space and Bushland Setting

Clause 50(c) and (d) of SEPP (HSPD) prevail over Clause D1 of the WDCP 2011 and therefore no

further assessment on this clause is required.

D7 Views

Several properties to the east of the subject site along Pittwater Road have raised concerns pertaining to view loss in their submissions, and the bulk of those submissions are from ground floor units. Photographs have been provided from a number of these units and an inspection has been undertaken.

The objecting properties currently have an outlook over the subject site, and that outlook (whilst currently obscured by the overgrown nature of the subject site) consists of trees and buildings on Alexander Street.

From these properties, it is considered that what they see is better described as an 'outlook' rather than a 'view'. It is further considered that the proposal does not unreasonably impact on this outlook, and would provide landscaping to enhance it commensurate to the existing outlook.

It is therefore concluded that the impact on outlook is acceptable and is consistent with what could have been reasonably expected to be developed on the site.

E11 Flood Prone Land

The proposed development does not comply with the requirement for the habitable (apartment) floor levels of the building to be at or above the Flood Planning Level (FPL).

The Applicants consultant has advised as follows:

The flood report has identified a Flood Planning Level (FPL) for development on the site of RL 4.73.

The flood report identifies that the provision of floodgates to the entry points and all site access openings with the top of the floodgate being equal to the FPL as being an acceptable flood mitigating measure.

During a flooding event residents will be able to shelter in place.

The architectural plans have been amended to nominate floodgates to the driveway and entrance pathway together with a front garden wall with a height of RL 4.73 being the identified FPL. Landscaping is proposed in front of this front garden wall to soften and screen it in a streetscape context. These plans also resolve the residual waste management issues. A copy of these plans is attached.

We note that the proposed flood attenuation measures are the same as approved by the Land and Environment Court immediately opposite the site at No. 1 Alexander Street involving the construction of a shop top housing development.

The self-activating flood barriers will remain below finished surface level other than during a flooding event with the integrated flood barrier garden wall at the front of the property maintaining a height which is complimentary and compatible with other front walls and fencing within the site's visual catchment. That is, the proposed flood attenuation measures will not compromise the design quality of the development or result in inappropriate or jarring streetscape consequences.

As detailed in the Referral Comments from Council's Development Engineering section has reviewed the proposal, including the Flood Report by Woolacotts Consulting Engineers and the proposal to install flood gates as an alternate solution to placing the floor levels at or above the FPL is not supported.

The proposal does not satisfy the provisions of the WDCP 2011 and will constitute a reason for refusal of the 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

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

A monetary contribution of \$52,462 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,246,223.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 seeking to justify a contravention of SEPP (HSPD) Clause 40(3) and 40(4)(b) 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.

Summary of Conclusions

The proposed development has significant architectural and design merit, and appropriately responds to the transitional nature of the site being bound by a cinema, shop top housing developments and detached dwelling houses and presents as a well-designed and proportioned building. Also, the variations sought to the development standards are supported with respect to the context, setting and amenity and do not detract from the merits of the overall application.

Furthermore, the Design and Sustainability Advisory Panel reviewed the proposal and was generally supportive of the urban design and sustainability aspects of the project and the majority of the recommendations made by the Panel have been incorporated into the revised scheme.

Finally, the residents concerns raised in response to the public exhibition have been considered in the assessment of this application and do not warrant refusal of the application.

However, there are fundamental concerns in relation to the manner in which the proposed development addresses the flood planning requirements of the WDCP 2011, and the waste management requirements have also not been resolved. These outstanding matters cannot be addressed by conditions of consent.

Accordingly, on balance, whilst the proposal is worthy of support on urban design and planning grounds, there are fundamental concerns remaining in relation to flooding and waste, and so the application cannot be supported and 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 DA2021/1805 for the Demolition works and construction of a seniors housing development on land at Lot A DP 379308,4 Alexander Street, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part E11 - Flood Prone Land of the Warringah Development Control Plan 2011.

LEGEND:

AW	AIRING
HW	HIGHLIGHT WINDOW
CU	A/C CONDENSER UNITS
FI	FIRE HYDRANT
FNR	FIRE HOSE REEL
FS	FIRE STAIRS
MC	MECHANICAL RISER TO FUTURE DETAIL
GY	GARAGE CHUTE
MB	MAILBOX TO FUTURE DETAIL
PIB	PLANTERBOX
R	24LB RECYCLING BIN
SK	SKYLIGHT
ST	STORAGE
WT	HOT WATER UNITS
DN	DOWN



CLIENT: HCAP GROUP

ISSUE	DATE	DESCRIPTION



ABN 36 147 035 51
P-02 9998 8540 E-info@pbdarchitects.com.au W-www.pbdarchitects.com.au
Level 2, 52 Abdon Street, Sany Hills NSW 20
Nominated Architect: Paul Bufavio NSW 779

80

GENERAL NOTES:

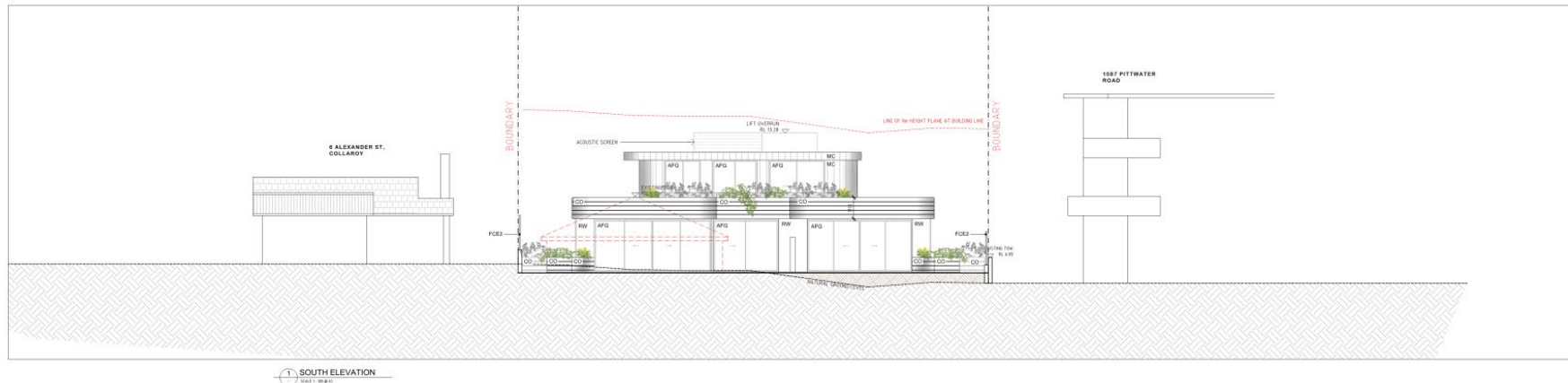
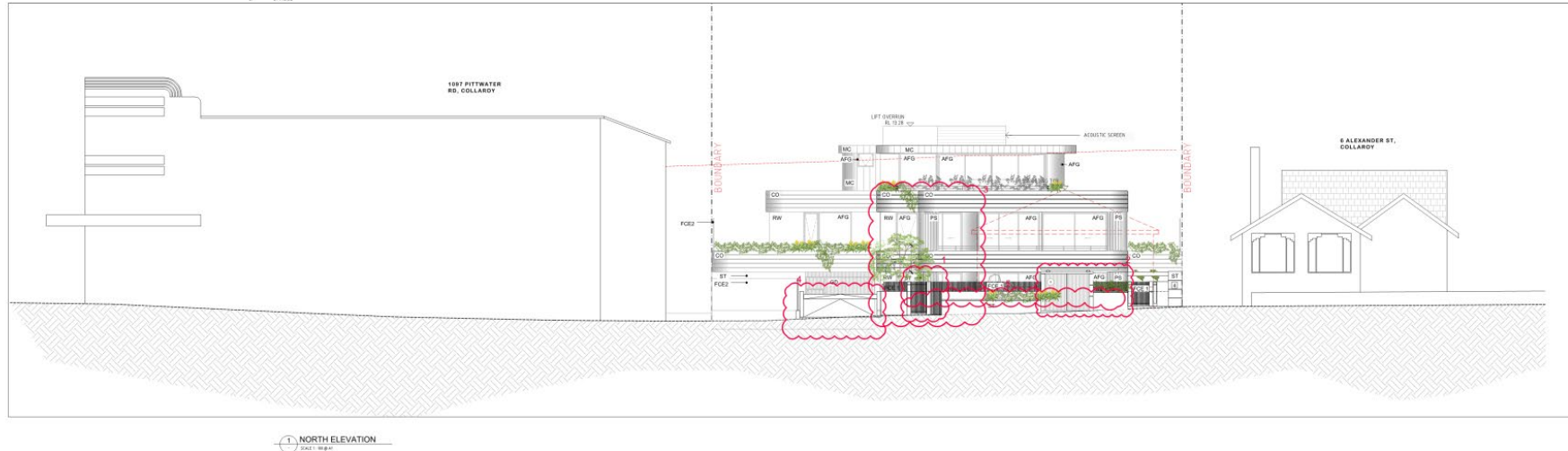
- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITY OF LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS.
- DETAILED FOR THE PURPOSES OF DA ONLY. FURTHER CONSULTANT AUTHORITY CONSIDERATION WILL BE REQUIRED AT STAGE WORKS PERMIT DESIGN AND PLANNING STAGE.
- ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAINAGE, SITEWORKS & SERVICES.
- SUPPORT OF DESIGN CONSIDERATION IS RELIANT BY PRO ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY PERIODICITY.
- AREA CIRCLES SUPPLIED ARE APPROXIMATE ONLY. FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED.

LEGEND:

- AW ACROUS
- HW HORIZONTAL WINDOW
- CO AIR CONDENSER UNITS
- FW FIRE WINDOW
- FWE FIRE WIND EVEL
- FS FIRE STAIRS
- FW FIRE WINDOW
- GC GARDEN CURT
- HW HORIZONTAL WINDOW
- PS PLASTERBOARD
- ST STEEL TYPING ROOF
- ST STORAGE
- ST STEEL TYPING ROOF
- ST STORAGE
- ST STEEL TYPING ROOF
- ST STORAGE

- 1: Relocation of Unit G.01 main entry
- 2: Relocation of Bin storage area and hydrant booster
- 3: wall pushed forward, amended window layout

- 4: Driveway ramp
- 5: Flood gate and perimeter wall proposed at RL 4.73

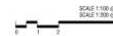


DEVELOPMENT APPLICATION DRAWING

PROPOSER:
PROPOSED SENIORS LIVING
4 ALEXANDER STREET, COLLAROY
LOT A, DP379308

CLIENT: HCAP GROUP

ISSUE	DATE	DESCRIPTION	ISSUE	DATE	DESCRIPTION
A	13/01/2021	DEVELOPMENT APPLICATION			
B	17/2/2022	ISSUED FOR AMENDED DA			



**DA201
ELEVATIONS 02**

ISSUE: B
DATE: (09/02/21) PROJECT NO: 2129

PBD ARCHITECTS
40/50 St 1st Floor
P-12 9000 8140 E: info@pbdarchitects.com.au W: www.pbdarchitects.com.au
Level 2, 52 Alton Street, Surry Hills NSW 2010
Registered Architect: Paul Rodgers NSW 7700

Suite 1 No.9 Narabang Way Belrose NSW 2085 • acn 121 577 768
t (02) 9986 2535 • f (02) 99863050 • www.bbfplanners.com.auBostonBlythFleming
Town Planners20th September 2021

**Clause 4.6 variation request – Clause 40(3) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Proposed Seniors Housing
4 Alexander Street, Collaroy**

1.0 Introduction

This clause 4.6 variation request has been prepared having regard to an application proposes the demolition of the existing dwelling located on the subject allotment and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and basement car parking for 9 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD). The proposed development is depicted on plans DA000 – DA003, DA100 – DA103, DA110 – DA114, DA200, DA201, DA300, DA400 – DA403, DA500, DA510, DA511, DA513, DA514, DA530, DA540 and DA600 prepared by PBD Architects.

The document has been prepared in support of a variation to the clause 40(3) SEPP HSPD development standard relating to site frontage.

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

2.0 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD)

2.1 Clause 40(3) SEPP HSPD

Pursuant to clause 40(3) SEPP HSPD the site frontage must be at least 20 metres wide measured at the building line.

Whilst there is no stated objective associated with this standard, it is considered that the implicit objective is to ensure that the property is of sufficient width, measured at the building line, to accommodate a senior's housing development maintaining contextually compatible side boundary setbacks to adjoining development.

In this regard, the subject site has a width measured at the front building alignment of the development of 19.81 metres representing a non-compliance of 190mm or 2.2%.

I note that the property width increases to 24.405 metres at a point located 14.45 metres into the subject property with the non-compliant portion of the property property width, measured at the front building alignment of the development, located adjacent to a driveway located on the immediately adjoining property to the east being the side boundary with the irregular boundary alignment as depicted in the survey extract at Figures 1 and 2 below and over page.

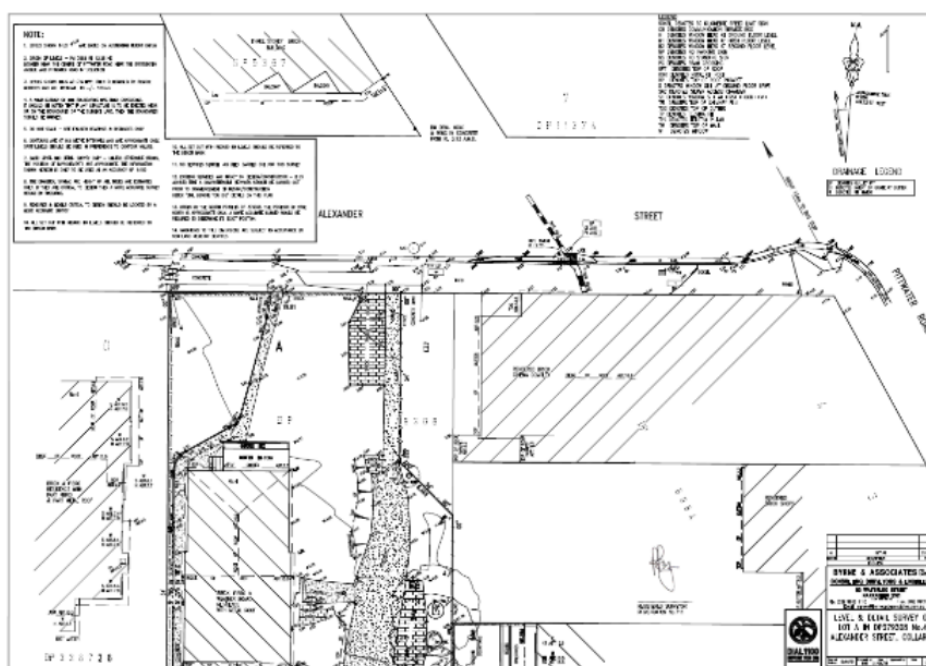


Figure 1 – Survey extract showing the regular eastern boundary alignment with a width the front portion of the site of 19.81 metres increasing to a width of 24.405 metres at a point located 14.45 metres into the subject property.

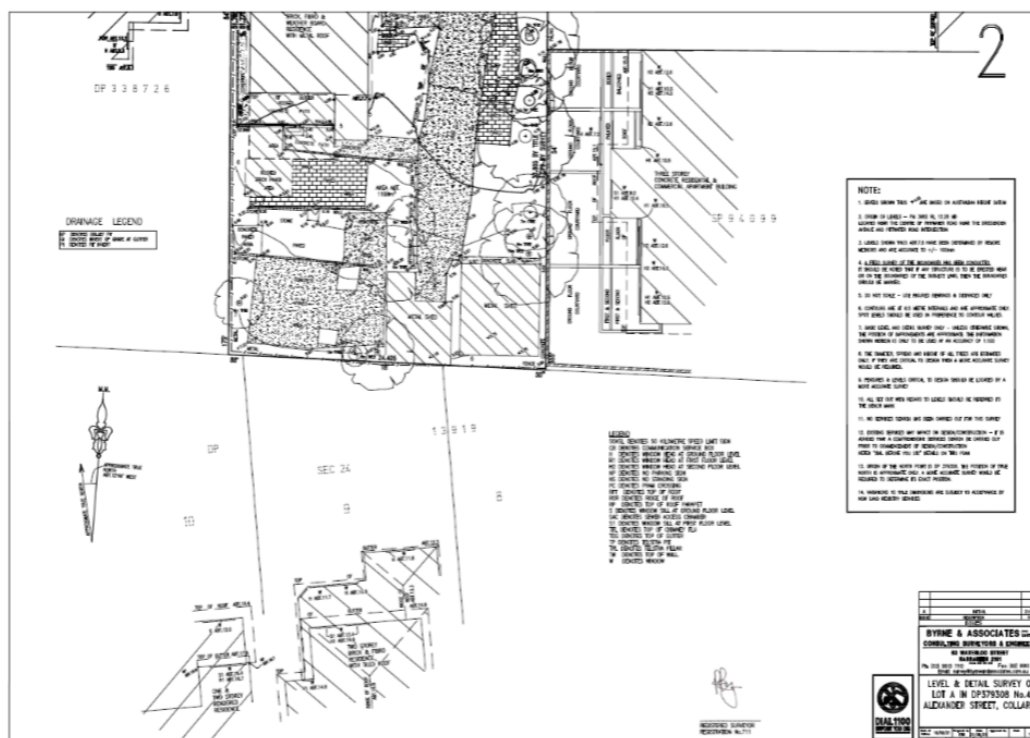


Figure 2 – Survey extract showing rear of the subject property displaying a width of 24.405 metres

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of WLEP provides:

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

This clause applies to the clause 40(3) site frontage development standard contained within SEPP HSPD.

Clause 4.6(3) of HLEP provides:

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

The proposed development does not comply with the site frontage standard at clause 40(3) of SEPP HSPD which specifies a minimum site frontage width of 20 metres measured at the building line however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of WLEP provides:

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

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

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

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

Clause 4.6(5) of WLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 40(3) SEPP HSPD from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways.*

It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

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

1. Is clause 40(3) SEPP HSPD a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 40(3) SEPP HSPD and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 40(3) of SEPP HSPD?

4.0 Request for variation

4.1 Is clause 40(3) of SEPP HSPD a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

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

Clause 40(4)(b) of SEPP HSPD prescribes a minimum site forntage width that relates to certain development. Accordingly, clause 40(3) of SEPP HSPD is a development standard.

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

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

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

Consistency with implicit objective of the site frontage standard

An assessment as to the consistency of the proposal when assessed against the implicit objective of the standard is as follows.

Whilst there is no stated objective associated with this standard, it is considered that the implicit objective is to ensure that the property is of sufficient width, measured at the building line, to accommodate a senior's housing development maintaining contextually compatible side boundary setbacks to adjoining development.

In this regard, the subject site has a width measured at the front building alignment of the development of 19.81 metres representing a non-compliance of 190mm or 2.2%.

I note that the property width increases to 24.405 metres at a point located 14.45 metres into the subject property with the non-compliant portion of the property property width, measured at the front building alignment of the development, located adjacent to a driveway located on the immediately adjoining property to the east being the side boundary with the irregular boundary alignment.

In this regard, the plan extracts at Figure 3 and 4 over page demonstrate that the development maintains a minimum setback of 3 metres to the western side boundary and approximately 4m to the eastern side boundary on the portion of the site which does not strictly comply with the 20 metre allotment width requirement. These setbacks are significant, being well in excess of the 900mm side boundary setback and well within the side boundary envelope applicable to development in the R2 Low Density zone, and to that extent represent contextually appropriate side boundary setbacks to both immediately adjoining properties.

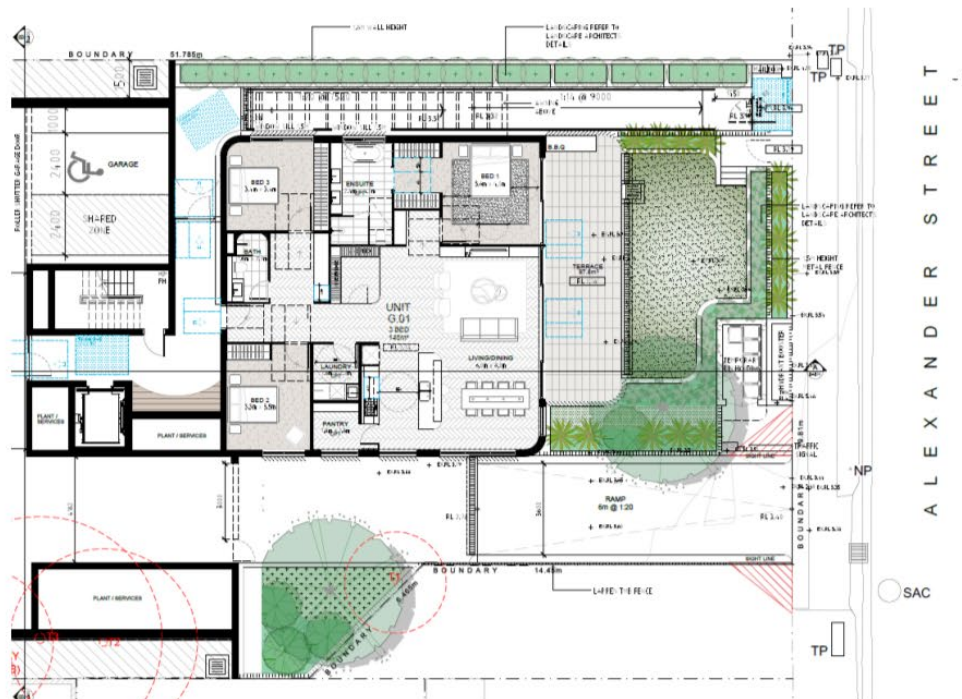


Figure 3 – Plan extract showing contextually appropriate ground floor level side boundary setbacks to both immediately adjoining properties.

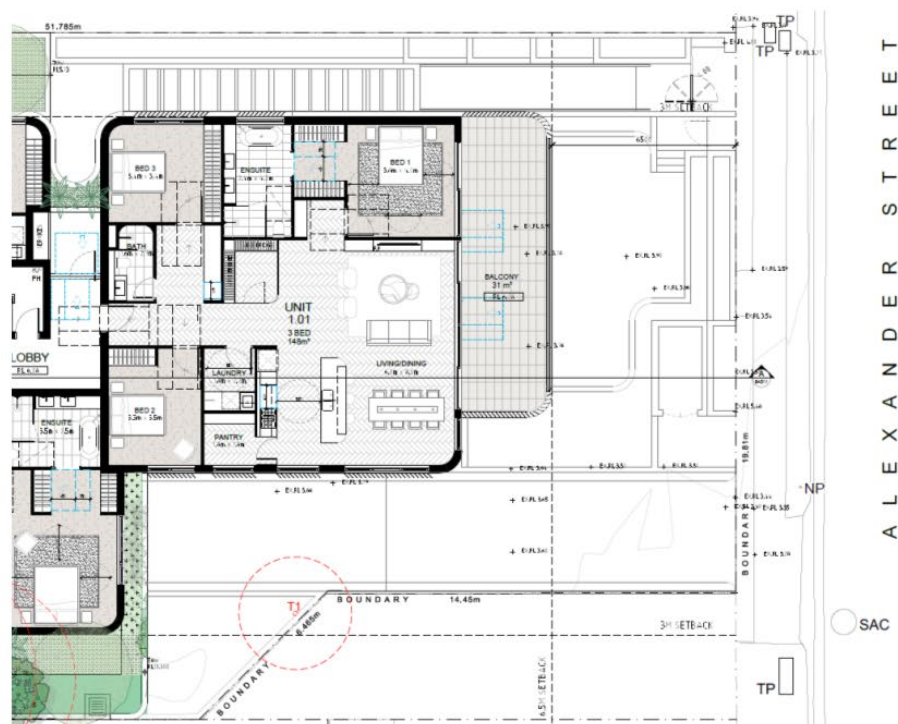


Figure 4 – Plan extract showing contextually appropriate first floor level side boundary setbacks to both immediately adjoining properties.

The proposal achieves this objective notwithstanding the minor variation to the 20 metre site frontage standard.

Consistency with zone objectives

The subject property is zoned Residential R2 Low Density Residential pursuant to WLEP. An assessment as to the consistency of the development against the zone objectives as follows:

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

Response: The proposal provides housing which will meet the needs of seniors or people with a disability within the community within a low density residential environment. The proposal achieves this objective notwithstanding the minor variation to the 20 metre site frontage standard.

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

Response: Not applicable.

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

Response: The proposal provides a compliant quantum of landscaped area, as defined, with sufficient side boundary setbacks to provide for a landscaped setting that is in harmony with the natural environment of Warringah. The proposal achieves this objective notwithstanding the minor variation to the 20 metre site frontage standard.

The non-compliant component of the development, as it relates to site frontage, demonstrates consistency with objectives of the R2 Low Density Residential zone and the implicit objective of the site frontage standard. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

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

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the variation to the site frontage standard. Those grounds are as follows:

Ground 1

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

“to promote the orderly and economic use and development of land,”

Compliance with the site frontage standard would prevent the development of the site for the purpose of seniors housing in circumstances where the site is ideally suited to this form of development given its immediate proximity to the Collaroy Beach Local Centre and the B-Line bus service.

The minor non-compliance is appropriately assessed having regard to the overall width of the allotment which increases to 24.405 metres at a point located 14.45 metres into the subject property where such width is in excess of the minimum required.

Under such circumstances, strict compliance would not promote the orderly development of the land.

Ground 2

Objective 1.3(g) of the EP&A Act is:

“to promote good design and amenity of the built environment,”

Approval of the minor variation will facilitate a senior's housing development of good design and amenity in a location ideally suited to this form of development.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of the clause 40(3) SEPP HSPD site frontage development standard and the objectives of the R2 Low Density Residential zone.

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

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development in the zone in which the development is proposed to be carried out.

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

4.4 Secretary's concurrence

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

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

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

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

5.0 Conclusion

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

Boston Blyth Fleming Pty Limited



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

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Town Planners20th September 2021

**Clause 4.6 variation request – Clause 40(4)(b) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Proposed Seniors Housing
4 Alexander Street, Collaroy**

1.0 Introduction

This clause 4.6 variation request has been prepared having regard to an application proposes the demolition of the existing dwelling located on the subject allotment and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and basement car parking for 9 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD). The proposed development is depicted on plans DA000 – DA003, DA100 – DA103, DA110 – DA114, DA200, DA201, DA300, DA400 – DA403, DA500, DA510, DA511, DA513, DA514, DA530, DA540 and DA600 prepared by PBD Architects.

The document has been prepared in support of a variation to the clause 40(4)(b) SEPP HSPD development standard relating to building height.

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

2.0 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD)

2.1 Clause 40(4)(b) SEPP HSPD

Pursuant to clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height.

The note to this clause identifies the associated purpose of object namely:

Note. *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

It has been determined that the portion of the development where the second storey floor plate overlaps the ground floor level floor plate results in a 3 storey building form, as defined. This breach occurs approximately 17 metres into the site as measured from the front boundary as depicted in Figures 1 and 2 below.

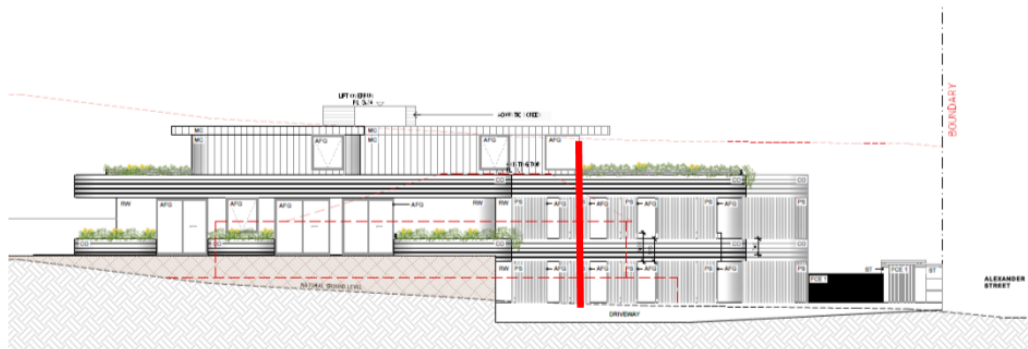


Figure 1 - Plan extract showing the 3 storey building height as viewed from the east

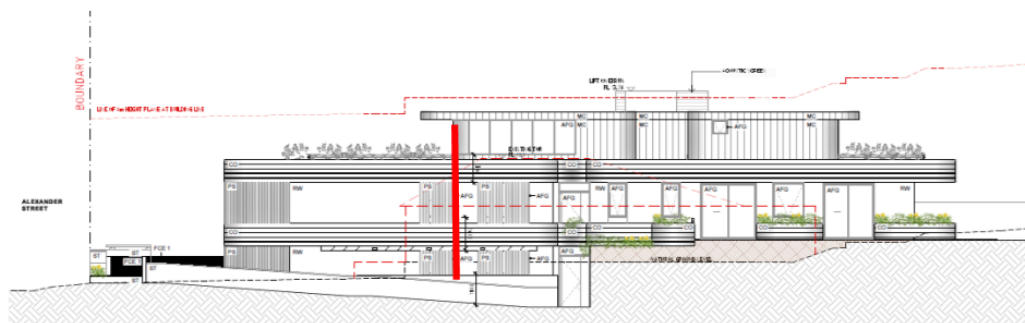


Figure 2 - Plan extract showing the 3 storey building height as viewed from the west

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

- (1) *The objectives of this clause are:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.
Clause 4.6(2) of WLEP provides:

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

This clause applies to the clause 40(4)(b) height development standard contained within SEPP HSPD.

Clause 4.6(3) of WLEP provides:

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

The proposed development does not comply with the height of buildings standard at clause 40(4)(b) of SEPP HSPD which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of WLEP provides:

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

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

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

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

Clause 4.6(5) of WLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 40(4)(b) SEPP HSPD from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

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

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

1. Is clause 40(4)(b) SEPP HSPD a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 40(4)(b) SEPP HSPD and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 40(4)(b) of SEPP HSPD?

4.0 Request for variation

4.1 Is clause 40(4)(b) of SEPP HSPD a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

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

Clause 40(4)(b) of SEPP HSPD prescribes a height provision that relates to certain development. Accordingly, clause 40(4)(b) of SEPP HSPD is a development standard.

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

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

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

Consistency with objectives of the height of buildings standard

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

The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

Response: Having regard to the stated objective of the clause 40(4)(b) SEPP HSPD standard we make the following observations:

- The topography of the land, which falls approximately 4 metres across its surface in a north easterly direction, facilitates a 2 storey stepped building form which, whilst overlapping into a 3 storey form as defined, complies with the 8 metre ceiling height standard. In this regard, the resultant building maintains an overall building height consistent with that anticipated through strict compliance with the overall building height provision of SEPP HSPD with the variation arising as a consequence of the irregular site topography.
- The development presents as a 2 storey compliant form as viewed from the rear of the property and from the properties western boundary where the 3rd storey component is located below the existing side boundary fence height. In this regard, the development presents as a 2 storey form as viewed from the immediately adjoining R2 Low Density Residential zoned land.
- The building will present as part 3 storeys as viewed from the eastern adjoining properties however these properties are located in the B2 Local Centre zone where an 11 metre/ 3 storey building height standard applies. Under such circumstances, a 3 storey form will not be perceived as inappropriate or jarring as viewed from these properties.

- In relation to the building's presentation in a streetscape context, I note that the 3 storey breach occurs approximately 17 metres into the site as measured from the front boundary with the development presenting as a 2 storey form which steps backup the site in response to topography consistent with the built form characteristics established by development located on both sides of Alexander Street within the site's visual catchment.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, by virtue of its number of storeys, offensive, jarring or unsympathetic in a streetscape context nor when compared to the built form characteristics of development within the site's visual catchment as they present to the street. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

In this regard, I am satisfied that the height of the proposal does avoid an abrupt change in the scale of development in the streetscape and to that extent achieves the implicit objective notwithstanding the building height variation proposed.

Consistency with zone objectives

The subject property is zoned Residential R2 Low Density Residential pursuant to WLEP. An assessment as to the consistency of the development against the zone objectives as follows:

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

Response: The proposal provides housing which will meet the needs of seniors or people with a disability within the community within a low density residential environment. The proposal achieves this objective notwithstanding the minor variation to the 20 metre site frontage standard.

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

Response: Not applicable.

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

Response: The proposal provides a compliant quantum of landscaped area, as defined, with the proposed landscaping achieving a setting that is in harmony with the natural environment of Warringah. The proposal achieves this objective notwithstanding the building height variation proposed.

The non-compliant component of the development, as it relates to site frontage, demonstrates consistency with objectives of the R2 Low Density Residential zone and the implicit objective of the building height standard. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

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

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1

The topography of the land, which falls approximately 4 metres across its surface in a north easterly direction, facilitates a 2 storey stepped building form which, whilst overlapping into a 3 storey form as defined, complies with the 8 metre ceiling height standard.

The topography of the land makes strict compliance with the 2 storey height standard difficult to achieve whilst providing a contextually appropriate stepped building form on this particular site.

In this regard, the resultant building maintains an overall building height consistent with that anticipated through strict compliance with the overall building height provision of SEPP HSPD with the variation arising as a consequence of the irregular site topography.

Ground 2

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

“to promote the orderly and economic use and development of land,”

Compliance with the height of buildings standard would necessitate a significant reduction in floor space in circumstances where the site is ideally suited to this form of development given its immediate proximity to the Collaroy Beach Local Centre and the B-Line bus service.

Under such circumstances strict compliance would not promote the orderly development of land.

Ground 3

Objective 1.3(g) of the EP&A Act is:

“to promote good design and amenity of the built environment,”

The non-compliant portion of the building is of good design as it maintains a 2 storey stepped building presentation to the street the adjoining R2 Low Density Residential zoned land.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 40(4)(b) SEPP HSPD building height development standard and the objectives of the R2 Low Density Residential zone

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

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development in the zone in which the development is proposed to be carried out.

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

4.4 Secretary’s concurrence

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

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

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

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

5.0 Conclusion

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

Boston Blyth Fleming Pty Limited



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



Design + Sustainability Advisory Panel Meeting Report – Date 25 November 2021

6 - DA2021/1805 - 4 Alexander Street COLLAROY

PANEL COMMENT AND RECOMMENDATIONS

General

Demolition works and construction of a part two-storey / part three-storey building over a single level of basement car parking accommodating five self-contained apartments pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Strategic context, urban context: surrounding area character

The site is in a low-density residential zone that is close to Pittwater Road. There are a number of current proposals for redevelopment in the area. The site is in the flattest section of Alexander Street before it rises steeply towards the west. The site also rises towards the south at the rear of the lot.

At approximately 13m, Alexander Street has a very narrow street reserve.

The Panel commends the quality of the documentation and representation of adjoining properties.

Scale, built form and articulation

The bulk of the building generally complies with the DCP front setback requirement of 6.5m. The upper level is setback further still with a generous roof terrace facing north. This will help improve the amenity of the narrow street.

The Panel considers the minor breaches of the height plane, including the lift overrun, insignificant.

The Panel was not provided with any analysis of the impact on views from properties to the west of the site, however most properties appear to face the street with very limited views towards the east. Most views from the adjoining property No.6 Alexander Street would be blocked by the commercial premises on Pittwater Road.

The Panel considers the bulk and scale of the building appropriate, and supports the narrow driveway along the eastern boundary that minimises impact on the continuity of the streetscape.

The logic of the overall strategy- a 'T' shaped form with 2 units projecting towards the street, instead of the retention of G.01 and a block of 4 (2x2) towards the rear is not clear. This second strategy would provide generous northern aspect for all 4 units and the potential for generous roof terraces for units 1.02 and 1.03 above G.01.

In general though, the Panel is supportive of the massing and built form.

Amenity, privacy

Unit 1.01

The Panel notes that the privacy of bedroom 3 is compromised by the entry walkway.

Unit 1.02

Unit 1.02 has inadequate solar access.

The planning of this unit could be easily reconfigured to include a living area/study/spare bedroom facing north in lieu of the main bedroom.

Unit 1.03

Unit 1.03 has inadequate solar access.

**Unit 2.01**

The kitchen and dining area of Unit 2.01 appears over-glazed on the western façade. It is difficult to understand how this west facing unshaded glass can perform adequately.

Generally

The units provide good amenity overall.

Recommendations.

1. Provide natural light and air to the stair at the upper level.
2. Ensure adequate acoustic isolation between the living area of Unit 1.02 and bedroom in Unit 1.03
3. Skylights to units 1.02 and 1.03 are inadequate. These should be changed to operable clerestory windows designed to optimise passive shading with appropriate overhangs and/or shading devices. It would appear quite easy to achieve this given the blank walls of bedrooms 1 and 3 in unit 2.01
4. Bedrooms 1 and 3 in unit 2.01 should be provided with small secondary windows on east and west walls respectively to provide a second source of light and cross-ventilation.
5. Check thermal performance of unit 2.01 and of west facing unshaded glass to kitchen and dining area in particular.

Access, vehicular movement and car parking

The car park entry is sympathetic to the street presence and the Panel supports the single lane access and tandem parking arrangements given the small number of cars.

Landscape

The Panel notes that the bedrooms in Unit 1.01 looks out over the driveway and that no planting is proposed either adjoining these unit or along the eastern side of the driveway.

Recommendations.

6. Provide planters along the driveway to improve outlook for Unit 1.01
7. Utilise roof space for more Solar PV panels.
8. Proposed scheme has only small trees. Provide larger endemic canopy tree species suitable for the coastal location to increase percentage of canopy cover, and in particular fat growing large canopy trees in the front set-back to contribute to the canopy in the street given the narrowness of the road reserve.
9. Provide a greater proportion of coastal endemic plant species especially in front setbacks.
10. Provide common on grade open space to boundary areas for screen planting. Do not rely solely on private gardens to achieve necessary screening.

Façade treatment/Aesthetics

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

Sustainability

No sustainability measures beyond compliance have been indicated at this stage.

Recommendations

11. Include electric heat pump hot water and induction cooktops to replace the use of gas.
12. The Panel recommends inclusion of a substantial amount of rooftop PV (1.5kW/unit) with direct feed 'behind the meter' to each apartment as well as to common areas.
13. Add external windows to bathrooms and utility rooms wherever possible.



14. Include EV charging points for all car spaces

PANEL CONCLUSION

The Panel supports the proposal overall but notes that significant changes to the roof, introduction of clerestories and roof profiles are required to ensure that living areas of units 1.02 and 1.03 receive adequate, controllable solar access.

Larger faster growing endemic trees in the front setback are required.

Other recommended changes should be investigated and included in any modification.

ITEM 4.2	DA2021/2055 - 32 GRIFFITHS STREET, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
AUTHORISING MANAGER	Phil Lane
TRIM FILE REF	2022/140075
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2055 for alterations and additions to a semi-detached dwelling at Lot 1 DP 1110439, 32 Griffiths Street, Fairlight, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2055
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 1110439, 32 Griffiths Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Samuel James Irving Grose Jane Ruth Reoch
Applicant:	David Moody
Application Lodged:	02/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/01/2022 to 28/01/2022
Advertised:	Not Advertised
Submissions Received:	25
Clause 4.6 Variation:	4.4 Floor space ratio: 26.25%
Recommendation:	Approval
Estimated Cost of Works:	\$ 284,950.00

The application seeks approval to alterations and additions to an existing semi-detached dwelling house. The proposed development includes a 26.25% variation to the floor space ratio development standard set by Clause 4.4 of the *Manly Local Environmental Plan 2013*. The existing dwelling has a non-compliant floor space ratio of 0.613:1 (102.2sqm) and the proposal includes 24sqm of additional floor space for the purpose of a new upper level bedroom. The variation is supported on its merits.

The proposal also introduces non-compliances to the wall height, side setback, open space and landscaped area controls of the *Manly Development Control Plan 2013*. These non-compliances are also supported on their merits.

The application was notified from 8 to 25 November 2021, during which time, submissions from twelve households were received. In response to concerns raised by Council (as noted in the Detailed

Description of Works), amended plans were submitted by the Applicant, prompting re-notification from 14 to 28 January 2022. During this time, submissions from twenty-two households were received. Across the two submission periods, Submissions raised concern with a number of matters, including (but not limited to) excessive bulk and scale, non-compliances with planning controls, amenity concerns (privacy, solar access and views), and inconsistency with streetscape and heritage character. Further amended plans were received on 23 February 2022 in order to address concerns raised by Council's Heritage Officer. As the changes were minor and demonstrated a lesser environmental impact, no re-notification was required, in accordance with the Northern Beaches Community Participation Plan.

The application is recommended for **approval**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks alterations and additions to the existing semi-detached dwelling, as follows:

- Demolition of existing chimney, rear stairs, laundry and porch;
- Reconfiguration of the existing lower ground and ground floor levels;
- Partial replacement of roof to the rear;
- New windows and doors to the existing ground floor;
- Addition of an upper level bedroom with ensuite and skylight;
- New spiral staircase and privacy screen to the rear;
- New front fence and gate; and
- Landscaping works.

On 9 December 2021, Council raised concern with the height and floor space ratio of the proposed development, and subsequent privacy impacts. Amended plans were received on 10 January 2022 in response to Council's concerns. The amended plans reduced the overall building height, reduced the rear roof form, increased the rear setback, and increased open space. The amended plans were formally re-notified from 11 to 28 January 2022. Council's Heritage Officer remained unsupportive of the proposal, prompting a submission of further amended plans on 23 February 2022. These plans demonstrated minor amendments of lesser environmental impact, so did not require re-notification in accordance with Council's Community Participation 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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 1110439 , 32 Griffiths Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Griffiths Street, Fairlight. The site is regular in shape with a frontage of 6.04m along Griffiths Street and a depth of 16.74m. The site has a surveyed area of 166.6m². The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling, adjoining 30 Griffiths Street to the east. The site slopes approximately 2m from south (front) to north (rear) and does not contain significant vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by semi-detached dwelling houses, detached dwelling houses, and residential flat buildings.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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	<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.

Section 4.15 Matters for Consideration	Comments
Regulation 2000)	<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. Amended plans were requested in response to concerns with the proposed bulk, scale and impacts. <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 matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition 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 Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	See discussion on “Notification & Submissions Received” in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/01/2022 to 28/01/2022 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 25 submission/s from:

Name:	Address:
Withheld	FAIRLIGHT NSW 2094
Wayne Seabrook	3 Montpelier Place MANLY NSW 2095
Louis Rozman	10 The Point Road HUNTERS HILL NSW 2110
Withheld	DEE WHY NSW 2099
Withheld	NSW
Rosemary White	
Withheld	Address Unknown
Rosemary White	
Withheld	CROMER NSW 2099
Andrew Benedict Madry	27 Balgowlah Road MANLY NSW 2095
Withheld	FAIRLIGHT NSW 2094
Mr Edward Robert Chilcott	5 Edwin Street FAIRLIGHT NSW 2094
Withheld	FAIRLIGHT NSW 2094
Mr Ewen Mileham Litchfield	42 Daintrey Street FAIRLIGHT NSW 2094
Withheld	FAIRLIGHT NSW 2094
Withheld	NORTH BALGOWLAH NSW 2093
Withheld	NSW
Withheld	FAIRLIGHT NSW 2094
Withheld	MANLY NSW 2095
Withheld	NSW
Withheld	FRENCHS FOREST NSW 2086

Name:	Address:
Withheld	FAIRLIGHT NSW 2094
Withheld	NSW
Withheld	NSW
Withheld	NSW
Withheld	NSW
Withheld	NSW
Chris Schilbach	Address Unknown

The application was originally notified from 8 to 25 November 2021. During the notification period, submissions from twelve households were received. The following issues were raised in the submissions:

- Alleged verbal misrepresentation by the owners of the subject site as to what would be proposed.
- Visual and acoustic privacy concerns relating to the new upper level northern window and the proposed new ground floor extension and stairs to the rear (north).
- Excessive building height and floor space ratio.
- Non-compliance with side and rear setback controls resulting in excessive bulk and scale.
- Inconsistency of the roof design to the remainder of the building.
- Concern that the existing roof contains asbestos.
- Inconsistency between the plans and documentation regarding the floor space ratio calculations.
- Inconsistency with the historic character and heritage value of the area.
- Concern that the upper level should not be identified as an attic.
- Loss of sunlight and outlook.
- Concern about the impact on the existing stormwater system and subsequent stormwater run off to neighbouring properties.
- The proposal is not in the public interest.

In response to concerns raised by Council (as noted in the Detailed Description of Works), amended plans were submitted by the Applicant, prompting re-notification from 14 to 28 January 2022. During this time, submissions from twenty-three households were received. The following issues were raised in the submissions:

- Alleged verbal misrepresentation by the owners of the subject site as to what would be proposed.
- Excessive floor space ratio, which appears to have increased in the amended plans.
- Non-compliance with side and rear setback controls resulting in excessive bulk and scale, and concern that the rear setback is even less.
- Visual and acoustic privacy concerns relating to the proposed new ground floor extension and bi-fold doors to the rear (north), and that the rear extension is closer in amended plans.
- Loss of sunlight and outlook.
- Inconsistency with the historic character and heritage value of the area.
- Inconsistency of the roof design to the remainder of the building.
- Concern that the upper level should not be identified as an attic.
- Concern that a balcony will be added to the rear at a later stage under exempt development.
- Concern about the impact on the existing stormwater system and subsequent stormwater run off to neighbouring properties.
- Allegations that storage areas will be used as bedrooms and should be calculated as gross floor

area.

- The proposal is not in the public interest.

The matters raised within the submissions are addressed as follows:

Alleged Misrepresentation of the Plans

Comment:

Communication between the landowners of the subject site and adjoining neighbours or other interested parties is not a planning consideration under the Environmental Planning and Assessment Act 1979.

Excessive Built Form - Floor Space Ratio and Setbacks

Comment:

The proposed development demonstrates a suitable built form outcome for the site, for the reasons detailed in the sections of this report relating to Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013 (with reference to the proposed floor space ratio non-compliance), and Clause 4.1.4 Setbacks (Front, Side and Rear) and Building Separation of the Manly Development Control Plan 2013 (with reference to the proposed side and rear setback non-compliances).

The original plans demonstrated a proposed rear setback of 3.1m to the balcony and 4.250m to the dwelling. The amended plans demonstrate a rear setback of 4.225m to the dwelling, and no balcony. The existing rear setback is 4.225m, as demonstrated by the submitted survey. As such, the amended plans retain the existing rear setback. The confusion in relation to the proposed rear setback arises due to the original plans including incorrect measurements and scale, an issue that is corrected by the amended plans.

Amenity - Visual/Acoustic Privacy, Solar Access, Outlook/Views

Comment:

The proposed development demonstrates a suitable visual and acoustic privacy response to the adjoining property to the north, as detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development Control Plan. The proposal is also acceptable in relation to solar access and outlook/views for the reasons detailed in the sections of this report relating to Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.3 Maintenance of Views of the Manly Development Control Plan, respectively.

Inconsistency with Heritage and Character

Comment:

The proposed development has been reviewed by Council's Heritage Advisor, who is supportive of the application, subject to conditions of consent requiring minor modifications to the upper level, and submission of a colours and materials schedule. The proposal (as modified by conditions of consent) is suitable in the heritage context of the area.

Roof Design

Comment:

The proposal includes a new roof design to the rear of the property. The roof design, while new, maintains a hipped roof form, which allows for the building to be renovated without excessive bulk and scale.

Classification of Upper Level as Attic

Comment:

The Manly Local Environmental Plan 2013 defines an attic as *"any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except*

for minor elements such as dormer windows and the like". The proposed development does not achieve this definition, as it is not wholly within the roof of the existing ground floor. However, this does not materially change assessment of the application as an upper level addition. Council has correctly identified the proposed works as alterations and additions to the existing semi-detached dwelling, and provides a detailed description of the works in this report.

Future Addition of a Rear Balcony

Comment:

Any balcony addition to the rear of the property can only lawfully be carried out with development consent and is not eligible to be built as exempt development (that which requires no planning consent) or complying development (that which requires consent by a private certifier). A balcony in this location cannot achieve the relevant development standards set by Clauses 2.12 and 3.12 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This means that any future proposal for a balcony in this location will be subject to assessment by Council. Unauthorised construction of a balcony in this location would be subject to investigation by Council's Building Control team.

Stormwater Management

Comment:

The proposed development, including the proposed stormwater management measures, has been assessed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Use of Storage as Bedrooms

Comment:

The area on the lower ground labelled as 'storage' is included in the calculations of floor space, as per the definition of gross floor area in the Dictionary of the Manly Local Environmental Plan 2013. However, the existing and unchanged floor-to-ceiling height of 2.28m precludes it from being classified as habitable space, in accordance with the National Construction code, which requires a minimum of 2.4m. As such, the room cannot be considered a bedroom. A condition of consent has been applied to ensure the building must operate as a semi-detached dwelling only, precluding use of the lower level as a secondary dwelling without consent.

Public Interest

Comment:

The application is demonstrated throughout this report as being acceptable and appropriate in its context, and is therefore in the public interest.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<i>Supported, subject to conditions of consent</i> Development Engineering has assessed the application. The proposal has no significant increase the hard stand area/ impervious areas in the subjected site. The stormwater shall be collected into an existing approved stormwater system. If there is not existing approved system, the Applicant shall install a stormwater system in accordance with Council's Water Management For Development Policy. A condition has been placed to address this stormwater concern.

Internal Referral Body	Comments																																				
	Secondly, no excavation is proposed in the development. Furthermore, the application proposed to modify the existing roof to accommodate the new bedroom on level one. It is unclear about the design and modification of the existing party wall. It may need to be referred to Building for assessment and comment. In this regard, Development Engineering has no objection to the application subject to conditions of consent.																																				
Strategic and Place Planning (Heritage Officer)	Supported, subject to conditions of consent <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3"> The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item: Item I55 – Group of 4 houses - 1, 3, 5 and 11 Griffiths Street, Fairlight </td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3"> Details of the item as contained within the Manly inventory is as follows: Item I55 - Group of 4 houses <u>Statement of significance:</u> A group of modest weatherboard cottages illustrative of early development of Fairlight. <u>Physical description:</u> Group of timber cottages (one brick infill) with iron roofs c.1910-1920. Very small scale development; extremely narrow allotments. Significant stone wall from William Street to end of No.5. Development pattern similar to rear of block (Charles Street). </td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td></td><td></td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item: Item I55 – Group of 4 houses - 1, 3, 5 and 11 Griffiths Street, Fairlight			Details of heritage items affected			Details of the item as contained within the Manly inventory is as follows: Item I55 - Group of 4 houses <u>Statement of significance:</u> A group of modest weatherboard cottages illustrative of early development of Fairlight. <u>Physical description:</u> Group of timber cottages (one brick infill) with iron roofs c.1910-1920. Very small scale development; extremely narrow allotments. Significant stone wall from William Street to end of No.5. Development pattern similar to rear of block (Charles Street).			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				
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Internal Referral Body	Comments		
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for alterations and additions to the existing dwelling, including internal alterations, a rear extension to the lower ground floor and a first floor addition. The existing building is a single storey semi detached dwelling from the Inter-War era.		
	The proposed attic dormer is not acceptable in its current form, as it is inconsistent with the traditional dormer; top of the proposed dormer should be at least 200mm below the ridge height of the main roof and the size of the dormer should be considerably reduced. It is also recommended to retain the existing chimney and the fire places where possible.		
	Heritage conservation requires the retention of an appropriate visual setting that contributes to the heritage values and the character of the existing streetscape. Therefore, considerations should be given to either reduce the size or remove this dormer so that the bulk and scale of the addition is minimised and not visible from the street/s.		
	Amended Plans - 23 February 2022		
	Amended drawings, dated 23 February 2022, have been reviewed, and it is considered to resolve some concerns Heritage had with the proposal, including the retention of the original chimney. However, the proposed setback of the attic conversion from the ground floor external walls (600mm reduction to the attic space) is not sufficient to reduce the bulk and scale and proportions as this addition is largely visible from a number of viewpoints. Further increase of the setback - another 400mm is required along with the reduction of the eave to 450mm. The upper most level of the roofline of this attic space must sit below the existing ridge cap. Heritage also require the full details of the proposed finishes and the colour scheme.		
	Therefore, the proposal is acceptable on heritage grounds, subject to three conditions.		
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
	Further Comments		
	COMPLETED BY: Oya Guner, Heritage Advisor		

Internal Referral Body	Comments
	DATE: 09 December 2021, Revised 24 February 2022
	<u>Assessing Officer's Comment:</u> Wording of the recommended conditions of consent has been modified slightly for clarity only.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<i>Supported, subject to conditions of consent</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A450332 dated 28 February 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 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.82m	-	Yes
Floor Space Ratio	0.6:1 (99.96sqm)	0.76:1 (126.2sqm)	26.25%	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
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

The proposed development includes a 26.25% variation to the floor space ratio development standard set by Clause 4.4 of the Manly Local Environmental Plan 2013. The existing dwelling has a non-compliant floor space ratio of 0.613:1 (102.2sqm) and the proposal includes 24sqm of additional floor space for the purpose of a new upper level bedroom. The variation is supported on its merits.

Development standard:	Floor space ratio
Requirement:	0.6:1 (99.96sqm)
Proposed:	0.76:1 (126.2sqm)
Percentage variation to requirement:	26.25%

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 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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 Clause 4.6(3)(a).

The Applicant's written request argues, in part:

- *The existing residential dwelling currently presents to the street as a single storey dwelling. I note that the proposed attic extension remains below the existing ridge line of the existing dwelling.*
- *The proposed alterations and additions represent a minor breach of the FSR Standard by 27.3m2.*
- *The proposed development is consistent with the relevant objectives of the FSR development standard expressed by clauses 4.4 LEP 2013.*
- *The proposed development achieves the relevant Objectives of the R1 General Residential zone.*
- *The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.*
- *The proposed development satisfies the relevant tests established in Wehbe v Pittwater Council (2007) 156 LGERA 446.*
- *The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help demand for housing in the locality.*
- *The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.*
- *The underlying objective would be thwarted if strict compliance with the FSR development standard was applied as the development satisfies the objectives or purpose of the FSR standard, despite the non-compliance. The development allows a more efficient use of land and provides additional occupancy capacity within the existing dwelling, contributing to the variety and availability of housing types in the area.*
- *The proposed alterations and additions are below or significantly below the Height of Buildings Standard under LEP 2013.*
- *The front setback of the proposed attic extension is setback well in excess of the Front Setback Control and set well back from the existing Ground Floor front facade.*
- *The rear setback of the proposed attic extension is setback well in excess of the rear setback control and set well back from the proposed ground floor rear facade.*
- *The application of Clause 4.1.3.1 Exceptions to FSR for Undersized Lots contained within Council's DCP is relevant and achieved by the proposed alterations and additions, resulting in a proposed FSR significantly below the Maximum Variation to FSR for Undersized Lots.*

(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.'

Section 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 Applicant's written request argues, in part:

- (a) The proposed attic addition and roof extension has an attractive palette of external finishes and colours. Furthermore, I consider that the proposed alterations and additions are a contemporary, well designed element.*
- (b) The proposed attic addition will be one of the positive outcomes as it will provide for the housing needs of the community and provide for a variety of housing types and densities, consistent with the objectives of the R1 General Residential zone. This achieves the objective of facilitating the orderly and economic use of the land in accordance with s1.3(c) of the Environmental Planning and Assessment Act 1979 (EPA Act).*
- (c) I consider that the proposed attic addition and other proposed works, will result in a significantly improved presentation of the existing building when viewed from the street frontage.*
- (d) I consider that the Architectural Plans clearly indicate that the proposed development is, notwithstanding the breach of the FSR Standard, compatible with the height, bulk and scale of adjoining existing developments.*
- (e) There is no excavation under the proposed development.*
- (f) The proposed development has a further positive outcome in that the existing building is largely to be retained, without demolition of the existing building. I consider that the proposed works, primarily involving the proposed attic addition and roof extension, will significantly improve the visual aesthetics of the existing building when viewed from the street, without requiring demolition of the existing*

building. Thus, the proposed additional bedroom and improved living areas will facilitate a visual improvement to the existing building.

- (g) *The proposed alterations and additions are below or significantly below the Height of Buildings Standard under LEP 2013.*
- (h) *There will be no increase in carparking demand as a result of the proposed development.*
- (i) *The proposed development results in an improvement in passive surveillance of Griffith Street by way of the proposed Bedroom window at First Floor on the western facade.*

While reference to the upper level being an attic is noted as not being consistent with the definition of attic, the above justification of the floor space ratio non-compliance is agreed with, as demonstrated throughout this report.

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, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act. The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b).

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

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives 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 addressed as follows:

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

Comment:

The proposed plans demonstrate a building of materially the same bulk and scale as the existing building, plus an upper level addition. This is due to the retention of the building envelope at the ground and lower floors, and the inclusion of a hipped roof form to the rear. The upper floor addition is only seen in its entirety from one vantage point in the streetscape (being from the south-west), and the proposed development will otherwise generally appear as single-storey from the street level. The proposed setback non-compliances are acceptable for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks (Front, Side and Rear) and Building Separation of the Manly Development Control 2013. It should be noted that the proposal (as modified by conditions of consent) is supported by Council's Heritage Advisor with regard to its presence in an area with heritage-listed

items and intrinsic heritage value.

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 development does not increase the overall density of the subject site, which is to remain as a single semi-detached dwelling house. The proposed upper level addition is designed and sited so as not to result in any unreasonable obscuring of important landscape or townscape features. The proposed hipped roof form to the rear allows for suitable retention of outlook and view to the sky for the property to the north.

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

Comment:

The proposed development demonstrates a suitable visual relationship between existing and new development in that the existing ground and lower ground floors are renovated, while the upper floor addition provides reasonable additional floor space without unreasonable impacts. The proposed development does not result in a greater building footprint and provides an improved open space and landscaped area outcome, so does not adversely affect the existing landscape character of the area.

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

Comment:

The proposed development is designed and sited so as not to result in any adverse environmental impacts on the use or enjoyment of adjoining land or the public domain. It is noted that submissions raised concern about the impact of the proposed development in relation to the enjoyment of the adjoining site to the north in relation to visual and acoustic privacy. The proposed development is acceptable in this regard for the reasons detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.

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:

Not applicable. The proposed development retains the existing residential use of the site.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the floor space ratio development standard.

Zone Objectives

The underlying objectives of the R1 General Residential zone are addressed as follows:

To provide for the housing needs of the community.

Comment:

The proposed development retains the existing residential use of the site.

To provide for a variety of housing types and densities.

Comment:

The proposed development retains the use of the site as a semi-detached dwelling, thereby retaining existing dwelling variety in the locality.

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

Comment:

Not applicable. The proposed development retains the existing residential use of the site.

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:

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the floor space ratio development standard is assumed by the Local Planning Panel.

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposal involves minimal earthworks and is acceptable in relation to acid sulfate soils.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

(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:

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

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment

On-site stormwater retention is not required for the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland

and receiving waters.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, 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 the risk of landslide—

- (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 subject site is of low risk in relation to landslip. The proposed development does not require earthworks, with the exception of for landscaping and rear stairs. The remainder of works are contained within the existing building footprint. As such, the proposed development is not likely to pose risk of landslide.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) 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*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Given the above, the proposed development is designed and sited and will be managed to avoid landslide risk and significant adverse impact on the development and land.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services, with the exception of vehicular access. The proposed development retains and relies upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 166.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Max. 1 dwelling per 250sqm	1 dwelling on 166.6sqm site	33.36%	No - Existing
	Dwelling Size: Min. 100sqm	126.2sqm	-	Yes
4.1.2.1 Wall Height	W: Max. 7.1m (based on gradient 1:10)	Ground Floor: 5.7m	-	Yes
		First Floor: 7.3m	2.8%	No
4.1.2.2 Number of Storeys	Max. 2 Storeys	2	-	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	3.1m	24%	No - Existing
	Pitch: Max. 35 degrees	Max. 18 degrees to new roof	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.5m	41.66%	No - Existing
4.1.4.2 Side Setbacks and Secondary Street Frontages	Lower Ground Floor: 900mm	1.2m	-	Yes
	Ground Floor: Min. 2m	1.2m	40%	No - Existing
	First Floor: Min. 2.46m	2m	18.69%	No
	Windows: Min. 3m	Ground Floor: 1.2m	60%	No - Existing
		First Floor: 2m	33.33%	No
4.1.4.4 Rear Setbacks	8m	4.225m	47.2%	No - Existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of Site Area (91.63sqm)	50.66% (84.4sqm)	7.9%	No - Existing
	Above Ground: Max. 25% of TOS (18sqm)	Nil	-	Yes
4.1.5.2 Landscaped Area	Min. 35% of TOS (29.54sqm)	42.65% (36sqm)	-	Yes
	1 Native Tree	2 Trees	-	Yes
4.1.5.3 Private Open Space	Min. 18sqm	38sqm	-	Yes
Schedule 3 Parking and Access	Min. 2 spaces	0 spaces	100%	No - Existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	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

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Concern was raised in submissions that the proposed development would result in unreasonable loss of solar access. Given the north-south orientation of the lot, the retention of the existing lower ground

and ground built form, and the central location of the proposed upper level, the proposed development will retain solar access to adjoining sites in accordance with the requirements of this control and is acceptable in this regard.

3.4.2 Privacy and Security

The proposed development includes a renovation of the rear of the existing ground floor, including installation of bifold doors, and replacement of the existing stairs and landing with a spiral staircase. Submissions raised concern regarding visual and acoustic privacy impacts to the adjoining neighbour to the north. 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:

Visual Privacy:

Clause 3.4.2.1 Window Design and Orientation subclause (a) requires that designs are to incorporate narrow, translucent or obscured glass windows to maximise privacy where necessary. In this case, such design features are not considered necessary. In accordance with subclause (b), the proposed bifold doors (being 4.225m from the rear boundary) are offset from those in the adjacent building, in order to restrict direct viewing and to mitigate impacts on privacy. The following photograph depicts the expected view from the ground floor directly to the north, from a standing position. For context and clarity, the renovated ground floor retains the same finished floor level (RL 38.14) and rear setback distance (4.225m), and the landing and privacy structure are deleted by the proposal.



Above: View from a standing position at the rear of the existing ground floor looking directly north.

The following photographs were taken from the existing landing (partially pictured above) to the north-west (left photograph) and north-east (right photograph). These photographs demonstrate the indirect views towards the dwelling to the north and its private open space.



Above: The view from the existing landing at the subject site towards the northwest (left) and northeast (right) from a standing position.

The photographs demonstrate that the rear of the existing ground floor to be renovated with bifold doors will not present unreasonable visual privacy impacts to the adjoining neighbour. The ground floor of the subject site does not align directly with windows at the adjoining property, being those depicted above in the centre of the right photograph. The view to the private open space of the adjoining property is predominantly obscured by the adjoining dwelling itself, and existing established screen planting. To assist, the following photographs depict what can be seen of the existing ground floor (the location of which is to be retained by the proposal) from the rear yard of the adjoining property.



Above: The view towards the subject site from the rear yard of the property to the north from a standing position at the eastern-most, central, and western-most points of the yard.

The left photograph above demonstrates that no view to the eastern portion of the private open space of the dwelling to the north is available, being blocked by the roof of the dwelling to the north. The centre photograph above demonstrates that a minimal and partially obstructed view corridor to the centre of the private open space of the dwelling to the north is available. The right photograph above demonstrates that no view to the western portion of the private open space of the dwelling to the north is available, being blocked by the existing established hedging.

It is noted that landscaping as a safeguard against overlooking should be given minor weight, as per the planning principle set by *Super Studio v Waverley* [2004] NSWLEC 91. However, this is in the context of proposing landscaping in place of better design. In this case, the landscape in question is well-established and in good health, and in the interests of the neighbouring property to maintain.

Additionally, the proposal demonstrates good design by way of retaining the existing rear setback of 4.225m, and not encroaching further. The bi-fold door design allows for greater access to light and air for the subject site, being a reasonable design element for the north-facing open plan kitchen/living room to which the doors relate.

Finally, given the proposed layout of the ground floor, it can be presumed the majority of activity in this room will be orientated to the eastern or western walls (e.g. to face a television), and not to the north towards the adjoining site. It is anticipated that views to the north will be more passive in nature, and not directly focussed on that orientation.

Acoustic Privacy:

The proposed development does not increase the density of the site. The main intention of the proposal is to renovate the existing ground floor, and provide one additional bedroom on the site via the upper level addition. The existing dwelling currently contains kitchen and dining room to the rear of the ground floor, being typically heavily-used rooms. The proposal includes an open plan kitchen and living area. These room uses are not considered materially different in terms of noise generation. That is to say the proposal does not introduce a noisier room use in place of an existing quieter room use like a study or bedroom. As such, the proposed development will not create noise above that expected for a single dwelling house, being reasonable in the metropolitan mixed residential context of the site.

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:

As above, the proposed development is demonstrated to suitably retain privacy for the subject site and adjacent sites, without compromising access to light and air, and while retaining reasonable outlook and views.

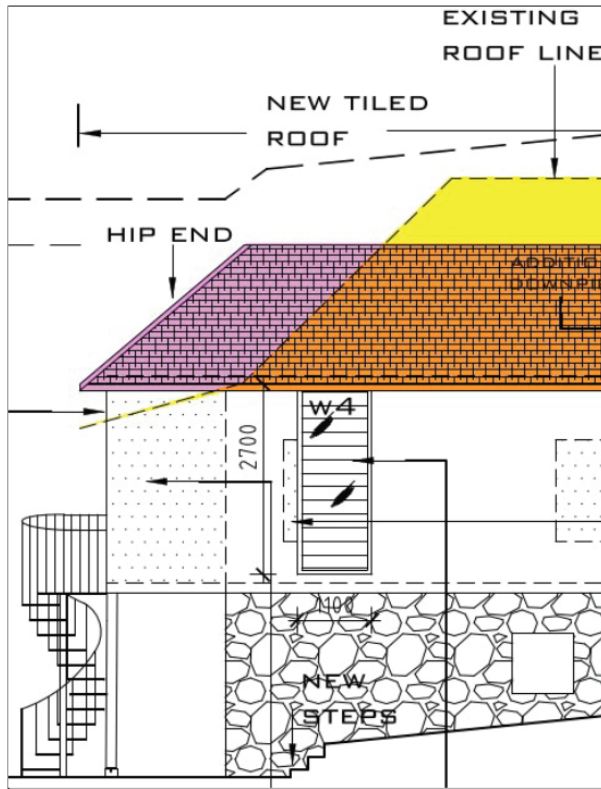
Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes window and door openings to the southern (front) elevation, thereby allowing for passive surveillance of the street and encouraging awareness of neighbourhood security.

3.4.3 Maintenance of Views

While no specific view loss complaint was raised in submissions, concern was raised that the proposed development would result in unreasonable visual imposition to the property to the north, in relation to the outlook towards the sky. The amended plans submitted through the assessment process demonstrate a hipped roof to the rear (north) in a closer, though lower, position to the existing hipped roof. In this way, it is expected that equivalent outlook towards the sky for the property to the north will be retained by the development. See the marked up plan below, demonstrating the existing rear roof line in yellow, the proposed rear roof line in pink, and their overlap in orange:



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

The proposed development includes a non-compliant wall height of 7.3m to the first floor addition, where a maximum of 7.1m is allowed under this control. There are no underlying objectives of this control under which to consider the merits of this variation. As such, the objectives of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan are addressed as follows.

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

Comment:

The proposed development is set below the existing ridge height, and provides an appropriate roof form in consideration of the general residential nature of the site and its surrounds. The proposed development is compliant with the maximum height of building development standard set by Clause 4.3 of the MLEP 2013.

- (b) *to control the bulk and scale of buildings,*

Comment:

The proposed development is acceptable in this regard for the reasons detailed throughout this report; in particular, within the section relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013, with respect to the floor space ratio, which controls bulk and scale.

- (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 development is suitably designed and sited so as not to disrupt views to, from, or between public or private land.

(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 development allows for compliant solar access to the subject site, adjoining sites, and public land, despite its non-compliance with the wall height control.

(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:

Not applicable. The subject site is zoned R1 General Residential.

4.1.3 Floor Space Ratio (FSR)

The proposed non-compliance with the floor space ratio development standard is assessed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

It should be noted that Clause 4.1.3.1 Exceptions to FSR for Undersized Lots of the MDCP 2013 provides that the floor space ratio on an undersized lot is to be no greater than the maximum floor space ratio that would apply if the site were not undersized. In this case, the subject site should have an area of 250sqm according to the Lot Size Map of the MLEP 2013, which would allow a gross floor area of maximum 150sqm (being 0.6:1 of 250sqm). The proposed development provides a gross floor area of 126.2sqm, being in accordance with Clause 4.1.3.1.

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

The proposed development includes a new upper level addition 2m from the western side boundary, where 2.46m is required by this clause. It should be noted that despite this clause, Clause 4.1.7 First Floor Additions of the MDCP 2013 allows that first floor additions may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. 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 upper floor addition is sited such that it will be reasonably set back from the streetscape. In this way, the dwelling will remain generally readable as a single-storey building from the street frontage and the proposed upper level will not present a visual imposition.

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 upper level includes windows to the western and northern elevations. The proposed northern window sill is set 1.7m above the finished floor level of the upper level and is fixed with louvres, thereby providing suitable visual amenity to the property to the north. The proposed western window is located such that it does not allow direct viewing between the room to which it belongs and the rooms of adjoining windows, in that it looks out over the roof of the adjoining property. The proposed development is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013, so allows for equitable light and air to the subject site and adjoining sites. The proposed development is designed and sited so as not to obstruct views to or from the subject site. The proposed development is suitable in the streetscape in consideration of its proportions in the built form pattern. The subject site does not have vehicular access, so does not impact upon traffic conditions.

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

Comment:

The proposed development demonstrates flexibility in the siting of the proposed upper level without resulting in any unreasonable impacts, as detailed throughout this report.

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 does not alter the existing building footprint. The proposed development introduces additional landscaped area, including with respect to planting of trees. The subject site is not classified as or adjoining open space land, national park land, or bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

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

The subject site is not currently supplied with any parking spaces and no new parking spaces are proposed. The proposal does not increase the density of development on the site, so does not prompt any additional parking requirements.

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 \$2,850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$284,950.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 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.

In summary, a detailed assessment has been required for the following specific issues:

- Variation to the floor space ratio development standard;
- Concern regarding the proposal in relation to the heritage significance of nearby heritage-listed houses at 1, 3, 5 and 11 Griffiths Street (Item 55);
- Non-compliance with the required setback controls; and
- Objections relation to amenity - privacy, solar access, and views.

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 the Clause 4.4 Floor Space Ratio development standard pursuant to Clause 4.6 of the MLEP 2013, as the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3), and the proposed development will be in the public interest, and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2055 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 1110439, 32 Griffiths Street, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan	23 February 2022	Interior Connections
Floor Plans	23 February 2022	Interior Connections
Roof Plan	22 February 2022	Interior Connections
North Elevation	23 February 2022	Interior Connections
South Elevation	23 February 2022	Interior Connections
West Elevation	23 February 2022	Interior Connections
East Elevation	22 February 2022	Interior Connections
Sections	23 February 2022	Interior Connections

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A450332	28 February 2022	Interior Connections

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid - Referral Response	1 December 2021

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a semi-detached dwelling, in accordance with the Manly Local Environmental Plan 2013, as follows:

Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

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

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

4. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not

be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of

jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant

shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$2,849.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$284,950.00.

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

contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

7. **Security Bond**

A bond (determined from cost of works) of \$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

8. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management For Development Policy in particular the section of Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management For Development Policy are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

10. **Details of External Materials and Colours**

Details of external materials and colours are to be provided to the satisfaction of Council's Heritage Officer prior to the issue of the Construction Certificate.

Reason: To preserve the heritage character of the existing semi-detached dwelling and the streetscape.

11. **Upper Level Setback**

The proposed setback of the upper level is to be increased to a minimum of 1000mm from the ground floor external walls. The floor plan is to be reconfigured accordingly to allow suitable internal stair access. The roof eave overhang of the upper level is to be maximum 450mm. Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To minimise the adverse impact on the streetscape.

12. **Reduction of the Upper Level**

The upper level is to be modified so that its roof ridge level sits 200mm below the main roof ridge of the existing semi-detached dwelling, which may require lowering of the ground floor ceiling. Both the ground floor and new upper floor are to be constructed to retain compliant floor-to-ceiling heights in accordance with the Building Code of Australia. Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To preserve the heritage value and integrity of the existing semi-detached dwelling.

13. **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.

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Pre-Construction Dilapidation Report**

A dilapidation report, including photographic survey, of 30 Griffiths Street, Fairlight must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation).

The report must detail the physical condition of the property, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Road Reserve**

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

Reason: Public safety.

17. **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.

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

18. **Stormwater Disposal**

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

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

19. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

20. **Post-Construction Dilapidation Report**

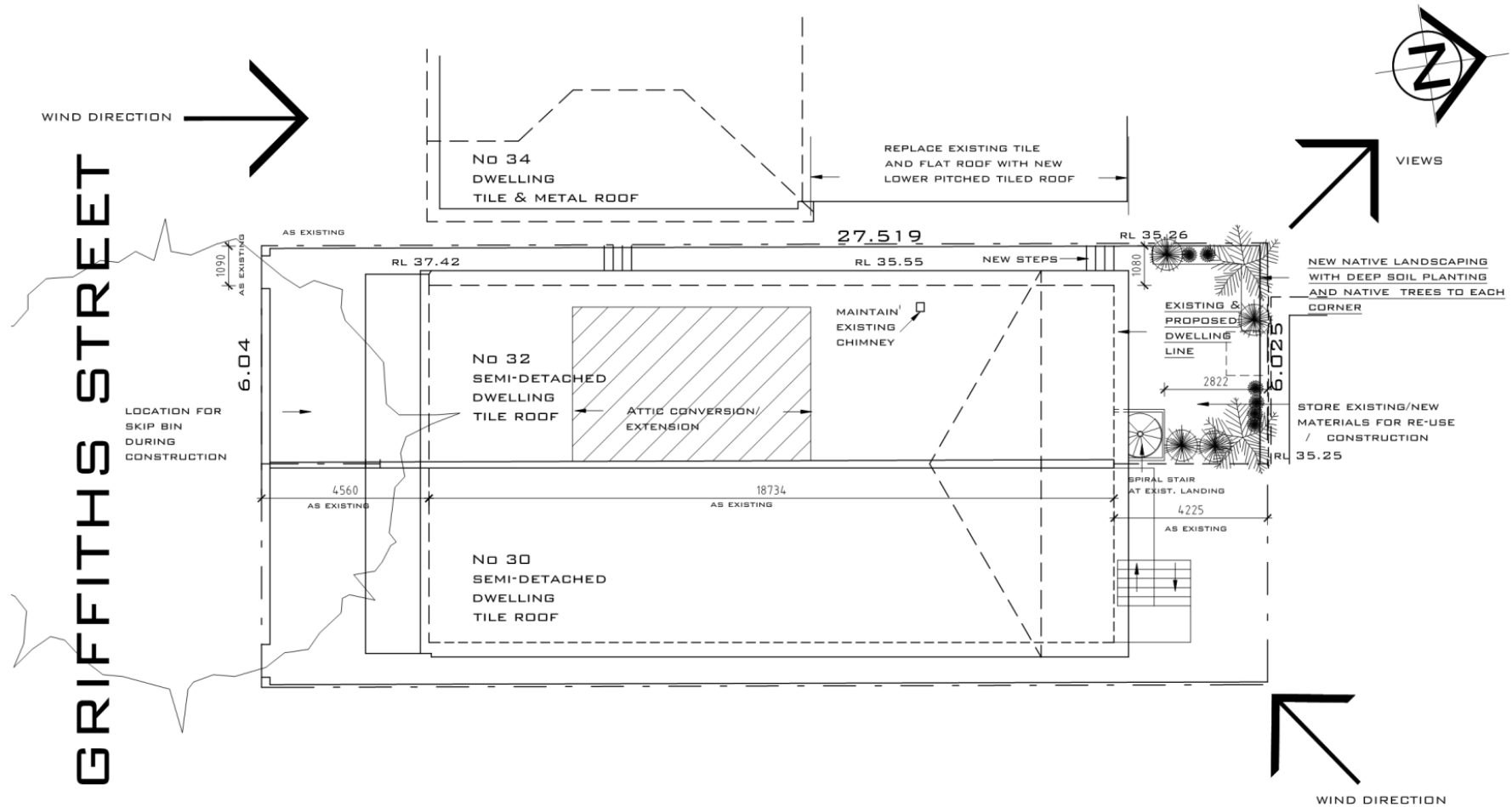
A post-construction dilapidation report of 30 Griffiths Street, Fairlight, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

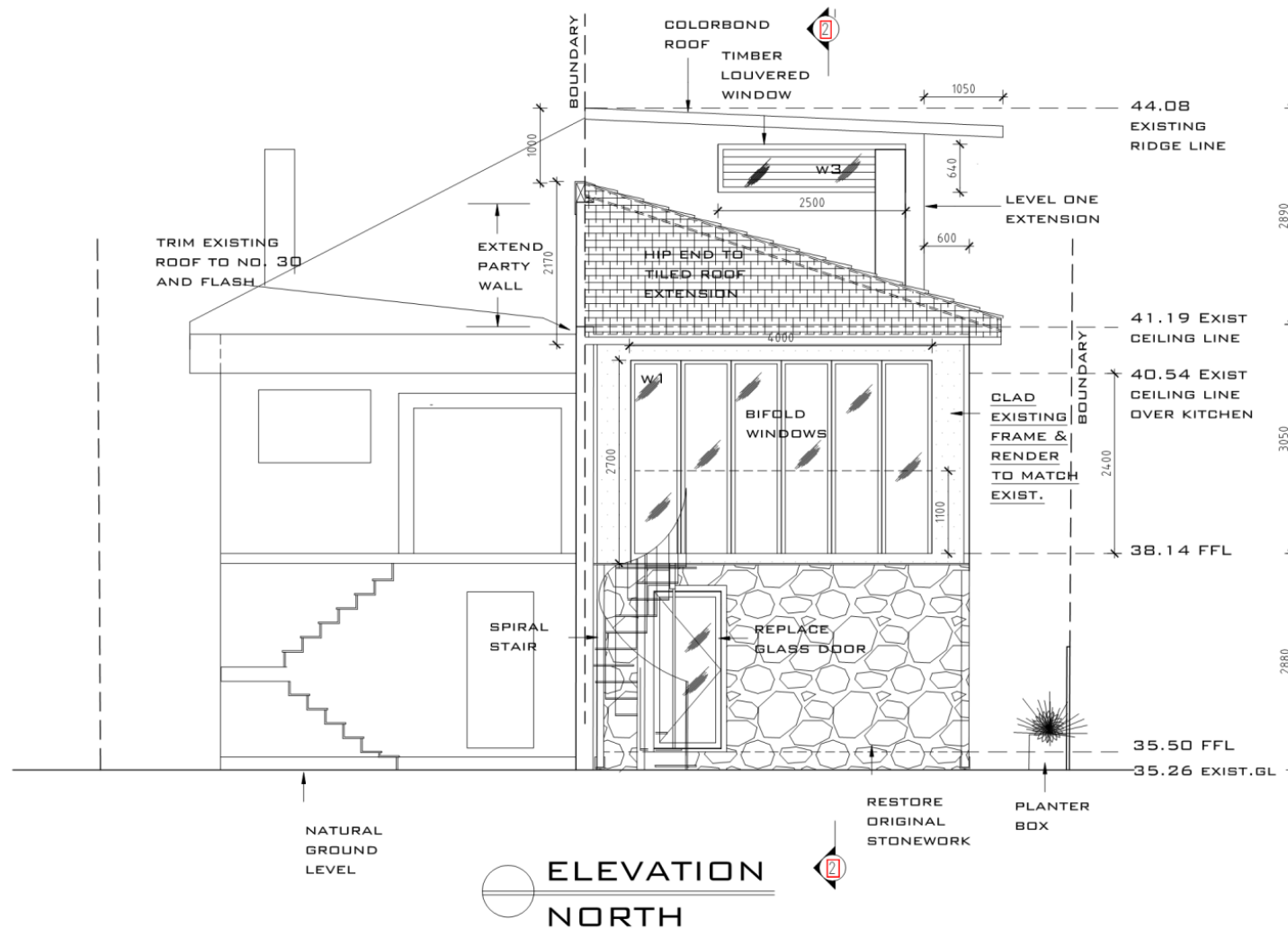


EXISTING PROPERTY DATA
SITE AREA - 166.6 MSQ
DWELLING FOOT PRINT 100.4 MSQ
OPEN SPACE 66.4 MSQ
LANDSCAPING 14 MSQ

PROPOSED PROPERTY DATA
SITE AREA - 166.6 MSQ
DWELLING FOOT PRINT 100.4 MSQ
OPEN SPACE 66.4 MSQ
LANDSCAPING 39 MSQ

PROPERTY
LOT 1 SEC DP 1110439
32 GRIFFITHS STREET, FAIRLIGHT
JANE REOCH AND SAM GROSE
DRAWN BY
INTERIOR CONNECTIONS
FIONA CORBETT

SITE PLAN
32 GRIFFITHS STREET,
FAIRLIGHT
21451WD01M
23 FEBRUARY 2022
1:100 @ A3
INTERIOR CONNECTIONS

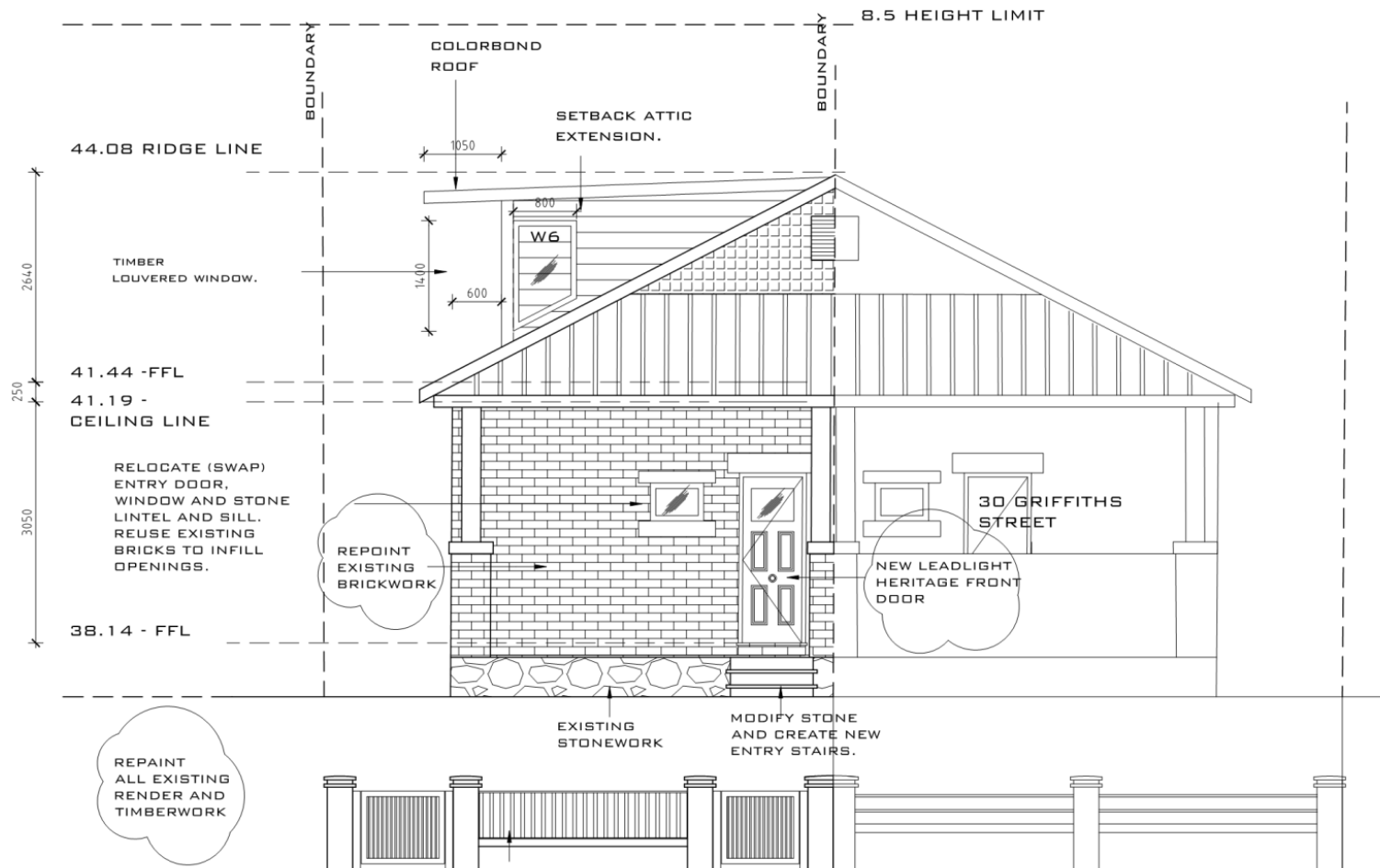


**ELEVATION
NORTH**

PROPERTY
LOT 1 SEC DP 1110439
32 GRIFFITHS STREET, FAIRLIGHT
JANE REDCH AND SAM GROSE
DRAWN BY
INTERIOR CONNECTIONS
FIONA CORBETT

NORTH ELEVATION
32 GRIFFITHS STREET, FAIRLIGHT
21451WD05P
23 FEBRUARY 2022
1:50 @ A3
INTERIOR CONNECTIONS





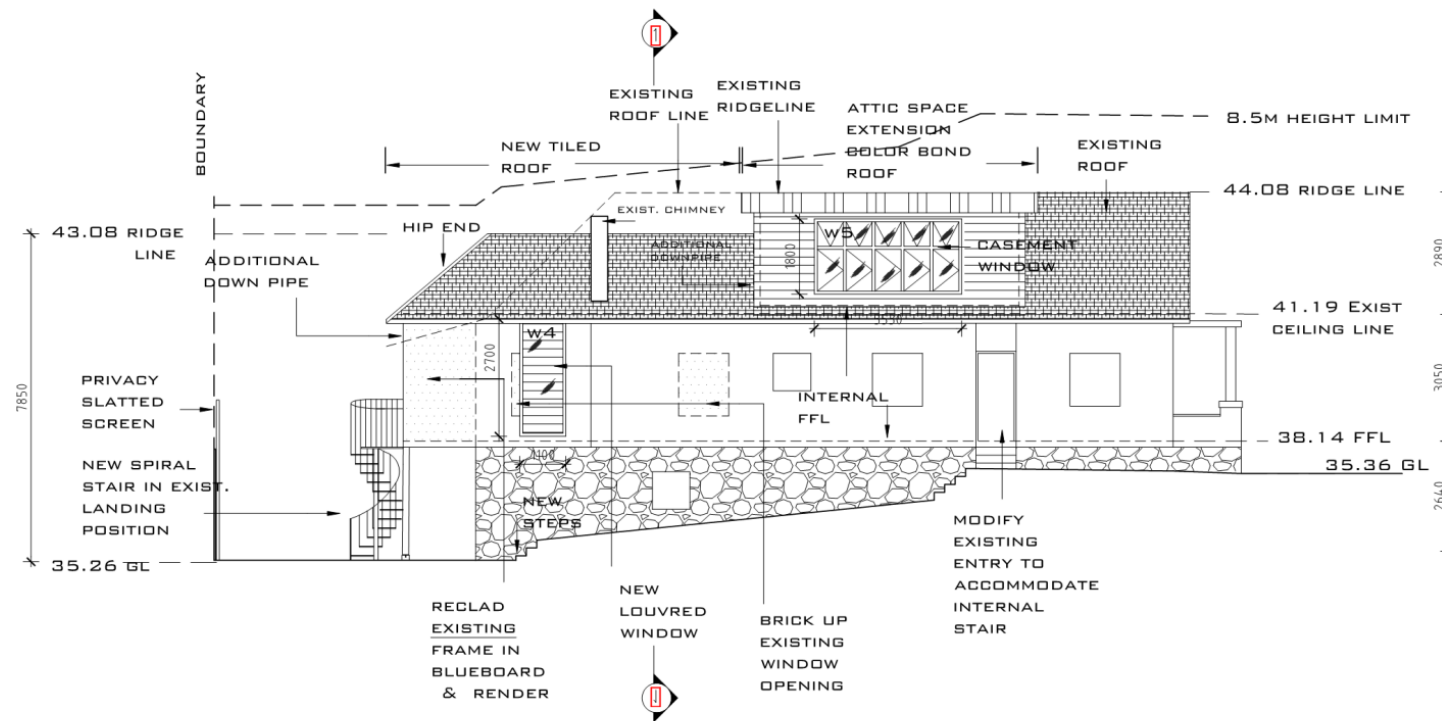
ELEVATION
SOUTH

NEW FRONT FENCE INCLUDING
SIDE ACCESS GATE AND MAIN ENTRY
GATE TO FRONT DOOR. MAINTAIN EXISTING
MASONRY CHARACTER, MATCHING NO.30

PROPERTY
LOT 1 SEC DP 1110439
32 GRIFFITHS STREET, FAIRLIGHT
JANE REOCH AND SAM GROSE
DRAWN BY
INTERIOR CONNECTIONS
FIONA CORBETT

SOUTH ELEVATION
32 GRIFFITHS STREET, FAIRLIGHT
21451WD06J
23 FEBRUARY 2022
1:50 @ A3
INTERIOR CONNECTIONS



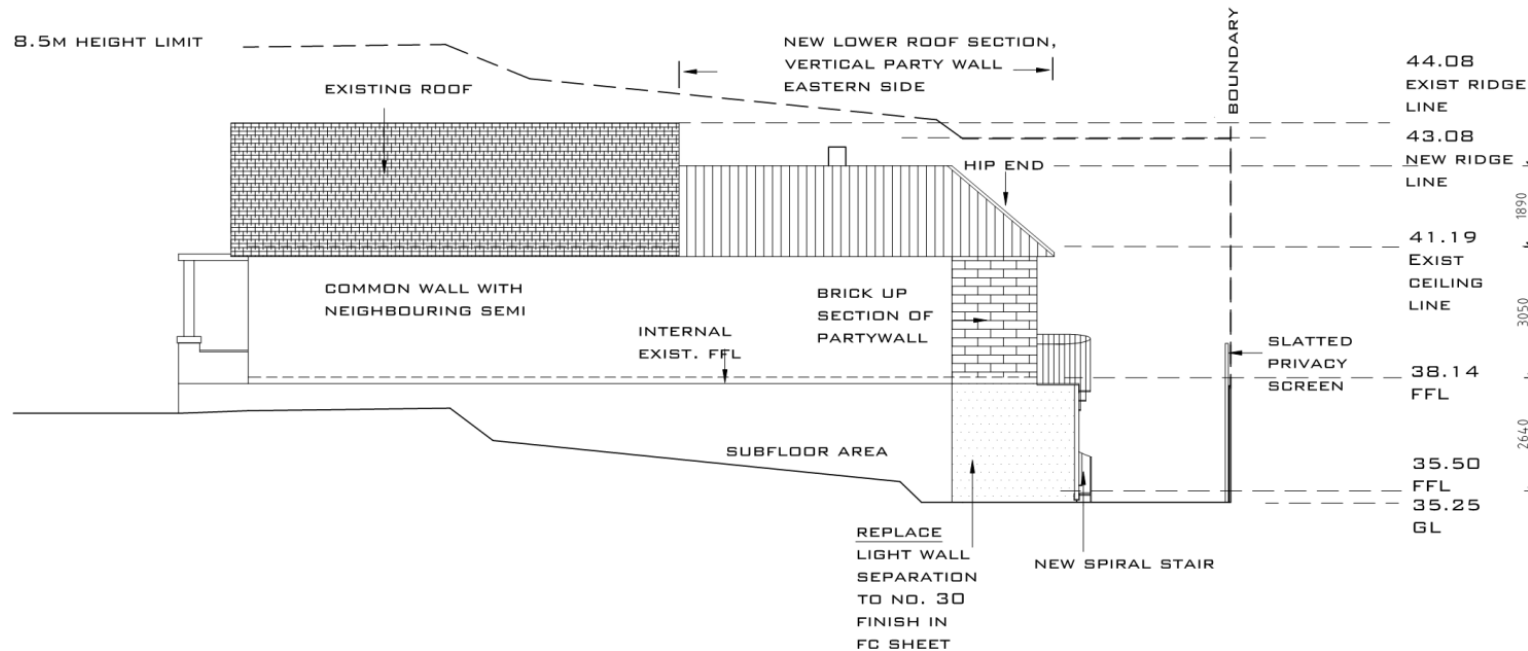


ELEVATION
WEST

PROPERTY
LOT 1 SEC DP 1110439
32 GRIFFITHS STREET, FAIRLIGHT
JANE REOCH AND SAM GROSE
DRAWN BY
INTERIOR CONNECTIONS
FIONA CORBETT

WEST ELEVATION
32 GRIFFITHS STREET, FAIRLIGHT
21451WD07Q
23 FEBRUARY 2022
1:100 @ A3
INTERIOR CONNECTIONS





ELEVATION
EAST

PROPERTY
LOT 1 SEC DP 1110439
32 GRIFFITHS STREET, FAIRLIGHT
JANE REDCH AND SAM GROSE
DRAWN BY
INTERIOR CONNECTIONS
FIONA CORBETT

EAST ELEVATION
32 GRIFFITHS STREET, FAIRLIGHT
21451WD081
22 FEBRUARY 2022
1:100 @ A3
INTERIOR CONNECTIONS



REVISED CLAUSE 4.6 REQUEST FOR VARIATION

OF

**FLOOR SPACE RATIO DEVELOPMENT STANDARD
UNDER CLAUSE 4.4 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

AT

**32 GRIFFITHS STREET, FAIRLIGHT
LOT 1 DP1110439**

DAVE MOODY
B.Plan. (UNSW), Dipl. Build. & Const. (MIBT), MPIA.

Email: contactdavemoody@gmail.com

Mobile: 0401450989

1. INTRODUCTION

This Revised Clause 4.6 Request is made pursuant to the provisions of Clause 4.6 of *Manly Local Environmental Plan 2013 (LEP 2013)*.

A variation under Clause 4.6 of LEP 2013 is requested in relation to the Floor Space Ratio (**FSR**) Standard under Clause 4.3 of LEP 2013 for a Development Application (**DA**) seeking approval for "*Proposed Alterations and Additions to an Existing semi-detached dwelling*" on a property known as 32 Griffiths Street, Fairlight (**Subject Site**).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the FSR Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the FSR Standard.

Clause 4.6 of LEP 2013 allows a Consent Authority to grant a variation to a Development Standard as prescribed 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 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.

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

"[63] It is clear from a reading of cl 4.6 of LEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the two development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).

[64] In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

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- (1) *are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) *are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) *have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) *have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i))."*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council [2001] NSW LEC 46*, *Wehbe v Pittwater Council [2007] NSW LEC 827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90*, and *Moskovich v Waverley Council [2016] NSW LEC 1015*.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2013.

I note that the FSR Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2013.

2. THE DEVELOPMENT STANDARD

4.4 Floor space ratio

(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,

(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.

(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.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Comment:

The above Clause 4.4 of LEP 2013 is a Development Standard.

The FSR Standard applicable to the subject site is 0.6:1 under LEP 2013, pursuant to Clause 4.4(2). Based on a Site Area of 166.6m², this would allow for a Gross Floor Area of 99.96m².

Based on the calculations provided on the amended plans accompanying this DA, I note that under the proposed alterations and additions, the Lower Ground and Ground Floor Gross Floor Areas remain unchanged. The only additional floor area comes as a result of the proposed attic extension, providing an additional 21.92m². This additional attic area results in a total Gross Floor Area of 127.26m², providing an FSR of 0.76:1.

I note that Council's Heritage Officer has recommended a number of Conditions of Consent be imposed as follows;

- *Further increase of the setback another 400mm;*
- *Reduction of the eave to 450mm;*
- *Roofline of the upper level addition to be set below the existing semi ridgeline; and*
- *Submission of a colours and materials schedule.*

Of particular relevance to this Clause 4.6 request is the Heritage Officer's request that the setback of the attic addition be extended by further 450mm than that recommended by the Heritage Consultant for the Applicant, Heritage 21. If Council proceeds with including this Condition of Consent in a future Development Consent, it would result in the Attic being reduced to 19.45m² which would result in an FSR of 0.75:1.

I consider that the variation of the FSR Standard is very reasonable for the reasons outlined in this Clause 4.6 Request including, but not limited to, the following:

- The Land and Environment Court has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard. I note that in this application, the breach results in 27.3m² greater floor area than allowed under the Development Standard.
- I note that the subject site contains a semi-detached dwelling located on its own lot which is below the minimum lot size identified under the LEP. Furthermore, I note that as contained within Council's DCP Clause 4.1.2.1- Exceptions to FSR for Undersized Lots, "*the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).*" For the reasons outlined in this Clause 4.6 Request, I consider that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the

case' and that there is 'sufficient environmental planning grounds to justify contravening the Development Standard.'

- I note that Clause 4.1.3.1 (a) of Council's DCP advises that *"The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots."* I note that Figure 30 advises that for a site identified in Area 'C' of the LEP Lot Size Map the maximum variation to the FSR for an undersized lot is the calculation of the FSR based on a 250m² site area. In this case, the subject site would have an area of 250sqm and the applicable floor space ratio control is 0.6:1, which would allow a gross floor area of maximum 150sqm (being 0.6:1 of 250sqm). The proposed gross floor area is below this figure at 127.26m².
- The breaching portion of the FSR Standard is limited to the proposed attic addition which is somewhat contained within the existing roof form and recessed back from the existing Ground Floor southern facade. This attic addition is also setback a further 8m then the rear setback of the proposed Ground Floor.
- A significant portion of the existing semi-detached dwelling is single storey in nature. I note that the proposed attic extension remains below this existing ridge line.
- I consider that the breach of the FSR Standard does not unreasonably contribute to the perceived bulk, scale and height of the proposed development when viewed from the street.
- The proposed alterations and additions will provide for an improved bedroom layout for the front bedroom whilst providing a new master bedroom and ensuite as a result of the proposed attic extension. The improved and additional bedroom serves the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed attic extension ensures that the existing semi-detached form of housing is retained, allowing for greater occupancy of the subject site without significant modifications to the existing building footprint or significant increase in gross floor area (21.92m²).
- The proposed alterations and additions do not result in the disruption of any of the following;

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CLAUSE 4.6 REQUEST - FSR
32 Griffiths Street, Fairlight

- 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),
- As evidenced by the Shadow Diagrams accompanying the original DA plans, the proposed alterations and additions will not result in any unreasonable overshadowing to adjoining properties. I note that any additional overshadowing is limited to the rooves of the adjoining property to the east and west and no public or private open space or habitable rooms are impacted. Furthermore, I note that the potential for overshadowing depicted in the shadow diagrams has now been further reduced due to the number of amendments made to the design to result in the current set of Architectural Plans.

This Clause 4.6 Request seeks to demonstrate that compliance with the FSR Development Standard is unreasonable or unnecessary by reference to the first test in Wehbe, that is that the objectives of the standard are achieved notwithstanding the non-compliance with the FSR Development Standard.

3. PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD

His Honour, Preston CJ in *Initial Action* (Para [27]) described the relevant test for this as follows:

The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

Based on Clause 4.4(1) of LEP 2013, the Objectives of the FSR Standard are as follows:

- (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,
 - (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.

Comment:

I consider that the proposed development, notwithstanding the breach of the FSR Standard, satisfies the above objectives of the FSR Standard for the reasons outlined in this Clause 4.6 Request, particularly noting the following:-

- The proposed alterations and additions maintain the residential use of the semi detached dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- The proposed alterations and additions easily comply with the Maximum Height of Buildings Standard applicable to the subject site.
- The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that the only additional Gross Floor Area is contained to the proposed attic extension and no significant trees or vegetation are required to be removed. In fact, the existing Landscaped Area on the subject site will be increased and improved as a result of the proposed alterations and additions.
- The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any significant levels of excavation, and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed and the existing levels of Landscaped Area will be improved in both quantity and quality.
- The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- The existing site is below the minimum lot size identified under the LEP. The proposed alterations and additions provide for additional living areas without increasing the site coverage and with only a minor increase in the building envelope.
- As identified by Figure 30 of Clause 4.1.3.1 Exceptions to FSR for Undersized Lots contained within Council's DCP, the proposed gross floor area falls below

this maximum figure at. This Clause 4.6 and the accompanying SEE have established that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and that 'there is sufficient environment planning grounds to justify contravening the development standard' allowing Council to consider the "undersized nature of the lot" as per Clause 4.1.3.1 Exceptions to FSR for Undersized Lots of Council's DCP.

4. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The steps to considering in assessing whether compliance with the FSR Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe* at [45].
3. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe* at [46].
4. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe* at [47].
5. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning

changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

For the purposes of this request, it is my opinion 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, consistent with the "first way" as set out in Step 3 above.

I wish to particularly note the following points: -

- The existing residential dwelling currently presents to the street as a single storey dwelling. I note that the proposed attic extension remains below the existing ridge line of the existing dwelling.
- The proposed alterations and additions represent a minor breach of the FSR Standard by 27.3m².
- The proposed development is consistent with the relevant objectives of the FSR development standard expressed by clauses 4.4 LEP 2013.
- The proposed development achieves the relevant Objectives of the R1 General Residential zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.

- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the FSR development standard was applied as the development satisfies the objectives or purpose of the FSR standard, despite the non-compliance. The development allows a more efficient use of land and provides additional occupancy capacity within the existing dwelling, contributing to the variety and availability of housing types in the area.
- The proposed alterations and additions are below or significantly below the Height of Buildings Standard under LEP 2013.
- The front setback of the proposed attic extension is setback well in excess of the Front Setback Control and set well back from the existing Ground Floor front facade.
- The rear setback of the proposed attic extension is setback well in excess of the rear setback control and set well back from the proposed ground floor rear facade.
- The application of Clause 4.1.3.1 Exceptions to FSR for Undersized Lots contained within Council's DCP is relevant and achieved by the proposed alterations and additions, resulting in a proposed gross floor area below the Maximum Variation to FSR for Undersized Lots.

For the reasons referred to in this Clause 4.6 Request and the accompanying SEE, I consider that the proposed development, notwithstanding the breach of the FSR Standard, will preserve the environmental amenity of neighbouring properties and the locality. Furthermore, the proposed development will result in a range of Positive Outcomes which are referred to in this Clause 4.6 Request and accompanying SEE.

5. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene the development standard.

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

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.
24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

For the reasons outlined in this Revised Clause 4.6 Request, I consider that the compliance with the FSR Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

I wish to particularly note the following points: -

- (a) The proposed attic addition and roof extension has an attractive palette of external finishes and colours. Furthermore, I consider that the proposed alterations and additions are a contemporary, well designed element.
- (b) The proposed attic addition will be one of the positive outcomes as it will provide for the housing needs of the community and provide for a variety of housing types and densities, consistent with the objectives of the R1 General Residential zone. This achieves the objective of facilitating the orderly and economic use of the land in accordance with s1.3(c) of the *Environmental Planning and Assessment Act 1979 (EPA Act)*.
- (c) I consider that the proposed attic addition and other proposed works, will result in a significantly improved presentation of the existing building when viewed from the street frontage.
- (d) I consider that the Architectural Plans clearly indicate that the proposed development is, notwithstanding the breach of the FSR Standard, compatible with the height, bulk and scale of adjoining existing developments.
- (e) There is no excavation under the proposed development.
- (f) The proposed development has a further positive outcome in that the existing building is largely to be retained, without requiring any significant demolition. I consider that the proposed works, primarily involving the proposed attic addition and roof extension, will significantly improve the visual aesthetics of the existing building when viewed from the street. Thus, the proposed additional bedroom and improved living areas will facilitate a visual improvement to the existing building.
- (g) The proposed alterations and additions are below or significantly below the Height of Buildings Standard under LEP 2013.
- (h) There will be no increase in carparking demand as a result of the proposed development.
- (i) The proposed development results in an improvement in passive surveillance of Griffith Street by way of the proposed Bedroom window at First Floor on the western facade.

For the reasons above , I consider that the proposed development (with the breach of the FSR Standard) promotes good design and amenity of the built environment in accordance with Objective at section 1.3(g) of the EPA Act.

6. PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a proposed development that contravenes a Development Standard unless Council is satisfied in relation to the following matters: -

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.

The above matters are addressed in this Clause 4.6 Request, including the following comments: -

Objectives for development within the zone in which the development is proposed to be carried out

Zone R1 General Residential

1 Objectives of zone

- 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 proposal is permitted with consent within the R1 Zone.

Furthermore, the proposed alterations and additions comply with the relevant Objectives of the R1 Zone as follows;

- The proposed alterations and additions will provide for an improved bedroom layout for the front bedroom whilst providing a new master bedroom and ensuite as a result of the proposed attic extension. The improved and additional bedroom serves the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed attic extension ensures that the existing semi-detached form of housing is retained, allowing for greater occupancy of the subject site without significant modifications to the existing building footprint.
- The proposed alterations and additions generally maintain the existing front façade with minor modifications to the existing front window and door locations. I note that these windows and doors are to be reincorporated into the front façade under the current DA. The proposed attic additions is well setback from the existing front facade.
- Furthermore, the proposed attic extension does not result in an additional level, but rather is incorporated into the existing roof form, limits the additional floor area to 21.92m² and is well setback from the existing front façade in order to ensure it remains sympathetic to the streetscape. These design elements ensure that the proposed development, when viewed from the street complements the identified streetscape.

As demonstrated in this request, I consider that the proposed development is consistent with the objectives for development of the zone in which the development is proposed to be carried out.

Similarly, for the reasons set out previously, I consider that the proposal is consistent with the objectives of the FSR Standard.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

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.

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance does not raise any other matter of significance for State or regional planning.

Is there a public benefit of maintaining the development standard?

I consider that there is no public benefit associated with maintaining strict compliance with the development standard;

- The proposed development results in a range of positive outcomes as outlined in this Clause 4.6 Request and accompanying SEE.
- The breach of the FSR Standard is as a result on the proposed 21.92m² of additional floor area to be contained within the attic addition.
- The proposed attic addition and roof extension contains an attractive palate of colours and materials.
- I consider that, when viewed from the street, the proposed alterations and additions will result in a significant improvement in the visual aesthetics of the existing building.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

8. IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the FSR Development Standard and Objectives of the R1 General Residential Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the FSR non-compliance.

I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request. I again note the range of positive outcomes which include, but are not limited to, the following:

- The proposed development is a contemporary well designed addition which will feature the use of attractive palette of external finishes and colours.
- A significant portion of the existing semi-detached dwelling is single storey in nature and has a maximum RL of 44.08AHD. I note that the proposed attic extension remains below this existing ridge line.
- I consider that the breach of the FSR Standard does not contribute to the perceived bulk, scale and height of the proposed development when viewed from the street.
- The proposed alterations and additions will provide for an improved bedroom layout for the front bedroom whilst providing a new master bedroom and ensuite as a result of the proposed attic extension. The improved and additional bedroom serves the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed attic extension ensures that the existing semi-detached form of housing is retained, allowing for greater occupancy of the subject site without significant modifications to the existing building footprint.

- The proposed alterations and additions do not result in the disruption of any of the following;
 - iv. Views to nearby residential development from public spaces (including the harbour and foreshores),
 - v. Views from nearby residential development to public spaces (including the harbour and foreshores),
 - vi. Views between public spaces (including the harbour and foreshores),
- As evidenced by the Shadow Diagrams accompanying this DA, the proposed alterations and additions will not result in any unreasonable overshadowing to adjoining properties. I note that any additional overshadowing is limited to the rooves of the adjoining property to the east and west and no public or private open space or habitable rooms are impacted. The Overshadowing shown on the Shadow Diagrams has been further reduced as a result of the modifications that have occurred to result in the current set of Architectural Plans.
- Whilst there will only be a minor increase in the area of deep soil landscaping compared to the existing, the Landscape Plans will result in a significant improvement in the quality of landscaping on the subject site.
- The building height of the proposed development is below or considerably below the height of buildings development standard under LEP 2013 and will have a single storey with attic addition presentation to the street.
- There will be no increase in carparking demand as a result of the proposed development.

9. CONCLUSION

Notwithstanding the breach of the FSR Standard, I consider that this Clause 4.6 Request for variation of the FSR Standard is well founded.

Notwithstanding the breach of the FSR Standard, I consider that the proposed development satisfies the objectives of the FSR Standards and the R1 General Residential zone.

I also consider that the proposed development, notwithstanding the breach, will not have an unreasonable adverse impact on adjoining properties or the public domain and will result in a range of positive outcomes. I particularly note my opinion that the proposed development will result in a significant improvement to the visual aesthetics of the existing building when viewed from the street.



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ITEM 4.3**DA2021/1408 - 16 ADDISON ROAD, MANLY - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE
INCLUDING A BOATSHED**

AUTHORISING MANAGER Rodney Piggott
TRIM FILE REF 2022/140637
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. DA2021/1408 for Demolition works and construction of a dwelling house including a boatshed at Lot 2 DP 325220, 16 Addison Road, MANLY, Lot LIC 30003605, 16 Addison Road, MANLY for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1408
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 325220, 16 Addison Road MANLY NSW 2095 Lot LIC 30003605, 16 Addison Road MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house including a boatshed.
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Sarah Penelope Joyce Nicholas John Fairfax
Applicant:	Patrick Adrian Joyce
Application Lodged:	17/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/09/2021 to 03/10/2021
Advertised:	03/09/2021
Submissions Received:	13
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,327,583.24

EXECUTIVE SUMMARY

The development application seeks approval to demolition and construction of a three storey dwelling house, double garage and boatshed.

The notification of the application resulted in thirteen (13) submissions objecting to the application.

The applicant was provided an opportunity to address concerns raised by Council by way of amended plans, but these amendments failed to satisfactorily address Council's concerns and the application is therefore recommended for refusal.

The view impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved. Council's Heritage advisor has reviewed the application and does not support the proposal in its current form.

As such, the application is recommended for refusal.

The application is referred to the Northern Beaches Local Planning Panel due to having more than 10 unique objections.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition works and construction of a three storey dwelling house, double garage and boatshed.

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 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 2 DP 325220 , 16 Addison Road MANLY NSW 2095 Lot LIC 30003605 , 16 Addison Road MANLY NSW 2095
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Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Addison Road, Manly The site is a battle-axe allotment off Addison Road, Manly. The site has a surveyed area of 543.8m². The site is located within the C4 Environmental Living zone and accommodates a dwelling house and garage. The site slopes from north-west to south-east corner and includes a approximate crossfall of 12m. The site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins in Manly. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential accommodation including one and two storey dwelling houses and residential flat buildings.
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Map:



SITE HISTORY

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

PLM2020/0185 - Demolition Works and construction of a new dwelling

Council raised the following issues with the proposal during pre-lodgement discussions:

- Foreshore Area/ Building Line
- Excavation
- Wall heights, setback, bulk and scale.

DA2019/0808 - Construction of a swimming pool and associated works. (Approved 21 January 2020)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application. Note: The Environmental Planning and Assessment Regulation 2021 (2021 EP&A Regulation) commenced on 1 March 2022 and replaced the 2000 Regulation. However, The application was lodged after 1 March 2022, the savings provisions apply pursuant to Schedule 6 of the 2021 EP&A Regulation.
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 have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the setback and wall height requirements under the Manly DCP 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 03/09/2021 to 03/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Christopher Sarroff	Address Unknown
Mr Raymond John Mathieson	503 / 54 West Esplanade MANLY NSW 2095
Mr Ross Dario Sterrantino Mrs Vivien Barbara Sterrantino	11 A Waratah Road PALM BEACH NSW 2108
Thomas Jacobs	6 / 22 - 26 Addison Road MANLY NSW 2095
Ms Sally Elizabeth Morton	2 / 22 - 26 Addison Road MANLY NSW 2095
Mr Vivian Reginald Mascarenhas	180 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Evolution Planning Pty Ltd Ms Margaret Gillian Mackenzie	Po Box 309 FRENCHS FOREST NSW 1640
Ms Marina Dimitropoulos	1 / 22 - 26 Addison Road MANLY NSW 2095
Ms Ann Frances James	12 Addison Road MANLY NSW 2095
Ms Victoria Liew-Dwyer	18 Addison Road MANLY NSW 2095
Mr Cosimo Maiolo	20 Addison Road MANLY NSW 2095
Mrs Margaret Gillian Lavers	14 A Addison Road MANLY NSW 2095
Antonella Sterrantino	Address Unknown

The following issues were raised in the submissions:

- **View Loss;**
- **Boatshed permissibility;**
- **Overdevelopment;**
- **Privacy;**
- **Parking/Traffic Management;**
- **Landslide risk (Excavation);**
- **Impact of foreshore;**
- **Pets;**
- **Impact on threatened species;**
- **Built form non-compliance;**
- **Boundary Fence**
- **Location of heater;**

- **Construction impacts; and**
- **Classification of development.**

The above issues are addressed as follows:

- **View Loss**

Comment:

Concern was raised in regard to loss of water views from private open space from adjoining properties. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development results in a unreasonable loss of view loss from neighbouring properties and warrants the refusal of the application.

- **Boatshed permissibility**

Comment:

Concern is raised in regards to the permissibility of the proposed boatshed. The matter of the permissibility of the boatshed is discussed in detail within this report. In summary, the proposed boatshed is deemed permissible and satisfactory pursuant to clause 6.10 (Limited development on foreshore area) of the Manly LEP and Clause 16 of *Sydney Regional Environmental Plan (Sydney Harbour Catchment)* 2005.

This issue does not warrant the refusal of the application

- **Overdevelopment (Building Height)**

Comment:

A number of submissions received raise concern regarding the bulk of the proposed development, noting non-compliance with numerous aspects of MLEP 2013 and MDCP 2013. As discussed in further detail with respect to individual built form standards/controls, the scale of the development attributes to unreasonable impacts upon adjoining properties and the streetscape, and the proposal is not supported in this regard.

- **Privacy**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the proposed particularly to windows and living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP.

This does not warrant the refusal of the application

- **Parking/ Traffic management**

Comment:

Concern is raised in regards to traffic, safety and loss of on-street parking as a result of the proposed development. The development proposes compliant off-street parking for the dwelling house, being two (2) off-street parking spaces for a dwelling house. Concern is also raised in regards to use of the right of carriageway that also services neighbouring properties. If the application is to be approved, conditions of consent may be imposed to ensure the Construction Traffic Management Plan is updated to ensure suitable traffic/construction mitigation measures are imposed prior to the issue of any construction certificate or commencement of works.

This issue does not warrant the refusal of the application

- **Landslide risk (Excavation)**

Comment:

Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered under Clause 6.8 of the Manly LEP and Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Dilapidations reports and the recommendations proposed under the Geotechnical report (prepared by Geotechnics dated 4 March 2021) may be imposed as part the conditions of consent if the application is to be approved.

This issue does not warrant the refusal of the application

- **Impact of foreshore**

Comment:

Concern has been raised in regards to the visual impact of the dwelling house when viewed from the foreshore. Given the variety of development along the southern side of Addison Road, the proposed development when viewed from the foreshore is not deemed to be unreasonable or unsightly.

This issue does not warrant the refusal of the application

- **Pets**

Comment:

Concern is raised in regards to the behaviour of pets on the existing property. This matter is not a consideration under the *Environmental Planning and Assessment Act 1979* (NSW).

This issue does not warrant the refusal of the application

- **Impact on threatened species**

Comment:

The subject site is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. As such, the application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

This issue does not warrant the refusal of the application

- **Built form non-compliance**

Comment:

Concern is raised in regards to the proposed setback non-compliances, wall height and number of storeys non-compliance and the resulting undesirable presentation to the streetscape as well as amenity impacts to adjoining properties. A detailed assessment of the non-compliance under clause 4.1.4 Setbacks (front, side and rear) of the Manly DCP is in this report and clause 4.1.2 Height of buildings (Incorporating Wall Height, Number of Storeys & Roof Height). In summary, the variation to the setback and wall height controls is not supported and warrants the refusal of this application.

- **Boundary Fence**

Comment:

Concern is raised in regards to impact of the proposed boundary fencing along the eastern property boundary as shown on the plans. No owners consent has been provided from the adjoining property who shares this boundary. As such, the element of the proposal may be conditioned to be deleted prior to the issue of the construction certificate if the application is approved.

This issue does not warrant the refusal of the application

- **Location of Heater**

Comment:

Concern is to the suitability of the heater as shown on the ground floor plan. The location of the gas heater heater is deemed reasonable given that it is generally centralised on site.

This issue does not warrant the refusal of the application

- **Construction Impacts**

Comment:

Significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions may be included to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set operation/construction hours if the application is to be approved.

This issue does not warrant the refusal of the application

- **Classification of Development**

Comment:

Concern is raised that the proposed development may be utilised as a dual occupancy. The proposed development contains internal access at each level, and as such is not capable of

being used as a dual occupancy. A condition of consent may be imposed if the application is approved to ensure that that dwelling is used as single domicile only.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objection, with conditions. This application is for the demolition of an existing residential dwelling, and the construction of a new residential dwelling. Councils Landscape Referral section has considered the application against the Manly Local Environmental Plan, and the following Manly DCP 2013 controls: • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping • 5.4.1 Foreshore Scenic Protection Area The Statement of Environmental Effects provided with the application notes that no trees are to be removed as a result of proposed works. This statement is not necessarily supported by the Architectural and Landscape Plans as there is one existing tree located within the rear of the site that is likely to be removed as a result of proposed works. No major concerns are raised regarding the removal of this tree as it appears to be of low landscape value and significance. In addition, it is evident that a number of compensatory tree plantings are proposed on the Landscape Plan which is supported. It should be noted that trees within neighbouring properties are considered to be protected irrespective of species, and as a result are required to be protected and retained. Although proposed works are not likely to directly impact these trees in adjoining properties, care must be taken to ensure construction impacts do not negatively impact their short-term and long-term health. The retention of these trees, as well as those to be retained in the driveway, is key to satisfying control 3.3.2, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". The Landscape Plan provided with the application proposed the in-ground planting of trees, shrubs, accents, grasses as well as groundcovers. Slight concern is raised regarding the use of a couple of tree species, specifically <i>Howea fosteriana</i> and <i>Olea europaea</i>. Both of these tree species are exempt, with <i>Olea europaea</i> being identified as an environmental weed. For this reason, the use of these species is not supported, and it is recommended that these trees be replaced for locally native alternatives. This species change,

Internal Referral Body	Comments
	alongside the completion of other landscape works as proposed on the Landscape Plan, is key to satisfying controls 3.3.1 and 4.1.5, as key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", "to maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland", as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area". The completion of these landscape works is also necessary to comply with control 5.4.1, as key objectives of this control seek to "maintain the visual dominance of the natural environment", as well as "minimise the contrast between the built and environment and the natural environment", which is particularly important due to site proximity to the Manly Foreshore. The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plan, inclusive of the requires tree species changes.
NECC (Bushland and Biodiversity)	No objection, with conditions. <u>Relevant Provisions</u> The proposal has been assessed against the following provisions: • NSW Biodiversity Conservation Act 2016 (BC Act) • NSW Biodiversity Conservation Regulation 2017 (BC Regulation) • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) • Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat) <u>Impact Assessment</u> The subject site is identified as being within the NSW Biodiversity Values Map (BV Map) and includes areas of the 'Little Penguin Declared Area of Outstanding Biodiversity Value' as declared under the BC Act. Accordingly, the DA has been accompanied by a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor in accordance with the NSW Biodiversity Assessment Method. The BDAR (GIS Environmental Consultants, July 2021) provides a comprehensive assessment of potential impacts to Little Penguins, Long-nosed Bandicoots and other relevant threatened species arising from the proposal. It is considered that the key potential impacts arising from the proposal are associated with demolition, excavation and construction activities; these have been assessed in the BDAR and include:

Internal Referral Body	Comments
	- Noise and vibration in penguin habitat during demolition, excavation and construction - Waste management activities and increased human use of penguin habitat areas during construction - Sedimentation and run-off into penguin habitat - Impacts to other threatened species i.e. Long-nosed Bandicoot population, three threatened flora species. Noise and vibration during demolition, excavation and construction Construction-related impacts such as noise and vibration will be primarily managed by timing high-impact works (i.e. demolition and excavation) to occur during the penguin non-breeding season. Whilst the BC Regulation defines the Little Penguin breeding season as “the period from 1 July in any year until 28 February in the following year (both dates inclusive)”, penguins may vacate a nest/moult site prior to the end of February and/or may return to nest sites prior to 1 July. The Geotech Report recommends non-percussive excavation techniques, including those for the lower level. If percussive excavation works occur then a detailed penguin monitoring provision to enable adaptive noise and vibration management in response to variable patterns of penguin site usage will need to be developed by the Project Ecologist. It is considered that, subject to proposed mitigation and monitoring measures (if required), noise/vibration associated with demolition, excavation and construction works are unlikely to impact penguin habitat or behaviour. Waste management activities and increased human use of the foreshore during construction In order to avoid disturbing penguin breeding/moulting behaviour, delivery of materials and removal of waste is to be undertaken from Addison Road and not via the foreshore at any time. Sedimentation and run-off into penguin habitat Inadequately managed sedimentation and construction run-off has the potential to impact penguin nesting/moulting/loafing habitat at the bottom of the cliff. Appropriate provisions to prevent sedimentation and run-off into penguin habitat will be conditioned. Impacts to other threatened species The development footprint is generally confined to the existing built form and is therefore unlikely to result in a permanent loss of wildlife habitat such as foraging resources for Long-nosed Bandicoots (lawn/garden). Conclusion The proposed development has been designed, located and will be managed to respond appropriately to important site constraints and avoid adverse environmental impacts. This conclusion is related to the

Internal Referral Body	Comments
	impacts to biodiversity, and does not endorse the permissibility, or otherwise, of the development. It is considered that, subject to recommended conditions, the proposal can be undertaken without adverse impact to the endangered populations of Little Penguins and Long-nosed Bandicoots, other threat-listed species, or their habitats.
NECC (Coast and Catchments)	No objection, with conditions. Updated comment: 1 March 2022 In reviewing the coastal assessment, it is noted the proposed boatshed is above the mean high water mark and therefore outside W2 - Environmental Protection area. Given that the proposed boatshed is above the mean high water mark, the boatshed is permissible under Clause 16 of the Sydney Harbour REP below. Consideration should be given if the boatshed is permissible under the Manly LEP and DCP. The application is therefore supported.
NECC (Development Engineering)	No objection, with conditions. The amended stormwater plan with the provision of OSD is satisfactory. No objections to approval subject to conditions as recommended.
NECC (Water Management)	No objection, with conditions. The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The relevant water management Policy principles are: • Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland. • Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events. • Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources. The proposed development is presenting a low environmental risk after the construction period. The development application is acceptable, subject to conditions.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral

Internal Referral Body	Comments																		
	The proposal has been referred to Heritage as the subject site is affected by a heritage item, being Item I1 Harbour foreshores, listed in Schedule 5 of Manly Local Environmental Plan 2013.																		
	Details of heritage items affected																		
	Details of the heritage item as contained within the Manly Heritage Inventory are: Item I1 Harbour foreshores <u>Statement of Significance</u> Natural landscape type - Aesthetic. <u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.																		
	Other relevant heritage listings																		
	<table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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RAIA Register of 20th Century Buildings of Significance	No																		
Other	No																		
	Consideration of Application The proposal seeks consent for the demolition of the existing single level dwelling and construction of a three storey dwelling house including a boatshed on the subject site. The proposed works include modifications to the existing natural landscaping and the rock outcrops, to form a terrace at the proposed lower ground floor level and a smaller terrace at the boatshed level. A stone retaining wall has also been proposed along the boatshed (across the site) stretching up to the lower ground level terrace. This wall is considered to impact the views from the Harbour as it creates a four storey building appearance when viewed from the Harbour, by replacing the natural setting in the foreshore area that is visible from the Harbour. The subject site is located within the Manly Foreshore Scenic Protection Area and considerations should be given to the following controls under Clause 5.4.1 Foreshore Scenic Protection Area of Manly DCP:																		

Internal Referral Body	Comments
	<u>5.4.1.1 Additional matters for consideration</u> LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area. a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also: i) minimise the contrast between the built environment and the natural environment; ii) maintain the visual dominance of the natural environment; iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat; iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas; v) locate rooflines below the tree canopy; vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality. b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly. Therefore, Heritage can not support this proposal in its current form and require amendments. <u>Consider against the provisions of CL5.10 of MLEP 2013</u> 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? N/A Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 04 March 2022
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.

External Referral Body	Comments
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.
Foreshore and Waterways Planning and Development Advisory Committee	The proposal was referred to Foreshore and Waterways Planning and Development Advisory Committee. No response has been received within the 28 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. 1183912S_02 dated 9 August 2021).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	100

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

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 15 (Heritage Considerations), Clause 21 (21. Biodiversity, ecology and environment protection), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken as follows:

14. Foreshores and Waterways Area

The planning principles for land within the Foreshores and Waterways Area are as follows:

- (a) development should protect, maintain and enhance the natural assets and unique environmental*
- (b) public access to and along the foreshore should be increased, maintained and improved, while*
- (c) access to and from the waterways should be increased, maintained and improved for public*
- (d) development along the foreshore and waterways should maintain, protect and enhance the*
- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand*
- (f) public access along foreshore land should be provided on land used for industrial or commercial*
- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should*
- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public*
- (i) the provision and use of public boating facilities along the waterfront should be encouraged.*

Comment:

The foreshore area currently has no public access, therefore, the proposal will not alter any public access to or along the harbour foreshore for recreational or commercial use.

15. Heritage Considerations

The planning principles for heritage conservation are as follows—

- (a) Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance,*
- (b) the heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved,*
- (c) an appreciation of the role of Sydney Harbour in the history of Aboriginal and European settlement should be encouraged,*
- (d) the natural, scenic, environmental and cultural qualities of the Foreshores and Waterways Area should be protected,*
- (e) significant fabric, settings, relics and views associated with the heritage significance of heritage items should be conserved,*
- archaeological sites and places of Aboriginal heritage significance should be conserved.*

Comment:

The Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. As detailed in the response from Council's Heritage Officer (above), the proposal have been found to result in a development that will have an adverse impact upon the significance of the local heritage item I1 Harbour foreshores. The proposal is inconsistent with this clause.

21. Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands.*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed dwelling and boatshed are proposed above the mean high-water mark. The proposed development was referred to Council Biodiversity and Coast and catchment officer who raised no concern with the proposed development.

25. Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows-

- (a) the scale, form, design and siting of any building should be based on an analysis of:*

- (i) the land on which it is to be erected, and*
- (ii) the adjoining land, and*
- (iii) the likely future character of the locality,*
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

Comment:

The proposal is not considered to substantially alter the appearance of the foreshore area in the vicinity of the site. The proposed works to the foreshore area are relatively remaining within the existing dwelling house building footprint. The proposed dwelling house is compatible with the established and future character of the locality.

26. Maintenance, protection and enhancement of views

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*
- (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*
- (c) the cumulative impact of development on views should be minimised.*

Comment:

The proposed development will result in excessive loss of harbour view from neighbouring properties. The level of view loss has not been suitably minimised.

27. Boat storage facilities

The matters to be taken into consideration in relation to boating facilities are as follows—

- (a) development should increase the number of public boat storage facilities and encourage the use of such facilities,*
- (b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high water mark,*
- (c) development should provide for the shared use of private boat storage facilities,*
- (d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand,*
- (e) boat storage facilities should be as visually unobtrusive as possible*
- (f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single mooring*

Comment:

The proposed boatshed is a private boatshed and proposed above the mean high-water mark. The proposed boatshed will not be visually obtrusive. The proposed boatshed satisfies this clause.

Given the scale of the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was considered necessary. The proposal was referred to Foreshore and Waterways Planning and Development Advisory Committee on 30 August 2021. No response has been received within the 30 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

The proposed development is generally consistent with the requirement of the SREP. However, the impact upon the heritage item that adjoins the site is not supported. As such, it is considered that the application does not comply with the requirements of the State Regional Planning Policy (Sydney Harbour Catchment) 2005.

SEPP (Coastal Management) 2018

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

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures
are in
place
to
ensure
that
there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no

coastal vulnerability area has been identified. Not applicable.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. Currently, there is no public access along the foreshore. In addition, the proposed works are consistent with the existing foreshore swimming pool and nearby comparable developments. Overall, the proposal does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (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 proposed works are designed and can be managed to avoid adverse impacts upon the matters identified in this clause.

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 proposal does not impact upon public access to and along the foreshore. The subject site and adjacent foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. However, the foreshore area has been heavily modified and no sites have been identified within the vicinity of the proposed development. Overall, the proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent may be imposed to stop works if any Aboriginal Engravings or Relics are unearthed.

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

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	-	Yes
Floor Space Ratio	FSR:0.6:1 (326.28sqm)	FSR: 0.596:1 (324.3sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

5.10 Heritage conservation

Council's Heritage advisor has reviewed the proposed development application as the proposed subject adjoins Local Heritage Item *11 Harbour foreshores*. As discussed previously in the assessment report, the presentation of the proposed dwelling house and associated boatshed to the foreshore will result in a negative visual impact upon the heritage item and is not supported. Therefore, it is listed as a reason for refusal.

6.8 Landslide risk

The site is mapped on the landslip Risk Map. The proposal includes earthworks to facilitate the lower ground floor level and boatshed. The proposal is unlikely to increase any landslip risk or significant adverse impact on surrounding land. The application has been reviewed by Council's Development Engineer who has confirmed that stormwater will be suitably managed by way of a on-site detention tank. Further, the geotechnical report submitted with the application (prepared by JK Geotechnics, dated 16 April 2021) which stipulates that the proposal will not have an reasonable impact upon existing ground and surface water flows. Standard conditions may be imposed to ensure that adequate sediment controls are installed prior to the commencement of any works to minimise potential risks. As such, the proposal complies with clause 6.8 of the MLEP.

6.10 Limited development on foreshore area

The proposed boatshed and the rear portion of the proposed dwelling house within the foreshore area mapped under Clause 6.10 of Manly LEP. The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,
- (c) 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 demolition of the existing dwelling house and proposed new dwelling house represents a rebuilding of a existing building partly in the foreshore area consistent with subclause (2)(a) under clause 6.10.

The proposed boatshed within the foreshore is permissible pursuant to subclause (2)(c)

As such, the works proposed are deemed to be acceptable under this clause.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 543.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East 7.5m (based on gradient 1:6)	East 6.4m - 7.9m	5.3%	No
	West: 7.15m (based on gradient 1:9.5)	West 5.8m - 7.4m	3.4%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	N/A, Battle-axe allotment	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	East First floor -2.13m - 2.63m	East Dwelling First floor- 0.904m – 3.0m Dwelling ground floor - 0.904m - 3m	up to 65% -	No
	West First floor - 1.93m - 2.46m	West Dwelling First floor- 1.054m - 1.293 - 3m Dwelling ground floor -1.054m - 1.293 - 3m	up to 48% -	No
	Windows: 3m	1m - 3.0m	66%	No
4.1.4.4 Rear Setbacks	8m	7.2m	10%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (299.09sqm) of site area	37.25% (202.6) sqm	32.3%	No
	Open space above ground 25% of total open space	0sqm	-	Yes

4.1.5.2 Landscaped Area	Landscaped area 35% of open space	36.1% (73.2sqm)	-	Yes
	3 native trees	4 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	No street frontage	-	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	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	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	No	No
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	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

As detailed in the response from Council's Heritage Officer (above), the proposal have been found to result in a development that will have an adverse impact upon the significance of the local heritage item *I1 Harbour foreshores*, inconsistent with the requirements and objectives of clauses 3.2 of MDCP 2013.

3.4.2 Privacy and Security

Description of non-compliance

Privacy concerns have been raised by neighbouring properties in regards to potential overlooking between the subject site

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:

Concern from No. 14a Addison Road was raised in regard to potential overlooking from the outdoor living areas and the proposed first floor glass wall across the western elevation. Amended plans submitted by the applicant have incorporated a timber privacy screen from floor to ceiling level to mitigate direct overlooking between properties. No further privacy measures are requires to further mitigate privacy between dwellings.

Concern has also been raised from adjoining properties in regard to potential overlooking between the subject site and the neighbouring properties at No. 20 Addison road apartments at No. 22-26 Addison Road. From a view of what is visible from the site it is evident there are some sight lines into the living areas of of the neighbouring eastern property. However, the sightlines are not the dominant views (which is directly to the rear of the subject site) and inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties.

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:

Given the above, the proposed development retains adequate privacy for the residential developments to the east and west, while allowing sufficient access to light and air, and balancing of views.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise casual surveillance of the street from the property.

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

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received four (4) submission from the occupants of No. 12, 18, 5/22-26 and 6/22- 26 Addison Road, Manly raising view loss as a concern.

To assist Council in its assessment of the application Height poles were requested on 24 November 2021 to reflect the amended building design.

Amended plans and survey confirmation from a registered surveyor confirming the height poles location and heights were lodged with Council. (Refer to plan prepared by Norton Survey Partners dated 21 December 2021).

The location of the height poles (amended) is shown below:



Image 1 - Survey Confirmation of height poles

Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposed development will result in a minor to moderate loss of views from neighbouring properties. The level of view loss is not supported given the side setback, wall height non-compliance and general lack of modulation at first floor level.

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Views affected from adjoining properties are harbour views, land and water interface and views of North Head filtered through existing development as shown below.

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

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

Existing views from the above properties are obtained from all areas facing south (rear), including the living rooms and balconies and bedroom and associated balconies from a standing position. Due to the elevation of the property, the views from the upper level primary living spaces are more wide ranging than those enjoyed on the lower level.

3. Extent of impact

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

Comment to Principle 3:

The extent of impact varies between the properties, as follows:

No. 12 Addison Road, Manly

The nature of the view affected from this property would harbour (water) views to the south-east. The views from this property are taken from the first floor bedroom balcony. The views would be filtered through existing development and vegetation as pictured below. A large portion of the existing views are to the side and over the top of the subject site dwelling house (No. 16 Addison Road, Manly). The extent of impact from this property is moderate as it will lose views from the only room with harbour views. There are no existing views from the ground floor rooms.



Photo 1 - View looking south-east from first floor bedroom balcony.



Photo 2 - View looking south-east from master bedroom.

No. 18 Addison Road, Manly

Occupants of No. 18 Addison Road, Manly currently enjoy views towards the harbour, north head and the land water interface in a southern direction from the first floor sunroom/study at the rear of the building. The view is obtained over the rear boundary and over the roof of the existing dwelling. The extent of impact to from this property moderate as it will lose the views from rear of the first floor. There are no existing views from the ground floor rooms.



Photo 3 - View looking south from first floor sunroom



Photo 4 - View looking south from first floor sunroom

No. 6/22- 26 Addison Road, Manly

Apartment 5 is located on the first floor of 22-26 Addison Road. Occupants of Apartment 6 currently enjoy views towards the harbour, North Head and the land water interface in a south and south-westerly direction from the living room and terrace to the rear side of the building. The view is obtained over the side boundary and over the roof of the existing dwelling. The proposed development is likely to result in minor loss of water view, while the land and water interface and North Head are retained in full. Noting the collective existing views from this property, the proposed development on a whole will have a minor impact upon the amenity of this dwelling. The likely impact is not considered to be unreasonable, as a similar impact would otherwise arise with a compliant built form.



Photo 5 - View looking south from first floor terrace



Photo 6 - View looking south from living room

No. 5/22-26 Addison Road, Manly

Apartment 5 is located on the first floor of 22-26 Addison Road. Occupants of Apartment 5 currently enjoy views towards the harbour, north head and the land water interface in a south and south-westerly direction from the living room and terrace to the rear side of the building. The view is obtained over the side common boundary and over the roof of the existing dwelling. The proposed development is likely to result in minor loss of harbour view, while the land and water interface and North Head retained in full. Noting the existing views from this property, the proposed development

on a whole will have a negligible to minor impact upon the amenity of this dwelling. Similarly to unit 6, the likely impact is not considered to be unreasonable, as a similar impact would otherwise arise with a compliant built form.



Photo 7 - View looking from terrace looking south west



Photo 8 - View looking from living room looking south west

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development complies with the Building Height and Floor Space Ratio development standards under the Manly LEP. The subject development does not comply with the controls of the MDCP 2013 and in the circumstances it is found that the view loss for the neighbouring property is unacceptable and warrants the refusal of the application.

The demonstrated non-compliances, being side setbacks and wall height give rise to unreasonable view impacts.

It is acknowledged that the context and siting of the existing dwelling on the subject site, makes views for adjoining properties extremely vulnerable to any form of new development. However, it is concluded that the extent of the breaches of the planning controls is excessive and a more skillful and compliant design would vastly improve the outcome.

The question of a more skillful design has been considered in that a close analysis of the plans identifies the opportunity to retain areas of view lines from all affected properties. The views assessment determined that there is the opportunity to significantly lessen the impact on views. While it acknowledged that that full compliance would be unreasonable given the constraints of the site, a greater level of compliance with both the wall height and side setback control would allow for view corridors to be maintained. In this regard, the development potential would not be significantly compromised.

Therefore, the proposed dwelling house in particular the first floor setback and wall height non-compliance is considered unreasonable in the circumstances of this application in that the application does not demonstrate a reasonable sharing of views

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

Comment:

As discussed above the proposed development will result in an unreasonable loss of view. In regards to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is not supported in this particular instance.

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

Description of non-compliance

Clause 4.1.2 of Manly DCP permits a maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- East elevation: 1:6 gradient, which permits a maximum wall height of 7.5m.
- West elevation: 1:9.5, which permits a maximum wall height of 7.15m

The maximum wall height of the proposed dwelling house is as follows:

- East wall: 8.4m, which represents a 5% variation from the numeric requirement.
- West wall: 8.9m, which represents a 11.25% variation from the numeric requirement.

Clause 4.1.2 of the MDCP 2013 limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement. The 3 storey component occurs at the front of the structure over the footprint of the garage, with the rear half of the structure being a 2 storey building.

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

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

Comment:

The proposal complies with the Height of buildings development standard and therefore, meets the desired building height envisaged for the site. The semi-detached dwellings follow the slope of the land.

(1) (b) To control the bulk and scale of buildings.

Comment:

The proposal complies with the Height of buildings and Floor space ratio development standards, which are the key controls that govern the bulk and scale of buildings. However, the proposed dwelling house fails to provide sufficient articulation at first floor level to offset the visual bulk and scale of the building which as a result will lead to unreasonable view loss impacts.

(1) (c) To minimise disruption to the following:

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

Comment:

The proposal has been assessed against the view loss provisions under Section 3.4.3- Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development results in unreasonable view loss from neighbouring properties.

The development does not satisfy this objective.

(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The solar impacts of this aspect of the development are acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

The wall height non-compliance does not create unreasonable impacts over land in recreation or environmental protection zones, that might conflict with bush land and surrounding land uses.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.13m - 2.63m from the eastern boundary at first floor level and 1.93m - 2.46m from the western boundary at first floor level. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.4.4.4 of the Manly DCP requires development be setback 8m from the rear boundary.

The development proposes the following:

East side setback- First floor: 0.904m - 3.0m (up to 65% variation to the numeric control)

West side setback- First floor - 1.054m - 1.293m - 3.0m (up to 48% variation to the numeric control)

Windows- 1m - 3m (up to 66% variation to the numeric control)

Rear setback- 7.2m (10% Variation to the numeric control)

Merit consideration:

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

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 works will not be visible from 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.*

Comment:

The proposed side setback non-compliance at first floor level contributes to a loss of water views from adjoining properties to the north. Greater compliance with this control would directly relate to a greater view corridor being retained toward the harbour.

The proposal does not satisfy this objective.

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

Comment:

Flexibility cannot be provided in this circumstance as the proposed side setback non-compliance results in view loss impacts that are a direct result of the side setback non-compliance on both the eastern and western side of the dwelling house.

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 level of landscaping proposed on site is reasonable given the constraints on site and existing landscaping on site. No important landscape features on site as proposed to be removed.

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

Comment:

The subject site is not located in a bush fire zone.

As such, non-compliance with the side setbacks prescribed by this control is considered to warrant the refusal of the subject application.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at 35% (84m²) of total open space be landscaped open space. The development proposes 21.25% (51m²), non-compliant with the numeric control (39.3% variation).

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:

While there is a minor reduction of landscaped open space on site, no particular important landscape features are proposed to be removed.

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:

Significant landscaping is proposed to the northern end of the property to offset any visual impact of the dwelling house and outdoor living spaces.

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

Comment:

The loss of landscaped open space does not unreasonably compromise amenity for adjoining properties or the subject site.

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

Comment:

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff.

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

Comment:

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works will not lead to an unreasonable spread of weeds across the site, adjoining properties or public open spaces including the foreshore.

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

Comment:

The application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

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

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 \$23,276 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,327,583.

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

The proposed upper floor of the dwelling is inconsistent with the wall height, number of storeys side setback controls of MDCP 2013. The non-compliant elements of the proposal attribute to impacts upon views currently enjoyed by residents of Addison Road, which are considered to be unreasonable in light of the extent of proposed non-compliance and opportunity for more skilful design solutions.

The impacts associated with the non-compliant top floor are considered to warrant the refusal of the subject application.

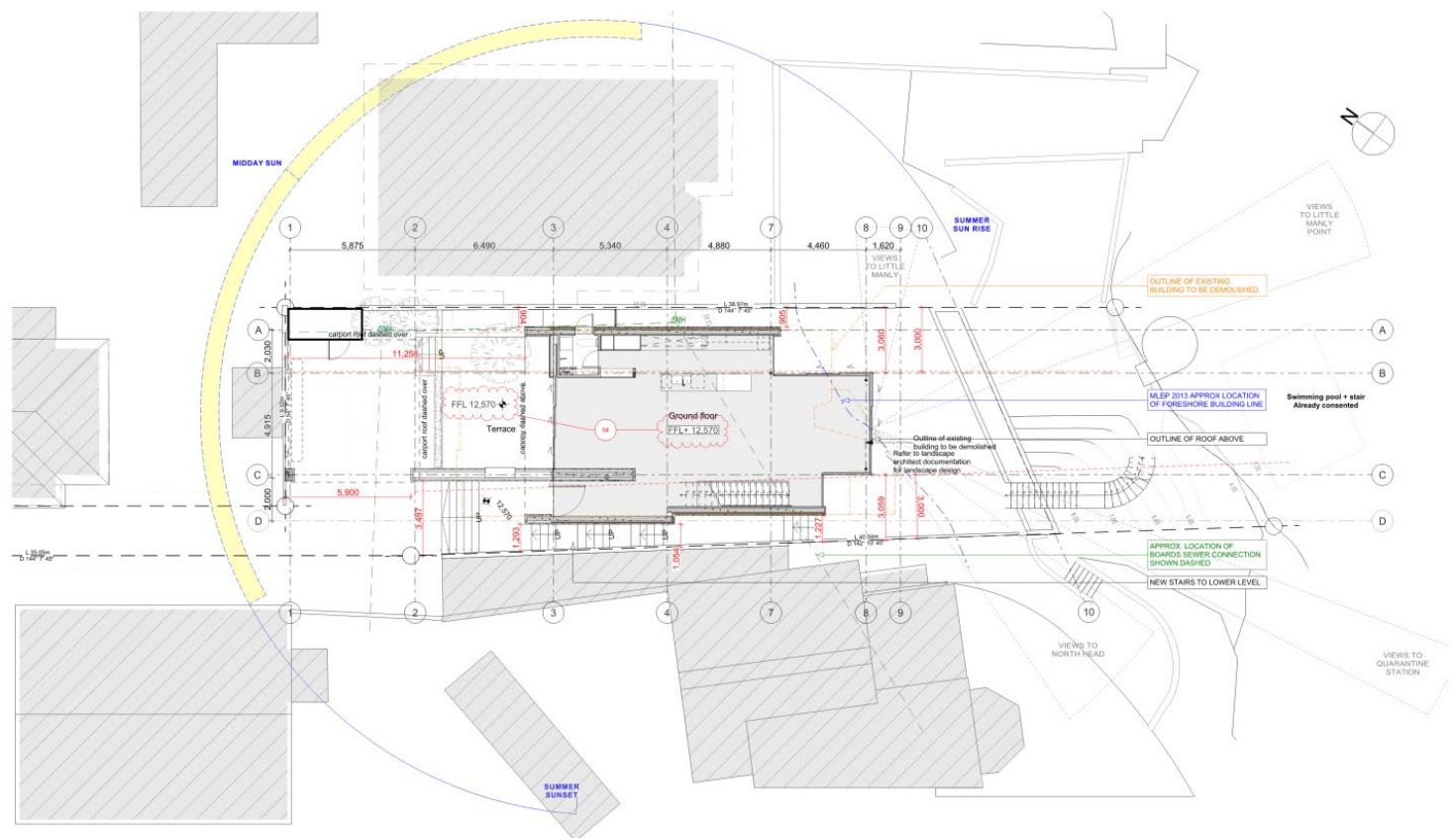
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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 DA2021/1408 for the Demolition works and construction of a dwelling house including a boatshed. on land at Lot 2 DP 325220, 16 Addison Road, MANLY, Lot LIC 30003605, 16 Addison Road, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.
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 5.10 Heritage conservation of the Manly Local Environmental Plan 2013 and Clause 3.2 (Heritage considerations) of the Manly DCP 2013.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan .
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.

Change List - Revision C		
ID	Name	Last Modified
01	Project Layouts Added	18/10/2021 3:59 pm
02	Main Civil Added	18/10/2021 6:57 pm
03	Open Fire Addition Added	18/10/2021 6:58 pm
04	FFL Lowered	17/12/2021 3:48 pm
05	Project RA Lowered	17/12/2021 4:56 pm
06	FG Lowered	17/12/2021 4:56 pm
07	Boat Shed Layout	17/12/2021 4:56 pm



Town Planning:

Site Area: 543.8m²

Floor space Ratio: 0.6
543.8x0.6= 326.3m²

Zone: E4 Environmental Living

Max. Wall Height: 7.2m
or calculated for gradient

Max. Building Height: 8.5m

Max. Roof Slope: 35°

Lot size C: Min. 250m²

Setback: 1/3 Wall Height

Foreshore Scenic Protection Area
Bandicoot and Penguin Significant Area
Biodiversity Overlay

Dwelling Gross Floor Area	
Boat shed	22m ²
Lower Floor	84.5m ²
Ground Floor	104m ²
First Floor	92m ²
TOTAL:	302.5m²
(includes plant, vertical circulation & basement storage)	
Storage Shed	4.3m ²

NOTE: Drawings subject to Architects Developed and Detail Design revisions. Not for Construction. To be used in conjunction with Specification and Consultant Drawings.

PATTERSON

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16 Addison Rd, Sydney

Consultants
Quantity Surveyors Dean, Murray & Partners Ltd.
Structural Engineers Law Sue Dawson Ltd.
Trust Designer Bulkable Layouts Ltd.
Geotechnical Engineer Chambers Consultants Ltd.

designed	**	peer review	**
drawn	**	checked	**

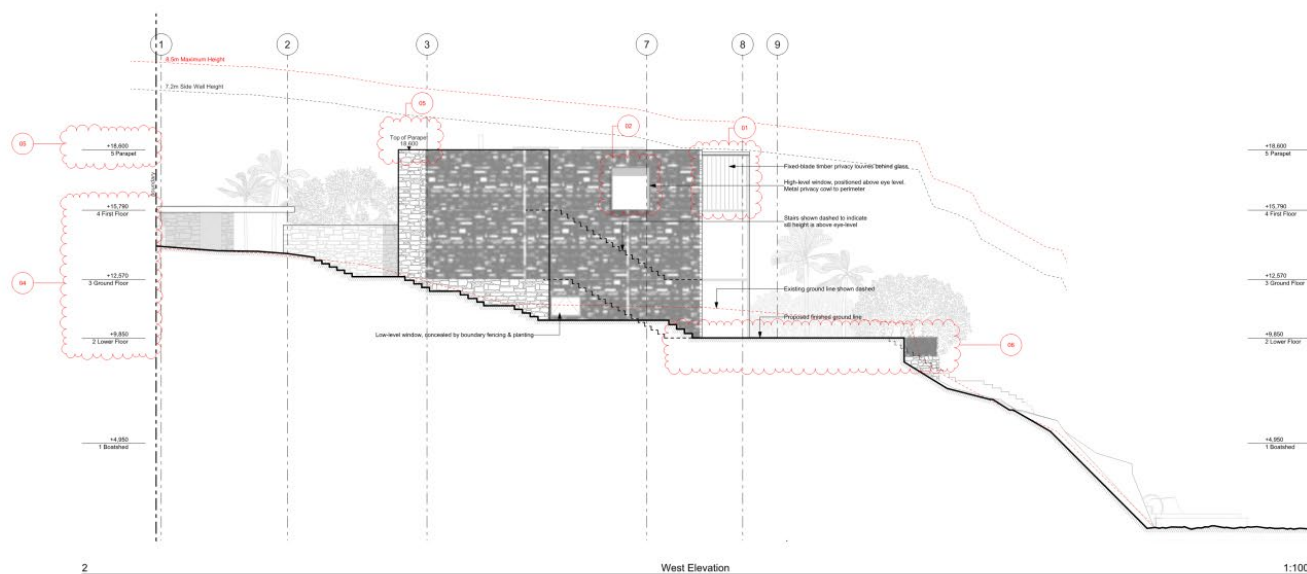
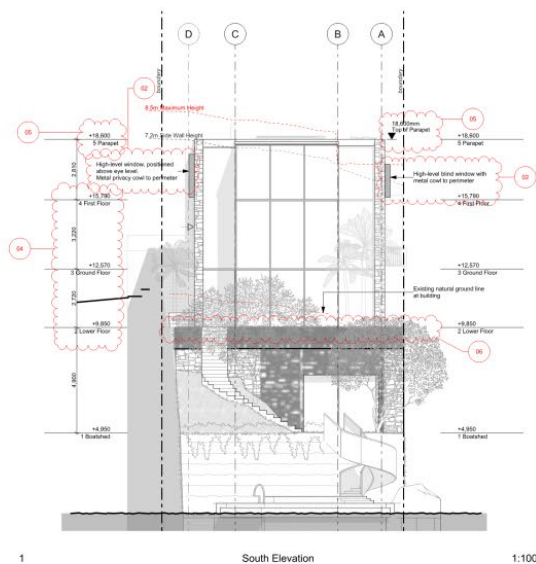
scale 1:100 @ A1 date 21/12/2021

Site Plan 1:200 @ A3

drawing set
Development Application
Not For Construction

ref no.	18010
sheet no.	1.3
revision	C

The contractor must check and verify all drawings, details, dimensions and levels in site prior to commencing any work. Any discrepancies, errors or omissions must be reported to the architect, or suggestions for modifications made prior to work starting. Copyright in these drawings and all parts thereof remains at all times the property of Patterson Associates Limited.
Do not scale dimensions from drawings
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Change List - Revision C		
ID	Name	Last Modified
01	Primary Layout Added	18/10/2021 4:10 pm
02	Main Cover Added	18/10/2021 4:01 pm
03	Site Plan Annotations Added	18/10/2021 4:10 pm
04	FFL Lowered	17/10/2021 3:48 pm
05	Parapet 18.0 Lowered	17/10/2021 4:00 pm
06	FGL Lowered	17/10/2021 4:00 pm
07	Base Street Layout	17/10/2021 4:00 pm

NOTE: Drawings subject to Architects Developed and Detail Design Revisions. Not for Construction. To be used in conjunction with Specification and Consultant Drawings.

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Consultants
Quantity Surveyors Dean, Murray & Partners Ltd.
Structural Engineers Law Sue Dawson Ltd.
Trust Designer Bulkable Layouts Ltd.
Geotechnical Engineer Chambers Consultants Ltd.

designed	**	peer review	**
drawn	**	checked	**

scale 1:100 @ A1 date 21/12/2021

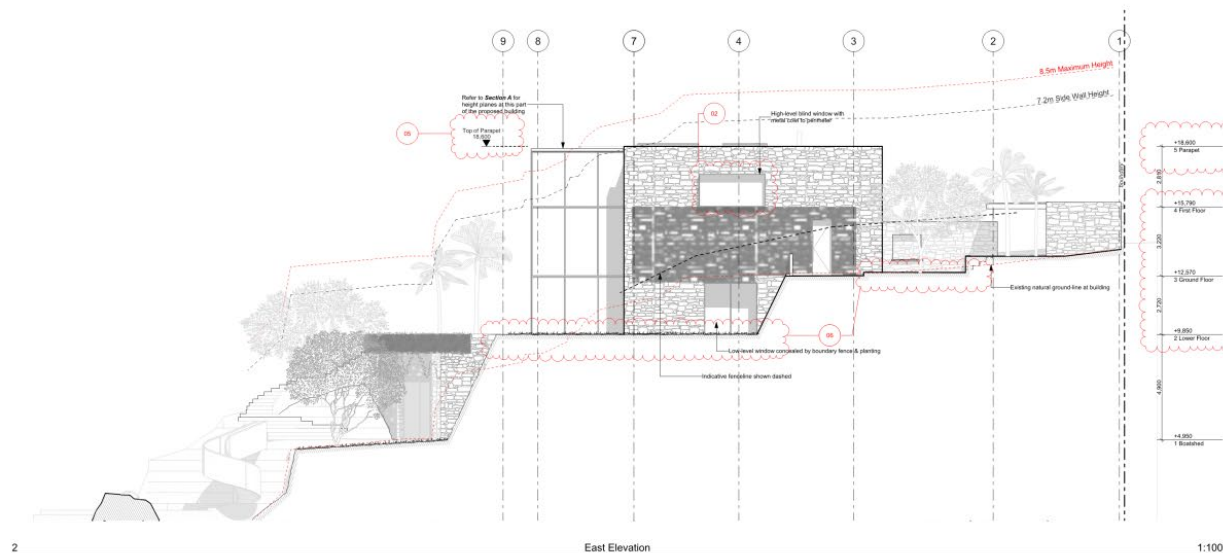
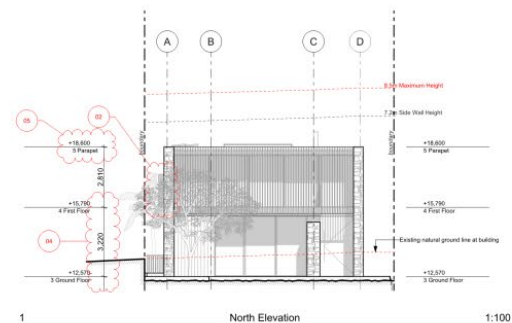
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drawing set
Development Application
Not For Construction

ref no.	18010
sheet no.	2.1
revision	C

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Change List - Revision C		
ID	Name	Last Modified
01	Privacy Screens Added	18/12/2021 9:59 am
02	Metal Grid Added	18/12/2021 9:59 am
03	Gate Line Extension Added	18/12/2021 9:59 am
04	PFL Lowered	17/12/2021 3:48 pm
05	Parapet RL Lowered	17/12/2021 4:02 pm
06	PFL Lowered	17/12/2021 4:02 pm
07	Road Street Layout	17/12/2021 4:02 pm



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drawn	**	checked	**

scale 1:100 @ A1 date 21/12/2021

title
**Elevations - 1:200 @
A3**

drawing set

**Development Application
Not For Construction**

ref no.

18010

sheet no.

2.2

revision

C

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5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2021/1766 - 18 ALEXANDER STREET, COLLAROY - DEMOLITION WORKS AND CONSTRUCTION OF A HOUSING DEVELOPMENT COMPRISING FIVE (5) SELF-CONTAINED APARTMENTS INCLUDING BASEMENT CAR PARKING PURSUANT TO SEPP (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/144683
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 for the following reasons:

- it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- 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 Northern Beaches Council as the consent authority vary clause 40(4) of SEPP (HSPD) pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1766 for demolition works and construction of a housing development comprising five (5) self-contained apartments including basement car parking pursuant to SEPP (Housing for Seniors or People with a Disability) 2004 at Lot 8 DP 6984, 18 Alexander Street, COLLAROY, Lot 9 DP 6984, 18 Alexander Street, COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1766
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 8 DP 6984, 18 Alexander Street COLLAROY NSW 2097 Lot 9 DP 6984, 18 Alexander Street COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a housing development comprising five (5) self-contained apartments including basement car parking pursuant to SEPP (Housing for Seniors or People with a Disability) 2004
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Laxland Group Pty Ltd
Applicant:	Laxland Group Pty Ltd
Application Lodged:	05/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	22/10/2021 to 05/11/2021
Advertised:	22/10/2021
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 5.8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,069,059.30

EXECUTIVE SUMMARY

The development application involves the construction of a seniors housing development comprising five (5) apartments, made pursuant to the State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004 (SEPP (HSPD)).

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposal does not comply with the development standard under Clause 40(4)(c) of the SEPP

(HSPD), in that a portion of the building in the rear 25% of the site is greater than one storey in height.

The lodgement of this application follows the granting of two previous consents by the land by the Land and Environment Court of NSW for the construction of two side by side boarding house developments on the two lots the subject of the current application. These two consents have not been activated and will be need to be surrendered (by condition) if the proposal seniors housing development is approved.

The exhibition of the application resulted in one (1) submission from a neighbouring property, which requested amendments to the building height and landscaping, and refuted the findings of the Flood Report. On balance, these matters have been found to either not hold determining weight or can be resolved via conditions. A second submission was received in response to the report from Council's Design and Sustainability Advisory Panel.

The proposal generally achieves compliance with the applicable planning controls, and is found to provide for a good level of internal amenity for occupants and neighbours alike. Notwithstanding any non-compliances to the relevant controls, the impacts of the non-compliances are largely inconsequential to the merits of the proposal.

This assessment concludes that the development is well designed, appropriately proportioned and will sit within an appropriate landscape setting. The development will make a positive contribution to the streetscape and character of the area, notwithstanding it is a larger and more substantial building than what is typical in the street, which pertains to its seniors housing characterisation and the associated planning controls.

Accordingly, it is recommended that the NBLPP as the consent authority, **APPROVE** the application, subject to draft conditions provided.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and construction of a seniors housing development comprising five (5) apartments made pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Specifically, the proposal involves:

- Demolition of all structures on-site
- Removal of four (4) trees (one of which is high value, and three of which are exempt palm trees)
- Excavation works to a maximum depth of 5.7m
- Construction of one (1) level of basement accommodating ten (10) car parking spaces, including one (1) visitor space
- Construction of two (2) buildings atop of the basement, one being two storeys and the other three storeys. The building accommodates five (5) apartments to be occupied by seniors or people with disabilities. Four (4) units are three (3) bedrooms and one (1) unit is two (2) bedrooms
- Planting of 14 new trees and several hundred new shrubs and groundcovers

Each of the apartments in the development are large in size, with the proposal having an overall Floor Space Ratio of 0.5:1.

During the course of the assessment, revised plans were received in response to Council's Development Engineers and Design and Sustainability Advisory Panel. The revisions made to the plans include:

- Internal layout changes to the car park
- Modification of driveway gradient
- In-filling of void space above car park with storage, waste room, cycle parking and mechanical systems
- Reduction in scale of temporary bin holding bay and changes to perimeter structure
- Addition of a privacy screen to stairwell
- Deletion of one bedroom from Unit 3
- Addition of ensuite windows
- Addition of more solar panels

The revised plans are not considered to involve changes that require the re-notification of the application, which is consistent with Council's Community Participation 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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 8 DP 6984 , 18 Alexander Street COLLAROY NSW 2097 Lot 9 DP 6984 , 18 Alexander Street COLLAROY NSW
------------------------------	--

	2097
Detailed Site Description:	The site is legally identified as Lots 8 and 9 in Deposited Plan 6984 and are cumulatively known as No. 18 Alexander Street, Collaroy. Herein this report reference to 'the site' pertains to both these lots. The site has a frontage to Alexander Street of 24.38m with a maximum depth of 47.955m equating to an overall area of 1,156.1 square metres. The site presently accommodates a part two / part three storey detached dwelling house with a detached single storey secondary dwelling, decking and an in-ground swimming pool. The site is located within the R2 Low Density Residential zone pursuant to the <i>Warringah Local Environmental Plan 2011</i>. The site is approximately 150m west of Pittwater Road and 200m west of Collaroy Beach. The site is bound by detached dwelling houses to the north, east and west. South of the site is a large bushland site occupied by the Salvation Army.

Map:



SITE HISTORY

Development Consents

DA2020/0205 and DA2020/0261 (Boarding Houses) - These development consents each relate to one of the lots making up the subject site, and were granted for the construction of a boarding house on each lot.

The two DA's were refused by the Northern Beaches Local Planning Panel on 2 September 2020. An appeal was lodged in the Land and Environment Court of NSW (*Wrights v Northern Beaches Council* [LEC No: 2020/145123]), which was upheld by the Court (after significant amendments were made to

address built form and character issues), with consent being granted on 29 March 2021.

These consents have not been activated. In the event that the current application is approved, a condition will be imposed requiring the surrender of the two boarding house consents.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the design following on from DSAP comments. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has

Section 4.15 Matters for Consideration	Comments
	been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This 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 matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any 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 22/10/2021 to 05/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Andreas Lehr	20 Alexander Street COLLAROY NSW 2097
Mr Niall Alastair Lindsay Johnston	11 Alexander Street COLLAROY NSW 2097

Two (2) submissions were received in response to the public exhibition of the application, one is support and one in objection.

The submission in support of the application did raise issue with a number of the recommendations made by the Design and Sustainability Advisory Panel. Specifically, the submission states that, if the recommended changes were to occur, there would be greater impacts on their amenity. The submission concludes with; *"The current proposed design, with extensive setback, landscaping and use of high quality materials is aesthetically pleasing. Significant changes as recommended by the DSAP Report are unlikely to result in better aesthetics and if implemented would result in a much more "block like" structure."*

The changes made to the design in response to the DSAP comments were relatively minor or internal and are not considered to result in any adverse impacts to neighbouring properties over and above the original scheme.

The following issues were raised in the submission which objected to the proposal:

- **Building Height**
- **Flood Report**
- **Landscape Plan Inaccuracies**

The matters raised in the submission are addressed as follows:

- **Building Height**

Comment:

The submission states that the building exceeds the height control and requests that the building height be lowered, that the lift overrun be lowered and that solar panels be installed flush to the roof (rather than projecting upwards).

The applicable building height provision for a seniors housing development is contained within SEPP (HSPD) which prevails over Council's LEP height control. The SEPP height is a maximum of 8.0m and is measured to the underside of the ceiling of the uppermost floor (rather than the roof ridge) and prohibits Council from refusing an application on the grounds of building height, if it complies with the 8.0m provision.

The plans submitted show the solar panels being installed directly atop the roof with no additional rise.

In this instance, as compliance is achieved with the SEPP, the building height variation to the LEP control does not permit the refusal of the application.

- Flood Report**

Comment:

The submission states that the submitted Flood Study contains results and conclusions that are incorrect, and states that the drainage plans for the proposal do not show how to prevent run-off from entering adjacent properties.

A detailed Overland Flow Study and Flood Impact Assessment Report has been provided with the application and has been reviewed by Council's Water Management Officer and Development Engineering Officer. The review reveals that the experts are satisfied with the proposed flooding and stormwater arrangements.

No expert evidence has been provided by the concerned resident to support the assertion that the submitted flooding reports are incorrect.

Accordingly, this matter does not warrant the refusal of the application.

- Landscape Plan Inaccuracies**

Comment:

The submission states that where shrubs are shown on the landscape plan, they should be replaced with native trees, as apparently had been discussed between the objector and the developer. Civil agreements between the parties are not relevant to the consideration of this application, and no evidence of an agreement has been provided.

Notwithstanding, Council's Landscape Officer has reviewed the proposal and the Landscape Plan and has indicated support for the application, subject to conditions as provided.

The objection is satisfied by way of conditions.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	The application was referred to the DSAP on 25 November 2021 and a copy of their report is attached. The panel made a number of recommendations to the proposal regarding solar access, amenity and privacy. Concerns were also raised about the large void space above the car park. In response to these concerns, the applicant revised the plans in the following ways: • <i>Provision of a privacy screen to the outermost edge of the external stairway.</i> • <i>Utilisation of the void space to now accommodate storage for residents, bicycle parking, waste storage rooms, batteries and air conditioning units.</i> • <i>Provision of communal seating ("meeting") areas in the</i>

Internal Referral Body	Comments
	<i>breezeway.</i> • <i>Addition of new windows in some units.</i> • <i>Deletion of one bedroom from Unit 3 to improve solar access.</i> Whilst the revised plans did not address all the comments raised by the DSAP, they have responded to the overarching intent of improving internal amenity and better utilising wasted space. The applicant did not relocate the car park entry to the side of the site as suggested by the Panel. Council's Traffic Engineer has raised no concerns with the proposed location of the driveway from an accessibility or safety perspective. It is considered that the proposal generally satisfies the DSAP recommendations.
Building Assessment - Fire and Disability upgrades	Supported, with conditions The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	Supported, with conditions This application is for the demolition of an existing residential dwelling and swimming pool, and the construction of a new housing development for seniors or people with a disability. The proposed development comprises of five three-bedroom apartments, with underground parking and new landscape works. Council's Landscape Referral section has assessed for compliance with the following relevant controls and policies: • State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004 - <i>Clause 33 Neighbourhood amenity and streetscape</i>; and <i>Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings</i>, • Seniors Living Policy - Urban Design Guidelines for Infill Development - <i>Clause 2 Site Planning and Design</i>; and <i>Clause 3 Impacts on Streetscape</i>, • Warringah Local Environmental Plan 2011, • Warringah Development Control Plan 2011 - <i>D1 Landscaped Open Space and Bushland Setting</i>; and <i>E1 Preservation of Trees and Bushland Setting</i>. The Statement of Environmental Effects provided with the application notes that a number of existing trees are to be removed as a result of

Internal Referral Body	Comments
	proposed works, and for this reason, an Arboricultural Impact Assessment has been provided. This Arboricultural Impact Assessment has identified a total of nine trees, three of which are located in the adjoining property to the south, two within the adjoining property to the west, with the remaining four trees located within the site boundaries. Of the nine trees identified, all trees outside of the site boundaries are proposed to be retained, with all those within the site proposed for removal. These trees proposed for removal include Tree No. 1, 2, 3 and 9. Tree No. 1 has been identified as two individual trees that have grown around each other, hence their health and structural integrity are heavily intertwined. These trees are located centrally within the site, and have been identified as being in good health, fair structure, with a high landscape amenity value. Tree No. 1 has been proposed for removal as it falls within the footprint of proposed works and is unable to be retained with the current site layout. Trees No. 2, 3 and 9 have all been identified as exempt palm species, and as a result, may therefore be removed without Council's approval. Trees No. 2 and 3 are located centrally within the site adjacent to Tree No. 1, whereas Tree No. 9, a group of palms, is located adjacent to the western boundary. Considering a large number of compensatory canopy trees have been proposed within the development, no concern is raised, and the removal of these trees is supported. Of the five trees proposed to be retained, identified as Trees No. 4, 5, 6, 7, and 8, Tree No. 6 is the only tree likely to be impacted by proposed works. The Arboricultural Impact Assessment has noted that the proposed basement, is anticipated to encroach into the Tree Protection Zone (TPZ) of this tree by less than 10%, with no encroachment into its Structural Root Zone (SRZ). The Arboricultural Impact Assessment has also accommodated for the over excavation that is likely to occur to construct the basement, hence no major concerns are raised regarding the impact of proposed works on the health and vitality of these trees. The retention of these trees is vital to satisfy control E1, as key objectives of this control include "to effectively manage the risks that come with an established urban forest through professional management of trees", "to protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological populations", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". A Landscape Plan has been provided with the application, with proposed works including the in-ground planting of trees, shrubs, accents, grasses and groundcovers, as well as the on-slab planting of shrubs, accents, grasses and groundcovers. Trees in pots have also been proposed. Generally, the proposed landscape works are supported as it is evident proposed works seek to enhance the landscape amenity of the site, whilst ensuring compensatory canopy trees are incorporated

Internal Referral Body	Comments
	to replace those trees removed. In addition, the significant planting in the front and rear setbacks, alongside the use of on-slab planting with spill over planting, provides valuable built form mitigation and softening, whilst positively contributing to the streetscape character of the locality. This is particularly important considering the proposed works seek to increase the overall scale of the built form when compared to that of the existing dwelling. Although this is the case, concern is raised with some of the proposed plant species, specifically the use of <i>Archontophoenix cunninghamiana</i>, <i>Brachychiton populneus</i> x <i>acerifolius</i> 'Bella Pink', <i>Pennisetum alopecuroides</i> 'Nafray' and <i>Rhaphiolepis indica</i> 'Oriental Pearl', as these have been identified as exempt species, or environmental weeds, and are therefore considered undesirable species. For this reason, it is recommended that these be substituted for locally native alternatives. Rather than the need for the applicant to re-submit an amended Landscape Plan, the need for this species change can be addressed through conditions of consent. The completion of these landscape works, inclusive of the required species change, is necessary to satisfy control D1, as key objectives of this control include "to enable planting to maintain and enhance the streetscape", "to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the dwelling", as well as "to enhance privacy between buildings". In terms of the State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004, with respect to Clause 33 Neighbourhood amenity and streetscape, development should, according to sub-clause (e) embody planting that is in sympathy with, but no necessarily the same as, other planting in the streetscape, sub-clause (f) retain, wherever reasonable, major existing trees, and, sub-clause (g) be designed so that no building is constructed in a riparian zone. In addition, with respect to Clause 34 Visual and acoustic privacy, development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by (a) appropriate site planning, the location and design of window and balconies, the use of screening devices and landscaping. Upon further review of the proposal, it is evident that sub-clause (e) and (f) of Clause 33 have been satisfied, as the proposal seeks to largely retain significant native canopy trees adjacent to the southern boundary. Although a major tree within the site is to be removed to accommodate proposed works, the proposal seeks to supplement this with a number of additional locally native canopy trees, alongside shrubs and under-storey planting, significantly improving the landscape amenity, character and value of the site. Sub-clause (g) has also been satisfied as no riparian zone is to be affected or impacted by proposed works. The landscape component of Clause 34 has also been satisfied, as the Landscape Plan demonstrates significant screen planting is to be incorporated on the ground floor along each boundary, as well as in raised on-slab planters to prevent overlooking to neighbouring properties. Additionally, under the State Environmental Planning Policy (Housing

Internal Referral Body	Comments
	for Seniors or People with a Disability), 2004, with respect to Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings, a consent authority must not refuse consent to the development application made pursuant to this chapter for carrying out of development for the purpose of self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds: (c) landscaped area if - (i) in the case of a development application made by a social housing provider - a minimum 25 square metres of landscape area per dwelling is provided, or (ii) in any other case - a minimum 30% of the area of the site is to be landscaped, (d) deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres. The Landscape and Architectural Plans provided illustrate a total landscape area of 43.3%, of which 25.8% is deep soil. This is well above the minimum requirements outlined in sub-clause (c) (ii) and (d), with a significant area dedicated to deep soil planting. The whole rear setback of the site, totalling 154.6 square metres has been dedicated to deep soil, with a minimum dimension of approximately 4 metres at its smallest, and 6.5 metres at its largest. In addition, a deep soil area of 117.4 square metres has been allocated to the north-east corner of the site, within the front setback. This area provides valuable deep soil area to establish large canopy trees which are necessary to mitigate and soften the bulk and scale of the dwelling. Considering the above information, the proposal appears to be compliant against the State Environmental Planning Policy (Housing for Seniors or People with a Disability), 2004. Furthermore, with relation to the Seniors Living Policy 'Urban Design Guidelines for Infill Development', the objectives of this policy are largely synonymous with that of the State Environmental Planning Policy. The two primary clauses that relate to landscape include <i>Clause 2 Site Planning and Design</i>: and <i>Clause 3 Impacts on Streetscape</i>. The objectives of Clause 2 include "to retained existing natural features of the site that contribute to the neighbourhood character", "to provide high levels of amenity for new dwellings", "to maximise deep soil and open space for mature tree planting, water percolation and residential amenity" as well as "to minimise the physical and visual dominance of car parking, garaging and vehicular circulation". The key objectives of Clause 3 include "to minimise impacts on the existing streetscape and enhance its desirable characteristics", "to ensure that new development, including the built form, front and side setbacks, trees, planting and front fences, is designed and scaled appropriately in relation to the existing streetscape". As discussed above, the proposed landscape works seek to retain significant trees at the rear of the site, compensate tree removal with the planting of new native canopy trees, as well as

Internal Referral Body	Comments
	improve the overall amenity of the site through the implementation of layered planting to enhance privacy of the site and its immediate neighbours. For this reason, the proposal appears to be compliant and achieve the key objectives of this design policy. The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plans, inclusive of the required species changes.
NECC (Development Engineering)	UPDATED COMMENTS 7/3/22 The design engineer has provided a crest within the driveway to provide approximately 330mm of freeboard above the 1 in 100 year AEP water surface level adjoining the driveway entrance. The bin bay walls and an adjoining blade wall extend over Councils existing stormwater line, the bin bay needs to be modified slightly so the location of the bin bay north west corner wall can comply with Councils Water Management policy for development. No objection to the development subject to conditions. UPDATED COMMENTS 13/1/2022 In terms of the flood study, the post development results indicate that overland flows will pass the north western corner of the site. This portion of the site proposes a front wall, the entry gate and the bin store walls. These structures have not been modelled in the flood report and will likely impede the flows. In this regard, the applicant must amend the design to ensure no structures impede the flows. Open style fences and gates will be acceptable. The applicant's Engineer must review the design and confirm the flows will not be impeded. The existing Council pipeline has been accurately located and is outside of the existing drainage easement burdening the site. In this regard, a new easement will need to be created 3 metres wide centrally over the pipeline and the old easement extinguished. The bin store walls must not be located within the area of this proposed easement. The architectural plans are to include the proposed easement. Finally, I have reviewed the proposed driveway grades and they do not appear to be in accordance with the requirements of AS/NZS2890.1:2004. In this regard, the applicant must provide sections on both sides of the driveway from the kerb invert to the basement demonstrating compliance. The grade from the kerb invert to the boundary is to be a maximum of 5% and internal grades must

Internal Referral Body	Comments
	include a maximum grade of 1 in 8 for 6 metres from the boundary up to the required crest. Transitions to the basement are to be in accordance with the above standard. Previous comments The proposed stormwater drainage plans were reviewed and the following further information is required. 1) Submission of a DRAINS model for Council review including design summary parameters . Please note the pre existing condition is to be set at state of nature. The model has to be prepared in accordance with Councils Water Management Policy for Development and Australian rainfall and runoff 2019. Additionally Councils overland flow mapping indicated the property is affected by overland flow and as such a Overland flow hydrological/hydraulic study is to be provided in accordance with the design parameters and relevant chapters of Australian Rainfall and Runoff 2019. Councils preferred model is DRAINS and the study is also to be in accordance Councils Water Management Policy for Development.
NECC (Riparian Lands and Creeks)	Supported, without conditions This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The property is not impacted by the riparian and creek corridor.
NECC (Water Management)	Supported, with conditions The application meets the requirements of the relevant Environmental Planning Instruments and policies and complies with controls for water quality/groundwater.
Traffic Engineer	Supported, with conditions The proposed development includes demolishing the existing dwelling and building 5 Seniors Living 3-bedroom self-contained residential apartments with an associated basement car park with 15 car spaces. The site comprises two (2) adjoining allotments with a combined area of 1,156.117sq.m. The consolidated site is rectangular with a frontage of 24.38 metres to Alexander Street. Traffic: · Traffic generation as per the updated TfNSW traffic generation guidelines TDT 2013/04a : 0.4 peak hour vehicle trips per dwelling. $0.4 \times 5 = 2$ vehicle trips /

Internal Referral Body	Comments
	peak hour Existing (for 1 dwelling) traffic generation about 1 vehicle / hour Therefore nett increase in traffic due to the proposed development = 2-1= 1 vehicle /hour Traffic impact is not significant. · Demolition and Construction Traffic Management Plans are required. Public transport availability Available on Pittwater Road about 250 m from the subject site. Parking: · Required - As per SEPP, 0.5 space/bed room for residents and no visitors' parking is required. · So required number of resident parking spaces = $0.5 \times 15 = 7.5 \sim 8$ parking · Provided: - Proposing 15 spaces. Includes 1 visitors' accessible parking. - Also, Motorbike parking facilities and Bike Storage is available. Parking requirements are satisfied. Access and circulation swept paths:

Internal Referral Body	Comments
	Access: - Two (2) existing driveways will be removed and new vehicular access to the basement parking area is provided via a combined entry/exit driveway extending to/from Alexander Street. - The driveway width is 5.5 m. - Exit/Entry in a forward direction Swept paths Submitted and satisfactory. - Pedestrian safety: Vehicular entry and building entry are separated. No safety concerns. Servicing: Normal domestic waste collection applies. On-street waste collection is deemed acceptable. Ongoing All facilities should be maintained throughout the lifetime of the project. Conclusion In view of the above, the development proposal can be approved with conditions.
Waste Officer	Supported, with conditions

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions as recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a part-two/part-three storey seniors housing development plus basement car parking for the provisions of five (5) self-contained dwellings. Whilst the habitable components of the building are limited to two-storeys, the semi-below ground level accommodating storage and services is not less than 1.2m above ground level, and does not provide for car parking and therefore, by the SEPP 65 definition, constitutes a storey.

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 the proposal is part 3 storeys in height.

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 DA stage. This documentation has been submitted by the applicant.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

The proposal was reviewed by the Design and Sustainability Advisory Panel, noting that Council does not have a SEPP 65 Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The character of Alexander Street is defined by its narrow roadway and steepness as it rises to the west and the predominant urban character is its residential nature and the appearance of predominantly 2 storey buildings with landscaped frontages.

The proposal maintains the distinctive residential look of the street and employs a deep front setback with dense landscaping to both enhance the streetscape and to minimise the visual impact of the building.

The building as a whole is considered to be well designed and contextually appropriate for the neighbourhood.

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

Whilst the proportions of the built form are greater than those of a single dwelling house, the overall scale of the building is not so great that it appears incongruous with the other buildings in the street.

The architecture of the proposal incorporates materiality changes, significantly stepping and tiered landscaping which, combined with the large setbacks, results in a built form that is of an appropriate built form and scale for the land, the street and the locality.

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 addition of five (5) residential units along Alexander Street is appropriate and commensurate with the sites proportions and proximity to the local centre, public transport and the beach reserve.

Principle 4: Sustainability

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

Comment

The proposal incorporates both passive sustainability measures (solar access, shading, cross-ventilation) and built solutions (photovoltaic panels, EV chargers, water harvesting).

Principle 5: Landscape

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

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

Comment

The building is surrounded by landscaping on all sides in a manner which is more formalised than most other buildings in Alexander Street. The quality of proposed landscaping is considered to be high and will enhance the site and the wider streetscape and character. The landscaping will also enhance the quality of accommodation afforded to future residents.

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 provides a high level of amenity for future occupiers and for neighbours.

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 level of documentation submitted at DA stage is satisfactory and sufficient to show that the building is capable of providing a safe environment for residents and the public.

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 development is situated in a zone that is dominated by detached dwelling houses and is proximate to the B2 Local Centre zone to the east. The addition of four (4) x three (3) bedroom apartments and one (1) x two (2) bedroom apartment is considered to provide diversity and alternate housing choice for the community commensurate with the prevailing housing typology.

Principle 9: Aesthetics

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

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

Comment

For the reasons detailed throughout this report, the development as a whole is considered to exhibit a good standard of architecture in terms of its massing, proportions and materiality. On balance, the building will enhance the streetscape and character of the locality, whilst providing a high level of

amenity for future occupants without being to the detriment of existing neighbours.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The development is sited appropriately on the land commensurate to the prevailing planning controls and contextually relates to the setbacks and heights of adjacent buildings.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The site is orientated in a northerly direction to optimise solar access within the development without causing any unreasonable overshadowing of neighbouring 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?	Consistent The development has an appropriate interface to the street-edge for a residential development. That interface does not compromise safety or security.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Inconsistent (Satisfactory on merit) The proposal does not provide a sufficient area of communal open space, however as each unit is dedicated a private outdoor area greater in scale than the requirements, and given the proximate location to the beach, the absence of communal open space is found to be acceptable.
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements:	Consistent The development

	<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 rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <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> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	dedicates 25% of the total site area to deep soil zones.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <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> </tbody> </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 (Satisfactory on merit) The building is up to 12.0m (4 storeys) in height and therefore the appropriate spatial separation distances are 6.0m and 3.0m. As the site is within a zone which permits 0.9m side boundary setbacks, compliance with this control is largely contingent on the design of the building itself, rather than neighbouring buildings. Unit 1 (located at ground level and above the driveway entrance) is orientated to the street (north) with minimal flank windows. To the south the terraced is screened by a wall and landscaping. Unit 2 (located above Unit 1) is the same situation as Unit 1. Units 3 and 4 (located to the rear of the block, level with the ground in that location) are primarily orientated to the south, but do have windows on their
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
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Over 25m (9+ storeys)	12m	6m												

		flank elevations, including doors from a dining room on the western elevation. However, these doors and windows open onto a garden that is landscaped and bound by a 1.8m high boundary fence. These factors result in there being no unreasonable level of overlooking into neighbouring properties. Unit 5 (top floor) is orientated northwards and only has side-facing flank windows from bedrooms which are not anticipated to cause any unreasonable overlooking. Unit 5 does benefit from a larger roof terrace which is set off the eastern boundary by 5.6m and western boundary by 7.0m. Beyond those measurements are landscaped planter boxes along the perimeter of the terrace which would restrict opportunities for downwards viewing and, over time, would block horizontal views from the terrace. On balance, the proposal is considered to be well designed for its context and, despite not strictly complying with the requisite spatial separation requirements, results in an acceptable visual privacy outcome.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent

Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent
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 Carparking is to be provided in accordance with the provisions of SEPP (HSPD) as discussed later in this report (ratio of 0.5 spaces per bedroom - 14 bedrooms proposed, 7 spaces required, ten provided).
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. - A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent Four out of the five units receive an adequate provision of solar access in mid-winter with Unit 4 being non-compliant. This equates to 80% compliance.
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	Consistent

	these levels allows adequate natural ventilation and cannot be fully enclosed.													
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent												
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 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>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Consistent
Minimum ceiling height														
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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 All apartments exceed the prescribed dimensions.		
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												
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent												
	In open plan layouts (where the living, dining and	Consistent												

	kitchen are combined) the maximum habitable room depth is 8m from a window.																
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Consistent															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent															
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Consistent															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <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
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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.	Consistent															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <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></td><td></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²			Consistent					
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, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent	
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent	
Configuration			
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent	
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent The ground floor apartment provides a satisfactory level of safety for the residents.	
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The building is considered to be a high quality design which manages to obscure its true scale by way of its pavilion design. The architecture, generous setbacks and landscaped treatment result in the building facade being contextually appropriate with the street.	
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent	
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent	
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Consistent	

	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
	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
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A The development does not seek to utilise the existing structures for adaptive re-use.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				N/A The development is not for a mixed use 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.				N/A No awnings or signage to the public domain are proposed.
Performance					

Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

The development application is not being refused on any of these grounds.

(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 development application is not being refused on any of these grounds.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1238507M_02 dated 28 January 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	60

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

SEPP (Housing for Seniors or People with a Disability) 2004

The application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (**SEPP (HSPD)**) as the development is for the construction of five (5) self-contained dwellings for seniors or people with a disability. An assessment against the relevant provisions of SEPP (HSPD) is as follows.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows:

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The development seeks to provide five (5) dwellings for seniors or people with a disability on an unusually large parcel of land in an accessible location. Notwithstanding any numerical non-compliances as discussed later in this report, the overall design and outcomes of the proposal are supported and on balance the proposal is considered to achieve the aims of the SEPP (HSPD).

Chapter 2 – Key Concepts

Comment:

The development is appropriately described as "*in-fill self-care housing*" falling under the umbrella term of *self-contained dwellings*, as permitted under the SEPP (HSPD).

Chapter 3 – Development for Seniors Housing

Chapter 3 of SEPP (HSPD) contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of (SEPP HSPD) outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The development provides satisfactory access to shops, banks and other retail and commercial services as required, as well as community services and recreation facilities, and a GP. The site is proximate to the Collaroy Beach town centre area.	YES
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The site is located within 400m of a bus stop that is regularly serviced throughout the day and not. The adjoining commercial area also accommodates a number of services and uses that will contribute to the amenity of residents.	YES
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not located within bushfire prone land.	N/A
28	(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.	The site is capable of being connected to a reticulated water system and sewerage infrastructure. Evidence of this infrastructure is detailed on the accompanying survey plan.	YES
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii),	This clause applies as Clause 24 (Site compatibility certificate) does not apply. The site is situated within an urban context comprised by commercial	YES

Development Criteria			
Clause	Requirement	Proposal	Complies
	and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	developments to the north and east and low density residential developments to the south and west. The transitional scale of this development in terms of its proportions and density represent an appropriate development for the vicinity given existing uses. The provision of landscaped area is generally consistent with what can reasonably be expected to be provided on adjacent sites. The proposed development, by virtue of its proportions, form and character is not considered likely to prejudice the amenity or development potential of surrounding sites.	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis is provided in the submitted architectural plans and Statement of Environmental Effects.	YES

Clause 31 Design of In-fill Self-care Housing

Pursuant to Cause 31, in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP (HSPD). A detailed assessment of the proposal against the requirements of Seniors Living Policy is undertaken hereunder.

Section	Requirements	Comment
1. Responding to Context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique	Proportionately the subject development site is larger in area than adjoining residential sites to north, east and west. Whilst the scale of the development is larger than a traditional dwelling house, the land it sits on is also larger which enables the development to be visually congruous with neighbouring properties. The WLEP 2011 and WDCP 2011

Section	Requirements	Comment
	character.	do not have any specific locality statements as such but rather seek to define an appropriate character through the applicable built form controls. An assessment of these factors can be found later in this report under Part B of the WDCP 2011.
2. Site Planning and Design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	The proposal is a well-designed residential building integrated within a landscaped setting. The landscaped characteristics of the proposal, combined with the material palette and proportions of the development ensure that any negative impact on neighbourhood character is minimise. The car parking entrance is considered to be a safe, efficient and acceptable option. It is noted that Council's DSAP recommended that access be reduced in size and changed in location, however this has been objected to by an adjoining land owner and could (unassessed) compromise road and pedestrian safety. On that basis the site planning and design is acceptable.
3. Impacts on Streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	The primary desirable characteristic of Alexander Street is the landscaped frontages of houses, however this character has somewhat been eroded by the dominance of car parking both within those frontages, and on the street. The design of the development ensures that the frontage of the site is densely landscaped and does not provide any car parking within the frontage. In that respect, the proposal enhances the desirable characteristics of the streetscape and minimises the dominance of driveways and car park entries in the streetscape.
4. Impacts on Neighbours	The proposal is generally in accordance with the requirements of this section.	The proposal is not found to have any unreasonable impacts on neighbours as expanded upon

Section	Requirements	Comment
		(where necessary) in the WDCP 2011 section of this report and in the below table against the criterion of Division 2 of the SEPP.
5. Internal Site Amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	Appropriate internal amenity and circulation is provided for occupants and their guests.

Clause 32 Design of Residential Development

In accordance with Clause 32 of SEPP (HSPD) a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of the SEPP.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP (HSPD).

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood Amenity and Streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The proposal recognises the proportions of nearby buildings and the prevalence of landscaped frontages. The design responds to those frontages by providing a greater than average setback and ample landscaping to ameliorate any perceived visual bulk of the structure.	YES
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	On that basis, the design appropriately responds to the streetscape. There are no adjacent or proximate heritage items.	YES
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and	These matters are considered elsewhere in this report under the provisions of SEPP 65 (Apartment Design Guide).	YES

Control	Requirement	Proposed	Compliance
	overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors. d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.	The proposed front setback is significantly greater than neighbouring buildings. The WDCP 2011 requires a setback of 6.5m. The proposed first floor (above basement) is setback 14.5m and the floor above is setback 28.7m from the front boundary. The proposed Landscape Plan and planting schedule has been accepted by Council's Landscape Officer, subject to conditions as recommended. Achieved. Achieved.	YES YES YES YES
CL34 Visual and Acoustic Privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and	The development is considered to provide an acceptable level of visual and acoustic privacy to both occupants of the development itself, and to neighbouring buildings.	YES

Control	Requirement	Proposed	Compliance
	balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.		
CL35 Solar Access and Design for Climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	This matter is discussed in greater detail elsewhere in this report under the Apartment Design Guides assessment criteria but in summary, the proposal is considered to provide acceptable solar access appropriately designed for the climate.	YES
CL36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Council's Development Engineers are satisfied with the proposed stormwater solution.	YES
CL37 Crime Prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of	Access to the development is via a secure lobby. The front garden areas and access pathways are overlooked by the units within the development itself which provide for natural passive surveillance of the surrounding area.	YES

Control	Requirement	Proposed	Compliance
	the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	The individual apartments can be designed with 'peep holes' in the doors to see who is standing at them.	
CL38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The site is afforded a reasonably level footpath from its frontage to the Pittwater Road shops, amenity and bus stops. That pedestrian environment is considered to be appropriately safe and comfortable for pedestrians. Internally within the site an adequate provision of safe and easy-to-navigate pedestrian amenity is provided.	YES
CL39 Waste Management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The waste storage room will provide appropriate recycling facilities as required.	YES

Part 4 - Development Standards to be Complied With

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP (HSPD) a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP (HSPD).

Control	Required	Proposed	Compliance
Site Size	1000 sqm	(surveyed) 1,156sqm	Yes
Site frontage	20 metres	24.39 metres	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Less than 8 metres	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height	Noted	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height	The building proposes a two storey component in the rear 25% of the site.	No (see Clause 4.6 discussion elsewhere in this report)

Clause 41 Standards for Hostels and Self-contained Dwellings

In accordance with Clause 41, a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50%	Capable of complying as secured via condition.	YES

Control	Required	Proposed	Compliance
	whichever is the greater.		
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Capable of complying as secured via condition.	YES
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	Capable of complying as secured via condition.	YES
Private Car Accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Capable of complying as secured via condition.	YES
Accessible Entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Capable of complying as secured via condition.	YES
Interior General	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Capable of complying as secured via condition.	YES
Bedroom	At least one bedroom within each dwelling	Capable of complying as secured via condition.	YES

Control	Required	Proposed	Compliance
	must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.		
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of complying as secured via condition.	YES
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of complying as secured via condition.	YES
Surface Finishes	Balconies and external paved areas must have slip resistant surfaces.	Capable of complying as secured via condition.	YES
Door Hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Capable of complying as secured via condition.	YES
Ancillary Items	Switches and power points must be provided in accordance with AS4299.	Capable of complying as secured via condition.	YES
Living & Dining Room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Capable of complying as secured via condition.	YES
Kitchen	The kitchen must comply with the	Capable of complying as secured via condition.	YES

Control	Required	Proposed	Compliance
	requirements of Clause 16 of Schedule 3		
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Capable of complying as secured via condition.	YES
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Capable of complying as secured via condition.	YES
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Capable of complying as secured via condition.	YES
Garbage	A garbage storage area must be provided in an accessible location.	Capable of complying as secured via condition.	YES

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP (HSPD) a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP (HSPD).

Control	Required	Proposed	Compliance
Building Height	8m or less (Measured vertically from ceiling of topmost floor to	The development has a building height (measured from the underside of the top-	YES

Control	Required	Proposed	Compliance
	ground level immediately below)	most level ceiling to the ground level immediately below) of less than 8.0 metres.	
Density and Scale	0.5:1	0.583:1 (583.6sqm to 1,156.1sqm)	NO
Landscaped Area	30% of the site area is to be landscaped	43.3% (500.7sqm)	YES
Deep Soil Zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	The site provides two thirds of its deep soil zones located to the rear of the site.	YES
Solar Access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	This matter is discussed in greater detail elsewhere in this report under the Apartment Design Guides assessment criteria but in summary, the proposal is considered to provide acceptable solar access appropriately designed for the climate. The proposal is not being recommended for refusal on this basis.	YES
Private Open Space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a	Each dwelling is afforded satisfactory private open space.	YES

Control	Required	Proposed	Compliance
	living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	(i) 0.5 car parking spaces for each bedroom where the development application is made by a person other than a social housing provider.	14 bedrooms requiring 7 car parking spaces. Nine residential car parking spaces providing plus one visitor space.	YES
Visitor Parking	None required if less than 8 dwellings	Five dwellings proposed therefore no visitor parking required, however one space is provided.	YES

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

Since the lodgement of this development application on 05 October 2021 the new State Environmental Planning Policy (Housing) 2021 (*Housing SEPP*) has become adopted and supersedes the previous SEPP (HSPD).

The new Housing SEPP includes standards for seniors housing development, however as the application was lodged prior to the coming into force of the new instrument (being 26 November 2021) a savings provision pursuant to Schedule 7 states that the former provisions of a repealed instrument (being the SEPP (HSPD)) continue to apply.

Accordingly, an assessment against the provisions of the Housing SEPP is not required in this instance.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an

application for modification of consent) for any development carried out:

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

Comment

The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions as recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings*	8.5m	Roof: 8.5m	-	Yes
		Lift shaft: 9.0m	5.8%	No*
		Underside of ceiling: <8.0m	-	Yes

***Note:** Clause 50 of the SEPP (HSPD) prevails over Clause 4.3 of the WLEP and provides for a maximum building height of 8.0m (measured to the underside of the top-most ceiling). As the consent authority cannot refuse a development application that complies with the SEPP (HSPD) standard, regardless of compliance with the WLEP 2011 standards, the 5.8% breach to the lift shaft is nullified and is not discussed further in this report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Clause 40 of the SEPP (HSPD) incorporates Development Standards pertaining to minimum sizes and building height for HSPD developments.

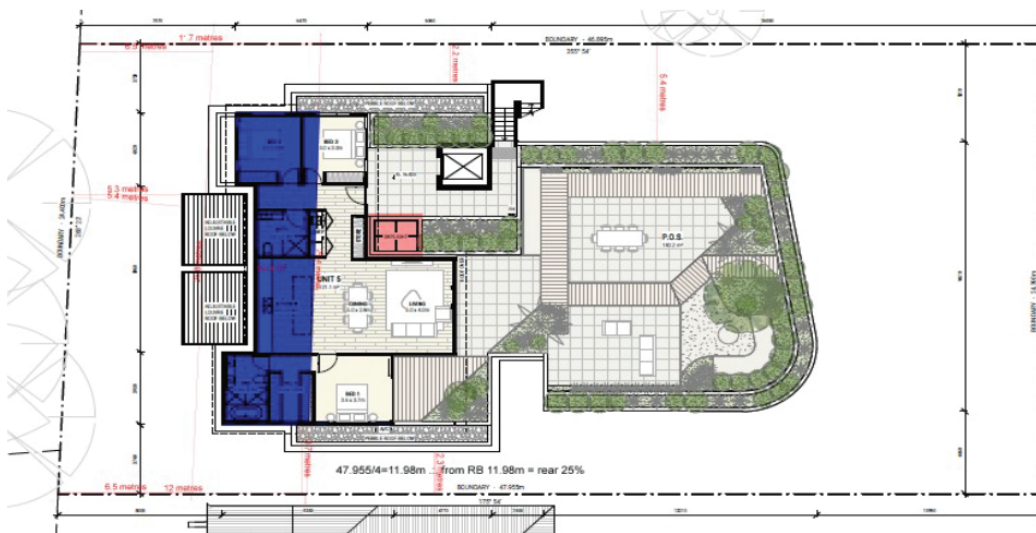
Of note in this Clause is subclause (4)(c) which reads:

(4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted—

.....

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The proposed development breaches this development standard, as detailed in the extract from the working plans below, noting that the section highlighted in blue is two storeys within the rear 25% of the site and is the subject of this Clause 4.6 exception assessment:



Development Standard:	SEPP (HSPD) cl.40(4)(c)
Requirement:	A building located in the rear 25% site area must not exceed 1 storey in height
Proposed:	Two storeys
Percentage Variation to Requirement:	21%*

*Of the rear 25% building area approximately 21% is proposed to be built within $(46.895/4=11.723)$.

$47.955/4=11.988$. $(11.723+11.988)/2=11.855$. $59.4/(11.855 \times 24.4) = 20.1\%$

Assessment of Request to Vary a Development Standard

The following assessment of the variation to SEPP (HSPD) Clause 40(4)(c) development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

SEPP (HSPD) Clause 40(4)(c) 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.

Applicants Submissions

The applicants written request argues, in part:

- *that the objectives and purposes of the standard are achieved*
- *that the underlying purpose of the standard is not relevant to the development*
- *that the proposal complies with the setback controls under the WDCP 2011*
- *that the existing development on the site displays a similar level of non-compliance*
- *that the non-compliance is not directly attributable to any impacts on adjacent land*

Comment: It is concurred with that the subject site is not regular in that it doesn't back onto another R2 zoned property and thus the assumed intent of (4)(c) is either not relevant, or is assumed to be achieved. Notwithstanding the numerical non-compliance, the portion of building in the rear 25% of the site is not found to impact on the amenity of neighbouring properties on either side and has a lesser impact on neighbours and the streetscape than a building that was situated closer to the street (which could have been proposed).

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 SEPP (HSPD) Clause 40(4)(c) development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

SEPP (HSPD) Clause 40(4)(c) does not contain any specific objectives pertaining to the requirements of the control. The primary purpose of the control is to limit two storey development in the rear quadrant of a site in zones that are intended to accommodate low density residential development only (i.e. not accommodate residential flat buildings). On that basis, it can reasonably be deduced that the intent of the control revolves around an increased impact on neighbouring amenity consequent of an increased density, and the potential for an increased building bulk and scale.

In the absence of any specific objectives, it has been determined that an assessment of the proposal against the underlying objectives of the Clause 4.3 Height of Building development standard is

necessary, as it is the most relevantly aligned development standard pertaining to height.

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

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

Comment:

The proposed development is broken into two pavilions that are generally two storeys in height and are of an architectural typology that is not inconsistent with a typology that could be expected to be found in a residential street.

The height of the development is generally consistent with neighbouring properties, if not lesser. The majority of the building height sits below the 8.5m building height control (under WLEP 2011) with the exception of the lift shaft which reaches 9.0m. The height of the development remains congruous with residential properties on sloping sites.

The site entails two standard size allotments which, together make the site one of the largest in Alexander Street. Whilst the development may have a larger footprint than neighbouring detached dwelling houses, the site does have an area double the size of neighbouring properties. The footprint of the building is not so large as to be double the size of nearby properties. On that basis, the scale and footprint of the development is compatible with the scale of surrounding and nearby development.

For the reasons detailed below [particularly in subclause (d)] the overall development, whilst it is non-compliant with respect to the rear 25% setback requirement, it is considered acceptable.

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

Comment:

The R2 zone is subject to a 6.5m front building setback control which, generally is the character of development in the street. The proposal provides for a 14.5m front setback at ground level, and a 28.7m front setback at first floor level. These significant setbacks serve to minimise the visual impact of the development.

The works overall are not found to result in any detrimental disruption of views, loss of privacy or loss of solar access to neighbouring properties.

Whilst SEPP (HSPD) Clause 40(4)(c) seeks, in part, to minimise overlooking of properties to the rear, such is not an issue in this circumstance, as the site adjoins a large and densely vegetated parcel of land owned by the Salvation Army. It is not anticipated that in the foreseeable future any development of this neighbouring site would occur within a 6.0m distance of the shared boundary and as such, the intent of (4)(c) and the WDCP 2011 rear setback control are achieved. Furthermore, the impacts on the two adjoining properties, both to the east and west, are reasonable and acceptable.

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

Comment:

As described throughout this report, the proposal is well designed and is of a reasonable density and proportions commensurate to the lot size and proximity to the local centre. These proportions and the overall architecture of the proposal are found to be enhancing to the Alexander Street streetscape and do not compromise the scenic quality of the environment.

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

Comment:

For the reasons described above pertaining to the front setback distances, combined with the details of the Landscape Plan, it is considered that from the streetscape the buildings overall proportions would not be readily visible, and even less-so when the vegetation matures over time. From Alexander Street, the building has an appropriate visual impact.

As the reason for this assessment is the rear setback, it is also relevant to consider the visual impact when viewed from the Salvation Army parkland area (despite not being public land). The proposed development is lesser in height than the existing house and is of a similar width. The 'first floor' (backing onto gardens) will not readily be seen from the Salvation Army site as it will be behind a fence and landscaping. The first floor will have greater visibility, however that facade is simple view few window openings which result in no unacceptable degree of overlooking, or perception of being overlooked.

The visual impact on the development from both the street and the property to the rear is acceptable.

Zone Objectives

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

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

Comment:

The development provides for five new dwellings on a large lot surrounded by a landscaped curtilage. The proposal maintains a reasonably low density, without impacting on the amenity of neighbours and provides for new housing.

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:

The proposal provides for residential accommodation in a residential zone. The proposed apartments and site provide sufficient services and facilities to cater for the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

The development provides a compliant provision of landscaped open space in accordance with the SEPP and the DCP, providing more than 500m² of vegetated areas that will enhance the site and the overall street, and will overtime screen the development from public view.

It is considered that the development satisfies this objective.

Conclusion on Objectives

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the SEPP (HSPD) cl. 40(4)(c) Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	7.8m	8.3%	No
B3 Side Boundary Envelope	east - 4.0m	No encroachments	-	Yes
	west - 4.0m	Unit 5 - two encroachments measuring 0.9m(h) by 4.1m(l) and 0.8m(h) by 5.9m(l)	22.5%	No
B5 Side Boundary Setbacks	east - 0.9m	Building - 2.6m +	-	Yes
	west - 0.9m	Balcony - 1.2m Building - 2.2m +	- -	Yes Yes
B7 Front Boundary Setbacks	north - 6.5m	Bin Room - 0.8m Building - 12.1m +	12.3% -	No Yes
B9 Rear Boundary Setbacks	south - 6.0m	Terrace - 5.3m Building - 6.55m +	11.6% -	No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (462.44m ²)	43.3% (500.7m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 of the WDCP 2011 limits external wall heights in a singular plane to 7.2m. The proposal exceeds this by providing a wall height of 7.8m thus resulting in a 8.3% variation to the control. It is noted that the development complies with the prevailing building height control under the SEPP

(HSPD).

Merit consideration

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

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

Comment:

The non-conforming wall height is not attributable to any unreasonable or excessive visual bulk or visual impact when viewed from neighbouring properties or the public domain.

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

Comment:

The development maintains a height generally beneath the existing tree canopy level.

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

Comment:

As described later in this report the proposal does not result in any unreasonable sharing of views.

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

Comment:

The non-conforming wall height is not found to be attributable to any amenity impact on neighbouring properties.

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

Comment:

Whilst exceeding the prescribed wall height, the overall development is of a compliant building height which demonstrates responsiveness to the site topography.

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

Comment:

The proposal provides a sufficient innovative roof pitch and is broken into two pavilions to ensure a visual break is afforded when viewed from the public or private domain.

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

B3 Side Boundary Envelope

Description of non-compliance

The site is subject to the 4.0m side boundary envelope control. The development encroaches this prescribed envelope on the western elevation by up to 22.5%, as shown in red on the following working drawing:



Merit Consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk*

Comment:

Despite the encroachment of the envelope as shown above, the overall design does not exhibit a height of bulk that is congruous with a typical dwelling house on a sloping block. The overall massing of the building is compliant with the building heights and side setback requirements and is therefore deemed to be acceptable.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings*

Comment:

The encroachment of the side boundary envelope is inconsequential to amenity impacts on neighbouring properties.

- *To ensure that development responds to the topography of the site*

Comment:

The development is split into two pavilions and follows the contours of the land to both minimise the presentation of the building from the street and from neighbouring houses. The design is therefore considered appropriately responsive to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The site is subject to a 6.5m front boundary setback control. Whilst the building significantly exceeds this requirement, with a minimum setback of 12.1m, the temporary waste holding area encroaches with a setback of under 1.0m. This holding bay does not permanently accommodate bins, rather it is only to have bins in it on collection day when they will be transported from the basement.

Merit Consideration

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

- *To create a sense of openness*

Comment:

The non-conforming element consists of a lightweight roof structure elevated above the fence height on posts. The open nature of the structure, and the landscaped curtilage of it ensures a sense of openness is maintained.

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

Comment:

The presence of structures within the front setback area is not unprecedented in the street and, given the minimal scale and openness of the structure, maintains an appropriate visual continuity.

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

Comment:

The streetscape is considered to be enhanced by the development

- *To achieve reasonable view sharing*

Comment:

The non-conforming element does not contribute to any view loss.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The development is subject to a 6.0m rear building setback control. The building complies with that requirement, but a portion of the Unit 3 terrace encroaches the setback by 700mm.

Clause B9 includes a variation provision that reads:

On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.

That variation provision is applicable to this development.

Merit Consideration

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

- *To ensure opportunities for deep soil landscape areas are maintained*

Comment:

The development provides a compliant provision of landscaping and deep soil zones.

- *To create a sense of openness in rear yards*

Comment:

The encroaching element consists of paving tiles at grade and thus does not compromise a sense of openness.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings*

Comment:

The encroachment element is positioned nearly 8m from the western side boundary and backs onto the aforementioned Salvation Army site and thus, does not harm the amenity of adjacent land.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements*

Comment:

The variation sought is not inconsistent with landscaped elements in the streetscape.

- *To provide opportunities to maintain privacy between dwellings*

Comment:

The encroaching element does not jeopardise the privacy of neighbouring dwellings or future occupants.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C3 Parking Facilities

The car parking ratio provided under SEPP (HSPD) prevails over Appendix 1 of the WDCP 2011, but in any event, the proposal complies with both ratios and is therefore considered to provide an appropriate provision of car parking facilities.

D3 Noise

The proposal is not anticipated to generate any day-to-day noise that would be detrimental to the amenity of adjacent properties above and beyond what could readily be anticipated to be audible from a residential properties.

The mechanical systems of the proposal are located in the semi-underground level between the basement and residential accommodation above, and this will provide acoustic shielding to any noise emitted from these systems.

D7 Views

The proposed development has not been found likely to cause any unreasonable impacts on the provision of views currently enjoyed from neighbouring properties. Given the general compliance with the Built Form Controls, the proposal is likely to have the same level of impact (or lesser) than that of a detached dwelling house on just one of the two lots.

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 \$20,691 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,069,059.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 40(4) of the SEPP (HSPD) 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.

Summary of Assessment and Conclusions

The assessment, notification and review by the DSAP has determined that the proposed development has merit and it is noted that the main design and amenity issues that arose during the assessment process were addressed by the applicant and resolved.

The revised design appropriately responds to the context and topography of the site and on balance, presents as an appropriate built form for the locality. The variation that is sought to the rear 25% building development standard is inconsequential to the context, setting and amenity of residents and does not detract from the overall merits of the application.

The larger than required front setback, stepped nature and pavilion-type design, and the landscape setting will all serve to lessen the visual impact of this infill seniors housing development, acknowledging that it is a larger scale and density of development in this R2 - Low Density Residential zoned area, that is envisaged and made permissible pursuant to SEPP HSPD.

The proposal is worthy of support and for that reason, it is recommended that the Northern Beaches Local Planning Panel grant **APPROVAL** to the application. 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 40(4) of SEPP (HSPD) pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1766 for Demolition works and construction of a housing development comprising five (5) self-contained apartments including basement car parking pursuant to SEPP (Housing for Seniors or People with a Disability) 2004 on land at Lot 8 DP 6984, 18 Alexander Street, COLLAROY, Lot 9 DP 6984, 18 Alexander Street, COLLAROY, 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
DA101 Proposed Site Plan Rev. B	31 January 2022	Walsh Architects
DA102 Demolition Plan Rev. A	03 September 2021	Walsh Architects
DA110 Basement Plan Rev. B	31 January 2022	Walsh Architects
DA111 Undercroft Floor Plan Rev. B	31 January 2022	Walsh Architects
DA112 Level 1 Floor Plan Rev. B	31 January 2022	Walsh Architects
DA113 Level 2 Floor Plan Rev. B	31 January 2022	Walsh Architects
DA114 Roof Plan Rev. B	31 January 2022	Walsh Architects
DA200 Sections Rev. B	31 January 2022	Walsh Architects
DA201 Sections Rev. B	31 January 2022	Walsh Architects
DA300 Elevations Rev. B	31 January 2022	Walsh Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Assessment Report (ref:114672-Access-r 1)	09 September 2021	BCA Access
Arboricultural Impact Assessment Report	26 August 2021	Hugh The Arborist
BASIX Certificate No. 1238507M_02	28 January 2022	Building Sustainability Assessments
BCA Assessment Report	21 September	BCA Logic

	2021	
Overland Flow Study and Flood Impact Assessment Report (ref:210804) Issue A	10 September 2021	RTS Civil Consulting Engineers Pty Ltd
Flood Management and Civil Access Response (ref:210804)	31 January 2021	RTS Civil Consulting Engineers Pty Ltd
Geotechnical Investigation (ref:J3685)	03 September 2021	White Geotechnical Group
Traffic and Parking Impact Assessment (ref:21278) Issue A	September 2021	Transport and Traffic Planning Associates

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LS501.1 Ground Level - Landscape Plan - Sheet 1 Issue C	27 January 2022	Plot Design Group
LS501.2 Level 1 - Landscape Plan - Sheet 2 Issue C	27 January 2022	Plot Design Group
LS501.3 Level 2 - Landscape Plan - Sheet 3 Issue C	27 January 2022	Plot Design Group
LS503.1 Landscape Details - Sheet 4 Issue C	27 January 2022	Plot Design Group

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	10 September 2021	Walsh Architects

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

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

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

FEES / CHARGES / CONTRIBUTIONS

3. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$20,690.59 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,069,059.30.

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.

4. 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.

5. **Construction, Excavation and Associated Works Bond (Councils Stormwater Drainage line)**

The applicant is to lodge a bond of \$15,000 as security against any damage during to course of construction works for councils 750mm diameter concrete drainage line that runs through the north wester corner of the site.

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

Reason: Protection of Council's infrastructure.

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

The applicant is to lodge a Bond of \$20,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

A bond of \$10,000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

Reason: Protection of Council's infrastructure.

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

8. **On Slab Landscape Works**

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

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

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

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

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

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

9. **Walls located within the overland flow path.**

Any proposed walls including the walling within the bin bay area are to feature openings to allow for the free passage of overland flow as defined by the flood engineer in the RTS consulting engineers overland flow and flood impact assessment report. Details demonstrating compliance are to be submitted to the certifier prior to issue of the construction certificate.

Reason: To manage impacts of flooding on adjoining properties.

10. **Deletion of walling within Councils 750mm drainage line and easement.**

All proposed walling is to be removed from proposed Council relocated 3m wide easement footprint in accordance with Councils water management policy for development. The bin bay north west corner wall will need to be relocated to achieve this requirement.

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

Reason: Compliance with Councils Water management policy for development.

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **Car Parking Standards**

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

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

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

13. **Car Parking Finishes**

All driveways, car parking areas and pedestrian paths are to be surfaced and sealed. Details of treatment to these areas are to be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

14. **Construction Traffic Management Plan**

As a result of the 3T Load Limits on Alexander Street, site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

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

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

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

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

15. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL’s and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

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

16. **Building Code of Australia Requirements**

The Building Code of Australia works and recommendations as detailed in the Building Code of Australia Assessment Report prepared by BCA Logic dated 3/9/2021, Ref No. 114672-BCA-r1 are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

17. **Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. In this regard the Access Assessment Report prepared by BCA Access ref: 114672-Access-r1, is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

18. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY FOR DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by RTS Civil Consultants, drawing number 210804 SW01-SW02A ,SW200A , dated 3/9/21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) or RPENG and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The discharge line from the on site stormwater detention tank is to be connected directly into the kerb and gutter with a No 200x100mm RHS gal pipes. Services in the footpath area are to be located to avoid conflicts.
- ii. The discharge line from the pump sump within the basement is to be directly connected to Councils kerb inlet pit fronting the property.
- iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

19. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

20. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

21. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are

available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

22. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

23. Compliance with Standards

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

24. External Finishes to Roof

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

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

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

25. Surrender of Consent

The applicant shall surrender to Council Development Consent Nos: DA2020/0205 and DA2020/0261 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

26. Sydney Water "Tap In"

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

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

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

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

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

27. **Fencing Height and Vegetation**

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure maximum vehicular and pedestrian visibility.

28. **Waste and Recycling Requirements**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

29. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) all works within the TPZ's and SRZ's of trees to be retained.

All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

30. **Tree Removal Within the Property**

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

- i) *Ficus rubiginosa*, located centrally within the site within the footprint of proposed works, Tree No. 1.

Note:

- i) Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.
- ii) Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: To enable authorised building works.

31. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

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

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

32. **Demolition Traffic Management Plan**

As a result of the 3T Load Limits on Alexander Street, site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by a suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

33. **Pre-Construction Dilapidation Report**

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

- 16 ALEXANDER STREET, COLLAROY
- 20 ALEXANDER STREET, COLLAROY

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

35. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture

including advice on root protection measures,
vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
i) Section 8 - Conclusions,
ii) Section 10 - Recommendations,
iii) Section 11 - Arboricultural Work Method State and Tree Protection Requirements,
iv) Section 12 - Hold Points,
v) Appendix 1A - Proposed Basement and Tree Protection Plan.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

36. **Road Reserve**

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

Reason: Public safety.

37. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing

Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by <INSERT> prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

38. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

39. **Dewatering Management**

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

40. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

41. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

42. **Ongoing Management**

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

Reason: To ensure public safety.

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

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

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

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

44. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels,

prior to concrete slab being poured/flooring being laid.

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

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

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

46. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

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

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

(a) Pouring of the vehicle crossing and any footpath works.

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

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

48. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

49. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval.

The proposed boundary RLs are to comply with the longitudinal driveway design provided by RTS consulting engineers DRW no 210804 CW200 B .

An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Authority.

Reason: To facilitate suitable vehicular access to private property.

50. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

51. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

52. **Landscape Completion**

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

- i) substitute the proposed *Archontophoenix cunninghamiana* for a native alternative, minimum 45L pot size. Suggested species include: *Livistona australis*,
- ii) substitute the proposed *Brachychiton populneus x acerifolius* 'Bella Pink' for a native alternative, minimum 75L pot size. Suggested species include: *Angophora hispida*, *Banksia serrata*, or *Corymbia ficifolia*,
- iii) substitute the proposed *Pennisetum alopecuroides* 'Nafray' with a native alternative, minimum 140mm pot size. Suggested species include: *Ficinia nodosa*, *Imperata cylindrica*, or *Lomandra longifolia*,
- iv) substitute the proposed *Rhaphiolepis indica* 'Oriental Pearl' with a native alternative, minimum 200mm pot size. Suggested species include: *Banksia spinulosa*, *Grevillea sericea*, or *Westringia fruticosa*.

Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees.

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

Reason: Environmental amenity.

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

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

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

54. **Stormwater Disposal**

The stormwater drainage/on site detention works shall be certified as compliant with the approved Construction certificate drawings and Council water management policy for development by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

55. **Post-Construction Road Reserve Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

56. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by RTS Civil Consulting Engineers. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

57. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

58. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
 - e) Impervious area restrictions to maintain the water balance for the site
 - f) Funding arrangements for the maintenance of all stormwater treatment measures
 - g) Identification of maintenance and management responsibilities
 - h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
 - a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

 - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits
 - b) Routine maintenance requirements
 - c) Work Health and Safety requirements
 - d) Waste management and disposal
 - e) Traffic control (if required)
 - f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
 - g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

59. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

60. **Installation of Rainwater Tanks**

Rainwater tanks shall comply with the following:

- a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
- b) Have a sign affixed to the tank stating the contents is rainwater
- c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
- d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
- e) Pumping equipment must be housed in a soundproof enclosure
- f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

61. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

62. **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.

63. **Shared Zone Bollard**

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

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

Reason: To ensure compliance with Australian Standards.

64. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

65. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

66. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The applicant is to create a 3m wide drainage easement in favour of Council over the centre line of Council's 750mm RCP pipe that traverses the north west corner of the site. All costs associated with the creation of this easement are to be borne by the applicant.

Additionally all structures are to be located clear of any Council pipeline or the relocated Council easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

67. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures

within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

68. **Garbage and Recycling Facilities**

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

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

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

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

69. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

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

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

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

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

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition

and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

71. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

72. **Reinstating the damaged road reserve during construction**

Any damages to road reserve shall be reinstated to Council standard. Suitably prepared plans shall be submitted to for an approval under and approved by Council. All costs associated with the works shall be borne by the applicant.

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

Reason: To maintain road reserve to the standards.

73. **Removal of Redundant Driveways.**

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

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

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

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

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

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

Reason: To ensure waste and recycling facilities are provided.

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

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

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

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

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

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

Reason: To create encumbrances on the land.

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

77. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

78. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

79. **Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve

an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

80. **Resident Parking Permits**

Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title.

Reason: To ensure the tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).

81. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

82. **Accessibility of parking facilities**

The parking facilities and vehicular access should be maintained to the Standards and accessible throughout the lifetime of the development.

Reason: To ensure parking facilities are maintained and minimise the on-street parking impacts.



September 2021	B&B Resource 1564	
Building Sustainability Essentials	Ph: (02) 4962 3433	
enquiries@buildingustainability.net.au	www.buildingsustainability.net.au	
The following specification is used to achieve the thermal performance value indicated on the different construction elements are applied from the Australian Certificate is no longer valid.		
Thermal Performance Specifications (does not apply to garage)		
External Wall Construction		Added Insulation
Lightweight		R2
Internal Wall Construction		Added Insulation
Plasterboard on studs		None
Plasterboard + studs + shift liner + studs + Plasterboard (gyp wale)		None
Ceiling Construction		Added Insulation
Plasterboard	R5 to ceilings adjacent to roof space and decks above	
Roof Construction		Added Insulation
Concrete (J1, 2, 3 & 4)		None
Metal (U5)	Any	Fol + R10 Barbs
Floor Construction		Added Insulation
Concrete	As drawn	None
Windows		
	Glass and frame type	U Value SHGC Range Area % As drawn
ALUM-01-2 A	Aluminium A50 High Solar Gain Low E	5.40 0.44 - 0.54 As drawn
ALUM-02-2 A	Aluminium B50 High Solar Gain Low E	5.40 0.52 - 0.64 As drawn
Type A windows are aerating windows, tilt&turn, casements, R's 8" minimum, entry doors, entry doors, french doors Type B windows are double hung windows, sliding windows & doors, fixed windows, stacker, double doors Type C windows are double hung windows, sliding windows & doors, fixed windows, stacker, double doors		
Shading		
	Glass and frame type	U Value SHGC Range Area % As drawn
VAL-01 R	VAL-01 R	2.50 0.21 As drawn
U and SHGC values are according to AS/NZS. Alternative products may be used if the U value is lower and the SHGC is within the range specified		
External Window Shading (slaves, verandahs, pergolas, awnings etc)		
As drawn elements indicated as drawn		
Ceiling Penetrations (downlights, exhaust fans, flat etc)		
No adjustment has been made for losses to insulation arising from ceiling penetrations.		
Calling Fans used in the Modelling and to be installed in the following areas		



1 PROPOSED NORTH ELEVATION
(A430) 1:100 @ A1



2 PROPOSED SOUTH ELEVATION
(A430) 1:100 @ A1



3 PROPOSED EAST ELEVATION
(A430) 1:100 @ A1



4 PROPOSED WEST ELEVATION
(A430) 1:100 @ A1

EXTERNAL FINISHES SCHEDULE

CODES	EXTERIOR
F1	- BOARD FORMED IN-SITU CONCRETE
F2	- POWDER COATED ALUMINIUM RATTENS
F3	- WHITE - PAINTED EASYLAP F.C.
F4	- SANDSTONE - EXTERIOR BASEMENT WALL & RETAINING WALLS
F5	- ALUMINIUM WINDOW FRAME - WHITE SKY
F6	- LYSAGHT METAL ROOF - SURFMIST

ATTACHMENT A

Written Request to Vary the Rear 25% Building Height Control

INTRODUCTION

The subject site is located on the southern side of Alexander Street, approximately 145 metres to the west of Pittwater Road. The site comprises two (2) adjoining allotments with a combined area of 1,156.117m². The consolidated site is rectangular in shape with a frontage of 24.38 metres to Alexander Street.

The site is currently occupied by a 2 – 3 storey dwelling house, located towards the rear of the site, and a detached single storey building located towards the front of the site.

The proposed development comprises the demolition of the existing structures on the site, and the construction of a housing development for seniors or people with a disability, incorporating 5 x 3-bedroom self-contained apartments.

Off-street car parking is proposed for 15 vehicles within a basement level, accessed via a combined entry/exit driveway extending to/from Alexander Street.

Clause 40(4)(c) of State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004 specifies that a building located in the rear 25% of the site must not exceed 1 storey in height.

The proposed development has been carefully designed to negotiate the topographical conditions of the site, with the building form accommodating the topographical rise towards the rear (south).

The proposed development extends to a maximum height of 7.9 metres, and 2-storeys (in a vertical plane), including adjacent to the boundaries of the site.

A portion of the 2-storey building extends within the rear 25% of the site. In that location, the building has a maximum height of approximately 6.8 – 7.4 metres. The building adopts a low level skillion style roof with a 2 degree fall towards the rear.

The building height control in the rear 25% of the site is a development standard, and Clause 4.6 of the Warringah Local Environmental Plan (LEP) 2011 is the mechanism by which a variation to a development standard

incorporated within *"any other environmental planning instrument"* (in this instance the SEPP) may be varied.

CLAUSE 4.6 OF THE WARRINGAH LEP 2011

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (Initial at 87).

Clause 4.6(2) of the LEP specifies that *"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"*.

Clause 4.6(3) specifies that 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.*

Clause 4.6(4) specifies that 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(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

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

CONTEXT AND FORMAT

This “written request” has been prepared having regard to “*Varying development standards: A Guide*” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *Hansimikali v Bayside Council [2019] NSWLEC 1353;*
- *Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161.*
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243.*

“*Varying development standards: A Guide*” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which

compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective 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 Councils 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.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council [2016] NSWLEC 1015*, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and the zone, is not a requirement to “achieve” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “something less onerous than ‘achievement’”.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

In *Hansimikali v Bayside Council [2019] NSWLEC 1353*, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

Finally, in *Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161*, Commissioner O’Neill found that “The desired future character of an area cannot be determined by the applicable development standards for height and FSR alone”.

Further, Commissioner O’Neill found that “The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character”.

Similarly, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243*, Commissioner O’Neill found that “The desired

future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60])".

ASSESSMENT

Is the requirement a development standard?

The building height control in the rear 25% of the site is a development standard and is not excluded from the operation of Clause 4.6(2) of the LEP.

What is the underlying object or purpose of the standard?

The objectives of Clause 40(3)(c) are not specifically expressed in the SEPP, however the aims of the SEPP are to increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.

Further, it is reasonable to assume that the underlying objective of the building height control in the rear 25% of the site is intended to minimise the impact of buildings adjacent to the rear yards of surrounding properties.

The proposed development complies with the provisions of Clause 50 of the SEPP in relation to building height, density and scale, landscaped area, deep soil zones, solar access, private open space, and parking.

The controls in Clause 50 of the SEPP are standards that cannot be used to refuse development consent for self-contained dwellings.

The proposed development complies with the controls incorporated in the Warringah Development Control Plan (DCP) 2011 in relation to the rear boundary setback, and the side boundary setbacks, including the portion of the building within the rear 25% of the site.

Further, the portion of the building within the rear 25% of the site adopts a low level skillion style roof with a 2 degree fall towards the rear.

The site is adjoined to the rear (south) by a large expanse of open space associated with the *Elizabeth Jenkins Place Aged Care Centre*. In the circumstances, the site does not have an ordinary physical relationship to the rear typical of a back-to-back row of residential allotments.

The site is currently occupied by a 2 – 3 storey dwelling house, located towards the rear of the site. The existing dwelling has a 2-storey form within the rear 25% of the site.

The adjoining buildings to the east and west similarly occupy the rear portion of the allotments, including within the rear 25% of the sites.

The proposed landscaping includes eight (8) new trees within a mature height of 4 – 20 metres. The proposed trees will be supplemented by 113 shrubs with a mature height of 1 – 4 metres, with the remainder of the landscaped areas accommodating ground cover/mass plantings.

The proposed landscaping extends around the perimeter of the site, including within the setbacks to the front, rear and side boundaries.

The proposed development will substantially maintain the amenity of the adjoining properties to the east and west in terms of the key considerations of visual bulk, overshadowing, privacy and views.

On 24 April 2020, Council granted Development Consent (REV2020/001) for *"Boundary adjustment part demolition for alterations and additions to a dwelling house construction of a detached dwelling house and a Secondary dwelling"*. The approved dwellings included 2-storey components within the rear 25% of the site.

On 29 March 2021, the Land and Environment Court upheld two (2) appeals against the refusal of two (2) separate DA's for the site (*Waights v Northern Beaches Council [2021] NSWLEC 1153*).

The approved development comprises the construction of two (2) boarding houses. The approved boarding houses both include 2-storey components within the rear 25% of the site.

In the circumstances, the proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the building height control in the rear 25% of the site, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published "*Varying development standards: A Guide*" (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the building height control in the rear 25% of the site, notwithstanding the numerical variation.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The assumed objectives of the building height control in the rear 25% of the site remain relevant, and the proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the building height control in the rear 25% of the site, notwithstanding the numerical variation.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the building height control in the rear 25% of the site, notwithstanding the numerical variation.

Further, the proposed development will provide additional residential accommodation within an established residential environment, offering a

very good level of internal amenity without imposing any significant or adverse impacts on the amenity of the surrounding land.

In the circumstances, strict compliance with the building height control in the rear 25% of the site would be unreasonable and unnecessary to the extent that the amenity of the proposed apartments would be unnecessarily reduced within a development that is consistent with the overarching objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of the surrounding land.

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;*

The building height control in the rear 25% of the site has not specifically been abandoned or destroyed by the Council's actions. Irrespective, Council has historically adopted a relatively flexible approach to the implementation of development standards in circumstances where the objectives of the control are achieved, notwithstanding a numerical non-compliance.

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Strict compliance with the building height control in the rear 25% of the site would be unreasonable and unnecessary to the extent that the amenity of the proposed apartments would be unnecessarily reduced within a development that is consistent with the overarching objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of the surrounding land.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation to the building height control in the rear 25% of the site is reasonable and appropriate in the particular circumstances on the basis that:

- the proposed development complies with the provisions of Clause 50 of the SEPP in relation to building height, density and scale, landscaped area, deep soil zones, solar access, private open space, and parking;
- the proposed development complies with the controls incorporated in the Warringah DCP 2011 in relation to the rear boundary setback, and the side boundary setbacks, including the portion of the building within the rear 25% of the site;
- the site is adjoined to the rear (south) by a large expanse of open space associated with the *Elizabeth Jenkins Place Aged Care Centre*. In the circumstances, the site does not have an ordinary physical relationship to the rear typical of a back-to-back row of residential allotments;
- the site is currently occupied by a 2 – 3 storey dwelling house, located towards the rear of the site, and the existing dwelling has a 2-storey form within the rear 25% of the site;
- the adjoining buildings to the east and west similarly occupy the rear portion of the allotments, including within the rear 25% of the sites;
- the proposed landscaping includes eight (8) new trees within a mature height of 4 – 20 metres, with the proposed trees supplemented by 113 shrubs with a mature height of 1 – 4 metres, with the remainder of the landscaped areas accommodating ground cover/mass plantings, including within the setback to the rear boundary;
- proposed development will substantially maintain the amenity of the adjoining properties to the east and west in terms of the key considerations of visual bulk, overshadowing, privacy and views;
- the Council and the Court have recently approved developments that include 2-storey components within the rear 25% of the site;
- strict compliance with the building height control in the rear 25% of the site would be unreasonable and unnecessary to the extent that the amenity of the proposed apartments would be unnecessarily reduced within a development that is consistent with the overarching objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of the surrounding land;

- the proposed development is consistent with, or not antipathetic to, the objective of the R2 – Low Density Residential zone; and
- the proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the building height control in the rear 25% of the site, notwithstanding the numerical variation.

Are there any matters of State or regional significance?

The proposed variation to the building height control in the rear 25% of the site does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the building height control in the rear 25% of the site, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining the building height control in the rear 25% of the site in other instances.

Any other matters?

There are no further matters of relevance to the proposed variation to the building height control in the rear 25% of the site.

Zone Objectives and Public Interest

The site is zoned R2 - Low Density Residential pursuant to the Warringah LEP 2011, and the objectives of the zone relating to residential development are expressed as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development is permissible on the site pursuant to the provisions of SEPP (Housing for Seniors or People with a Disability) 2004, and the SEPP prevails to the extent of any inconsistency with the LEP.

In the circumstances, the proposed development will provide a very high standard of residential accommodation within an established residential precinct. Further, the proposed development includes extensive new landscaping that will materially enhance the landscaped setting of the site and surrounds.

The proposed development serves the public interest by providing substantially improved residential accommodation within an established residential environment, offering a very good level of internal amenity without imposing any significant or unreasonable impacts on the amenity of surrounding land.

Finally, the very minor variation to the building height control in the rear 25% of the site does not raise any significant matters of public interest.

CONCLUSION

The purpose of this submission is to formally request a variation to the building height control in the rear 25% of the site incorporated in Clause 40(3)(c) of SEPP (Housing for Seniors or People with a Disability) 2004.

In this instance, strict compliance with the control is unreasonable on the basis that the objectives are achieved anyway, and unnecessary on the basis that no beneficial planning purpose would be served.

In the circumstances, there are sufficient environmental planning grounds to justify the variation to the building height control in the rear 25% of the site.



Design + Sustainability Advisory Panel Meeting Report – Date 25 November 2021

5 - DA2021/1766 - 18 Alexander Street COLLAROY

PANEL COMMENT AND RECOMMENDATIONS

General

The proposal is for the demolition of a detached house and construction of two x two-storey buildings over a single level of basement car parking accommodating five self-contained apartments pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Strategic context, urban context: surrounding area character

The site is in a low-density residential zone that is close to Pittwater Road. There are several current proposals for redevelopment in the area. The site is in the moderately sloped section of Alexander Street before it rises steeply towards the west.

The site also rises steeply towards the south at the rear of the lot.

At approximately 13m, Alexander Street has a very narrow street reserve.

The Panel commends the quality of the documentation and representation of adjoining properties.

Scale, built form and articulation

The bulk of the building has been set back 12m from the street that is well in excess of the setback required by the DCP. The upper level is set back further still with a very large roof terrace facing north.

The Panel was not provided with any analysis of the impact on views from properties to the west of the site, however most properties appear to face the street with very limited views towards the east. No 20 does appear to have a large east facing window on the third level but the Panel was not able to determine the impact on views from this property.

The Panel considers the bulk and scale of the building appropriate, however the wide driveway has a significant impact on the continuity of the street scape and appears unnecessarily wide given that it will only serve ten vehicles. The arrangement also results in a very large void above the car park that has no apparent use. This is discussed further in the car parking and access section.

The overall planning strategy is the creation of two blocks separated by a 'breezeway', while this provides some articulation the arrangement of the stairs and windows is an inefficient use of the building envelope without providing amenity.

Recommendations

1. Alternative massing should be explored. It is not clear why units 1 and 2 are not narrower (E-W) and longer (N-S) that would be possible with the deletion of the breezeway.
2. Relocating the stairwell and lift towards the centre of the building would provide a significant increase in the northern exposure of units 3 and 4 and by relocating bedrooms to the south and living to the NE and NW it should be possible to have good solar access to both units.
3. Units 1 and 2 and carpark could be raised by 1.5m, and units 3 and 4 dropped by a 1.5m. This would allow an additional unit to be created by repeating units 3 and 4 on the second level while reducing the overall height of the building, reducing the excavation, eliminating the void above the car park and providing less steep access to the car park.
4. Investigate the potential to have a relatively level narrower car park entry along the eastern boundary of the site.



Amenity, privacy

Units 1 and 2

Outlook from Unit 1 over the driveway is poor and the terrace opens from the bedroom not the living area, the balcony is not of a useable dimension adjoining the living area

It is not clear what purpose the double wall with the large circular cut-out performs- this is valuable external wall area that could provide cross ventilation and natural light and air to the ensuite.

Unit 3 and 4

Units 3 and 4 have no northern orientation and even the bedrooms that could have northern windows do not.

The skylight above unit 3 is inadequate for solar access to the living area.

Living areas and private open spaces face south and given the rise towards the back would have very little natural light

Unit 5

Access to the unit is by an unsheltered stair or uncovered lifts

The very large roof terrace is un-shaded.

The roof terrace would require significant cross falls and insulation resulting in an increased floor to floor clearance than that indicated to ensure 2.7m ceilings in Unit 2 below.

Generally

Bathrooms would benefit from natural light and air.

The 'breezeways' take up a large volume within the building envelope but do not provide high amenity and in their current form, provide little amenity or spatial interest and without openings do not provide natural ventilation.

The location of the external staircase compromises the privacy of the adjoining property at No.20 Alexander Street now and in the future.

Recommendations.

5. Ensure the living rooms of all units receive 2 hours of sun mid-winter
6. Provide cross ventilation to all units
7. Internalise main stair to improve privacy
8. Investigate deletion of breezeway and replacement by a conventional lobby that provide weather protection while still allowing for natural light and ventilation.
9. Rearrange ensuite and WIR in Unit 1 to provide natural light and ventilation to ensuite.

Access, vehicular movement and car parking

The car park entry dominates the street presence and could be reduce to a single lane given the low numbers of cars.

Recommendations

10. Redesign the car parking layout, stairs and relocate stairs and lift to the centre of building to maximise the northern aspect of units
11. Investigate the potential of relocating the parking and access to the eastern boundary
12. Investigate the potential of 'jockey' or stacked parking



Landscape

The Panel commends the consideration and concern for trees on neighbouring properties.

The extensive planters, particularly around the roof terrace of Unit 5 should be part of the common property to ensure an adequate maintenance regime.

Recommendations.

13. Substitute non-endemic species like *Corymbia citriodora* and *Brachychiton populneus* with large endemic canopy tree species suitable for the coastal location.
14. Provide greater percentage of coastal endemic plant species especially in front setbacks.
15. Provide common on grade open space to boundary areas for screen planting. Do not rely solely on private gardens to achieve necessary screening.

Façade treatment/Aesthetics

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

Sustainability

No sustainability measures beyond compliance have been indicated at this stage.

Recommendations

16. Include electric heat pump hot water and induction cooktops to replace the use of gas.
17. The Panel recommends inclusion of a substantial amount of rooftop PV (1.5kW/unit) with direct feed 'behind the meter' to each apartment as well as to common areas.
18. Add external windows to bathrooms and utility rooms wherever possible.
19. Include EV charging points for all car spaces

PANEL CONCLUSION

The Panel does not support the proposal in its current form.

A re-design that achieves improvements in solar access, amenity and privacy as indicated in the recommendations is required.

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