

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 18 MAY 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 18 May 2022

|            |                                                                                                                                                                                                                                                                                     |            |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <b>1.0</b> | <b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>                                                                                                                                                                                                                                     |            |
| <b>2.0</b> | <b>MINUTES OF PREVIOUS MEETING</b>                                                                                                                                                                                                                                                  |            |
| 2.1        | Minutes of Northern Beaches Local Planning Panel held 4 May 2022                                                                                                                                                                                                                    |            |
| <b>3.0</b> | <b>CATEGORY 3 APPLICATIONS</b>                                                                                                                                                                                                                                                      |            |
| <b>4.0</b> | <b>PUBLIC MEETING ITEMS.....</b>                                                                                                                                                                                                                                                    | <b>5</b>   |
| 4.1        | DA2021/2141 - 19 Warri Close, Narraweena - Alterations and additions to an existing dwelling house and change of use to a boarding house .....                                                                                                                                      | 5          |
| 4.2        | DA2021/2153 - 27A Pine Avenue, BROOKVALE - Demolition works and construction of a residential flat building including basement carparking.....                                                                                                                                      | 45         |
| 4.3        | Mod2022/0007 - 1031 Barrenjoey Road, PALM BEACH - Modification of Development Consent DA2021/1311 granted for Use of premises as a cafe including a change of hours.....                                                                                                            | 119        |
| 4.4        | DA2021/2493 - 205-207 Ocean Street, NARRABEEN - Alterations and additions to an existing mixed-use building.....                                                                                                                                                                    | 136        |
| <b>5.0</b> | <b>NON PUBLIC MEETING ITEMS.....</b>                                                                                                                                                                                                                                                | <b>180</b> |
|            | A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion. |            |
| 5.1        | Mod2022/0022 - 43 Booralie Road, TERREY HILLS - Modification of Development Consent DA2016/0523 granted for demolition works, construction of a service station and signage.....                                                                                                    | 180        |
| 5.2        | Mod2021/0904 - Kimbriki Road, INGLESIDE - Modification of Development Consent DA96/371 granted for Kimbriki Recycling and Waste Centre to permit additional excavation and landfilling.....                                                                                         | 198        |
| 5.3        | DA2022/0356 - 2/67 New Street, BALGOWLAH HEIGHTS - Alterations and additions to shop top housing.....                                                                                                                                                                               | 221        |

## **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 4 MAY 2022**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 4 May 2022 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

|                     |                                                                                                                                                |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| ITEM 4.1            | DA2021/2141 - 19 WARRI CLOSE, NARRAWEENA -<br>ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING<br>HOUSE AND CHANGE OF USE TO A BOARDING HOUSE |
| AUTHORISING MANAGER | Steve Findlay                                                                                                                                  |
| TRIM FILE REF       | 2022/276561                                                                                                                                    |
| ATTACHMENTS         | 1 <a href="#">↓ Assessment Report</a><br>2 <a href="#">↓ Site Plans &amp; Elevations</a>                                                       |

### PURPOSE

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

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/2141 for alterations and additions to an existing dwelling house and change of use to a boarding house on land at Lot 2 DP 861079, 19 Warri Close, NARRAWEENA, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                                           |                                                                                               |
|-------------------------------------------|-----------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | DA2021/2141                                                                                   |
| <b>Responsible Officer:</b>               | Adam Mitchell                                                                                 |
| <b>Land to be developed (Address):</b>    | Lot 2 DP 861079, 19 Warri Close NARRAWEENA NSW 2099                                           |
| <b>Proposed Development:</b>              | Alterations and additions to an existing dwelling house and change of use to a boarding house |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R2 Low Density Residential                                     |
| <b>Development Permissible:</b>           | Yes, under State Environmental Planning Policy (Affordable Rental Housing) 2009               |
| <b>Existing Use Rights:</b>               | No                                                                                            |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                      |
| <b>Delegation Level:</b>                  | NBLPP                                                                                         |
| <b>Land and Environment Court Action:</b> | No                                                                                            |
| <b>Owner:</b>                             | Adam Paul Taylor<br>Shelly Anne Taylor                                                        |
| <b>Applicant:</b>                         | Corona Projects Pty Ltd                                                                       |
| <b>Application Lodged:</b>                | 15/11/2021                                                                                    |
| <b>Integrated Development:</b>            | No                                                                                            |
| <b>Designated Development:</b>            | No                                                                                            |
| <b>State Reporting Category:</b>          | Residential - New multi unit                                                                  |
| <b>Notified:</b>                          | 26/11/2021 to 10/12/2021                                                                      |
| <b>Advertised:</b>                        | 26/11/2021                                                                                    |
| <b>Submissions Received:</b>              | 49                                                                                            |
| <b>Clause 4.6 Variation:</b>              | Nil                                                                                           |
| <b>Recommendation:</b>                    | Refusal                                                                                       |
| <b>Estimated Cost of Works:</b>           | \$ 130,000.00                                                                                 |

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling house to facilitate a change of use to a four-bedroom boarding house pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH).

The application is permissible under the SEPP ARH and was submitted prior to the coming into force of the SEPP Housing 2021.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposal is deemed controversial by virtue of submissions received. A number of duplicate submissions have been logged, however approximately 31 submissions in objection and 11 submissions in support of the application have been received.

The submissions in support all express the need for additional affordable housing in the region therefore requesting that the application be approved.

The submissions in objection raise concern with the use of the building as a boarding house and speculative concerns about prospective tenants, along with general amenity concerns and traffic, access and parking concerns.

On balance this report concurs with several but not all of the concerns expressed by the community.

The findings of this report conclude that whilst the use of the land for the purpose of a boarding house could be generally supported, the physical works required to facilitate the conversion of the existing building from a dwelling house to a boarding house are unacceptable and cause a detrimental impact on the quality of the streetscape. The provision of an access ramp and waste storage area within the front setback area of the building eliminate the opportunity for substantial landscaping to screen the building.

The front setback treatment proposed would not be supported on this site for any type of land use, and is indicative that the existing building cannot be appropriately adapted for the conversion sought.

This report finds that the proposed car parking arrangement is unacceptable in that it displays poor accessibility and is not appropriately user-friendly for a boarding house development. The location of car parking would likely cause acoustic impacts and excessive light-spill into neighbouring properties. Council's Traffic Engineering department share similar concerns and do not support the application on this basis.

Council's Development Engineering department are also unsupportive on the grounds of stormwater dispersal, however it is acknowledged that these concerns could be addressed through additional information if required.

This report concludes with a recommendation that the NBLPP **REFUSES** the development application.

## **PROPOSED DEVELOPMENT IN DETAIL**

Development Consent is sought for the following:

### **1. Change of Use**

The application seeks consent to change the use of the existing building from a 'Dwelling House' to a 'Boarding House' comprising of four (4) independent boarding rooms, each capable of accommodating a maximum of two (2) persons at any one time.

### **2. Alterations and Additions**

To facilitate the Change of Use component of this application, works are sought to the existing building including revisions to the internal layout, window arrangements and access from the street.

### **Amended Plans**

During the course of this assessment Council wrote to the applicant to advise that the proposal did not appropriately comply with the SEPP ARH in that several rooms were too large to be considered boarding rooms, and questioned whether vehicular access could be safely made to the proposed

parking spots.

In response to that correspondence the applicant submitted revised plans which further modified the internal layout, and also deleted the existing northeastern exterior corner walls to the lower ground floor to permit vehicular access via a turntable, essentially creating a large sub-floor void space beneath the building.

These plans did not necessitate the renotification of the development application.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - C6 Building over or adjacent to Constructed Council Drainage Easements  
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
 Warringah Development Control Plan - D3 Noise  
 Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                   |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 2 DP 861079 , 19 Warri Close NARRAWEENA NSW 2099                                                                                                                                                                              |
| <b>Detailed Site Description:</b> | <p>The subject site is legally known as Lot 2 DP 861079 and is known as 19 Warri Close, Narraweena.</p> <p>The site falls within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.</p> |

The site is rectangular in shape with a width of 15.24m, depth of 22.61m and an overall surveyed area of 346.4m<sup>2</sup>. The site has is a result of a previous subdivision.

The site presently accommodates apart one / part two storey detached brick dwelling house with a concrete driveway that traverses the northern edge of the land.

Topographically the site falls from west to east (front to rear) by approximately 3m via a gradual slope, which results in the building being single storey to the west (front) and two storeys to the east (rear).

The site has some vegetation to the front, however no significant trees are present on site.

Surrounding developments consist of other detached dwelling houses of varying age, size and construction.

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. No prelodgement meeting was held to discuss this proposal.

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

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

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



| Section 4.15 Matters for Consideration                                                                                    | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument                                             | See discussion on “Environmental Planning Instruments” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan                                                    | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement                                                          | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should consent be granted these matters can be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the internal layout and vehicular access arrangements within the site.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should consent be granted this matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). Should consent be granted this matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should consent be granted this matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should consent be granted this matter can be addressed via a condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and          | <p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |



| Section 4.15 Matters for Consideration                                                 | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| built environment and social and economic impacts in the locality                      | <p>In summary it is concluded that the physical works necessary to accommodate a boarding house result in an unacceptable environmental impact on the quality of the streetscape and the quantity of vegetation proposed in the front garden.</p> <p><b>(ii) Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development                 | The site is considered unsuitable for the proposed development given impacts to the streetscape.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 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 that the use of the site for the purposes of a boarding house are acceptable, however, the physical works necessitated to accommodate this use create an unacceptable visual impact on the streetscape. This impact creates 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 26/11/2021 to 10/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 49 submission/s from:

| Name:           | Address:                               |
|-----------------|----------------------------------------|
| Mrs Jodie Blake | 10 Lae Place ALLAMBIE HEIGHTS NSW 2100 |
| Mrs Maria Lahm  | 5 Warri Close NARRAWEENA NSW 2099      |

| Name:                               | Address:                                |
|-------------------------------------|-----------------------------------------|
| Mr Boris Levin                      | 9 Warri Close NARRAWEENA NSW 2099       |
| Jamal Fanaeyan                      | 15 Lascelles Road NARRAWEENA NSW 2099   |
| Ms Pamela May Walter                | 16 Edward Street NARRAWEENA NSW 2099    |
| Mr Yu Zhen                          | 4 Warri Close NARRAWEENA NSW 2099       |
| Mr Terence John Sadler              | 12 Lascelles Road NARRAWEENA NSW 2099   |
| Antonio Cosimo Rullo                | 12 Edward Street NARRAWEENA NSW 2099    |
| Ms Rosalia Ippolito                 | 14 Edward Street NARRAWEENA NSW 2099    |
| Lloyd Crawford                      | 2 Lascelles Road NARRAWEENA NSW 2099    |
| Ms Scarlett Murphy Templeman        | 2 Lascelles Road NARRAWEENA NSW 2099    |
| Mr David John Anglicas              | 66 Lascelles Road NARRAWEENA NSW 2099   |
| Joel Amran Ridzuan                  | 69 - 71 The Corso MANLY NSW 2095        |
| Merle Pamela Sadler                 | 12 Lascelles Road NARRAWEENA NSW 2099   |
| Ms Xiaolei Feng                     | 6 Warri Close NARRAWEENA NSW 2099       |
| Andrew Robert Morgan                | 21 Warri Close NARRAWEENA NSW 2099      |
| Xia Wang                            | 3 Warri Close NARRAWEENA NSW 2099       |
| Ms Angela Lu                        | 3 Warri Close NARRAWEENA NSW 2099       |
| Mr Michele Petruccelli              | 24 Lascelles Road NARRAWEENA NSW 2099   |
| Ioulia Barnes                       | 22 Warri Close NARRAWEENA NSW 2099      |
| Anonymous                           | N/A                                     |
| Miss Jessica Anna Teresina Palamara | 2 / 13 Lagoon Street NARRABEEN NSW 2101 |
| Hui Guo                             | 1 Bambara Crescent BEECROFT NSW 2119    |
| Mr Darren John Lowe                 | 71 Edward Street NARRAWEENA NSW 2099    |
| Mr James Andrew Kleppen             | 1 Warri Close NARRAWEENA NSW 2099       |
| Mr Troy Walter                      | 47 Lascelles Road NARRAWEENA NSW 2099   |
| Anka Maksimovic                     | Address Unknown                         |
| Ms Maria Filomena Agostino          | 36 Edward Street NARRAWEENA NSW 2099    |
| Anna Nero                           | 60 Edward Street NARRAWEENA NSW 2099    |
| Jen Peu                             | Address Unknown                         |
| Joel Keefer                         | Address Unknown                         |
| Joshua Green                        | Address Unknown                         |
| Luke Dodson                         | Address Unknown                         |
| Mrs Meral Agceli                    | 10 / 10 Cassia Street DEE WHY NSW 2099  |
| Katelyn Dohman                      | Address Unknown                         |
| Mr Michael Lloyd Lahm               | 5 Warri Close NARRAWEENA NSW 2099       |
| Mr Adam Paul Taylor                 | 19 Warri Close NARRAWEENA NSW 2099      |
| Ms Patricia Ann Culver              | 8 Warri Close NARRAWEENA NSW 2099       |
| Russel Gray                         | Address Unknown                         |
| Lisa Helen Morgan                   | 21 Warri Close NARRAWEENA NSW 2099      |
| Stuart Gough                        | Address Unknown                         |

| Name:               | Address:                               |
|---------------------|----------------------------------------|
| Megan Lilian Keeble | 48 Lascelles Road BEACON HILL NSW 2100 |
| Rita Hogel          | Address Unknown                        |
| Steven Sia          | Address Unknown                        |
| Ian Ugarte          | Po Box 1584 BUDERIM NSW 4556           |
| Brian Happ          | Address Unknown                        |
| Andrew Danne        | Address Unknown                        |
| Deborah Lee Bowker  | 39 Cormack Road BEACON HILL NSW 2100   |
| Rodney Turner       | 23 Warri Close NARRAWEENA NSW 2099     |

During the public exhibition of the application approximately 31 submissions in objection and 11 submissions in support of the application were received (a number of additional duplicate submissions were received from the same addresses).

The submissions in support of the application generally state that decisions should not be made on an emotional basis and that there is a demonstrable need for additional affordable housing within Sydney.

The submissions in objection of the application raised the following issues:

- Boarding House and prospective tenants
- Traffic, access and parking
- Acoustic privacy
- Waste collection arrangement
- Accessibility
- Property values

The above issues are addressed as follows:

- **Boarding House and prospective tenants**

Submissions received note that there is already several affordable / social housing developments within the vicinity of the site and object to the presence of any more affordable housing on the street. Submissions also state that the tenants of the development would be "dangerous", "don't care" and engaged in illicit substances thereby resulting in an increase in local crime.

Comment

A boarding house is permitted on the site pursuant to the SEPP ARH which prevails over Council's Land Use Table.

No evidence is submitted to substantiate claims that prospective tenants would jeopardise the safety or harmony of the locality.

There appears to be a misunderstanding as to the use of the land. This proposal is for 'affordable housing' which, pursuant to the SEPP ARH, is unregulated in terms of the rental charged. This means that anyone can be a tenant (if approved by the owner/manager). This proposal is not for social or community housing.

These concerns do not warrant the refusal of the application.

- **Traffic, access and parking**

The submissions raised concerns that the development has an insufficient provision of car parking and that parking arrangements on site require vehicles to reverse onto the street thus creating a safety issue.

Comment

Council's traffic engineer and planner concur that the proposed methodology of car parking and vehicle maneuvering on the site are inappropriate and non-compliant with the Warringah Development Control Plan 2011 (WDCP 2011). This matter forms a reason for refusal.

- **Acoustic privacy**

Submissions received note that an acoustic report was commissioned to address some neighbouring properties, but not all, and claim that the operation of the building as a boarding house may generate unacceptable acoustic impacts to neighbours.

Comment

Council's Environmental Health Officer has reviewed the acoustic report and concludes that its findings and recommendations are acceptable to ensure there is no unreasonable acoustic intrusion, subject to conditions. The development is also accompanied by an Operational Management Plan which would ensure that occupants of the development do not harm the acoustic privacy of neighbours.

- **Waste collection arrangement**

The submissions raised concerns that waste collection would be difficult given the increased intensity of occupants on the site.

Comment

The development is required to have five large wheelie bins which have been accepted by Council's Waste Officer. The number of bins is not considered to be vastly different to that of neighbouring properties and this reason does not warrant the refusal of the application.

- **Accessibility**

The submissions raised concerns that the development may not be properly accessible for disabled persons.

Comment

Council's traffic engineer has found that the proposed car parking arrangement is not suitable for disabled persons, particularly wheelchair users, and this matter forms a reason for refusal of the application.

- **Property values**

The submissions raised concerns that the provision of a boarding house development would decrease the value of surrounding properties.

Comment

Property value is not a matter for consideration under the Environmental Planning and Assessment Act 1979 and there is no mechanism to assess this concern.

**REFERRALS**

| Internal Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Assessment - Fire and Disability upgrades | <p><b>Supported, with conditions</b></p> <p><i>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.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Environmental Health (Industrial)                  | <p><b>Supported, with conditions</b></p> <p><i>The proposal to convert the existing dwelling into a four bedroom boarding house is supported with the suggested conditions to control noise impacts on surrounding residents. We concur with the acoustic assessment, that the development can comply with relevant provisions of Warringah DCP, Protection of Environment Operations Act 1997, and is in line with Noise Policy for Industry 2017 and Noise Guide for Local Government.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Landscape Officer                                  | <p><b>Supported, with conditions</b></p> <p><i>This application is for the alterations and additions to an existing residential dwelling, including the change of use to a boarding house. Alterations include the minor demolition of site structures to facilitate internal layout re-configurations. Additions are inclusive of a new accessible ramp and stairway within the front setback of the site.</i></p> <p><i>Councils Landscape Referral section has assessed for compliance with the following relevant controls and policies:</i></p> <ul style="list-style-type: none"> <li><i>State Environmental Planning Policy (Affordable Rental Housing) 2009 - Division 3, Clause 29 Standards that cannot be used to refuse consent,</i></li> <li><i>Warringah Local Environmental Plan, 2011,</i></li> <li><i>Warringah Development Control Plan, 2011 - D1 Landscaped Open Space and Bushland Setting, and E1 Preservation of Trees or Bushland Vegetation.</i></li> </ul> <p><i>The Statement of Environmental Effects provided with the application notes that four trees are to be removed as a result of proposed works.</i></p> |

| Internal Referral Body         | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|                                | <p><i>This statement is largely supported by the Architectural Plans as it is evident only four trees are shown to be removed.</i></p> <p><i>Although no Arboricultural Impact Assessment has been provided with the application, these four trees to be removed have been identified as exempt species due to being below 5 metres in height. For this reason, these trees may be removed without Councils approval. Considering proposed works are largely located within the existing building footprint, no detrimental impacts towards adjoining vegetation is anticipated. Although this is the case, care must still be taken, particularly during the transportation of materials to and from the site, as any negative impacts towards trees and vegetation in adjoining properties shall not be supported. The retention of this vegetation is vital to satisfy control E1, 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".</i></p> <p><i>With regards to the State Environmental Planning Policy (Affordable Rental Housing) 2009, specifically Clause 29 of Division 3, landscape treatment within the front setback is to be compatible with the streetscape in order to be compliant. It is noted that ground levels begin to fall immediately within the site, hence the visual impacts of the proposed works are not expected to be high. For this reason, it could be viewed that the accessible ramp and stairway in the front setback are compatible, however concern is raised regarding the limited landscape, which is also closely related to control D1 of the Warringah DCP. The Architectural Plans provided do indicate some planting is proposed within the front setback, however no details of this planting is evident. In order to satisfy both the State Environmental Planning Policy and control D1, this planting should incorporate a combination of grasses and shrubs, in addition to a native tree adjacent to the southern boundary in the south-west corner of the site. This vegetation will positively contribute to the overall streetscape character of the area, whilst also assisting in the mitigation and softening of the bulk and scale of built form. This planting 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 building", as well as "to enhance privacy between buildings".</i></p> <p><i>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the implementation of the required tree, shrub and grass planting.</i></p> |
| NECC (Development Engineering) | <p><b>Not supported</b></p> <p><i>The proposal is for the alterations and additions to an existing building and the change of use to a boarding house. No changes to the</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|                        | <p><i>vehicular access is proposed and the additions include a access ramp in the front setback.</i></p> <p><i>Council's records indicate that the subject site may be burdened by Council's stormwater assets located within the site. Council has public Planning Maps online with stormwater information as a reference for detailed stormwater investigations, available under the "Stormwater" overlay map (<a href="https://services.northernbeaches.nsw.gov.au/icongis/index.html">https://services.northernbeaches.nsw.gov.au/icongis/index.html</a>). To demonstrate compliance with Council's Water Management for Development policy, it is recommended that the following details are submitted:</i></p> <ul style="list-style-type: none"> <li><i>• Accurately locate, confirm dimensions including depth and plot to scale Council's public drainage system and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided); If the applicant proposes to use a CCTV pipeline survey to confirm the location of the pipeline, it is recommended that the survey is carried out in accordance with Council's guideline;</i></li> <li><i>• All structures are to be located clear of any Council pipeline, pit or easement and comply with minimum vertical and horizontal clearances;</i></li> <li><i>• Footings of any structure adjacent to an easement, pipeline, culvert or channel are to be designed in accordance with the above-mentioned policy; and</i></li> <li><i>• Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance with Council's policy are to be submitted</i></li> </ul> <p><u><b>Stormwater</b></u></p> <p><i>No stormwater plan has been submitted. As the development is for the change of use from single dwelling to a boarding house the stormwater management shall be in accordance with Clause 9.3.2 of Council's Water Management for Development policy. As the site fall to the rear and based on the survey plan there appears to be a interallotment drainage easement to the rear, the following details shall be provided:</i></p> <ul style="list-style-type: none"> <li><i>• details of the beneficiaries of the interallotment drainage easement</i></li> <li><i>• details of the existing pipe/pits within the easement</i></li> <li><i>• A stormwater plan detailing the site drainage in accordance with Council's water Management for development Policy.</i></li> </ul> <p><u><b>Planner comment</b></u></p> <p><i>In light of the in-principle concerns that are raised with this proposal</i></p> |



| Internal Referral Body       | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|                              | <p>generally the above requirements were not requested to be addressed by the applicant as it would bear as unnecessary expense when the application is recommended for refusal on other grounds.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Strategic and Place Planning | <p><i>Councils adopted draft Local Housing Strategy (LHS) outlines Councils preferred approach to the permissibility of boarding houses within the Northern Beaches LGA.</i></p> <p><i>Specifically, the LHS prohibits boarding houses in the R2 low density residential zone except within 400 metres of several local centres (known as the Housing Diversity Areas) on sites greater than 1,000 m<sup>2</sup> with a maximum of 12 rooms and developed and maintained in perpetuity by a community housing provider. This approach is further re-iterated in Councils recently released LEP Discussion Paper as part of the new Northern Beaches LEP.</i></p> <p><i>Further opportunities for housing (inclusive of boarding houses) will also be explored in the Centre Investigation Areas within 800 metres of Brookvale, Manly Vale, Mona Vale, and Dee Why as part of current, or soon to commence, precinct planning or place planning in these areas.</i></p> <p><i>The site is not within 400m of any of the Housing Diversity Areas, or within the future Centre Investigation Areas.</i></p> <p><i>The finalisation of the Housing SEPP is also imminent, which proposes to remove boarding houses as a mandated permitted use in the R2 low density residential zone and amend the definition to ensure that boarding houses are retained in perpetuity as affordable rental housing and managed by a Community Housing Provider.</i></p> <p><u>Planner Comment</u><br/>Comments made by Strategic and Place Planning are noted, however the aforementioned Housing SEPP was not adopted before the lodgement of this application and therefore is not applicable to this development. The existence of a boarding house on this site is permitted as per the SEPP ARH.</p> |
| Traffic Engineer             | <p><b>Not supported</b></p> <p>Original Assessment<br/><i>No objections made to the application, subject to conditions requiring swept paths to be confirmed prior to the issuance of a Construction Certificate, and revised plans showing the location of motorcycle and bicycle parking spaces.</i></p> <p>Since receipt of the original comments revised plans were received which remove portions of the lower ground floor walls and seemingly introduce a turning circle to the parking area. Council's traffic engineers provided the revised comments:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|                        | <p><u>Revised Assessment</u></p> <p><i>1. It is not appropriate to have a disabled space on a turntable as it does not provide a satisfactory level surface upon which to unload, restricts access and will not be easy to load/unload to or from. The unload area adjacent to the disabled bay is not fixed in position and unlikely to always be available for use.</i></p> <p><i>2. Having two side-by-side parking spaces on a turntable is considered inappropriate. If one vehicle parks poorly with a wheel off the edge it is likely to result in damage to one or both vehicles when the turntable is activated.</i></p> <p><i>3. The use of a turntable is not appropriate for use in a boarding house as it caters for a short-term lodgers and drivers are likely to be unfamiliar with its operation and use it incorrectly or park poorly on it.</i></p> <p><i>4. The use of a turntable places an ongoing maintenance and training burden on the management of the site.</i></p> <p>The above points are tantamount to refusal on traffic safety grounds and are contributory to the concluding remarks of this report that the existing building is inappropriate and incapable of being converted into a boarding house. The proposal is therefore inconsistent with Clause C2 Traffic, Access and Safety and C3 Parking Facilities of the WDCP 2011.</p> |
| Waste Officer          | <p><b><i>Supported, with conditions</i></b></p> <p><i>The revised architectural plans provide an acceptable waste storage solution.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| External Referral Body | Comments                                                                                            |
|------------------------|-----------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid who raised no objections to the development and no conditions. |

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

### SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

### Division 3: Boarding houses

#### Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and  
(b) provides lodgers with a principal place of residence for 3 months or more, and  
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and  
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

*but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".*

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

#### Clause 26: Land to which this Division applies

| Requirement                                                                                                                                                                                                                                                                | Comment                                                                                                                                                         |
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| This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:                                                                                                                               |                                                                                                                                                                 |
| (a) Zone R1 General Residential, or<br>(b) Zone R2 Low Density Residential, or<br>(c) Zone R3 Medium Density Residential, or<br>(d) Zone R4 High Density Residential, or<br>(e) Zone B1 Neighbourhood Centre, or<br>(f) Zone B2 Local Centre, or<br>(g) Zone B4 Mixed Use. | <b>Consistent</b><br>The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011. |

#### Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

| Requirement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p><b>Note: Accessible area</b> means land that is within:</p> <p>(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p> | <p><b>Consistent</b></p> <p>The site is located within the R2 Low Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p> |
| <p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>                                                                                                                                                                                                                               | <p>Not applicable.</p> <p>The site is located within the Sydney region.</p>                                                                                                                                                                                                                                                                                                                                                                             |

Clause 28: Development may be carried out with consent

| Requirement                                                                        | Comment                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Development to which this Division applies may be carried out with consent.</p> | <p>The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.</p> |

Clause 29: Standards that cannot be used to refuse consent

| Standard                                                                                                                                                                                                                                                             | Requirement                                                                                                              | Proposed                                                                                                      | Compliant/Comment     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------|
| <p><b>(1) Density and scale</b></p> <p>A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more</p> | <p>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p>    | <p>Floor space ratios are not applied in the WLEP 2011 or WDCP and this clause therefore does not apply..</p> | <p>Not applicable</p> |
|                                                                                                                                                                                                                                                                      | <p>(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing</p> | <p>Floor space ratios are not applied in WLEP 2011 or WDCP.</p>                                               | <p>Not applicable</p> |

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| than:                                                                                                                          | maximum floor space ratio for any form of development permitted on the land, or                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                           |                 |
|                                                                                                                                | <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p> | The site is located within the R2 Low Density Residential zone which does not permit residential flat buildings, and therefore this clause does not apply.                                                | Not applicable. |
| (2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds: |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                           |                 |
| <b>(a) building height</b>                                                                                                     | if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,                                                                                                                                                                                                                                                                                                                                                                                                                         | The maximum height of buildings is 8.5m from existing ground level pursuant to clause 4.3 of the WLEP 2011. The building height is compliant, and is not subject to change as a part of this application. | Compliant       |
| <b>(b) landscaped area</b>                                                                                                     | if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | The landscaped treatment within the front setback area is not compatible with the streetscape. Generally properties along the street and in the wider R2 zone have 6.5m deep landscaped front             | Inconsistent    |

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|                               |                                                                                                                                                                                                                                                                                                                                                                                                       | <p>gardens. This proposal results in there being a narrow strip of landscaping in between ramps which is inconsistent with the quantity of landscaping on neighbouring sites, and results in an inferior and incompatible appearance.</p> <p>This matter warrants the refusal of the application.</p>       |                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>(c) solar access</b>       | <p>where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p>                                                                                                                                                                                                          | <p>Pursuant to clause 30(1) (a) of the SEPP the development is not required to provide any communal living rooms. The plans detail a small space of 'shared living zone' including a laundry and storage on the lower ground floor. This space is not considered to achieve the requisite solar access.</p> | <p>Notwithstanding the fact that the subject communal living space does achieve 3 hours of direct sunlight, the development is not required to provide this space in any regard. Therefore on balance, it is found to be more beneficial to have a communal room with limited solar access as opposed to no communal room. On that basis a variation to this control can be considered.</p> |
| <b>(d) private open space</b> | <p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m<sup>2</sup> with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m<sup>2</sup> with a minimum dimension of 2.5m is provided</p> | <p>The development includes one communal garden (private open space) of 26m<sup>2</sup> and with a minimum width of 3.48m.</p>                                                                                                                                                                              | <p>Compliant</p>                                                                                                                                                                                                                                                                                                                                                                            |

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|                               | adjacent to that accommodation,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                             |           |
| <b>(e) parking</b>            | <p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p> | The development comprises four rooms and provides two car parking spaces (one being accessible) and the development therefore complies with cl.19(e) (iia). | Compliant |
| <b>(f) accommodation size</b> | <p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | The boarding rooms each provide a compliantly dimensioned space.                                                                                            | Compliant |

|  |                                                                                                                                                                               |                                                                                                                       |           |
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|  | used by a single lodger, or                                                                                                                                                   |                                                                                                                       |           |
|  | (ii) 16 square metres in any other case.                                                                                                                                      |                                                                                                                       |           |
|  | (3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.                 | The development does not propose any communal kitchen or bathroom facilities as each room has independent facilities. | Compliant |
|  | (4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2). | Noted.                                                                                                                | N/A       |

Clause 30: Standards for boarding houses

| Standard requirement                                                                                                                                                   | Proposed                                                                                                                                                                                                                 | Compliant/Comment |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:                                |                                                                                                                                                                                                                          |                   |
| (a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,                                                              | The development comprises of four rooms and therefore no communal living room is required.                                                                                                                               | Not Applicable    |
| (b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m <sup>2</sup> , | No boarding room has a gross floor area (excluding any kitchen or bathroom facilities) of greater than 25m <sup>2</sup> .                                                                                                | Compliant         |
| (c) no boarding room will be occupied by more than 2 adult lodgers,                                                                                                    | The development includes a Plan of Management which, at Section 3.2, details that the premises shall be occupied by no more than eight lodgers at any one time, including a maximum of two lodgers in each of the rooms. | Compliant         |
| (d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,                                                   | Each boarding room is provided with a private kitchen and bathroom for the use of each lodger.                                                                                                                           | Compliant         |
| (e) if the boarding house has capacity to accommodate 20 or                                                                                                            | The boarding house has a maximum capacity of eight (8)                                                                                                                                                                   | Not Applicable    |

|                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                          |                |
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| more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,                                                                                                                                                                | lodgers and therefore no boarding house manager is required to be housed on site.                                                                                                                        |                |
| (g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use, | The land is zoned primarily for residential purposes (R2 Low Density Residential)                                                                                                                        | Not Applicable |
| (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.                                                                                                                           | The plans detail one motorcycle and two bicycle parking spaces. In reality additional spaces could be provided within the lower ground floor area, however the details shown on the plans are compliant. | Compliant      |
| (2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.                                                                                                                               | The building is not an existing boarding house.                                                                                                                                                          | Not Applicable |

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment

The site is within the R2 Low Density Residential zone and has four (4) boarding rooms therefore complying with cl.30(AA).

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*



Comment

The proportionality of the building does not materially changed when viewed from the streetscape.

In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment

The development does not seek to change the existing size of the building. The building is of a typical proportion commensurate to the prevailing streetscape.

In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment

At present the site has landscaping to the front boundary which contributes to screening the building. Whilst this vegetation is not significant or particularly valuable, it does provide for a pleasant outlook and streetscape appearance. The development seeks to remove this vegetation to provide for a new access ramp and waste storage area - both elements that are necessities for a boarding house development. The introduction of these two elements removes the ability to landscape the front garden in a manner that could screen the development either to the same intensity that it is currently screened, or to an acceptable intensity.

The removal of opportunity to appropriately landscape the sites frontage, caused by structures needed to provide a boarding house development, is not appropriate and is symbolic that the existing site arrangement is not appropriate to permit for a change of use to a boarding house.

In this regard, it is considered that the development is inconsistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment

The proposal does not seek to amend the existing materiality of the building.

In this regard, the development is considered to be consistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

#### Comment

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

#### Constraints on the development potential of surrounding sites

The development is not anticipated to add additional constraints to surrounding sites that could jeopardise or prejudice their development potential.

#### Privacy

The development is not anticipated to generate any unacceptable degree of overlooking into neighbouring properties commensurate to the existing situation.

#### Overshadowing

The development shall not generate any additional shadows on neighbouring properties.

#### Noise

The development is not anticipated to generate any excessive or unacceptable noise impacts.

#### Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

#### Conclusion

Whilst the use of the site for the purpose of a boarding house is accepted, the works required to convert the existing dwelling house into a boarding house generate physical impacts that are deemed detrimental to the quality of the streetscape. A boarding house requires disabled access and a proper waste storage area, both of which have been proposed within the front building setback area. These two elements, combined with a generally limited ratio of landscaping inhibit the ability of the site to provide an appropriately landscaped frontage consistent with the rest of the street. On that basis the character of the built form is incompatible with the prevailing character and pattern of structures within the local area.

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

A BASIX certificate has been submitted with the application (see Certificate No. A412794\_02 dated 11 November 2021).

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment

The proposal was referred to Ausgrid who raised no objections to the development and no conditions.

### 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?                                                            | No  |

#### Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 7.75m    | No change   | Yes      |

#### Compliance Assessment

| Clause                          | Compliance with Requirements |
|---------------------------------|------------------------------|
| 2.7 Demolition requires consent | Yes                          |
| 4.3 Height of buildings         | Yes                          |
| 6.2 Earthworks                  | Yes                          |
| 6.4 Development on sloping land | Yes                          |

#### Detailed Assessment

## Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

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

### Comment

The development continues to provide housing needs for the community.

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 development provides for a residential land use which meets the accommodation requirements 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

By virtue of the physical structures required to provide a compliant boarding house development (being disabled access and waste storage) the proposal detracts from the general landscaped setting that is currently on the street and on Warri Close by way of removing the front garden, and by limiting the possibility of providing mature plantings in future.

On that basis the treatment of the front setback area is inconsistent with the R2 Low Density Residential zone objectives and this forms a reason for refusal. The use of the land for the purpose of a boarding house is not objected to.

It is considered that the development does not satisfy this objective.

## Warringah Development Control Plan

### Built Form Controls

| Built Form Control        | Requirement | Existing        | Proposed  | % Variation* | Complies |
|---------------------------|-------------|-----------------|-----------|--------------|----------|
| B1 Wall height            | 7.2m        | 5.4m            | No change | -            | Yes      |
| B3 Side Boundary Envelope | North - 4m  | No encroachment | No change | -            | Yes      |
|                           | South - 4m  | No encroachment | No change | -            | Yes      |

|                                                     |                            |                             |                                             |                   |                        |
|-----------------------------------------------------|----------------------------|-----------------------------|---------------------------------------------|-------------------|------------------------|
| B5 Side Boundary Setbacks                           | North - 0.9m               | Building - 3.2m             | Building - no change<br>Parking - 0.9m      | -<br>-            | Yes<br>Yes             |
|                                                     | South - 0.9m               | 1.4m                        | No change                                   | -                 | Yes                    |
| B7 Front Boundary Setbacks                          | 6.5m                       | Building - 6.7m             | Building - no change<br>Ramp - approx. 0.2m | -<br>97%          | Yes<br>No              |
| B9 Rear Boundary Setbacks                           | 6m                         | Building - 3.4m             | Building - no change<br>Parking - 0.5m      | -<br>83.3% (5.5m) | No<br>(existing)<br>No |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% (138.4m <sup>2</sup> ) | 24.4% (84.6m <sup>2</sup> ) | 9% (34.4m <sup>2</sup> )                    | 75.2%             | No                     |

#### Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | No                           | No                          |
| B1 Wall Heights                                                        | Yes                          | Yes                         |
| B3 Side Boundary Envelope                                              | Yes                          | Yes                         |
| B5 Side Boundary Setbacks                                              | Yes                          | Yes                         |
| B7 Front Boundary Setbacks                                             | No                           | No                          |
| B9 Rear Boundary Setbacks                                              | No                           | No                          |
| C2 Traffic, Access and Safety                                          | No                           | No                          |
| C3 Parking Facilities                                                  | No                           | No                          |
| C4 Stormwater                                                          | No                           | No                          |
| C6 Building over or adjacent to Constructed Council Drainage Easements | No                           | No                          |
| C7 Excavation and Landfill                                             | Yes                          | Yes                         |
| C8 Demolition and Construction                                         | Yes                          | Yes                         |
| C9 Waste Management                                                    | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting                          | No                           | No                          |
| 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                         |

| Clause                                          | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------------------|------------------------------|-----------------------------|
| 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

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The site is subject to a 6.5m front boundary setback requirement. Whilst the existing building remains compliant, the new access ramp and waste storage area encroach within this setback.

##### 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 addition of a ramp and waste storage area within the front setback area is not considered to detract from the existing sense of openness within the streetscape as these structures are, generally, below the height of the existing boundary fence.

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

##### Comment

The site is already of proportions generally lesser than its neighbours and as such, the existing frontage is already more cramped than neighbouring properties. The addition of a large ramp structure (required for disabled access) and a bin storage area for five (5) bins within the front setback further decrease this already incongruent setback. The consequence of the development results in there being approximately 11m<sup>2</sup> of calculable landscaped open space within the front setback area.

The addition of these extra structures in combination with the shortfall in landscaped area results in an inconsistent visual continuity of landscaped elements within the front setback which, overall, harm the quality of the front setback area and streetscape.

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

Comment

The application is devoid of detail to demonstrate that the visual quality of the streetscape would be enhanced by this development. The removal of existing vegetation and replacement with hard structures for almost the entirety of the front setback area cannot be said to protect and enhance the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment

The development is not anticipated to cause unreasonable view sharing impacts.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

### Description of non-compliance

Clause B9 pertains to the rear setback elements of a development including car parking areas. Whilst the building setback is not subject to change, the proposed car parking spaces are being modified from an internal garage to an open-style area beneath the existing house encroaching within the rear setback area. This assessment below therefore relates to car parking within the rear setback area.

### 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

No change to existing.

- *To create a sense of openness in rear yards.*

Comment

The parking of cars within the rear setback area is not considered to detrimentally impact on a sense of openness given the non-permeance of non-compliance.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment

The proposed arrangement of car parking spaces within the rear setback area requires awkward and numerous maneuvers to get into the parking spaces/turntable and to exit the site. The intensity of using these car spaces is also subject to increase by virtue of the change of use of the site. These two factors, combined with the lessened spatial separation of the car parking area to the rear walls of no. 28 Edward Street to the east given rise to an increased risk of acoustic intrusion and lightspill into neighbouring properties.

Whilst there is some existing boundary landscaping, this is not permanent nor sufficient to mitigate the impacts of vehicles coming and going, particularly in the evening, nighttime and early morning.

It therefore cannot be said that the car parking arrangement preserves the amenity of adjacent land.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment

The provision of car parking and the existence of permanent structures within the rear setback area is preceded within the street and the non-compliance sought will therefore maintain the visual continuity.

- *To provide opportunities to maintain privacy between dwellings.*

Comment

The car parking is not considered to harm the provision of visual privacy enjoyed by neighbours.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

**C6 Building over or adjacent to Constructed Council Drainage Easements**

The site may be burdened by Council's stormwater assets which have not been appropriately surveyed or identified by the application. In the absence of this information Council's Development Engineers are unable to confirm if the proposal includes the building over or adjacent to Council's infrastructure, nor whether these works could impact on that infrastructure.

It shall be noted by the reader that the applicant has not been requested to address these concerns given the costs involved in such, and given that fact that the application is being recommended for refusal due to separate reasons. Were the application to have been supported this information could be requested and further investigated.

**D1 Landscaped Open Space and Bushland Setting**Description of non-compliance



Clause D1 requires that a landscaped ratio of 40% be provided on site, equivalent to an area of 138.4m<sup>2</sup> in this instance. The control should generally be read in conjunction with Clauses B7 and B9 relating to the front and rear setbacks which, in combination, seek to ensure that an appropriately proportioned and landscaped front and rear garden is provided.

The existing development is deficient of the required landscaped area (at 24.4%) and this application further reduces that quantum to only 9%. In calculating those areas it should be noted that areas beneath eaves and lesser than 2m in width are excluded from the landscaped open space area.

The application requests a 75.2% variation to the control requirements. It is noted that the architectural plans submitted detail a larger ratio of 'deep soil landscaping', however this calculation neglects to consider the requirements of Clause D1 as detailed above.

#### Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

#### Comment

The proposed ramp structure necessitates the removal of most plantings along the front boundary. The application is not accompanied by a detailed Landscape Plan or Planting Schedule to assess whether or not sufficient plantings will be made available to maintain and enhance the streetscape. Notwithstanding that, the proportions of landscaped areas provided within the front setback area are considered deficient to accommodate any significant landscaping to enhance the streetscape.

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

#### Comment

The vegetation proposed to be removed has been identified as exempt meaning that it can be removed without Council approval. The topographical modifications to accommodate the ramp and bin area are not significant.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

#### Comment

The development will modify the width of deep soil area in the front garden from effectively 6.5m down to 1m (in part) which has not been demonstrated to be sufficient to enable the establishment of vegetation sufficient in scale to mitigate the bulk of the building.

- *To enhance privacy between buildings.*

#### Comment

It is considered that the proposal does not modify the existing provision of privacy between

buildings.

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

Comment

Covered under SEPP ARH requirements.

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

Comment

Whilst not detailed on the plans, it is considered that the rear garden area is sufficient in proportion to provide space for service functions including clothes drying.

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

Comment

The shortfall in landscaped open space is not considered material to the facilitation of water management. Refer to specific comments earlier in this report from Council's Development Engineer.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

### **D3 Noise**

The development application is accompanied by a Acoustic Report that has been reviewed and considered acceptable by Council's Environmental Health Officers. The development, were it to be approved, would be subject to an Operational Management Plan to ensure that noise transmissions are kept to a minimum.

Whilst the occupation of the building with up to eight (8) residents is generally greater than a traditional boarding house that does not necessarily correlate to an increase in noise.

However, the location of the car parking and turntable structure located in an undercroft area right against the rear boundary of the property has not been considered by the applicant. It is anticipated that the operation of the turntable, and the noises generated by vehicles could be detrimental to the amenity of neighbours given the proximate nature of the structures.

### **D8 Privacy**

The increased intensity of occupation is not considered tantamount to an increased invasion of visual privacy commensurate to the current conditions enjoyed by neighbouring properties.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

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

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

A monetary contribution of \$ 650 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 130,000.

## **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

This Assessment Report finds that the existing building is not capable of being appropriately modified to facilitate its conversion from a dwelling house into a boarding house.

The proposal results in unacceptable streetscape impacts through the removal of landscaping opportunities. The proposed car parking location is likely to generate unreasonable acoustic intrusion and light overspill into neighbouring properties. The car parking solution is not appropriate for a boarding house development and is likely to be prone to accidental misuse.

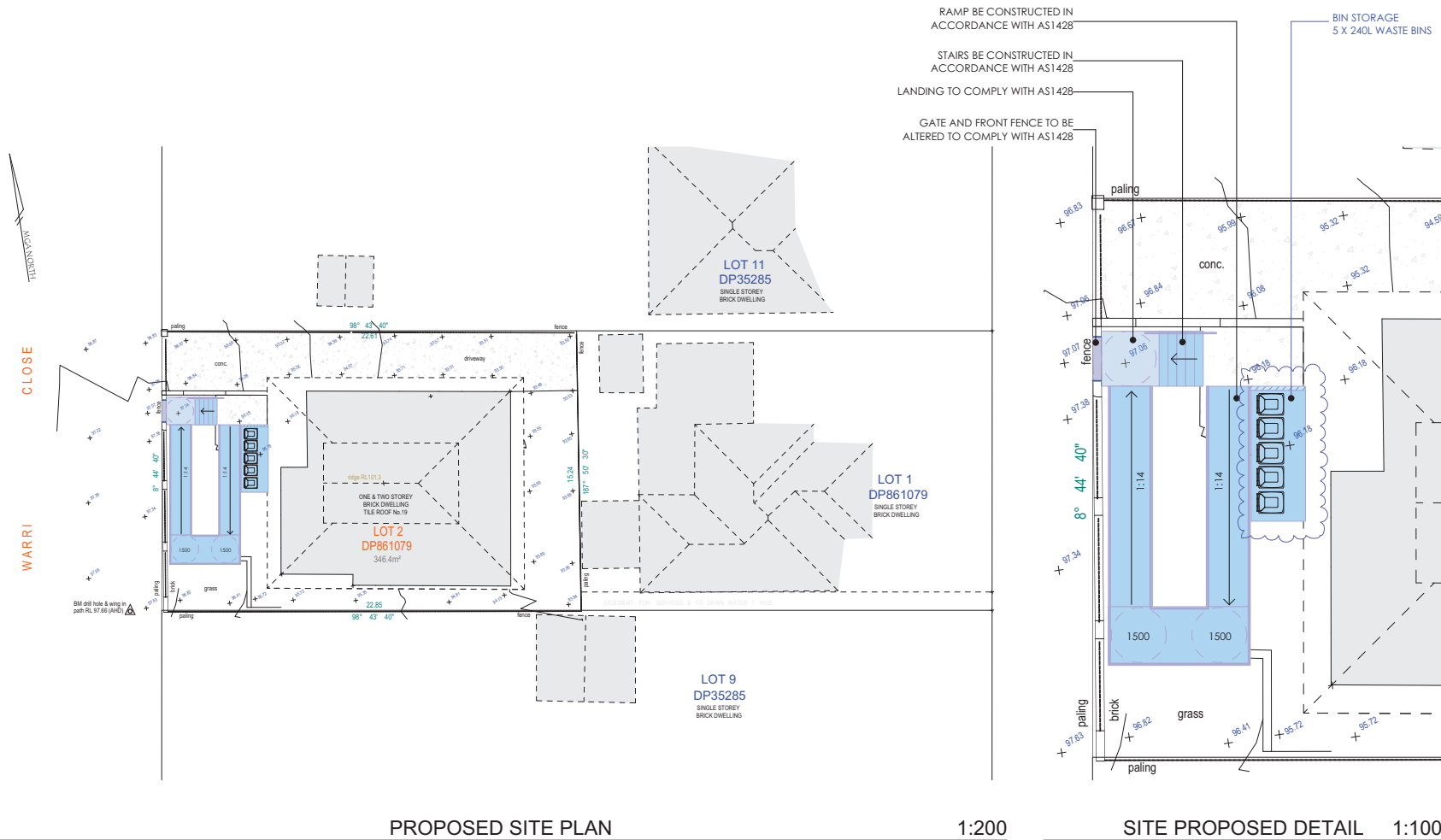
On balance these factors result in the considered opinion that the proposal is not appropriate nor in the public interest, further evidenced by the community's response to the public exhibition of the application.

It is on these grounds that this report concludes with the recommendation that the NBLPP as the consent authority **REFUSE** the development 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 DA2021/2141 for the Alterations and additions to an existing dwelling house and change of use to a boarding house on land at Lot 2 DP 861079, 19 Warri Close, NARRAWEENA, 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.
  - Pursuant to Section 29(2)(b) and 30(A) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, the proposal provides a front boundary setback and landscaped solution that is inconsistent with the surrounding R2 zone.
  - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the Zone R2 Low Density Residential of the Warringah Local Environmental Plan 2011.
  - Pursuant to Section 4.15(1)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development inconsistent with the following provisions of the Warringah Development Control Plan 2011:
    - B7 Front Boundary Setbacks.
    - B9 Rear Boundary Setbacks.
    - C2 Traffic, Access and Safety.
    - C3 Parking Facilities.
    - C4 Stormwater.
    - C6 Building Over or Adjacent to Constructed Council Drainage Easements.
    - D1 Landscaped Open Space and Bushland Setting.



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19 Warri Close, Narrabeena  
Northern Beaches  
Australia

Mr & Mrs Taylor

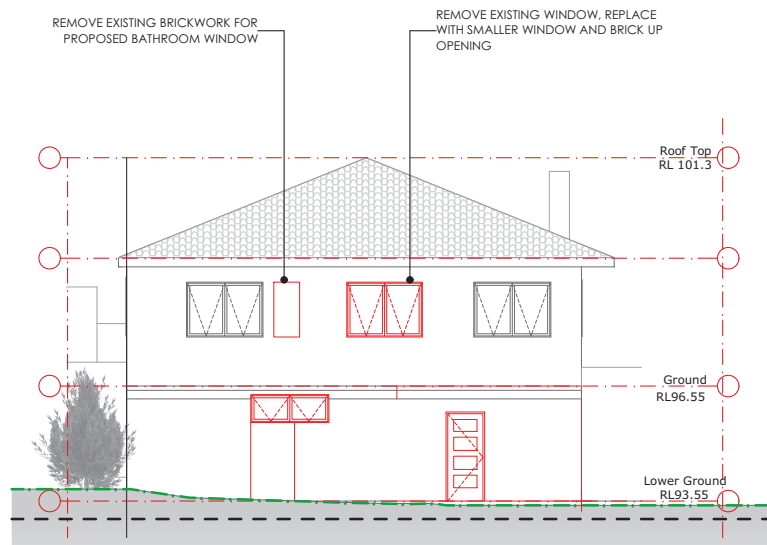
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DEVELOPMENT  
APPLICATION

DATE  
6/02/2022

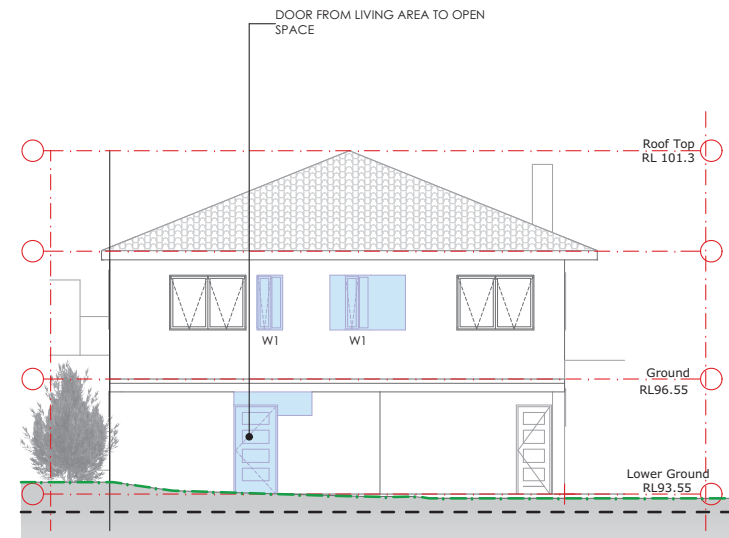
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**EAST ELEVATION EXISTING**

**1:100**



**EAST ELEVATION PROPOSED**

**1:100**



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Mr & Mrs Taylor

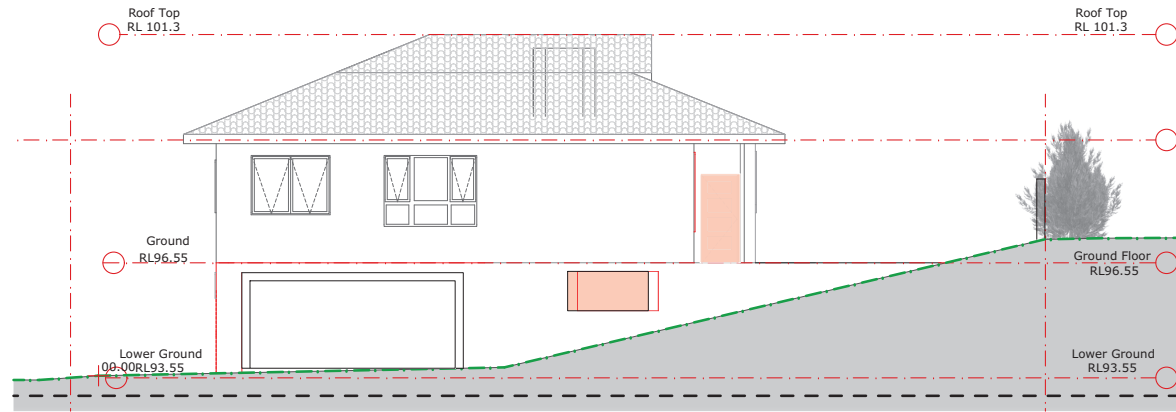
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DEVELOPMENT  
APPLICATION

DATE  
6/02/2022

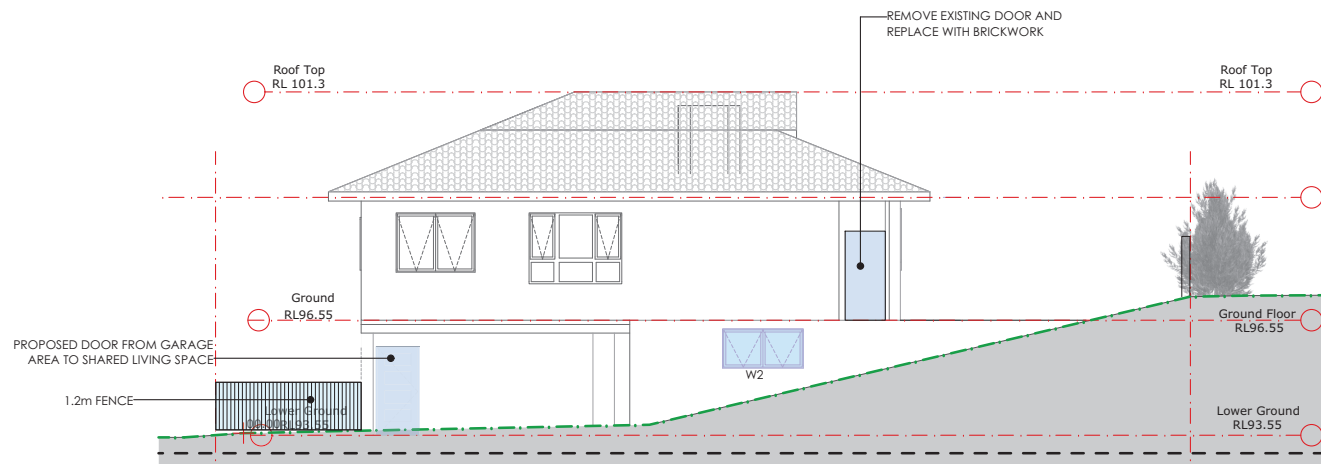
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DRAWING : EAST ELEVATION EXISTING, EAST ELEVATION PROPOSED





**NORTH ELEVATION EXISTING**

**1:100**



**NORTH ELEVATION PROPOSED**

**1:100**



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Northern Beaches  
Australia

Mr & Mrs Taylor

ISSUE  
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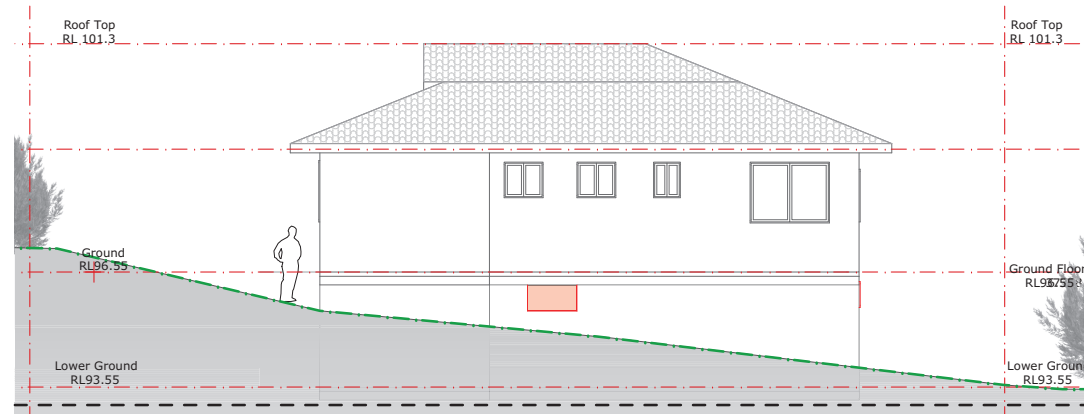
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APPLICATION

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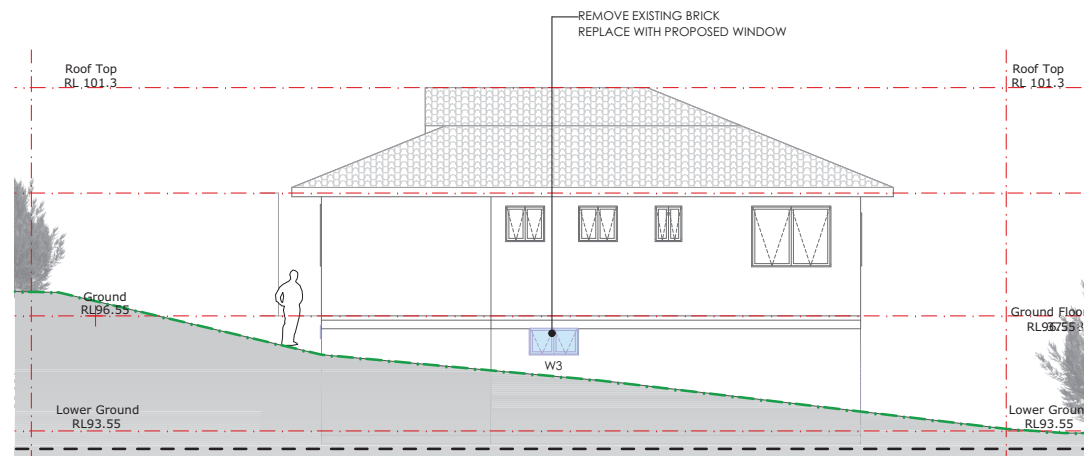






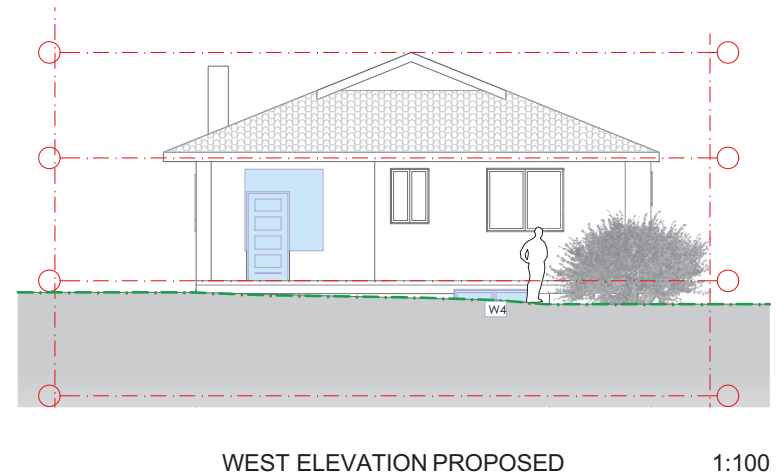
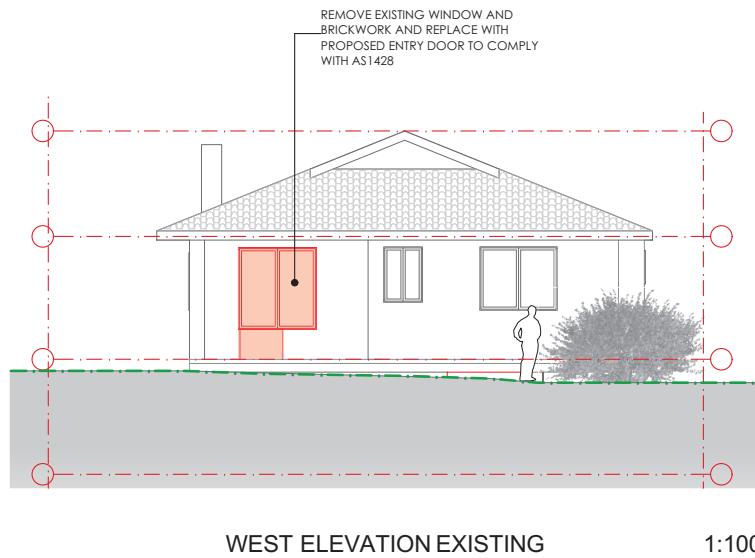
**SOUTH ELEVATION EXISTING**

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**SOUTH ELEVATION PROPOSED**

**1:100**



**ITEM 4.2**

**DA2021/2153 - 27A PINE AVENUE, BROOKVALE -  
DEMOLITION WORKS AND CONSTRUCTION OF A  
RESIDENTIAL FLAT BUILDING INCLUDING BASEMENT  
CARPARKING.**

**AUTHORISING MANAGER** Rodney Piggott

**TRIM FILE REF** 2022/276619

**ATTACHMENTS**

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site Plans & Elevations
- 3 [↓](#) SEPP 65 Report
- 4 [↓](#) Design & Sustainability Advisory Report

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/2153 for demolition works and construction of a residential flat building including basement carparking on land at Lot C DP 403991, 29 Pine Avenue BROOKVALE NSW 2100 Lot A DP 403991, 27 A Pine Avenue, BROOKVALE, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                                           |                                                                                                            |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | DA2021/2153                                                                                                |
| <b>Responsible Officer:</b>               | Maxwell Duncan                                                                                             |
| <b>Land to be developed (Address):</b>    | Lot C DP 403991, 29 Pine Avenue BROOKVALE NSW 2100<br>Lot A DP 403991, 27 A Pine Avenue BROOKVALE NSW 2100 |
| <b>Proposed Development:</b>              | Demolition works and construction of a residential flat building including basement carparking             |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R3 Medium Density Residential                                               |
| <b>Development Permissible:</b>           | Yes                                                                                                        |
| <b>Existing Use Rights:</b>               | No                                                                                                         |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                                   |
| <b>Delegation Level:</b>                  | NBLPP                                                                                                      |
| <b>Land and Environment Court Action:</b> | Yes                                                                                                        |
| <b>Owner:</b>                             | A.C.N. 646 685 592 Pty Ltd                                                                                 |
| <b>Applicant:</b>                         | A.C.N. 646 685 592 Pty Ltd                                                                                 |
| <b>Application Lodged:</b>                | 18/11/2021                                                                                                 |
| <b>Integrated Development:</b>            | No                                                                                                         |
| <b>Designated Development:</b>            | No                                                                                                         |
| <b>State Reporting Category:</b>          | Residential - New multi unit                                                                               |
| <b>Notified:</b>                          | 03/12/2021 to 17/12/2021                                                                                   |
| <b>Advertised:</b>                        | 03/12/2021                                                                                                 |
| <b>Submissions Received:</b>              | 12                                                                                                         |
| <b>Clause 4.6 Variation:</b>              | 4.3 Height of buildings: 1.1%                                                                              |
| <b>Recommendation:</b>                    | Refusal                                                                                                    |
| <b>Estimated Cost of Works:</b>           | \$ 5,856,220.00                                                                                            |

### EXECUTIVE SUMMARY

The proposal seeks consent for demolition works and construction of a three (3) storey residential flat building, comprising 23 apartments and basement carparking at 27A and 29 Pine Avenue, Brookvale.

Twelve (12) submissions have been received which raise issues regarding bulk and scale, traffic, solar access, privacy, excavation and construction and view loss. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

The proposal is contrary to the design principles of *State Environmental Planning Policy No. 65 -*

*Design Quality of Residential Apartment Development* (SEPP 65) and the requirements and objectives of the Apartment Design Guide (ADG), Warringah LEP 2011 (WLEP 2011) and Warringah Development Control Plan 2011 (WDCP 2011), with specific concerns regarding solar access, spatial separation/setbacks, privacy, bulk and scale and visual impact. Based on the detailed assessment contained in this report, it is recommended that the application be refused.

As the application relates to a three-storey residential flat building development that is subject to the provisions of SEPP 65 and has more than 10 objection the application is referred to the Northern Beaches Local Planning Panel for determination with a recommendation of refusal.

### PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition works and construction of a three (3) storey residential flat building including basement carparking, pursuant to *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development* (SEPP 65).

Specifically, the development incorporates the following:

- The demolition of two dwelling houses and associated outbuildings;
- The construction of a three building, three storey residential flat building containing:
  - 9 x one bedroom apartments,
  - 8 x two storey bedroom apartments;
  - 6 x three bedroom units; and
- Common basement level containing parking for 43 vehicles and 12 bicycles.
- Site preparation works including tree removal; and
- Consolidation of lots Lot A DP 403991 and Lot C DP 403991 into one.

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B2 Number of Storeys  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - C4 Stormwater  
Warringah Development Control Plan - C9 Waste Management  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D8 Privacy  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - D18 Accessibility and Adaptability  
Warringah Development Control Plan - D20 Safety and Security

#### SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | <p>Lot C DP 403991 , 29 Pine Avenue BROOKVALE NSW 2100</p> <p>Lot A DP 403991 , 27 A Pine Avenue BROOKVALE NSW 2100</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Detailed Site Description:</b> | <p>The subject sites are commonly known as 27A Pine Avenue, Brookvale and 29 Pine Avenue, Brookvale.</p> <p>The site is zoned R3 Medium Density Residential zone under the Warringah Local Environmental Plan 2011 (WLEP 2011).</p> <p>The sites currently contain a dwelling house on each lot. The land has total area of 2216m<sup>2</sup></p> <p>The site contains a fall from north side to the south side of the site of approximately 3m.</p> <p>The site is regular in shape with a combined frontage of 20.17m along Pine Avenue and an average depth of 109.33sqm. The site has a total surveyed area of 2216m<sup>2</sup>.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>The area surrounding the site is characterised by a mix residential land uses including low-density free-standing dwellings, residential flat buildings and seniors housing.</p> <p>The site is adjoined to the south by a two and a half storey residential flat building, to the north by a dwelling house and residential flat building, and to the east Seniors Housing development.</p> |

Map:



#### SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

#### Current Application

The application was referred to the Design Review Panel at the meeting on 16 December 2021. The panel reviewed the application and concluded that the proposed development was not supported, and warranted a complete re-design. Recommendations were provided regarding built form, access, landscaping, amenity, façade and sustainability.

On 18 January 2022, the applicant filed a Class 1 Appeal (Deemed Refusal) with the Land and Environment Court for the proposed development. A section 34 conference was undertaken on 20 April 2022. No agreement was reached and the conference was terminated.

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

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

| Section 4.15 Matters for Consideration                                               | Comments                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument        | See discussion on “Environmental Planning Instruments” in this report.                                                                                                                                                                                                                                                                |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the |



| Section 4.15 Matters for Consideration                                                                                                            | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                   | residential use of the site, and is not considered a contamination risk.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan                                                                            | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement                                                                                 | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)                         | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and | <p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |



| Section 4.15 Matters for Consideration                                                 | Comments                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| economic impacts in the locality                                                       | <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>                                                  |
| Section 4.15 (1) (c) – the suitability of the site for the development                 | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                  |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report.                                                                                                                                                                                                                                                                                                                                        |
| Section 4.15 (1) (e) – the public interest                                             | This assessment has found the proposal to be contrary to the relevant requirement(s) of the WDCP and ADG 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 03/12/2021 to 17/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 12 submission/s from:

| Name:                           | Address:                                       |
|---------------------------------|------------------------------------------------|
| Mr Frank Anthony Mesiti         | 3 Green Street BROOKVALE NSW 2100              |
| Ryan Sheldon Dourado            | 13 / 23 - 27 B Pine Avenue BROOKVALE NSW 2100  |
| Mr Gregory Andrew Halpin        | 23 Oatway Parade NORTH MANLY NSW 2100          |
| Mr Antony Maitland Gold         | 13 Darlington Drive CHERRYBROOK NSW 2126       |
| Mr Graham Dawson                | 14 / 23 - 27 B Pine Avenue BROOKVALE NSW 2100  |
| Amanda Elizabeth Wyndham Farrar | 8 Pine Avenue BROOKVALE NSW 2100               |
| Mr Jamie Jonathan Kingsman      | 24 / 21 - 23 Shackel Avenue BROOKVALE NSW 2100 |
|                                 |                                                |

| Name:                            | Address:                                      |
|----------------------------------|-----------------------------------------------|
| Mr Sean Alexander McClean Aitken | 11 / 23 - 27 B Pine Avenue BROOKVALE NSW 2100 |
| Nora Bodkin                      | Address Unknown                               |
| Gregory Terrence Forbes          | 6 / 23 - 27 B Pine Avenue BROOKVALE NSW 2100  |
| Mrs Elizabeth Grace Lovell       | 12 Pine Avenue BROOKVALE NSW 2100             |
| Katka Zajac                      | 20 Avon Road DEE WHY NSW 2099                 |

The following issues were raised in the submissions:

- **Bulk and Scale**
- **Solar Access**
- **Privacy**
- **Traffic and Parking**
- **Views**
- **Loss of property value**
- **Excessive Excavation**

The above issues are addressed as follows:

- **Bulk and Scale**

A number of submissions received raise concern regarding the bulk of the proposed development, noting non-compliance with numerous aspects of WLEP 2011 and WDCP 2011

Comment:

As discussed in further detail with respect to individual built form standards/controls, the scale of the development results in unreasonable impacts upon adjoining properties and the streetscape, and the proposal is not supported in this regard. Accordingly, this matter is included as a reason for refusal.

- **Solar Access**

The submissions raised concerns in regards to the solar access impacts on the neighbouring property to the south (No. 23B - 27 Pine Avenue, Brookvale).

Comment:

The development application has been assessed against the solar access provisions under the ADG and Part D6 of the WDCP 2011. In summary, insufficient information has been provided to properly assess the impact to the adjoining property. The shadow diagrams submitted with the application do not effectively detail the extent of overshadowing during the winter solstice on June 21 for 9:00am, 12pm and 3:00pm. Council could not determine the extent of impact upon living room windows or to the private open space of the adjoining property to the south.

Accordingly, this matter is included as a reason for refusal.

- **Privacy**

The submissions raised concerns that in regards to the privacy impacts on the neighbouring property to the south (No. 23B - 27 Pine Avenue, Brookvale). Of particular concern is that of the second floor balconies along the southern side of the proposed building.

Comment:

The proposal has been assessed against the privacy provisions under the ADG and Part D8 Privacy of the Warringah DCP. In summary, the proposed balconies along the southern side of the adjoining southern property will result in direct overlooking of private open space and living rooms windows of the adjoining apartments of the south.

Accordingly, this matter is included as a reason for refusal.

- **Traffic and Parking**

Concern is raised in regards to traffic and potential dangers in regards to pedestrian safety as a result of the proposed use of the subject site.

Comment:

A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development is consistent with the underlying objectives of Part C2 Traffic, Access and Safety as well as numeric requirements of C3 Parking Facilities of the WDCP 2011.

This issue does not warrant the refusal of the application

- **Views**

Concern was raised in regards to view loss of city views from living rooms of the adjoining property to the north.

Comment:

The proposal has been assessed against the view loss provisions under Part D7 of the Warringah DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to Part D7 under the WDCP 2011 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from private open space.

This matter does not warrant the refusal of the application.

- **Loss of property value**

Concern is raised that the development would have an adverse impact on property value.

Comment:

The issue of property value is not one which can be considered under the provisions of Section 4.15 (1) of the Environmental planning and Assessment Act 1979. This issue does not warrant the refusal of the application.

This matter does not warrant the refusal of the application.

- **Excessive Excavation and Construction impacts**

Concern is raised in regards to the level of excavation proposed, with the objection noting the excavation to be excessive.

Comment:

While basement parking is accepted to be suitable for higher density development the extent of the excavation is excessive, noting it is non-compliant with the side setback control of the WDCP 2011 and the number of a parking spaces is in excess of the minimum requirement.

Accordingly, this matter is included as a reason for refusal.

## REFERRALS

| Internal Referral Body                   | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| Design and Sustainability Advisory Panel | <p><b>Not supported</b></p> <p>The proposed development extends across two existing lots which each contain a dwelling house at 27A &amp; 29 Pine Avenue. The proposal represents a three-storey RFB over a single level basement.</p> <p>The Warringah DCP Built Form Controls clearly state that a 2-storey form is expected on these sites.</p> <p>The Panel advise that the current three-story form is not supported as it will require significant excavation and poor amenity of the apartments looking into the excavated hill side. A two-storey option is more appropriate to the site and context and will ensure good amenity is achieved for all apartments.</p> <p>The applicant and should note that where major deviations from controls are proposed applicants are encouraged to bring these proposals to the Panel at Pre-DA stage and seek advice from council officers at a Pre-Lodgement Meeting (PLM) rather than leaving it to DA when the design is well advanced and considerable time and effort has been expended in the preparation of detailed design and consultants reports.</p> <p>The applicant should note that although the Panel is primarily concerned with design quality, the approach to any non-compliance with planning controls will be considered where there is:</p> <ul style="list-style-type: none"> <li>• a demonstrable improvement in amenity within the proposal, (overshadowing, privacy, access to rooftop open space etc.)</li> <li>• reduced impact on adjoining sites (either existing or in relation to future development potential)</li> </ul> |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|                        | <ul style="list-style-type: none"> <li>contributions to the public domain or other public benefits (affordability, environmental performance)</li> </ul> <p>In order to demonstrate the benefits of non-compliance the non-compliant proposal should be benchmarked and compared to a complying 'reference scheme' this has not been provided.</p> <p><b>Strategic context, urban context: surrounding area character</b></p> <p>Resolution of the existing Northern Boundary 4.5m right of way is not resolved and offers an unclear landownership for the western building, this land should be used for the ground floor residents as defined terrace gardens as indicated for the other two eastern buildings on the site.</p> <p>Currently the site has significant fall from the north to the south (short section) as well as the East West (long section). The site planning strategy of three separate buildings aligned in the East West alignment and a large single level basement creates unacceptable and non ADG compliant interbuilding separations less than the 12m required by the ADG between habitable rooms/balconies and excessive basement cut throughout the site.</p> <p>The short (North South) sections exhibited on Sheet No DA 200 demonstrate the extent of cut on the northern boundary (adjacent to No. 21-23 Shackle &amp; No 33 Pine Street) and of the proposal creating over 2 metre retaining walls and subterranean units. On the Southern side (No. 23B-27 Pine Street) the extent of basement cut is less than 2m from this boundary and could potentially compromise the existing sandstone formation and wall adjacent to No. 23B-27 Pine Street.</p> <p><i>Recommendations</i></p> <ol style="list-style-type: none"> <li><i>The proposed development should be redesigned to comply with ADG separations</i></li> <li><i>A more considered design approach should be investigated for the spaces between the buildings.</i></li> <li><i>Remaster plan the site to minimise excavation, eliminate the subterranean units.</i></li> <li><i>Reduce number of storeys and the number of units in order to reduce the excessive excavation that is a direct result of the number of cars that have to be accommodated on the site</i></li> </ol> <p><b>Scale, built form and articulation</b></p> <p>The current site configuration and building layout will impact the amenity of the RFB (No. 23B-27 Pine Street in terms of privacy and solar access to the property to the South.</p> |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                        | <p>The building proposal indicates various windows and balconies to the northern and southern elevations that do not provide the minimal ADG 6m separation.</p> <p>The extent of solid walls between the three buildings is not consistent with intent of ADG</p> <p>As noted above, the controls for the area clearly anticipate a 2-storey form.</p> <p>The views from the building to the north should be considered. Currently the upper-level steps in from the south, the upper levels should respond to the views by stepping in from the east and west to open view corridors.</p> <p><i>Recommendation</i></p> <p>5. <i>Comply with the 2-storey form unless it can be demonstrated that a 3-storey form achieves higher amenity and lesser adverse impacts.</i></p> <p><b>Access, vehicular movement and car parking</b></p> <p>Due the configuration of the building and basement car park layout the distance from the Pine Avenue entry to the most Eastern building entry for pedestrians accessing the site is greater than 75m along a narrow south facing external pedestrian access way. It is the Panel's view that this is a substandard circulation arrangement for visitors and residents.</p> <p>CPTED issues need to be resolved on this important access issue to the site.</p> <p><i>Recommendations</i></p> <p>6. <i>Reduce the amount of parking (refer to Rec4).</i></p> <p>7. <i>Provide detail on proposed lighting and security measures</i></p> <p><b>Landscape</b></p> <p>As noted above the use of the existing 4.5m right of way along the northern boundary is not resolved. This land should be made available to ground floor residents as defined terrace gardens as is indicated for the other two buildings on the site.</p> <p>The landscape design needs to reduce the impact on the current site conditions. The Panel understands that groundwater flows in this area are significant and should be investigated given the extent of excavation proposed.</p> <p><i>Recommendations</i></p> <p>8. <i>The landscape plan must indicate the ground floor plan for the Panel and Council to better understand the relationship of how interior and external uses are accomplished.</i></p> |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|                        | <p>9. <i>The landscape plan does not clearly distinguish between private open space and communal open space.</i></p> <p>10. <i>Include plant species that are endemic to the Northern Beaches.</i></p> <p><b>Amenity</b></p> <p>The applicant noted the good aspect and views to the south, currently all the building's living spaces face the northern boundary.</p> <p>The site is a very narrow site and it should be possible to gain both sunlight and views with the incorporation of more cross thought apartment, and better utilization of the gaps between the buildings on the site.</p> <p><i>Recommendations</i></p> <p>11. <i>Provide a more considered design response to the gaps between the buildings in the east/west direction.</i></p> <p>12. <i>Investigate a scheme which is two levels with the upper floor containing cross through livings space which gain both the northern and southern amenity.</i></p> <p><b>Façade treatment/Aesthetics</b></p> <p>The orientation of all units to the north results in a bland and unarticulated façade to the street.</p> <p>The facades of the internal elevations have no articulation and require consideration of further fenestration to improve the both the aesthetics and amenity of the buildings.</p> <p><i>Recommendations</i></p> <p>13. <i>Redesign the western façade to ensure that the building addresses the street.</i></p> <p>14. <i>Redesign the eastern and western internal elevations to provide increased amenity and articulation.</i></p> <p><b>Sustainability</b></p> <p>Gas cooktop and hot water has been included, a better outcome is electrify and avoid gas</p> <p>Roof falls to south, change to north to incorporate PV</p> <p>No rainwater reuse has been incorporated</p> |

| Internal Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                    | <p>Top floor, flip to get northern access to the bedrooms</p> <p>Surrounding area is already quite constrained with regard to traffic, parking, density. 3 storeys increases the density on this site and will put extra strain on the surrounding area.</p> <p><i>Recommendations:</i></p> <p>15. <i>Target electrification by changing to heat pump hot water and induction cooktops</i></p> <p>16. <i>Include 1.5kW PV per apartment with direct behind the meter feed to each unit as well as PV for the common areas</i></p> <p>17. <i>Include a rainwater tank and reuse for irrigation and toilet flushing/laundries</i></p> <p>18. <i>Change the arrangement of the top floor to gain more northern light to the bedrooms, or as noted locate the living areas on the top floor</i></p> <p><b>PANEL CONCLUSION</b></p> <p>The Panel does not support the proposal in its current form. A complete redesign is required. The Panel does not support the three-storey form and recommends a reduction to two storeys which will reduce excavation, ensure a better contextual fit, and reduce car parking numbers. The remaining apartments should be redesigned to provide both north light and southern aspect, with setbacks to ensure view sharing with the northern neighbour can be achieved.</p> |
| Building Assessment - Fire and Disability upgrades | <p><b>Supported (subject to conditions)</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Landscape Officer                                  | <p><b>Supported (subject to conditions)</b></p> <p>The development application is for the demolition of 2 existing dwellings upon 2 allotments, and the construction of a residential flat building and associated works.</p> <p>Council's Landscape Referral have assessed the application against the following</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|                        | <p>relevant landscape controls and policies:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2) (a) (b) and (c); and the Apartment Design Guide under SEPP 65 clause 28(2) (a) (b) and (c); and clause 30 (2) (a) and (b),</li> <li>• the associated Apartment Design Guide, including Principle 5: Landscape, and the objectives of control 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, and</li> <li>• Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation; D8 Privacy; D9 Building Bulk; D13 Front Fences and Front Walls</li> </ul> <p>Landscape Plans and a Arboricultural Impact Assessment is provided with the development application in accordance with Council's DA Lodgement requirements.</p> <p>The landscape proposal generally provides adequate landscape treatment, and subject to additional landscape planting to be imposed by conditions, is able to satisfy Schedule 1 Design quality principles of SEPP65, including Principle 5: Landscape - positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood; 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; optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p> <p>The objectives of the Apartment Design Guide are generally satisfied, subject to additional landscape planting to be imposed by conditions, including: 3E Deep Soil Zone; 4O Landscape Design; and 4P Planting on Structures. It is noted that part 3D Communal and public open space is not provided and the proposal is designed to maximise ground floor unit courtyards for families, with the upper level units having two balconies per apartment for various styles of gathering spaces in different times of year, to negate the need for a dedicated communal open space area. The landscape areas to the front and side setbacks, and between buildings are mass planted with trees, shrub and groundcovers. It is the opinion of Landscape Referral that such a landscape design provides a optimal opportunity for environmental benefits including tree canopy coverage, surface water management, and soil infiltration; as well as residential privacy and the reduction of the bulk and scale of the development.</p> <p>Landscape works include the provision of structures, ground treatments, and planting to common areas and to private courtyard areas. Landscape areas are provided into natural deep soil and over structure with deep soil provided principally to the front and rear setback, and the side boundaries include limited deep soil that is otherwise extended in width with landscape over basement structure. The plans do not provide a dimension depth of the landscape area over basement structure and to comply as landscaped area, the depth must be at least 1 metre, and conditions shall be imposed. Landscape plantings are provided to reduce the building bulk of the</p> |

| Internal Referral Body         | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                | <p>proposed development and additional small tree planting shall be imposed as conditions to improve the landscape amenity of the site landscape areas.</p> <p>The Arboricultural Impact Assessment assesses the impact of the proposed development to twenty two individual trees. The proposal will require the removal of thirteen trees, of which all but one (T5) are listed as low value category trees for retention and are Exempt Species by species type not requiring Council consent for management or removal. Eight trees will be subject to development impacts and have been assessed as able to be retained on the provision the works are carried out in accordance with tree protection measures as recommended. Existing trees proposed for removal are located either within the proposed driveway or are located within the proposed building and basement footprint, and should the development application be approved, no design alternatives are available for retention of the existing trees.</p> <p>Subject to conditions of consent, Landscape Referral raise no concerns.</p>                                                                                                                                                                      |
| NECC (Development Engineering) | <p><b>Not supported</b></p> <p>The contours of the site detail that approximately half the site drains to Pine avenue and the remainder to Councils drainage line that runs to the rear of the site. The proposed stormwater concept plan by Rise Engineering details the majority of the roof drainage from the development draining via charged lines via an on site stormwater detention system to the Pine avenue street drainage.</p> <p>The stormwater concept plan is not supported for the following reasons.</p> <ol style="list-style-type: none"> <li>1) The charged line drainage system is not supported as all the downpipes are able to be drained via gravity to either the Pine avenue street drainage system or Councils rear drainage line located near the eastern rear boundary.</li> <li>2) The location of the on site stormwater detention tank (below the bin room) is not supported because as required by Councils water management policy for development there is to be a minimum 300mm freeboard between the top water level of the OSD tank and the adjoining habitable floors.</li> </ol> <p>In large storm events the detention tank will surcharge and the stormwater will travel down the adjoining stair well and flood the below units .</p> |
| NECC (Water Management)        | <p><b>Supported (subject to conditions)</b></p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>The proposed stormwater water quality system documentation is satisfactory. The use of alternate water sources including rainwater, greywater and stormwater to meet non-potable demand is encouraged for all developments, as it reduces the water quality and flooding impacts of stormwater runoff.</p> <p>The construction stage must be managed to mitigate any pollution risk. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>This application, subject to conditions, is supported.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

| Internal Referral Body       | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Strategic and Place Planning | <p><b>Supported (No Conditions)</b></p> <p>The subject site at 27A-29 Pine Ave, Brookvale, is located within the Investigation Area Boundary of the draft Brookvale Structure Plan. The proposal involves the demolition of existing dwellings and construction of a residential flat building comprising 23 dwellings, 43 car spaces and consolidation of two allotments.</p> <p>The subject site is located within land zoned R3 Medium Density Residential under Warringah Local Environmental Plan 2011. There are no issues with loss of employment land and there is no impact with the strategic objectives of the draft Brookvale Structure Plan.</p> <p>The proposal is considered acceptable in terms of Council's Strategic Planning.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Traffic Engineer             | <p><b>Supported (subject to conditions)</b></p> <p>The proposed development is for demolition of the existing dwellings on 27a &amp; 29 Pine Ave and construction of a residential apartment building with 23 apartments and basement parking for 43 vehicles.</p> <p><u>Parking</u></p> <p>The DCP parking requirements for this development are</p> <p>9 x 1 bedroom apartments @1 space per apartment = 9 spaces</p> <p>8 x 2 bedroom apartments @1.2 spaces per apartment = 9.6 (10) spaces</p> <p>6 x 3 bedroom apartments @1.5 spaces per apartment = 9 spaces</p> <p>Visitor parking @ 1 space per 5 apartments = 4.6 (5) spaces</p> <p>Total parking requirement = 33 spaces</p> <p>Parking provided = 38 residential spaces &amp; 5 visitor spaces (including one disabled space)</p> <p>Parking provision exceeds requirements and is acceptable. It is noted that parking is not permitted on the sites Pine Street frontage given the presence of double separation lines and narrow road width which makes parking on either side of Pine Ave illegal within close proximity to the development. The over supply of parking therefore offsets the inability for residents or visitors to park on- street nearby.</p> <p><u>Traffic Generation</u></p> <p>The development contains more than 20 units and is therefore classified as high density residential development for the purposes of calculating generated traffic. The RMS Guide the Traffic Generating Developments uses a rate of 0.29 vehicle trips per hour per unit for high density residential development in a metropolitan sub regional centre. This would equate to 6-7 vehicle trips in the peak hour. The existing dwellings</p> |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                        | <p>on the site would have generated 2 vtpd so the net increase in traffic is 4-5 vtpd. This will not impact significantly on the surrounding road network.</p> <p><u>Vehicular Access</u></p> <p>The proposed vehicle access is 5.5m wide at the boundary and for a distance of 6m inside the boundary which is sufficient to allow for an entering and exiting vehicle to pass each other and is compliant with the requirements of AS2890.1. The gradients on the driveway are also consistent with Australian Standard requirement.</p> <p>The driveway is steep (1 in 4 ) and is not wide enough at its base for two vehicles to pass, it is on a straight alignment but entering and exiting vehicles will not have clear sight lines to each other. The driveway requires traffic light control to ensure that vehicles are not encountering each other on the steep section and having to reverse up or down the driveway.</p> <p><u>Loading/Servicing</u></p> <p>The development provides no dedicated delivery/servicing bay with it intended that small service vehicles would be accommodated within one of the visitor parking bays. The clearance into the carpark is only 2.2m which is insufficient to accommodate other than a vans or passenger vehicles. Any trucks making deliveries will therefore need to park on-street.</p> <p>Pine Avenue is narrow and on a significant gradient so deliveries of heavy items such as white goods or for parking for removalist vans both of which are generally undertaken by small or medium rigid trucks would need to be accommodated on street close to the premises. Legal parking within close proximity to the site is limited and on steep gradient downhill of the site. These spaces are generally in high demand and it is not considered reasonable to expect that delivery trucks or removalist vans would be able to access those spaces.</p> <p>To allow for truck deliveries or removalist truck visits to the site, which would occur on a relatively frequent basis it is considered that an indented loading bay capable of accommodating a medium rigid truck should be provided and signposted as Loading Zone. This would require preparation of plans including realignment of the footpath for consideration and approval by Council's Traffic Committee.</p> |
| Waste Officer          | <p><b>Not Supported</b></p> <p>The design must comply with the Northern Beaches Council Waste Management Guidelines, including:</p> <ol style="list-style-type: none"> <li>1. Accessing the waste storage area (bin room) through the bulky goods waste room as shown on the plans is unacceptable. The bin storage room and the bulky goods waste room must have separate access.</li> <li>2. Waste storage rooms must be graded and drained to a Sydney water</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <p>approved drainage system. It appears that the room currently drains to the OSD tank, this is not acceptable.</p> <p>3. A bulky goods waste storage area must be provided that will be a minimum of 4 cubic metres per 10 dwellings fit for the purpose of storing bulky goods.</p> <p>4. Waste storage areas must be accessible by a maximum ramp gradient of 1 in 8.</p> |

| External Referral Body | Comments                                                                                                                                                                                                                                                                                                    |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | <p><b>Supported</b></p> <p>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.</p> |

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP 65 - Design Quality of Residential Apartment Development

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

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or

mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
  - (i) the erection of a new building,
  - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
  - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a three storey residential flat 'housing' development plus basement car parking for the provisions of 23 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

## DESIGN REVIEW PANEL

The application was referred to DSAP on 16 December 2021. The Panel at its meeting concluded that the development in its current form cannot be supported. In summary, the DSAP report raised fundamental concerns relating to character, built form, access, landscape, amenity, facade and sustainability. The panel were not in support of the application as currently proposed and recommend a full re-design. Full comments from DSAP are provided earlier in this report.

## 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 subject site is located in the R3 Medium Density Residential zone. The surrounding development is characterised by two storey flat buildings with basement level parking and storage. The site and surrounding area is controlled by the WDCP 2011 2 storey control. The proposed three storey residential flat building is inconsistent with the character of the area and desired future character of the area. In this regard, the proposed development does not provide an appropriate transition to surrounding development or appropriate built form having regard to its visually prominent location.

**Principle 2: Built Form and Scale**

***Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.***

***Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.***

Comment:

The height, bulk and scale of the development is excessive, as expressed by the breach of the built form controls including the number of storeys control and side setback non-compliance. The mass and excessive bulk is exacerbated by the third floor where non-compliant setbacks and increased height with minimal articulation of the built form of the upper floors adds to the perceived bulk and scale where development should seek to minimise the visual impact.

In summary, the built form does not respond to its context and is therefore inconsistent with Principle 2.

**Principle 3: Density**

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

***Appropriate densities are consistent with the area's existing or projected population.***

***Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.***

Comment:

There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density for the subject site. As such, to determine suitable density, consideration is given towards the amenity of the development, the bulk and scale of the development and the impact of the development upon the surrounding environment. The proposed development does not provide a high level of amenity for future occupants.

**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 DSAP panel provided comments on general sustainability principles as followed:

*"Gas cooktop and hot water has been included, a better outcome is electrify and avoid gas*

*Roof falls to south, change to north to incorporate PV*

*No rainwater reuse has been incorporated*

*Top floor, flip to get northern access to the bedrooms*

*Surrounding area is already quite constrained with regard to traffic, parking, density. 3 storeys increases the density on this site and will put extra strain on the surrounding area"*

A BASIX Certificate for the apartments has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort. However, insufficient information has been provided in regards to address DSAP recommendations. Therefore, Principle 4 has not been satisfied.

**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 landscape solution is considered to be appropriate for the site. However, greater separation between buildings is required to ensure suitable privacy, solar access and general amenity.

The development does not satisfy this Principle.

**Principle 6: Amenity**

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

***Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural***



***ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.***

Comment:

As detailed in the assessment against the ADG and WDCP 2011, the proposed development is not appropriately resolved and fails to provide a reasonable level of amenity for future occupants of the development. Furthermore, the proposal also attributes to impacts upon the amenity of adjoining properties.

The development does not satisfy this Principle.

**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:

Whilst the proposal is generally acceptable in this regard, concern remains with regard to the amenity of the access pathway between Pine Avenue and the proposed apartments.

The development does not satisfy this Principle.

**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 application provides a reasonable mix of apartment sizes, with a mix of single, two and three bedroom apartments. The application fails to demonstrate the appropriate level of liveable or adaptable apartments, as required by the ADG and WDCP 2011.

The development does not satisfy Principle 8.

**Principle 9: Aesthetics**

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

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

Comment:

The DSAP panel provided the following comment in relation to the design of the building and general aesthetics:

*"The orientation of all units to the north results in a bland and unarticulated façade to the street. The facades of the internal elevations have no articulation and require consideration of further fenestration to improve the both the aesthetics and amenity of the buildings."*

The architectural treatment of the facades of the development are considered to be of good design, utilising a variety of materials, colours and textures. Whilst the design of the building is modern and contemporary, it is not considered to be compatible with the scale of existing and future development in the the area, as envisaged under relevant planning controls. The non-compliance with the number of storeys and setback controls will not provide an effective architectural transition between the proposed built form and the desired future character of the local area.

The development does not satisfy this Principle.

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                                                                                                                                       |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Part 3 Siting the Development</b> |                                                                                                                                           |                                                                                                                                                |
| <b>Site Analysis</b>                 | Does the development relate well to its context and is it sited appropriately?                                                            | <b>Does not comply</b><br>The building form does not reflect the current character as anticipated by the WDCP 2011. (See comments below).      |
| <b>Orientation</b>                   | Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties? | <b>Does not comply</b><br>The appearance of the development as viewed from the street and adjoining development is found to be unsatisfactory. |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                            | <p>The site has a suitable orientation to optimise solar access to the neighbouring southern property, However, an overdevelopment of the site contributes to a unreasonable loss of solar access for the neighbouring property.</p> <p>See further discussion below.</p> |         |           |  |  |  |                                                                                 |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-----------|--|--|--|---------------------------------------------------------------------------------|
| <b>Public Domain Interface</b>        | <p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>                                                                                                                                                                                              | <p><b>Does not comply</b></p> <p>An appropriate transition is not made between public/private interface with regards to safety/security, with concern raised in regards to the suitability of the external entrance and exit path to the building.</p>                    |         |           |  |  |  |                                                                                 |
| <b>Communal and Public Open Space</b> | <p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>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)</li> </ol> | <p><b>Does not comply</b></p> <p>The proposed development does not provide any communal open space for the residents of the development. See detailed discussion below.</p>                                                                                               |         |           |  |  |  |                                                                                 |
| <b>Deep Soil Zones</b>                | <p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum</th><th>Deep soil</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>                                                                                                                                                  | Site area                                                                                                                                                                                                                                                                 | Minimum | Deep soil |  |  |  | <p><b>Complies</b></p> <p>Yes - At least 20% of the site is deep soil area.</p> |
| Site area                             | Minimum                                                                                                                                                                                                                                                                                                                                                                                    | Deep soil                                                                                                                                                                                                                                                                 |         |           |  |  |  |                                                                                 |
|                                       |                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                           |         |           |  |  |  |                                                                                 |

|                                                                       | <table> <tr> <th></th><th>dimensions</th><th>zone (% of site area)</th></tr> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup>– 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </table>                                                                                                                                                                                                                                                                                                                                         |                                                                                                        | dimensions                    | zone (% of site area) | Less than 650m <sup>2</sup> | -  | 7% | 650m <sup>2</sup> – 1,500m <sup>2</sup> | 3m | Greater than 1,500m <sup>2</sup> | 6m                    | Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m |                                                                          |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-------------------------------|-----------------------|-----------------------------|----|----|-----------------------------------------|----|----------------------------------|-----------------------|-----------------------------------------------------------------------|----|--------------------------------------------------------------------------|
|                                                                       | dimensions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | zone (% of site area)                                                                                  |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| Less than 650m <sup>2</sup>                                           | -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 7%                                                                                                     |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| 650m <sup>2</sup> – 1,500m <sup>2</sup>                               | 3m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                        |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| Greater than 1,500m <sup>2</sup>                                      | 6m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                        |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                        |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| <b>Visual Privacy</b>                                                 | <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | 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 | <p><b>Does not comply</b><br/>See detailed comments below this table</p> |
| 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                                                                                                     |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| <b>Pedestrian Access and entries</b>                                  | <p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Complies</b>                                                                                        |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |
| <b>Vehicle Access</b>                                                 | <p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p><b>Complies</b><br/>The vehicle access points have been designed to achieve safety and minimise</p> |                               |                       |                             |    |    |                                         |    |                                  |                       |                                                                       |    |                                                                          |

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                        |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | conflicts between pedestrians and vehicles. The vehicle entrance is consistent with that of other flat buildings in the nearby vicinity.                                                                                                                               |
| <b>Bicycle and Car Parking</b>       | <p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>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.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p> | <p><b>Complies</b></p> <p>An assessment of car parking provision, having regard to WDCP 2011 and location of the site, has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p> |
| <b>Part 4 Designing the Building</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                        |
| <b>Amenity</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                        |
| <b>Solar and Daylight Access</b>     | <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>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.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p><b>Does not comply</b></p> <p>The applicants solar analysis (Dated 1 November 2021) notes compliance with this requirement with the following numericals:</p> <ul style="list-style-type: none"> <li>18/23 (78.2%) units receive 2</li> </ul>                       |

|  |                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |                                                                                                                                                                | <p>hours to living room windows and POS</p> <p>However, insufficient information in the form of elevational solar access diagrams have been provided to ensure how this is calculated. Council is not satisfied that the proposal complies with this requirement.</p>                                                                                                                                            |
|  | <ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul> | <p><b>Does not comply</b></p> <p>As above, the applicants solar analysis states:</p> <ul style="list-style-type: none"> <li>1/23 units receive no sun between 9am and 3pm during 21 June.</li> </ul> <p>Again, insufficient information in the form of solar access diagrams have been provided to ensure how this is calculated. Council is not satisfied that the proposal complies with this requirement.</p> |

| Natural Ventilation            | <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>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.</li></ul>                                                                                                                                                                            | Complies               |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------------|-----------------|------|---------------|------|-------------------------|------------------------------------------------------------------------------------------------------------------------|--------------|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|----------|
|                                | <ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Complies               |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| Ceiling Heights                | <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <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<br/><br/>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<br><br>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 | Complies |
| Minimum ceiling height         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| Habitable rooms                | 2.7m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| Non-habitable                  | 2.4m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| For 2 storey apartments        | 2.7m for main living area floor<br><br>2.4m for second floor, where its area does not exceed 50% of the apartment area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| Attic spaces                   | 1.8m at edge of room with a 30 degree minimum ceiling slope                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| If located in mixed used areas | 3.3m for ground and first floor to promote future flexibility of use                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| Apartment Size and Layout      | <p>Apartments are required to have the following minimum internal areas:</p> <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> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2each.</p> <p>A fourth bedroom and further additional bedrooms</p>                                                                                                                                                         | Apartment type         | Minimum internal area | Studio          | 35m2 | 1 bedroom     | 50m2 | 2 bedroom               | 70m2                                                                                                                   | 3 bedroom    | 90m2                                                        | <p>Complies</p> <p>The units achieve the minimum size for the respective amount of bedrooms.</p> |                                                                      |          |
| Apartment type                 | Minimum internal area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| Studio                         | 35m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| 1 bedroom                      | 50m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| 2 bedroom                      | 70m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |
| 3 bedroom                      | 90m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                       |                 |      |               |      |                         |                                                                                                                        |              |                                                             |                                                                                                  |                                                                      |          |

|                                                                                   | increase the minimum internal area by 12m2each.                                                                                                                                                                                                                                                                                                                                                                  |                                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|---------------|---------------|-------------------|-----|---|----------------------|-----|----|----------------------|------|----|-----------------------|------|------|-----------------|
|                                                                                   | 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.                                                                                                                                                                                                           | <b>Complies</b><br>The proposal achieves this requirement. |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | Habitable room depths are limited to a maximum of 2.5 x the ceiling height.                                                                                                                                                                                                                                                                                                                                      | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.                                                                                                                                                                                                                                                                                   | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).                                                                                                                                                                                                                                                                                                                   | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | 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.                                                                                                                                                                                                                                               | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul>                                                                                                                                                                                                         | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts                                                                                                                                                                                                                                                                                            | <b>Not applicable</b>                                      |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
| <b>Private Open Space and Balconies</b>                                           | 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 | 4m2 | - | 1 bedroom apartments | 8m2 | 2m | 2 bedroom apartments | 10m2 | 2m | 3+ bedroom apartments | 12m2 | 2.4m | <b>Complies</b> |
|                                                                                   | Dwelling Type                                                                                                                                                                                                                                                                                                                                                                                                    | Minimum Area                                               | Minimum Depth |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
|                                                                                   | Studio apartments                                                                                                                                                                                                                                                                                                                                                                                                | 4m2                                                        | -             |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
| 1 bedroom apartments                                                              | 8m2                                                                                                                                                                                                                                                                                                                                                                                                              | 2m                                                         |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
| 2 bedroom apartments                                                              | 10m2                                                                                                                                                                                                                                                                                                                                                                                                             | 2m                                                         |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
| 3+ bedroom apartments                                                             | 12m2                                                                                                                                                                                                                                                                                                                                                                                                             | 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 15m2and a minimum depth of 3m.                                                                                                                                                                                                                         | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |
| <b>Common Circulation and Spaces</b>                                              | The maximum number of apartments off a circulation core on a single level is eight.                                                                                                                                                                                                                                                                                                                              | <b>Complies</b>                                            |               |               |                   |     |   |                      |     |    |                      |      |    |                       |      |      |                 |



|                         | For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.                                                                                                                                                                                                                                                                                                                                                                        | Not applicable                                                                                                                              |                     |                   |     |                      |     |                      |     |                       |      |          |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-------------------|-----|----------------------|-----|----------------------|-----|-----------------------|------|----------|
| Storage                 | <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <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> <p>At least 50% of the required storage is to be located within the apartment.</p> | Dwelling Type                                                                                                                               | Storage size volume | Studio apartments | 4m2 | 1 bedroom apartments | 6m2 | 2 bedroom apartments | 8m2 | 3+ bedroom apartments | 10m2 | Complies |
| Dwelling Type           | Storage size volume                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                             |                     |                   |     |                      |     |                      |     |                       |      |          |
| Studio apartments       | 4m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                             |                     |                   |     |                      |     |                      |     |                       |      |          |
| 1 bedroom apartments    | 6m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                             |                     |                   |     |                      |     |                      |     |                       |      |          |
| 2 bedroom apartments    | 8m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                             |                     |                   |     |                      |     |                      |     |                       |      |          |
| 3+ bedroom apartments   | 10m2                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                             |                     |                   |     |                      |     |                      |     |                       |      |          |
| 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.                                                                                                                                                                                                                                                    | Complies<br>The application was accompanied by an acoustic report that provides recommendations to ensure no unreasonable acoustic impacts. |                     |                   |     |                      |     |                      |     |                       |      |          |
| Noise and Pollution     | Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.                                                                                                                                                                                                                                                                                                                                      | Complies<br>The development is adequately sited to minimise impacts from external noise.                                                    |                     |                   |     |                      |     |                      |     |                       |      |          |
| 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.                                                                                                                                                                                                                                                               | Complies<br>The proposal provides a general mix of 1, 2 and 3 bedroom apartments.                                                           |                     |                   |     |                      |     |                      |     |                       |      |          |
| Ground Floor Apartments | Do the ground floor apartments deliver amenity and safety for their residents?                                                                                                                                                                                                                                                                                                                                                                                             | Complies<br>Yes, the ground level apartments have secure access and are separated by fencing between the street.                            |                     |                   |     |                      |     |                      |     |                       |      |          |
| Facades                 | Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the                                                                                                                                                                                                                                                                                                                                     | Does not comply<br>The building                                                                                                             |                     |                   |     |                      |     |                      |     |                       |      |          |

|                        | local area.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | facade requires an increased setback from the the front property boundary to meet the character of the street. |            |                           |            |           |             |                                                 |       |         |                         |              |                                               |      |         |                       |             |                                              |     |       |                           |        |  |  |           |  |              |  |  |           |  |  |  |  |  |  |                                                                                |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|------------|---------------------------|------------|-----------|-------------|-------------------------------------------------|-------|---------|-------------------------|--------------|-----------------------------------------------|------|---------|-----------------------|-------------|----------------------------------------------|-----|-------|---------------------------|--------|--|--|-----------|--|--------------|--|--|-----------|--|--|--|--|--|--|--------------------------------------------------------------------------------|
| Roof Design            | Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.<br>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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Complies</b><br>The roof design is adequate for the locality                                                |            |                           |            |           |             |                                                 |       |         |                         |              |                                               |      |         |                       |             |                                              |     |       |                           |        |  |  |           |  |              |  |  |           |  |  |  |  |  |  |                                                                                |
| Landscape Design       | Was a landscape plan submitted and does it respond well to the existing site conditions and context.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>Complies</b><br>The proposed landscape plan is appropriate response to the site conditions and context.     |            |                           |            |           |             |                                                 |       |         |                         |              |                                               |      |         |                       |             |                                              |     |       |                           |        |  |  |           |  |              |  |  |           |  |  |  |  |  |  |                                                                                |
| Planting on Structures | <div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table> | Plant type                                                                                                     | Definition | Soil Volume               | Soil Depth | Soil Area | Large Trees | 12-18m high, up to 16m crown spread at maturity | 150m3 | 1,200mm | 10m x 10m or equivalent | Medium Trees | 8-12m high, up to 8m crown spread at maturity | 35m3 | 1,000mm | 6m x 6m or equivalent | Small trees | 6-8m high, up to 4m crown spread at maturity | 9m3 | 800mm | 3.5m x 3.5m or equivalent | Shrubs |  |  | 500-600mm |  | Ground Cover |  |  | 300-450mm |  |  |  |  |  |  | <b>Complies</b><br>The application provides adequate planting across the site. |
| Plant type             | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Soil Volume                                                                                                    | Soil Depth | Soil Area                 |            |           |             |                                                 |       |         |                         |              |                                               |      |         |                       |             |                                              |     |       |                           |        |  |  |           |  |              |  |  |           |  |  |  |  |  |  |                                                                                |
| Large Trees            | 12-18m high, up to 16m crown spread at maturity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 150m3                                                                                                          | 1,200mm    | 10m x 10m or equivalent   |            |           |             |                                                 |       |         |                         |              |                                               |      |         |                       |             |                                              |     |       |                           |        |  |  |           |  |              |  |  |           |  |  |  |  |  |  |                                                                                |
| Medium Trees           | 8-12m high, up to 8m crown spread at maturity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 35m3                                                                                                           | 1,000mm    | 6m x 6m or equivalent     |            |           |             |                                                 |       |         |                         |              |                                               |      |         |                       |             |                                              |     |       |                           |        |  |  |           |  |              |  |  |           |  |  |  |  |  |  |                                                                                |
| Small trees            | 6-8m high, up to 4m crown spread at maturity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 9m3                                                                                                            | 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                                                                                                                                                 |  |       | <b>Does not comply</b><br>The application is not accompanied by a level of detail to confirm that 20% of the units incorporate silver level universal design. |
| Adaptable Reuse                   | New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.                                                                                                                                                               |  |       | <b>Not applicable</b><br>The proposed development is for a new building                                                                                       |
| Mixed Use                         | Can the development be accessed through public transport and does it positively contribute to the public domain?<br><br>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.                         |  |       | <b>Not applicable</b><br>The proposed development is wholly residential                                                                                       |
| 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.<br><br>Signage must respond to the existing streetscape character and context. |  |       | <b>Not applicable</b><br>The DA does not propose any awning or signage and as such, this clause is not considered in the assessment of this application.      |
| Performance                       |                                                                                                                                                                                                                                                                                         |  |       |                                                                                                                                                               |
| Energy Efficiency                 | Have the requirements in the BASIX certificate been shown in the submitted plans?                                                                                                                                                                                                       |  |       | <b>Complies</b><br>Yes, NATHERS stamped plans provided.                                                                                                       |
| Water Management and Conservation | Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?                                                                                                                          |  |       | <b>Complies</b><br>Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and                |

|                             |                                                                                                                                                                    |                                                                                                                                                                                                                                                                  |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             |                                                                                                                                                                    | further, compliance with the supplied BASIX Certificate can be conditioned, if the application was recommended for approval.                                                                                                                                     |
| <b>Waste Management</b>     | Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling? | <b>Does not comply</b><br>A waste management plan has been submitted with the application. However, as noted waste management officer within this report, the location and access to the proposed waste room is not appropriate and as such cannot be supported. |
| <b>Building Maintenance</b> | Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?                                    | <b>Complies</b><br>The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.                                                                                                                 |

#### Detailed ADG Discussion

- Orientation and Overshadowing to Neighbouring Properties (3B-1 and 3B-2)**  
 The subject site is located in the R3 Medium Density Residential zone. The subject site is a suitable site for a Residential flat building, noting the size of the site and surrounding land uses. However, the proposed size and scale of the proposed development particularly noting the non-compliant setbacks and additional storey, results in unreasonable impacts on neighbouring properties particularly privacy and solar access. The non-compliance with these requirements and resulting amenity impacts indicates that the proposed development is an overdevelopment of the site.
- Communal open space (3D-1, 3D-2 and 3D-3)**  
 Objective 3D-1 of the ADG requires at least 25% of the site be

dedicated communal open space. The development fails to propose any communal open space on site. The need for communal open space on site is exacerbated by the poor amenity of the private open space area of the apartments at all three levels of the proposed development, with the provision of usable open space required in this circumstance to offset the below par amenity of the living areas of the individual apartments. The lack of communal open space of any note on site whether that be at ground floor, podium or roof level is representative of the proposal being a overdevelopment of the site.

- **Building Separation and Visual privacy (2F-1, 3F-1 and 3F-2)**

The control requires a 6m setback for habitable rooms and a 3m setback for non-habitable rooms for developments up to four storeys, to mitigate overlooking between properties. The development proposes a total of 6m separation between the habitable spaces between buildings 1 and 2 and buildings 2 and 3, non-compliant with the ADG. The ADG requires 6m between each building for a total of 12m between building 1 and 2 and building 2 and 3. The lack of separation between each of the proposed buildings will result in direct overlooking between apartments.

For new development adjacent existing buildings 6m of separation is required to the boundary. The proposed level 2 balconies along the southern side of the proposed development are setback 4.5m from the southern property boundary, non-compliant with the numeric control. The proposal provides insufficient separation to the boundaries to ensure the privacy of the neighbouring properties. The proposed balconies along the southern side of the development will have a direct line of the site to the private open space of apartments of No. 23B -27 Pine Avenue, Brookvale. The

The issue of non-compliance with the building separation requirements in relation to the southern boundary and between the proposed individual buildings has been included as a reason for refusal.

### **Concluding comments**

The proposed flat building is generally inconsistent with both the design principles of and ADG of SEPP 65 as discussed above and such is not supported in this instance.

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

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

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

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

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

Comment:

- A satisfactory amount of car parking is proposed, as assessed by Council's traffic engineer. This is not a reason for refusal.
- The application provides satisfactory internal area.
- The application provides a satisfactory ceiling height of 2.7m.

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

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

(3) To remove doubt:

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

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

Comment:

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

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

A BASIX certificate has been submitted with the application (see Certificate No. 1252426M dated 3 November 2021).

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

| Commitment      | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water           | 40              | 40       |
| Thermal Comfort | Pass            | Pass     |
| Energy          | 50              | 35       |

A condition may be included requiring compliance with the commitments indicated in the BASIX Certificate.

**SEPP (Infrastructure) 2007**

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 8.6m     | 1.1%        | No       |

Compliance Assessment

| Clause                                  | Compliance with Requirements              |
|-----------------------------------------|-------------------------------------------|
| 2.7 Demolition requires consent         | Yes                                       |
| 4.3 Height of buildings                 | No<br>(see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | No                                        |
| 5.3 Development near zone boundaries    | Yes                                       |
| 5.8 Conversion of fire alarms           | Yes                                       |
| 6.2 Earthworks                          | No                                        |
| 6.4 Development on sloping land         | Yes                                       |

Detailed Assessment

**4.3 Height of buildings**

Clause 4.3 of the WLEP 2011 provides a maximum building height of 8.5m within R3 Medium Density Zone.

The proposed flat building is largely compliant with the 8.5m height limit with the exception of the front of the building as shown which has a maximum height of 8.6m

It is acknowledged that the extent of non-compliance is minor, however there is no power to grant or consider Clause 4.6 for the non-compliance in relation to building height pursuant to Clause 4.6 of WLEP 2011.

#### 4.6 Exceptions to development standards

No clause 4.6 request was lodged with the application, and as such the variation the Height of Buildings development standard cannot be supported.

#### Warringah Development Control Plan

##### Built Form Controls

| Built Form Control                                  | Requirement  | Proposed                                    | % Variation* | Complies |
|-----------------------------------------------------|--------------|---------------------------------------------|--------------|----------|
| B2 Number of storeys                                | 2            | 3                                           | 50%          | No       |
| B3 Side Boundary Envelope                           | 4m           | Within envelope                             | -            | Yes      |
|                                                     | 4m           | Within envelope                             | -            | Yes      |
| B5 Side Boundary Setbacks                           | South- 4.5m  | Basement: 1.8m<br>Ground floor: 2.3m - 4.5m | 53-60%       | No       |
|                                                     | North - 4.5m | Basement: 1.8m<br>Ground floor: 4.5m        | 60%          | No       |
| B7 Front Boundary Setbacks                          | 6.5m         | 6.5m                                        | -            | Yes      |
| B9 Rear Boundary Setbacks                           | 6m           | 6.09m                                       | -            | Yes      |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 50%          | 50%                                         | -            | Yes      |

##### Compliance Assessment

| Clause                        | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                | Yes                          | Yes                         |
| B2 Number of Storeys          | No                           | No                          |
| B3 Side Boundary Envelope     | Yes                          | Yes                         |
| B5 Side Boundary Setbacks     | No                           | No                          |
| B7 Front Boundary Setbacks    | Yes                          | Yes                         |
| B9 Rear Boundary Setbacks     | Yes                          | Yes                         |
| C2 Traffic, Access and Safety | Yes                          | Yes                         |
| C3 Parking Facilities         | Yes                          | Yes                         |
| C4 Stormwater                 | No                           | No                          |
|                               |                              |                             |



| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| 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                           | No                          |
| D1 Landscaped Open Space and Bushland Setting                          | Yes                          | Yes                         |
| D2 Private Open Space                                                  | Yes                          | Yes                         |
| D3 Noise                                                               | Yes                          | Yes                         |
| D6 Access to Sunlight                                                  | No                           | No                          |
| D7 Views                                                               | Yes                          | Yes                         |
| D8 Privacy                                                             | No                           | No                          |
| D9 Building Bulk                                                       | No                           | No                          |
| D10 Building Colours and Materials                                     | Yes                          | Yes                         |
| D11 Roofs                                                              | Yes                          | Yes                         |
| D12 Glare and Reflection                                               | Yes                          | Yes                         |
| D14 Site Facilities                                                    | Yes                          | Yes                         |
| D18 Accessibility and Adaptability                                     | No                           | No                          |
| D19 Site Consolidation in the R3 and IN1 Zone                          | Yes                          | Yes                         |
| D20 Safety and Security                                                | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services                         | Yes                          | Yes                         |
| D22 Conservation of Energy and Water                                   | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation                        | Yes                          | Yes                         |
| E2 Prescribed Vegetation                                               | Yes                          | Yes                         |
| E6 Retaining unique environmental features                             | Yes                          | Yes                         |
| E10 Landslip Risk                                                      | Yes                          | Yes                         |

#### Detailed Assessment

#### **B2 Number of Storeys**

##### Description of non-compliance

The proposed development seeks consent for a three (3) storey residential flat building in a location where two (2) storeys is the height control. With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

##### Merit consideration:

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

- *To ensure development does not visually dominate its surrounds.*

Comment:

As discussed throughout this report, the proposed development is inconsistent with the existing and intended scale and bulk of buildings envisaged for the area. The proposed scale of the development is such that it creates additional and unreasonable impacts upon neighbouring properties. The third storey creates an unreasonable and undesirable sense of enclosure to the neighbouring property to the north and south due to its visual dominance by virtue of its bulk and scale.

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

Comment:

The additional storey of development and lack of articulation and setbacks at the top two levels of the building will create an adverse visual impact on the adjoining properties who will be directly overlooked. The proposed design is not considered to minimise these impacts.

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

Comment:

The proposal will not result in unreasonable disruption to views to, from or between residential development and public spaces.

- *To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.*

Comment:

The development is considered to result in a number of adverse amenity impacts on the adjoining properties in terms of privacy and solar access. The proposed development has not been suitably considered to address amenity issues for adjoining properties.

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

Comment:

The proposed development incorporates a flat roof and significant excavation to integrate three stories below the height limit. This is not considered to be an innovative design solution, particularly noting a compliant 2 storey development with a flat roof form would likely improve solar access to adjoining dwellings and respond more appropriately to Council's built form controls.

- *To complement the height of buildings control in the LEP with a number of storeys control.*

Comment:

Whilst largely compliant with the 8.5m height limit, the proposed built form is non-compliant with a number of fundamental built form controls. No clause 4.6 request was lodged to justify the variation to the development standard, and as such cannot be supported.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B5 Side Boundary Setbacks**

#### Description of non-compliance

The WDCP 2011 requires buildings be setback 4.5m from the side boundary. The WDCP 2011 requires side boundary setbacks to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.

The application proposes the following setbacks

**Basement:** 1.8m

**Lift access:** 2.2m

**Ground floor and level 1:** 3m - 4.5m

**Level 2:** 4.5m - 6.83m

The WDCP 2011 provides a variation to this control to allow basements to extend up to 2m from the side boundary for existing narrow width allotments.

#### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

#### Comment:

The proposal provides adequate deep soil landscaped areas in accordance with the Apartment Design Guide.

- *To ensure that development does not become visually dominant.*

#### Comment:

The proposed development will be overwhelming as seen from adjoining dwellings. The visual dominance of the non-compliant proposal is amplified by the proposed use of breeze block across the external staircase, the lack of any meaningful articulation at level 1 and 2 and minimal separation (6m) between each building.

- *To ensure that the scale and bulk of buildings is minimised.*

#### Comment:

The proposal includes insufficient side setbacks to minimise the bulk and scale of the building.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposal will result in overlooking from windows within the proposed setback area. The proposal provides inadequate separation to maintain a reasonable level of privacy within the locality.

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

Comment:

The proposed non-compliance with the side setback control will not result in the unreasonable disruption of views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

### C3 Parking Facilities

- The development provides the following on-site car parking:

| Use                       | Appendix 1 Calculation                                                                                                                                               | Required                                                                        | Provided                                                                | Difference (+/-) |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------|------------------|
| Residential Flat Building | 1 space x per 1 bedroom dwelling<br>1.2 spaces x per 2 bedroom dwelling<br>1.5 spaces x per 3 bedroom dwelling<br>1 visitor space x per 5 units or part of dwellings | 9 spaces<br>10 (9.6 rounded up) spaces<br>9 spaces<br>5 (4.6 rounded up) spaces | 38 residential spaces & 5 visitor spaces (including one disabled space) | +5               |
| <b>Total</b>              |                                                                                                                                                                      | 33                                                                              | 43                                                                      | +5               |

The application proposes compliant parking and access for the building including the ability to provide 1 disabled persons accessible space and visitor parking in accordance with the DCP and the current Australian Standard 2890.

#### **C4 Stormwater**

The application was referred to Council's Development Engineers who could not support the application in its current form. See detailed comments earlier in this report under the Development Engineering referral response. In summary, the proposed The charged line drainage system is not supported as all the downpipes are able to be drained via gravity to either the Pine avenue street drainage system or Councils rear drainage line located near the eastern rear boundary and the location of the on site stormwater detention tank (below the bin room) is not appropriate

Therefore, the application is recommended for refusal based on non-compliance with part C4 of the Warringah DCP.

#### **C9 Waste Management**

As discussed by Council's Waste Officer above, the proposal fails to provide a suitable waste storage area. The proposal is recommended for refusal in this regard.

#### **D6 Access to Sunlight**

##### Proposed Units

Clause D6 of WDCP 2011 requires at least 50% of the required area of private open space for each dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. However, this requirement is inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to solar access have no effect.

##### Adjoining dwellings

Clause D6 (Access to Sunlight) of the Warringah DCP 2011 requires at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The proposed development will overshadow private open space and ground and first floor living room windows of the adjoining south development (No. 23b - 27 Pine Avenue, Brookvale). The proposed development fails to provide 3 hours of sunlight to private open space of the adjoining southern development, non-compliant with the numeric control.

##### Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

##### Comment:

The breach to the storeys control and the insufficient side setbacks contribute unreasonably to impacts on solar access. A more sensitive or innovative design solution would reduce the severity of solar access impacts to the neighbouring properties.

While this clause does not consider overshadowing to living room windows, the DCP does refer to the planning principle established in the *Benevolent Society v Waverley Council (2010)* NSWLEC 1082. In consideration of this, the assessment against the guidelines of the planning

principle has been undertaken below.

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The Warringah DCP 2011 requires the same numerical compliance in term of Solar Access and Overshadowing for all residential land zones. The subject site is located within the R3 Medium Density Residential Zone and adjoins residential flat buildings, as such there is a greater expectation for solar access to be retained to neighbouring development.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The adjoining development is already significantly overshadowed. The proposed development will exacerbate the overshadowing both private open space and living room windows of the adjoining southern property.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development is considered a poor design as the the non-compliant third storey contributes to the shadowing impact on the adjoining southern property. The level of overshadowing cast by the development can be reduced by deleting the third storey and increasing the side setback and separation between the proposed building.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Insufficient elevational shadow analysis have been submitted to make a detailed assessment of the impact of the shadows to windows and principle habitable indoor areas of both the proposed dwelling and neighbouring dwellings

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Existing areas of sunlight that penetrate the private open space of the adjoining southern property will be eliminated, as a result of the excessive bulk and scale of the proposed development.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

No. 23B - 27 Pine Avenue is constrained by the existing retaining stone wall along the side boundary which separates the two developments (See photo below). The construction of a three storey 3 building residential flat building will exacerbate the shadowing impact of the development on private open space and living room windows of this property.



*Image 1 – Boundary between subject site and 23B and 27 Pine Avenue.*

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The adjoining properties to the south-east No. 23A and 23 Pine Avenue are likely to be developed into a higher density development in the future. The 3 storey non-compliant element is maintained to the rear of the site and is likely to cause shadowing to any future development of these two sites.

The guidelines set out in *Benevolent Society v Waverley Council* [2010] NSWLEC 1082 have not been achieved, and therefore the proposed development is considered to inconsistent with objective 1.

- *To encourage innovative design solutions to improve the urban environment and public open space.*

Comment:

The non-compliance to the storeys control and setback controls are deliberate choices to

maximise the number of apartments on site. The substantial building footprint and non-compliant 3 storey building does not improve solar amenity to adjacent land, conversely removing any remaining solar access to the Private open space area of the adjoining residential flat building to the south.

Therefore, the development does not meet this objective 2.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal fails to include any options for solar energy. The proposal is therefore inconsistent with objective 3.

Therefore, the development does not meet this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

## D7 Views

### Merit consideration

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

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

Comment:

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

#### **1. Nature of the views affected**

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

Comment to Principle 1:

#### **No. 24/21-23 Shackel Avenue, Brookvale**

The nature of the view affected from this property would be distant and partial city views. The existing views are filtered through existing development and vegetation. The subject apartment is a single level apartment located at first floor level of the adjoining residential flat building to the north.



## 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:

### **No. 24/21-23 Shackel Avenue, Brookvale**

The views affected from this property are obtained over the rear boundary from the first floor living room and bedroom. It should be noted that the views obtained from the sitting position are of a lesser value than those obtained in the standing position.

## 3. Extent of impact

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

Comment to Principle 3:

### **No. 24/21-23 Shackel Avenue, Brookvale**

This property currently enjoys a extremely distant view of the city. The views are obtained from the living room and master bedroom of the first floor apartment. The development would result in the loss of the existing distant city view and general outlook.



***Photo 1 - Photo taken from master bedroom looking south-west (Standing)***



***Photo 2 - Photo taken from master bedroom looking south (Standing)***



Photo 3 - Photo taken from living room looking south-west (Standing)



Photo 4 - Photo taken from living room looking south (Standing)

#### **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:

In consideration of the existing views from this property it is noted that the view in question is vulnerable to view loss from any form of multi storey development. The total severity of impacts upon city views is not considered to be unreasonable, with proposed view loss considered negligible given that the view in question is not considered highly valued. A more skilful design is not required in this circumstance.

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

Comment:

A reduced scale residential flat building is unlikely to open up view corridors from neighbouring properties.

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

Comment:

The proposal does not include the removal of any canopy trees in order to gain views.

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

## D8 Privacy

### Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

See assessment under SEPP 65 and the Apartment Design Guide. The proposal incorporates an inadequate design to maintain the privacy of the neighbouring properties. The proposal is inconsistent with the objectives of the control and forms a reason for refusal. The proposed incorporation of south facing balconies at top floor level will result in direct overlooking of private open space and bedrooms of the adjoining apartments to the south. The proposed orientation and general building design is fundamentally flawed and cannot be mitigated by simply incorporating tack on elements including privacy screens and planter boxes. A re-design is required to reorientate outdoor living areas away from adjoining properties

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

Comment:

The incorporation of a third level of apartments across the site has come at the expense of an innovative design that will provide reasonable privacy for all future occupants and neighbours. The proposal will not improve the urban environment for the residents of Pine Avenue.

The development does not meet this objective.



- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal is not anticipated to raise any issues with regards to issues with personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

## **D9 Building Bulk**

### Description of Non-compliance

Part D9 (Building Bulk) WDCP 2011 requires the following:

- "1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:  
The amount of fill is not to exceed one metre in depth.  
Fill is not to spread beyond the footprint of the building.  
Excavation of the landform is to be minimised.*
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass."*

Requirement 1, 2 and 8 of the this clause require articulation and break up of continuous wall planes. The proposed development fails to incorporate any significant articulation or break up of building mass to ensure the bulk of the development is minimised to a reasonable extent.

Further, requirement 3 requires excavation be minimised, by reducing the scope of the designs reducing the need for excessive excavation. The development includes extensive excavation of the land to provide additional units below the ground level, non-compliant with requirement 3.

### Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal will result in a built form that dominates the adjoining properties and is incompatible with the streetscape of the locality. The proposal is not of a good design that will

improve the urban environment.

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

Comment:

The proposal will present to the street as a three storey building within a dominant two storey area. Furthermore, the proposal will result in a bulk and scale that imposes on the private open spaces and living areas of the neighbouring properties. The proposal will result in an unreasonable visual impact when viewed from the adjoining properties and streets.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

#### **D18 Accessibility and Adaptability**

Clause D18 of WDCP 2011 requires the development to be compliant with AS1428.2. Further, 10% of the proposed units (three units (2.3 rounded to 3)) shall be capable of being adapted to meet the Adaptable House Class C classification level under AS4299. The Development Application is accompanied by a Access Report (prepared by BCA Logic dated 5 November 2021). However, the proposed application fails to state that three units are capable of being adapted to meet the Adaptable House Class C classification level under AS4299. As such, the application is recommended for refusal in this regard.

#### **D20 Safety and Security**

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 maintains and enhances the security and safety of the community.*

Comment:

The proposed does not provide safe access from the street to the apartments. The access path from the entrance to the rear is narrow and fails to provide safe access for residents and visitors accessing the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

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

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

A monetary contribution of \$58,562 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,856,220.

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

Overall, the proposal presents as an overdevelopment of the site, and the proposed residential flat building could readily be reduced in size/scale to achieve a greater level of compliance with WDCP 2011 and ADG, with less impacts upon the amenity of adjoining properties.

Importantly, the applicant has not submitted Clause 4.6 variation requests to vary the Height of Buildings development standard under WLEP 2011.

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

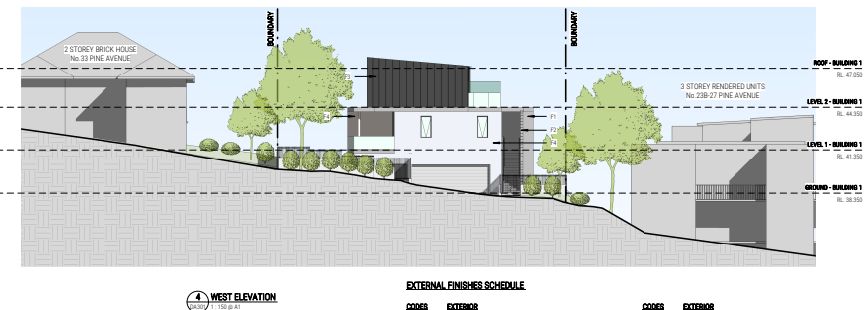
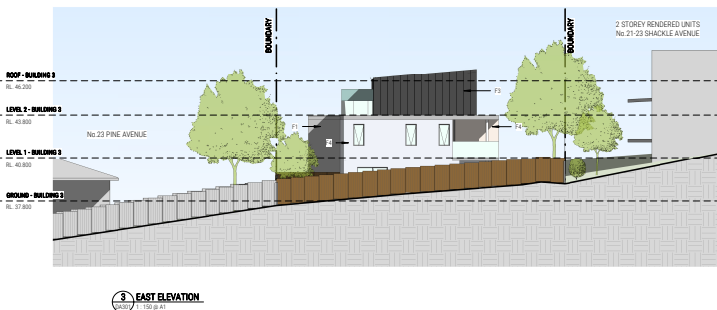
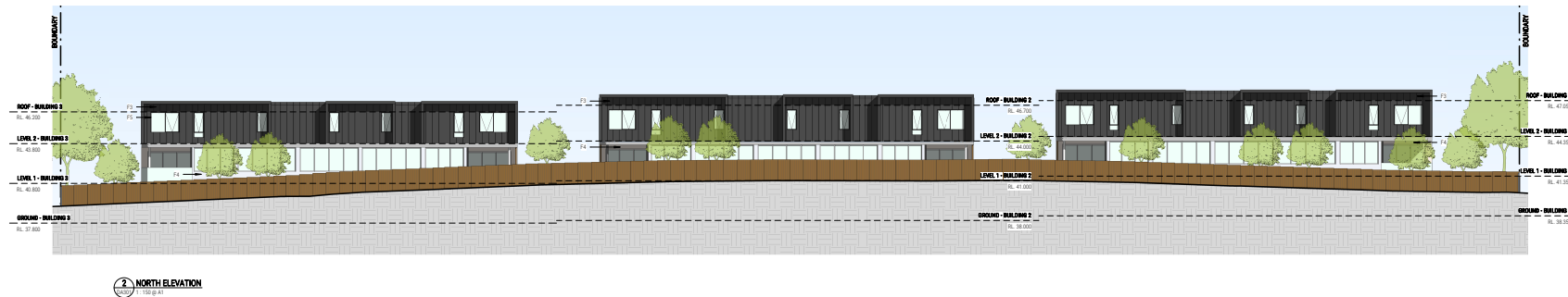
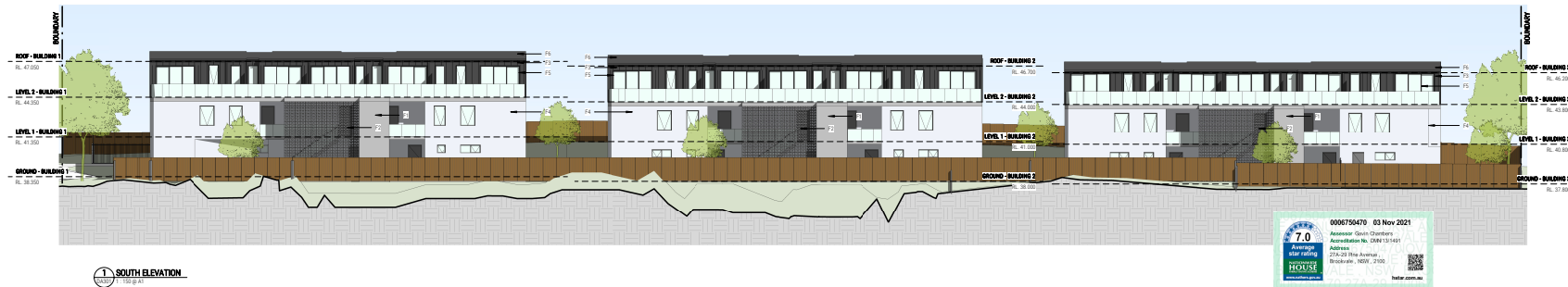


## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/2153 for the Demolition works and construction of a residential flat building including basement carparking on land at Lot C DP 403991, 29 Pine Avenue, BROOKVALE, Lot A DP 403991, 27 A Pine Avenue, BROOKVALE, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development, as the development has not had adequate regard to the design principles of SEPP 65 or the objectives of the Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with requirement of Clause 4.3 Height of Buildings, and the contravention of the development standard is not justified under clause 4.6.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2 Number of Storeys of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah 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 C4 Stormwater of the Warringah 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 C9 Waste Management of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D6 Access to Sunlight of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D20 Safety and Security of the Warringah Development Control Plan.





**EXTERNAL FINISHES SCHEDULE**

| CODES | EXTERIOR                                  | CODES | EXTERIOR                                  |
|-------|-------------------------------------------|-------|-------------------------------------------|
| F1    | CONCRETE                                  | F5    | ALUMINIUM WINDOW FRAME - SURFIST MONUMENT |
| F2    | BREEZE BLOCK                              | F6    | LYSAGHT METAL ROOF - MONUMENT             |
| F3    | MONUMENT - LYSAGHT ENDEAM WALL CLADDING   |       |                                           |
| F4    | OFF WHITE - FC SHEETING WITH PAINT FINISH |       |                                           |



## SEPP65 DESIGN VERIFICATION

27A-29 PINE AVENUE, BROOKVALE



**SEPP 65 Design Verification Statement**

Prepared to accompany the Development Application submitted to Northern Beaches Council.

**Project Address:**

27a-29 Pine Avenue Brookvale

**Prepared on behalf of:**

ACN 646 685 592 Pty Ltd

**Prepared by:**

Walsh Architects Pty Limited trading as Walsh Architects

**Verification of Qualifications**

Scott Walsh is a registered Architect in New South Wales (10366) and the Australian Capital Territory (2624)

**Statement of Design**

Walsh Architects has been responsible for the design of the project since its inception while having worked in conjunction with a wider consultant team. The project has been designed to contribute positively to the local area and respond respectfully to the local planning and design controls including the best practice design principles of SEPP 65.

We verify that our proposed residential development complies with the design quality principles set out in the Apartment Design Guide within SEPP 65. Details of the design compliance are included in the attached SEPP 65 Design Statement.

**Scott Walsh**

Director & Nominated Architect

ACT Registered Architect No. 2624

NSW Registered Architect No. 10366



## Introduction

## Site Description

The subject site comprises Lots A & C in DP 403991.

All two lots are proposed to be amalgamated into one development. They form a rectangular site totalling 2216 square metres. The north and south boundary length is 109.93m; and 20.17m at the East and West boundary along Avon Road.

The site has a similar level at the front to the rear; however there is a crossfall to the site along the short boundary of approximately 3m. The two sites currently accommodate a 3-storey residence and a 2-storey residence.

The immediate context is characterized mainly of residential flat buildings of 2-3 storeys as well as single and two storey residential dwellings.

The subject site is located within the Northern Beaches Council Local Government Area (LGA) and has a total surveyed site area of 2216m<sup>2</sup>. The subject site is zoned R3 (Medium Density Residential) under Warringah Local Environment Plan 2011. A maximum building height of 8.5m applies to the site.

## Design Proposal

The Development Proposal includes:

- The demolition of two existing brick residences and ancillary structures.
- The construction of a 3 storey residential flat building comprising of the following mix, inclusive of 5 LHA Silver level units.
- Parking for 38 residences, 5 visitors and 13 bicycles which exceeds the minimum requirement by 10 car parking spaces.

| Apartment Mix | No.       |
|---------------|-----------|
| 1 Bed         | 9         |
| 2 Bed         | 8         |
| 3 Bed         | 6         |
| <b>Total</b>  | <b>23</b> |



| Design Criteria |                     | Control Compliance | Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------|---------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3D              | Communal Open Space | NO                 | The project has a large amount of landscaping including 50% of the total site being landscaped. Whilst 50% of the site is landscaped, the building is designed to maximise ground floor unit courtyards for families, with the upper level units having two balconies per apartment for various styles of gathering spaces in different times of year. The large amount of balcony and courtyard areas per apartment therefore negate the need for a dedicated communal open space area.                                                                                                                                                                         |
| 3E              | Deep Soil Zones     | YES                | Overall landscape area accounts for 50% of the overall subject site. This is inclusive of planters over basement. Deep soil zones with a 3m minimum dimension make up 429m <sup>2</sup> and are mainly located at the front and rear of the site. This as a percentage accounts for 19.4% of the total site area which complies with the 7% minimum.                                                                                                                                                                                                                                                                                                             |
| 3F              | Visual Privacy      | NO                 | Given that the site has a 20 metre frontage, setbacks of 6m to north and south would leave a building width of only 8m which would need to include stairs and corridors. This would render unfeasible unit designs that would not work for the context. Given the significant slope to the site, the ground floor has great privacy with a 4.5m setback as the northern side is sunken (similar to 23 Pine Avenue) and the southern side having fencing for visual privacy. The top floor does have a 6m building setback to Northern and Southern boundaries, with the northern neighbouring windows over 12m away and therefore compliant with this objective. |
| 3J              | Car Parking         | YES                | The proposal provides basement parking which complies with the Guide to Traffic Generating Development parking generation rates for residential parking. Bicycle parking has also been allowed for under the WDCP controls. The development application is accompanied by a traffic report by TTPA which demonstrates compliance.                                                                                                                                                                                                                                                                                                                                |



|      |                                  |     |                                                                                                                                                                                                                                                                                                             |
|------|----------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4A   | Solar and Daylight Access        | YES | <p>The proposed development achieves over 78% of solar access, with 2 hours of solar access to 70% of dwellings between 9-3pm required.</p> <p>Only 1 apartment receives less than 15mins of sun.</p> <p>The development application is supported by a Solar Analysis Report to demonstrate compliance.</p> |
| 4B   | Natural Ventilation              | YES | <p>87% (20/23) of apartments are naturally cross ventilated. Maximum depth of a cross-through apartment is 18m.</p>                                                                                                                                                                                         |
| 4C   | Ceiling Heights                  | YES | <p>Ceiling heights of 2.7m are provided for habitable rooms and 2.4m for non-habitable rooms.</p>                                                                                                                                                                                                           |
| 4D-1 | Apartment Size                   | YES | <p>Apartments are greater than minimum area and each habitable room has a window to an external wall of not less than 10% of the floor area.</p>                                                                                                                                                            |
| 4D-2 | Apartment Depth                  | YES | <p>All open plan layouts have a habitable not exceeding 8m.</p>                                                                                                                                                                                                                                             |
| 4D-3 | Apartment Layout                 | YES | <p>Bedrooms and living rooms meet or exceed minimum dimensional requirements with all bedrooms having a minimum dimension of 3m excluding wardrobe space.</p>                                                                                                                                               |
| 4E   | Private Open Space and Balconies | YES | <p>All balconies and primary open space meet or exceed minimum dimensions.</p>                                                                                                                                                                                                                              |
| 4F   | Common Circulation and Spaces    | YES | <p>Each building has its own lift and stair. The maximum amount of units a lift serves is 8, with a maximum of 5 on a single level.</p>                                                                                                                                                                     |
| 4G   | Storage                          | YES | <p>Storage size volumes for each apartment type exceed the minimum criteria. 50% or greater of the required storage volume is located with each apartment.</p>                                                                                                                                              |





### Principle 1: Context and Neighbourhood Character

*Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.*

*Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.*

- The subject site is located on a hill with the main view of the site looking to the distant valley views to the south.
- The development proposes landscaped front setback which will contribute to enhance the Pine Avenue frontage. The generous amount of landscape area within the subject site will serve as a buffer zone between the development and its neighbours.
- A significant number of native vegetation will be incorporated into the landscape design within the development to merge the proposed building and vegetation subtly into the surrounding scenery.
- A balanced palette of materials and a well-proportioned building form will ensure a sophisticated integration of the proposed building into the existing context. We believe it contributes greatly to the quality and identity of the area.



## Principle 2: Built Form + Scale

*Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

*Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.*

- The proposed development adopts built form and scale in response to its immediate context by mimicking a similar 3-story unit typology which is evident throughout the immediate surrounding context.
- The forms respond carefully to the need for solar access from the north but distant views to the south.
- The scale and bulk of the built form is designed to effectively moderate the size of the building. On the top floor, units are setback further to reduce the apartment bulk.
- Pedestrian entry is accessed directly off Pine Avenue to an external corridor along the southern side of the building. This allows all private open spaces to face north to maximise their solar access.
- The form and overall architectural design contribute to the immediate context and reflects the northern beaches climate through its choice of materiality and colour palette.
- The building contains a one level underground basement with car parking accessible off Pine Avenue. This secure car park is accessible via swipe card from the driveway.



### 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.*

- The proposed development is consistent with the controls that relate to the site as identified in the WLEP and WDCP. The proposed density has been comfortably accommodated on the site in a manner that does not compromise the amenity of adjacent occupants particularly in respect of solar access, cross ventilation, privacy considerations and relative scale to future development within the general near vicinity. The buildings have been broken into three to reduce the apparent density on the site.
- There is a total of 23 apartments in the proposed development, comprising of 9 x 1-bedroom units, 8 x 2-bedroom units and 9 x 3-bedroom units. The apartments range in sizes with a number generously sized.
- The proposal reflects current market demands in relation to typologies and living patterns currently established in the local area. This is evident through the incorporation of more 2-bedroom and 3-bedroom unit types.
- The density of the development is considered sustainable within the existing and future availability of infrastructure, public transport, community and culturally significant facilities and environmental qualities on the site.



#### Principle 4: Sustainability

*Good design combines positive environmental, social, and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and livability 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.*

- The proposed development is consistent with the principles of SEPP 65 particularly through the orientation and design of the units, solar access and cross- ventilation consideration, as well as the choice of construction materials to reduce heating and cooling costs. A comprehensive analysis of the building has been undertaken as part of the BASIX Assessment.
- Climate and location suitable plant selection as well as the capture of stormwater to provide for irrigation to landscaping.
- Natural light and cross flow ventilation have been maximized where possible.
- Bathrooms will all be mechanically exhausted to the façade or roof.
- Energy efficient appliances and fixtures provided as per BASIX.
- Low maintenance, long lifecycle and reusable materials proposed in structural material and external cladding.



#### 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.*

- The proposed development makes provision for planting in common open spaces and areas where the provision of landscaping is practical. All ground floor apartments have generous landscaped areas as part of their primary open space.
- The proposal incorporates selective, low maintenance planting of various heights and density with an overall desire to blend into the characteristic landscaping of the area.
- The proposal seeks to create a landscape buffer around the perimeter of the building to respect the surrounding context and integrate the site levels into the overall streetscape. Fences and walls have been included as vertical landscape elements designed to define boundaries between spaces or to rationalise a change in level.
- Minimal maintenance outdoor planting on ground floor has been carefully considered to represent and reflect the landscape of the climate and area.
- Careful consideration has been taken by the landscape architect to ensure appropriate planting is selected to ensure an environmentally sustainable landscape design whilst maximize the potential for amenity and resident privacy. Please refer to Landscape drawings prepared by "Plot Design Group" issued as part of this DA submission.



### 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*

- Functional apartment sizes and general configuration consistent with current market demands. Lift services from basement to Level 1 with all Level 1 units being two stories to allow for a smaller top floor footprint whilst maximising the southern distant views.
- Appropriate connections within the apartments to capture northern light into all living rooms.
- The building layout allows ventilation to all bedrooms and habitable spaces, with 18/23 units (78.3%) achieving solar access and 20/23 units (87%) achieving natural cross-ventilation.
- Adequate day lighting and solar access for all rooms within the apartments.
- Carefully considered privacy and acoustic measures to any balconies and bedroom windows
- Five LHA Silver level units proposed on the ground floor promoting all age groups and ageing of future occupants consistent with ADG requirements.



### 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.*

- Clearly identifiable main building entrance and an open entry area allowing for adequate surveillance. The entrance will be clearly visible from the street with a metal security door installed. An intercom with integrated camera will be installed to identify visitors to the building complex.
- All corridors are open air allowing for an ease of connection between levels and buildings making it safer.
- Secure basement car parking provided with keyed and remote-control access. Clear circulation path in the basement allow safe pedestrian movement, especially when waiting at the lift and access to individual parking space and storage area.
- A clear definition between public and private spaces with clear, safe access points and adequate lighting of entrances and pedestrian areas including a separate accessway for pedestrian and for vehicles with a clear visibility.



#### 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*

- The size, configuration and mix of the apartments associated with the development provides an appropriate response to the market demand of future occupants
- The development has provided generous open air corridors for ease of accessibility and analysis has been conducted to ensure the development complies with the accessibility requirements. General access for people with disabilities has also been addressed in the design of the building overall.
- The site is located within proximity to necessary facilities including public transport, supermarkets, educational and leisure facilities, and medical services. Due to the topography, the easiest way to access most of these facilities is actually by car, but as we have provided additional parking it allows for parking spaces to be converted into accessible spaces if required.





#### 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.*

- Massing and façade details are designed to respond to both desired character of the area and the existing context.
- The building has a modern and clean aesthetic whilst also have a top floor that is significantly setback from neighbouring boundaries.
- Colour and material selections have been made to create transitions between inside and outside and allowing the development to add value to its surrounding neighbourhood.
- All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design, and structure contributing positively to the desired future character of the vicinity.



Design + Sustainability Advisory Panel Meeting Report – Date 16 December 2021

### **3 - DA2021 2153 - 27A Pine Avenue BROOKVALE PANEL COMMENT AND RECOMMENDATIONS**

#### ***General***

The proposed development extends across two existing lots which each contain a dwelling house at 27A & 29 Pine Avenue. The proposal represents a three-storey RFB over a single level basement.

The Warringah DCP Built Form Controls clearly state that a 2-storey form is expected on these sites.

The Panel advise that the current three-storey form is not supported as it will require significant excavation and poor amenity of the apartments looking into the excavated hill side. A two-storey option is more appropriate to the site and context and will ensure good amenity is achieved for all apartments.

The applicant should note that where major deviations from controls are proposed applicants are encouraged to bring these proposals to the Panel at Pre-DA stage and seek advice from council officers at a Pre-Lodgement Meeting (PLM) rather than leaving it to DA when the design is well advanced and considerable time and effort has been expended in the preparation of detailed design and consultants reports.

The applicant should note that although the Panel is primarily concerned with design quality, the approach to any non-compliance with planning controls will be considered where there is:

- a demonstrable improvement in amenity within the proposal, (overshadowing, privacy, access to rooftop open space etc.)
- reduced impact on adjoining sites (either existing or in relation to future development potential)
- contributions to the public domain or other public benefits (affordability, environmental performance)

In order to demonstrate the benefits of non-compliance the non-compliant proposal should be benchmarked and compared to a complying 'reference scheme' this has not been provided.

#### ***Strategic context, urban context: surrounding area character***

Resolution of the existing Northern Boundary 4.5m right of way is not resolved and offers an unclear landownership for the western building, this land should be used for the ground floor residents as defined terrace gardens as indicated for the other two eastern buildings on the site.

Currently the site has significant fall from the north to the south (short section) as well as the East West (long section). The site planning strategy of three separate buildings aligned in the East West alignment and a large single level basement creates unacceptable and non ADG compliant interbuilding separations less than the 12m required by the ADG between habitable rooms/balconies and excessive basement cut throughout the site.

The short (North South) sections exhibited on Sheet No DA 200 demonstrate the extent of cut on the northern boundary (adjacent to No. 21-23 Shackle & No 33 Pine Street) and of the proposal creating over 2 metre retaining walls and subterranean units. On the Southern side (No. 23B-27 Pine Street) the extent of basement cut is less than 2m from this boundary and could potentially compromise the existing sandstone formation and wall adjacent to No. 23B-27 Pine Street.

#### ***Recommendations***

1. The proposed development should be redesigned to comply with ADG separations
2. A more considered design approach should be investigated for the spaces between the buildings.



3. Remaster plan the site to minimise excavation, eliminate the subterranean units.
4. Reduce number of storeys and the number of units in order to reduce the excessive excavation that is a direct result of the number of cars that have to be accommodated on the site

### ***Scale, built form and articulation***

The current site configuration and building layout will impact the amenity of the RFB (No. 23B-27 Pine Street in terms of privacy and solar access to the property to the South.

The building proposal indicates various windows and balconies to the northern and southern elevations that do not provide the minimal ADG 6m separation.

The extent of solid walls between the three buildings is not consistent with intent of ADG

As noted above, the controls for the area clearly anticipate a 2-storey form.

The views from the building to the north should be considered. Currently the upper-level steps in from the south, the upper levels should respond to the views by stepping in from the east and west to open view corridors.

### **Recommendation**

5. Comply with the 2-storey form unless it can be demonstrated that a 3-storey form achieves higher amenity and lesser adverse impacts.

### ***Access, vehicular movement and car parking***

Due the configuration of the building and basement car park layout the distance from the Pine Avenue entry to the most Eastern building entry for pedestrians accessing the site is greater than 75m along a narrow south facing external pedestrian access way. It is the Panel's view that this is a substandard circulation arrangement for visitors and residents.

CPTED issues need to be resolved on this important access issue to the site.

### **Recommendations**

6. Reduce the amount of parking (refer to Rec4).
7. Provide detail on proposed lighting and security measures

### ***Landscape***

As noted above the use of the existing 4.5m right of way along the northern boundary is not resolved. This land should be made available to ground floor residents as defined terrace gardens as is indicated for the other two buildings on the site.

The landscape design needs to reduce the impact on the current site conditions. The Panel understands that groundwater flows in this area are significant and should be investigated given the extent of excavation proposed.

### **Recommendations**

8. The landscape plan must indicate the ground floor plan for the Panel and Council to better understand the relationship of how interior and external uses are accomplished.
9. The landscape plan does not clearly distinguish between private open space and communal open space.
10. Include plant species that are endemic to the Northern Beaches.

### ***Amenity***

The applicant noted the good aspect and views to the south, currently all the building's living spaces face the northern boundary.



The site is a very narrow site and it should be possible to gain both sunlight and views with the incorporation of more cross through apartment, and better utilization of the gaps between the buildings on the site.

#### Recommendations

11. Provide a more considered design response to the gaps between the buildings in the east/west direction.
12. Investigate a scheme which is two levels with the upper floor containing cross through living space which gain both the northern and southern amenity.

#### ***Façade treatment/Aesthetics***

The orientation of all units to the north results in a bland and unarticulated façade to the street.

The facades of the internal elevations have no articulation and require consideration of further fenestration to improve both the aesthetics and amenity of the buildings.

#### Recommendations

13. Redesign the western façade to ensure that the building addresses the street.
14. Redesign the eastern and western internal elevations to provide increased amenity and articulation.

#### ***Sustainability***

Gas cooktop and hot water has been included, a better outcome is electrify and avoid gas

Roof falls to south, change to north to incorporate PV

No rainwater reuse has been incorporated

Top floor, flip to get northern access to the bedrooms

Surrounding area is already quite constrained with regard to traffic, parking, density. 3 storeys increases the density on this site and will put extra strain on the surrounding area.

#### Recommendations:

15. Target electrification by changing to heat pump hot water and induction cooktops
16. Include 1.5kW PV per apartment with direct behind the meter feed to each unit as well as PV for the common areas
17. Include a rainwater tank and reuse for irrigation and toilet flushing/laundries
18. Change the arrangement of the top floor to gain more northern light to the bedrooms, or as noted locate the living areas on the top floor

### **PANEL CONCLUSION**

**The Panel does not support the proposal in its current form. A complete redesign is required.**

The Panel does not support the three-storey form and recommends a reduction to two storeys which will reduce excavation, ensure a better contextual fit, and reduce car parking numbers.

The remaining apartments should be redesigned to provide both north light and southern aspect, with setbacks to ensure view sharing with the northern neighbour can be achieved.

**ITEM 4.3**

**MOD2022/0007 - 1031 BARRENJOEY ROAD, PALM BEACH -  
MODIFICATION OF DEVELOPMENT CONSENT DA2021/1311  
GRANTED FOR USE OF PREMISES AS A CAFE INCLUDING A  
CHANGE OF HOURS**

**AUTHORISING MANAGER**

Phil Lane

**TRIM FILE REF**

2022/276790

**ATTACHMENTS**

- 1 [↓](#)Assessment Report
- 2 [↓](#)Site Plans and Elevations

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Modification Application No. Mod2022/0007 for Modification of Development Consent DA2021/1311 granted for use of premises as a cafe including a change of hours on land at Lot A DP 404349, 1031 Barrenjoey Road, PALM BEACH, for the reasons for refusal set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                                           |                                                                                                                   |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | Mod2022/0007                                                                                                      |
| <b>Responsible Officer:</b>               | Nick Keeler                                                                                                       |
| <b>Land to be developed (Address):</b>    | Lot A DP 404349, 1031 Barrenjoey Road PALM BEACH NSW 2108                                                         |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2021/1311 granted for Use of premises as a cafe including a change of hours |
| <b>Zoning:</b>                            | R2 Low Density Residential                                                                                        |
| <b>Development Permissible:</b>           | No                                                                                                                |
| <b>Existing Use Rights:</b>               | Yes                                                                                                               |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                                          |
| <b>Delegation Level:</b>                  | NBLPP                                                                                                             |
| <b>Land and Environment Court Action:</b> | No                                                                                                                |
| <b>Owner:</b>                             | Carolyn Ann Robertson                                                                                             |
| <b>Applicant:</b>                         | Turnbull Planning International Pty Ltd                                                                           |
| <b>Application Lodged:</b>                | 25/01/2022                                                                                                        |
| <b>Integrated Development:</b>            | No                                                                                                                |
| <b>Designated Development:</b>            | No                                                                                                                |
| <b>State Reporting Category:</b>          | Refer to Development Application                                                                                  |
| <b>Notified:</b>                          | 02/02/2022 to 16/02/2022                                                                                          |
| <b>Advertised:</b>                        | Not Advertised                                                                                                    |
| <b>Submissions Received:</b>              | 9                                                                                                                 |
| <b>Clause 4.6 Variation:</b>              | Nil                                                                                                               |
| <b>Recommendation:</b>                    | Refusal                                                                                                           |

### EXECUTIVE SUMMARY

This application seeks to modify development consent DA2021/1311 granted for use of premises as a cafe including a change of hours which was approved by the Northern Beaches Local Planning Panel (NBLPP) on 10 December 2021.

The modification involves the deletion of Conditions 5 and 6 relating to partial removal of unauthorised works, the location of acoustic screening and landscaping. These conditions were imposed by the NBLPP.

As the subject modification application has been made under Section 4.55(2) of the EPA Act and seeks to delete conditions of consent imposed by the NBLPP, the application is referred back to the NBLPP for determination.

Concerns raised in the objections predominantly relate to the proposal resulting in an unreasonable impact to the residential amenity of the locality through the deletion of Conditions 5 and 6.

Critical assessment issues include that the amenity of surrounding residences would be unreasonably impacted by deletion of Conditions 5 and 6.

This report concludes with a recommendation that the NBLPP refuse to grant consent to the modification application.

## PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2021/1311 granted for use of premises as a cafe including a change of hours.

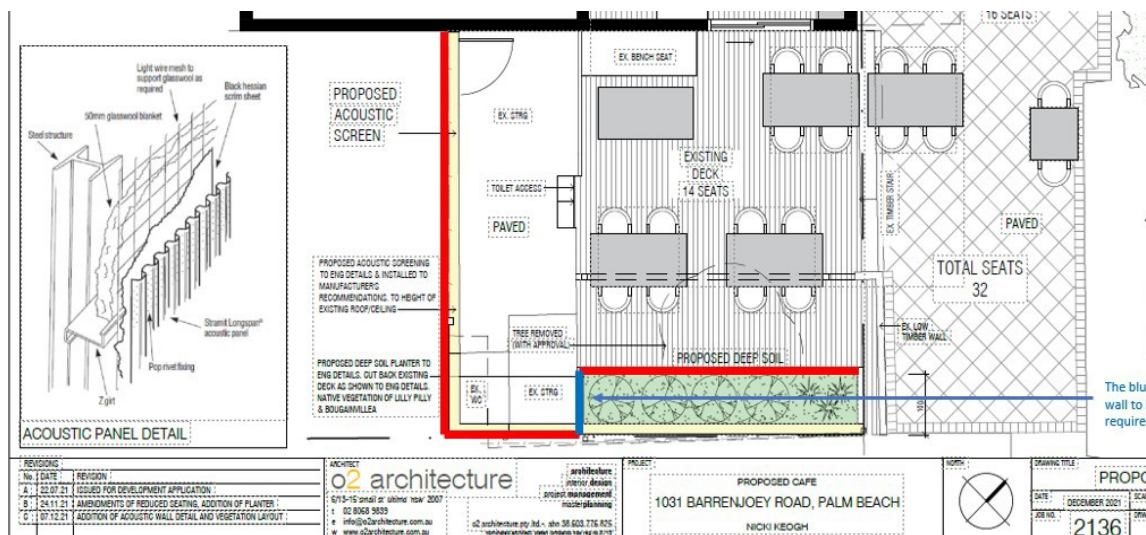
The modification proposes to delete Conditions 5 and 6 that were imposed by the Local Planning Panel.

Condition 5 reads as follows:

### 5. Amendments to the approved plans

The following amendments are to be made to the approved plans to the satisfaction of Council's Executive Manager Development Assessment prior to the issue of the Construction Certificate:

- The roof is to be altered and removed from above the deep soil planting.
- The acoustic screen is to be relocated to between the deep soil landscaping and the deck as illustrated red and blue on the following diagram.
- All works are to be within the boundaries of the subject property.



**Reason:** To ensure the development minimises unreasonable impacts upon neighbouring property.

Condition 5 requires amendments to be made to the approved plans, including the removal of the unauthorised pergola above the landscaped area, the relocation of the proposed acoustic wall from along the southwestern side boundary to the southwestern edge of the deck and the requirement that all works are located within the lot boundaries. The amended plans must be submitted to the Executive Manager

Development Assessment for approval prior to the issue of a construction certificate.

Condition 6 reads as follows:

#### 6. Landscape Planting

*The species of plants to be planted in the landscaped area adjacent to the deck shown in the approved plans are to be as approved by Council's Executive Manager Development Assessment prior to the issue of the Construction Certificate with the object of screening the acoustic wall as viewed from the neighbouring property, and are to be properly maintained in perpetuity.*

*Reason: to improve the amenity of the neighbouring property and the streetscape.*

Condition 6 requires a planting schedule for the landscaped area be submitted to the Executive Manager Development Assessment for approval prior to the issue of the construction certificate. This was imposed to ensure suitable vegetation species are planted to screen the acoustic wall and improve the visual amenity of the adjacent residential property and streetscape.

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity

### SITE DESCRIPTION

|                                   |                                                                                                     |
|-----------------------------------|-----------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot A DP 404349 , 1031 Barrenjoey Road PALM BEACH NSW 2108                                          |
| <b>Detailed Site Description:</b> | The subject site consists of one (1) allotment located on the southwestern side of Barrenjoey Road. |



The site is irregular in shape with a frontage of 12.19m along Barrenjoey Road and a depth of 31.73m. The site has a surveyed area of 284.5m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone and accommodates a two-storey building containing a cafe premises at the ground floor and residential occupancy on the upper floor.

The site is generally flat and is free of any significant vegetation.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:



#### **SITE HISTORY**

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

Consent No. **98/56** for the legalisation for an unauthorised refreshment room (restaurant) was approved on 27 April 1998 by the former Pittwater Environment and Planning Committee. This consent was modified on 1 November 1999 to remove Condition No. 1 that restricted the operation of the consent to 12 months.

Application **N1255/00** for the change of use of the existing premises from a refreshment room (restaurant) to a refreshment room (cafe and takeaway food) was approved on 22 February 2001 by the former Pittwater Development Unit.

Application **DA2021/1311** for Use of premises as a cafe including a change of hours was approved on 10 December 2021 by the Northern Beaches Local Planning Panel.

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/1311, in full, with amendments detailed and assessed as follows:

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

| Section 4.55 (2) - Other Modifications                                                                                                                                                                                                                          | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2021/1311 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modification does not alter the approved use of the site for the purpose of a restaurant or cafe.</li> <li>• The modification relates specifically to the wording of conditions imposed on the original consent that dictates where the acoustic screening for the outdoor deck is located.</li> <li>• The expected outcomes of the original assessment will be maintained under the modification.</li> </ul> |

| Section 4.55 (2) - Other Modifications                                                                                                                                                                                                                                                                                                                                                                                                            | Comments                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and | Development Application DA2021/1311 did not require concurrence from the relevant Minister, public authority or approval body.                                                                                                   |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require,<br><br>or<br><br>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and                                                                 | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.                                                                                                                                                                                                                                                  | See discussion on "Notification & Submissions Received" in this report.                                                                                                                                                          |

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration'                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument        | See discussion on "Environmental Planning Instruments" in this report.                                                                                                                                                                                                                                                                                                                                         |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk. |
| Section 4.15 (1) (a)(iii) – Provisions of any development                            | Pittwater 21 Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                |

| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| control plan                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement                                                                                                                   | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)                                                          | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| Section 4.15 'Matters for Consideration'                                               | Comments                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                        | (iii) <b>Economic Impact</b><br>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 unsuitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                           |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report.                                                                                                                                                                                                                                                                                                                                                   |
| Section 4.15 (1) (e) – the public interest                                             | This assessment has found the proposal to be contrary to the relevant requirement(s) of Section C2.12 of the P21DCP 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 for the site were established in the assessment of the original development application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

The proposed modification does not alter the level of compliance of the original development proposal with the requirements with Planning for Bush Fire Protection.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/02/2022 to 16/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

| Name:                     | Address:                                     |
|---------------------------|----------------------------------------------|
| Mr Marcello Giacomazzi    | 1 Iluka Road PALM BEACH NSW 2108             |
| Mr Geoffrey William Grist | 3 Iluka Road PALM BEACH NSW 2108             |
| Ms Jacqueline Tate        | 2 / 1026 Barrenjoey Road PALM BEACH NSW 2108 |
| Anthony Tate              | 2 / 1026 Barrenjoey Road PALM BEACH NSW 2108 |
| Mr Philip Georgouras      | 10 Lorne Avenue KENSINGTON NSW 2033          |
| Hamish Turner             | 1024 Barrenjoey Road PALM BEACH NSW 2108     |
|                           |                                              |

| Name:                     | Address:                                 |
|---------------------------|------------------------------------------|
| Leanne Tate               | Address Unknown                          |
| Mr Francis Charles Curtin | 1018 Barrenjoey Road PALM BEACH NSW 2108 |
| Slater & Elias Solicitors | DX 406 Sydney NSW                        |

The following issues were raised in the submissions:

- Amenity impacts caused by deletion of Conditions 5 & 6
- Garbage bins on street verge
- Hours of operation

The above issues are addressed as follows:

- **Amenity impacts caused by deletion of Conditions 5 & 6**

The submissions raised concerns that the deletion of Conditions 5 & 6 would result in unreasonable impact to the amenity of surrounding residences.

Comment:

Council does not support the applicant's proposal to delete Conditions 5 & 6 due to the unreasonable impact that this would cause on surrounding residences. The application is recommended for refusal on this basis.

- **Garbage bins on street verge**

The submissions raised concerns that the business operator consistently places garbage bins on the street verge.

Comment:

This modification does not relate to the ongoing operation of the business. The original development consent included a condition for the business to establish a garbage area within the property to store bins and waste prior to collection.

- **Hours of operation**

The submissions raised concerns that the hours of operation unreasonably impact upon the residential amenity of the locality.

Comment:

Matters relating to the existing and proposed hours of operation of the business were dealt with under the original development application. This modification does not propose to alter the approved hours of operation of the business.

## REFERRALS



| Internal Referral Body                          | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Environmental Health (Food Premises, Skin Pen.) | <p><b>General Comments</b></p> <p>There are no modifications to the food premises.</p> <p>Regarding the acoustic screen, Environmental Health have no objection to the screen in either location.</p>                                                                                                                                                                                                                                                                                                                      |
| NECC (Coast and Catchments)                     | <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant provisions of Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Proposed development the subject of this modification application does not change the coastal assessment for the approved development application (DA2021/1311) and no additional or amended coastal related conditions are recommended.</p> |

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

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

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

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

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

Nil

#### Pittwater Local Environmental Plan 2014

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

#### Principal Development Standards

| Standard             | Requirement | Approved                | Proposed  | % Variation | Complies |
|----------------------|-------------|-------------------------|-----------|-------------|----------|
| Height of Buildings: | 8.5m        | Acoustic screens - 2.6m | Unaltered | N/A         | Yes      |

#### Compliance Assessment

| Clause                  | Compliance with Requirements |
|-------------------------|------------------------------|
| 4.3 Height of buildings | Yes                          |
| 5.21 Flood planning     | N/A                          |
| 7.1 Acid sulfate soils  | N/A                          |
| 7.2 Earthworks          | N/A                          |
| 7.10 Essential services | Yes                          |

### Pittwater 21 Development Control Plan

#### Built Form Controls

As this proposal is reliant upon existing use rights, the strict application of the controls of P21DCP does not apply to the development. The modification does not alter the built form of the existing building and structures on the site. As such, the built form controls do not apply to this proposal.

#### Compliance Assessment

| Clause                                                         | Compliance with Requirements | Consistency Aims/Objectives |
|----------------------------------------------------------------|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted                  | Yes                          | Yes                         |
| A4.12 Palm Beach Locality                                      | Yes                          | Yes                         |
| B1.3 Heritage Conservation - General                           | Yes                          | Yes                         |
| B1.4 Aboriginal Heritage Significance                          | Yes                          | Yes                         |
| B3.6 Contaminated Land and Potentially Contaminated Land       | Yes                          | Yes                         |
| B3.11 Flood Prone Land                                         | N/A                          | N/A                         |
| B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land | Yes                          | Yes                         |
| B5.15 Stormwater                                               | Yes                          | Yes                         |
| B6.3 Off-Street Vehicle Parking Requirements                   | No                           | Yes                         |
| C2.1 Landscaping                                               | Yes                          | Yes                         |
| C2.2 Safety and Security                                       | Yes                          | Yes                         |
| C2.5 View Sharing                                              | Yes                          | Yes                         |
| C2.8 Energy and Water Conservation                             | Yes                          | Yes                         |
| C2.9 Waste and Recycling Facilities                            | Yes                          | Yes                         |
| C2.10 Pollution Control                                        | Yes                          | Yes                         |
| C2.11 Signage                                                  | N/A                          | N/A                         |
| C2.12 Protection of Residential Amenity                        | No                           | No                          |
| C2.22 Plant, Equipment Boxes and Lift Over-Run                 | Yes                          | Yes                         |

#### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

The modification does not alter the approved off-street parking situation of the site.



## **C2.12 Protection of Residential Amenity**

The applicant seeks to delete Conditions 5 and 6 which relate to the protection of residential amenity.

Condition 5 includes the requirement to remove the area of the pergola above the landscaped area and relocate the acoustic walls from the side boundary to the outer edge of the deck. The aim of this condition was to increase the spatial buffer between the deck and the adjacent property to help minimise acoustic impacts caused by the use of the deck and to allow vegetation to be planted in the landscaped area that would not be constrained by a roof above.

Condition 6 requires the applicant to submit a schedule of planting for the landscaped area on the approved plans to the Executive Manager Development Assessment for approval prior to the issue of the construction certificate. This condition was also imposed during deliberation on the original development application by the Local Planning Panel. The panel imposed this condition with the aim to ensure appropriate species are selected to be planted in the landscaped area to help mitigate visual impact from the acoustic screening.

The applicant seeks to delete Conditions 5 and 6 on the basis that the relocation of the acoustic screens will remove the ability for the landscaped area between the deck and boundary to be enjoyed by the cafe patrons and that the acoustic screens will result in an undesirable sense of enclosure for users of the deck. Further, maintenance of vegetation would become virtually impossible because of the 'tunnel like' effect the fencing and screening on either side of the landscaped area would create. The applicant argues the requirement for planting within the landscaped area to be used to screen the acoustic screens serves no purpose due to the existing boundary fence and screening vegetation already planted along the boundary of the adjacent property.

In light of the outcomes of this control, Council does not agree there is sufficient justification to delete Conditions 5 and 6.

While it is acknowledged the landscaped area will not be able to be enjoyed by patrons of the cafe, it is considered that the protection of residential amenity must be of greater importance than the amenity of cafe patrons in this case. Notwithstanding the historical operation of the site for the purpose of a restaurant and cafe, the site is located within an established residential area where occupants of the surrounding dwellings will experience ongoing operational impacts of the business. All attempts to minimise these impacts must be incorporated into the design of development to ensure reasonable residential amenity is maintained. This is the primary reason for the imposition of Conditions 5 and 6.

As such, the deletion of Conditions 5 and 6 will result in a poorer amenity outcome for surrounding residences and is not supported.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

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

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

This proposal to modify development consent DA2021/1311 has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application being submitted under Section 4.55(2) of the EPA Act and involves deletion of conditions imposed by the NBLPP.

The concerns raised in the objections relating to the impact of residential amenity have been addressed and are not considered to be appropriately resolved by the proposal.

The critical assessment issue of residential amenity impact caused by the business operation is not able to be appropriately mitigated by the proposal. The proposal is expected to result in a poorer residential amenity outcome compared to that of the original development consent.

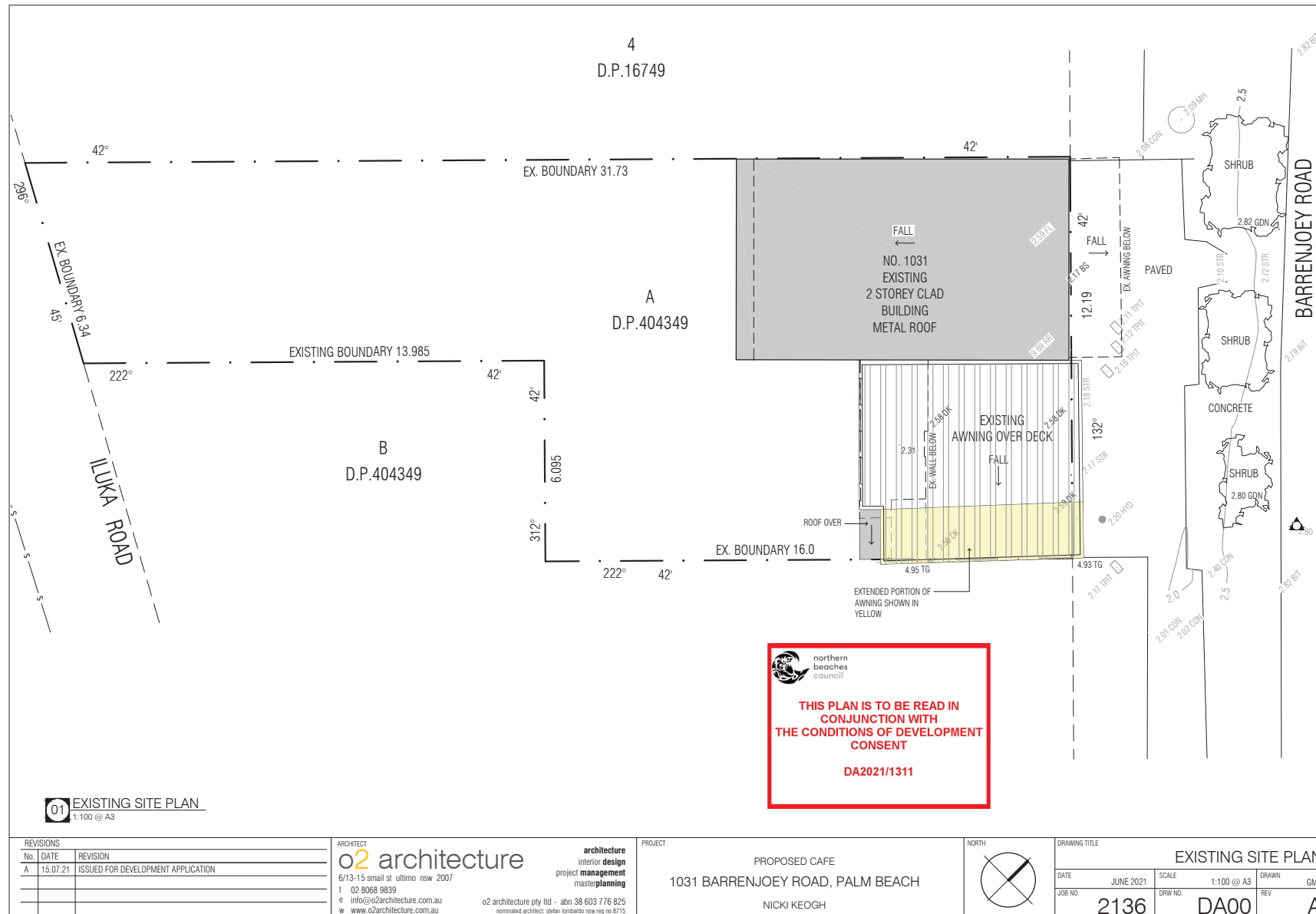
Overall, the development fails to demonstrate a high quality design and does not perform well against the relevant controls. The proposal is expected to result in unreasonable impacts on adjoining or nearby properties. The proposal has therefore been recommended for refusal.

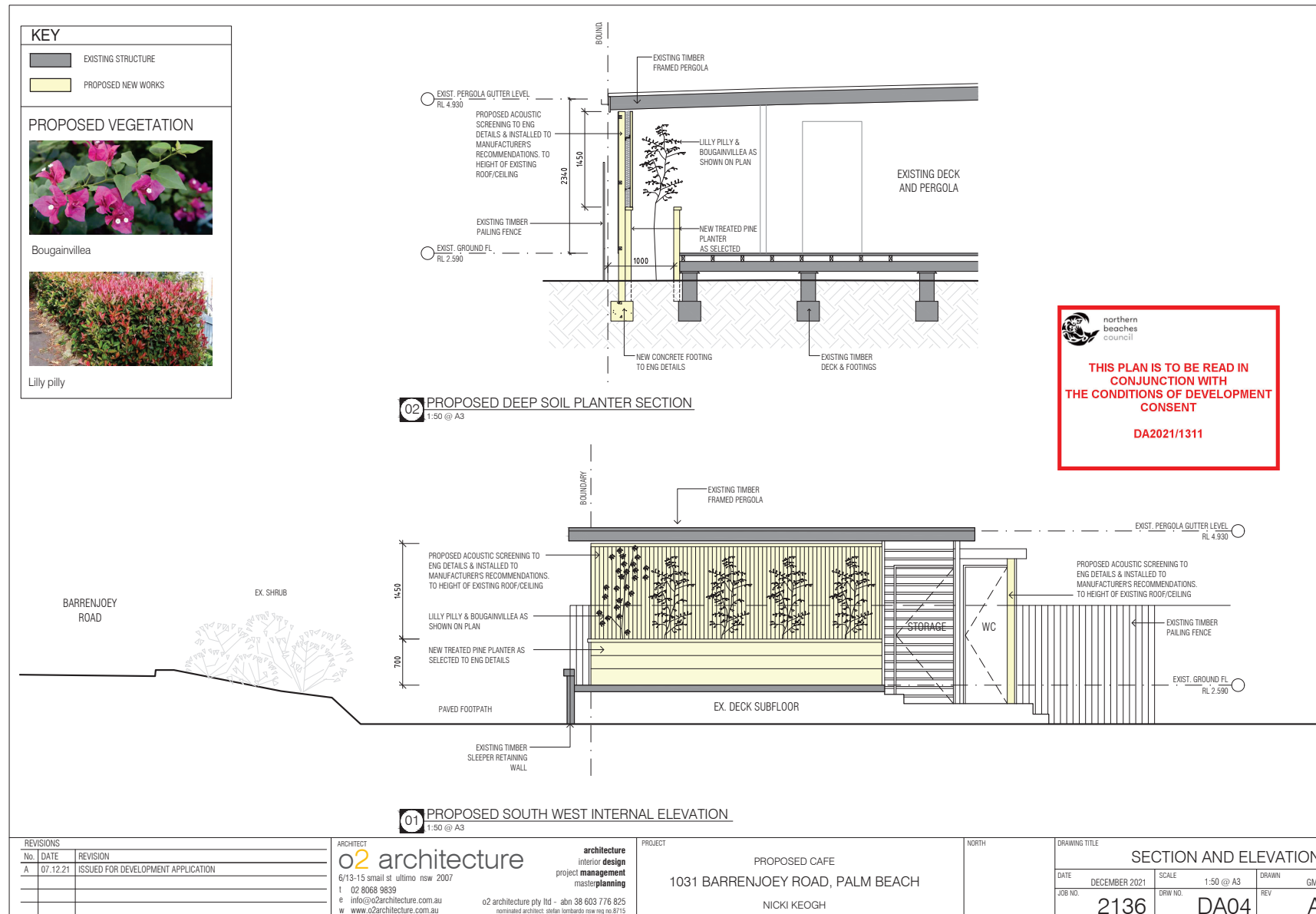
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

**RECOMMENDATION**

THAT Council , as the consent authority REFUSE Modification Application No. Mod2022/0007 for Modification of Development Consent DA2021/1311 granted for Use of premises as a cafe including a change of hours on land at Lot A DP 404349,1031 Barrenjoey Road, PALM BEACH, subject to the reasons outlined as follows:

1. 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 C2.12 Protection of Residential Amenity of the Pittwater 21 Development Control Plan. The proposal will result in increased visual and acoustic amenity impacts to the adjacent and nearby residential dwellings and the applicant's justification to delete Conditions 5 and 6 is not well founded.
2. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





**ITEM 4.4**

**DA2021/2493 - 205-207 OCEAN STREET, NARRABEEN -  
ALTERATIONS AND ADDITIONS TO AN EXISTING MIXED-  
USE BUILDING.**

**AUTHORISING MANAGER** Steve Findlay

**TRIM FILE REF** 2022/276818

**ATTACHMENTS**

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site Plans & Elevations
- 3 [↓](#) Clause 4.6

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/2493 for the alterations and additions to an existing mixed-use building on land at Lot 2 DP 235823, 205 - 207 Ocean Street, NARRABEEN, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                                           |                                                               |
|-------------------------------------------|---------------------------------------------------------------|
| <b>Application Number:</b>                | DA2021/2493                                                   |
| <b>Responsible Officer:</b>               | Gareth David                                                  |
| <b>Land to be developed (Address):</b>    | Lot 2 DP 235823, 205 - 207 Ocean Street NARRABEEN<br>NSW 2101 |
| <b>Proposed Development:</b>              | Alterations and additions to an existing mixed-use building   |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned B1 Neighbourhood<br>Centre     |
| <b>Development Permissible:</b>           | Yes                                                           |
| <b>Existing Use Rights:</b>               | No                                                            |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                      |
| <b>Delegation Level:</b>                  | NBLPP                                                         |
| <b>Land and Environment Court Action:</b> | No                                                            |
| <b>Owner:</b>                             | Adams & Edwards Pty Ltd                                       |
| <b>Applicant:</b>                         | Adams & Edwards Pty Ltd                                       |
| <b>Application Lodged:</b>                | 20/12/2021                                                    |
| <b>Integrated Development:</b>            | No                                                            |
| <b>Designated Development:</b>            | No                                                            |
| <b>State Reporting Category:</b>          | Mixed                                                         |
| <b>Notified:</b>                          | 18/01/2022 to 01/02/2022                                      |
| <b>Advertised:</b>                        | Not Advertised                                                |
| <b>Submissions Received:</b>              | 0                                                             |
| <b>Clause 4.6 Variation:</b>              | 4.3 Height of buildings: 22.94%                               |
| <b>Recommendation:</b>                    | Refusal                                                       |
| <b>Estimated Cost of Works:</b>           | \$ 186,016.00                                                 |

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing mixed use building comprising of the construction of a new passenger lift. The proposed lift is sited within the existing building footprint and includes a lift shaft and overrun at the roof level of the building.

The application includes a request under Clause 4.6 of the Warringah LEP 2011 to vary the development standard for building height. As the application proposes a variation to the building height development standard of more than 10%, the application is referred to Northern Beaches Local Planning Panel (NBLPP) for determination.

The maximum height of the proposed development has been measured at 10.45m which represents a

variation of 22.94% to the prescribed 8.5m building height limit.

No submissions have been received in response to neighbour notification.

The assessment of the application has found that the proposal in its current form cannot be supported as there are insufficient environmental planning grounds provided by the applicant to justify contravening the 'Height of Buildings' Development Standard under the WLEP 2011 to the extent proposed (ie. 22.94%). It is also considered that the proposal is inconsistent with requirements and objectives of Clause *B10 Merit assessment of rear boundary setbacks; D9 Building Bulk; D11 Roofs and F1 Local and Neighbourhood Centres* of WDCP 2011. Additionally, no BASIX Certificate has been provided as part of the application.

The proposal would be located next to a prominent public place, that being North Narrabeen Beach and Birdwood Park carpark. Overall, it is considered that the height of the proposed lift shaft would be inconsistent and incongruent with the adjoining open rooftop terraces of surrounding buildings particularly as viewed from this public area to the east. The proposed location of the lift shaft, with a setback of 1.3m from the rear boundary, would result in a visually prominent structure, which is not considered to be visually compatible with adjoining development. It is considered that the height, location and design of the proposed lift would result in a visually intrusive structure which would add to overall the bulk and scale of the building. Whilst it is acknowledged that the proposed lift would provide improved access for residents, it is considered that a more sensitive design could facilitate access to the rooftop without the need for a visually intrusive structure located approximately 2 metres above the required height limit

Accordingly, the application is referred to the NBLPP with a recommendation for refusal for the reasons detailed within the 'Recommendation' section of this report.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for alterations and additions to an existing mixed use building comprising of the construction of a new passenger lift. The proposed lift is sited within the existing building footprint and includes a lift shaft from basement level terminating at the deck at roof level of the building. The lift would service all four (4) residential units of the building with access being provided via the east facing balcony to each respective unit.

## ASSESSMENT INTRODUCTION

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

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



State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - D11 Roofs  
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 2 DP 235823 , 205 - 207 Ocean Street NARRABEEN NSW 2101                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Detailed Site Description:</b> | <p>The subject site is comprises of a four-storey mixed use development and is located on the eastern side of Ocean Street, Narrabeen.</p> <p>The site is regular in shape with a frontage of 11.355m along Ocean Street and a depth of 33.44m. The site has a surveyed area of 378.3m<sup>2</sup>.</p> <p>The site is located within the B1 Neighbourhood Centre zone and accommodates a mixed use development with basement carparking, ground and first floor commercial tenancies and four residential units. The upper level has a rooftop terrace and a gym/recreation area.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>The surrounding area is characterised by mixed use, residential and commercial buildings. The subject site is adjacent to North Narrabeen Beach and Birdwood Park carpark located to the east.</p> |

Map:



## SITE HISTORY

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

- **DA2001/1693** -Development Application for the demolition of existing building and construction of a building containing a commercial office over two levels and 4 residential dwellings over 2 levels above basement parking - Approved June 2002
- **DA2007/0440** - Development Application for the change of Use from Office to Cafe/Retail - July 2007
- **DA2012/0700** - Construction of a gym on the rooftop terrace. - Approved 20 August 2021
- **PLM2017/0166** - Pre-lodgment for the construction of a lift on Council land

## APPLICATION HISTORY

17/02/2022

Council wrote to the applicant, raising concerns primarily in relation to:

- Height of building non-compliance and associated visual impacts
- Non-compliance with WDCP controls relating to building bulk and roofs

02/05/2022

Amended plans were received which:

- Reduced the overall height of the lift by 0.07m
- Changed the external materials of the external portion of the lift from brick to aluminum powder coated louvers

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

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

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

| Section 4.15 Matters for Consideration                                                                                                                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                    | <p>Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>                                                                                                                                                                                                                                                |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered unsuitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Notification & Submissions Received” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Section 4.15 (1) (e) – the public interest                                                                                                                                         | This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah LEP 2011 and Warringah DCP 2011 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 18/01/2022 to 01/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

## REFERRALS

| Internal Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Assessment - Fire and Disability upgrades | <p><b>SUPPORTED</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| NECC (Coast and Catchments)                        | <p><b>SUPPORTED</b></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p><u>Coastal Management Act 2016</u><br/>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><u>State Environmental Planning Policy (Coastal Management) 2018</u><br/>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p><i>Comment:</i></p> <p>On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated December 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> |

| Internal Referral Body                                                                                                                                                                                                                                                                                                                                                                                       | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|----|--|------------------------------|----|--|-----------------------------|----|--|---------------------------------------|--|--|---------------------------------------------------------|----|--|-------|-----|--|
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><u>Warringah LEP 2011 and Warringah DCP 2011</u></p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>                                                                                                                                                                                         |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
| NECC<br>(Development Engineering)                                                                                                                                                                                                                                                                                                                                                                            | <p><b>SUPPORTED SUBJECT TO CONDITONS</b></p> <p>No objections to approval subject to conditions as recommended.</p>                                                                                                                                                                                                                                                                                                                                                          |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
| Strategic and Place Planning<br>(Heritage Officer)                                                                                                                                                                                                                                                                                                                                                           | <p><b>HERITAGE COMMENTS SUPPORTED</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><u>Discussion of reason for referral</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p>The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item</p>                                                                                                                                                                                                                                                                                                                                                              |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><b>Item I93 - Stone Wall</b> - Ocean Street, near Malcolm Street</p>                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><u>Details of heritage items affected</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p>Details of the item as contained within the Warringah inventory is as follows:</p>                                                                                                                                                                                                                                                                                                                                                                                        |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><u>Statement of Significance</u></p> <p>A good representative example of stone retaining walls of which there are a number in the study area. Historically representative of public works in the locality.</p>                                                                                                                                                                                                                                                            |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><u>Physical Description</u></p> <p>Coursed sandstone wall with a maximum height of 5 metres.</p>                                                                                                                                                                                                                                                                                                                                                                          |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <p><u>Other relevant heritage listings</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | <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 |  |
|                                                                                                                                                                                                                                                                                                                                                                                                              | 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
| <p><u>Consideration of Application</u></p>                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |
| <p>The proposal seeks consent for a passenger lift at the rear of the mixed use development. The heritage item is located to the north of the subject site on the other side of Malcolm Street intersection. Given the physical separation, that the works are to the rear and the building at 209-2011 in between, the proposal is considered to not impact upon the heritage item or its significance.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                    |    |  |                              |    |  |                             |    |  |                                       |  |  |                                                         |    |  |       |     |  |

| Internal Referral Body                      | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                             | <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No<br/>Has a CMP been provided? No<br/>Is a Heritage Impact Statement required? No<br/>Has a Heritage Impact Statement been provided? No</p> <p><b>Further Comments</b></p> <p>DATE: 5 January 2022</p>                                                                                                                                                                                                                                                                                                                                                              |
| Strategic and Place Planning (Urban Design) | <p><b>REFUSED</b></p> <p>The proposal has the following issues:</p> <ol style="list-style-type: none"> <li>1. The proposal is above the LEP height limit. It is unclear why the lift is required to service the observation deck and breach the height limit.</li> <li>2. The lift shaft protruding above level 2 is prominent and adds to the bulk and scale of the building and is visually obtrusive.</li> <li>3. The materiality of the proposed changes does not accord with the existing building and does not diminish the prominence of the proposed changes.</li> <li>4. The vehicular and pedestrian access to the lift at the basement level needs further design work and resolution to illustrate pedestrian safety and accessibility.</li> </ol> |
| Traffic Engineer                            | <p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>The DA seeks consent for the construction of a new internal vertical passenger lift to the existing mixed-use development (Two Storey Residential / Commercial – Four x 2-bed room dwellings and 2 commercial spaces), within the existing building footprint.</p> <p>The proposal results in the loss of one car space to accommodate the new internal vertical passenger lift. However, the development continues to provide for parking in accordance with Council's requirements.</p> <p><u>Traffic:</u></p> <ul style="list-style-type: none"> <li>· No additional traffic impact due to the proposed development.</li> </ul>                                                                            |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <ul style="list-style-type: none"> <li>· However, considering the site constraints and high vehicle &amp; pedestrian movements, Construction Traffic Management Plans are required.</li> </ul> <p><u>Parking:</u></p> <p>The loss of one car space is required to accommodate the new internal vertical passenger lift. However, the development provides parking facilities in accordance with Council's requirements</p> <ul style="list-style-type: none"> <li>· Required as per Warringah DCP...             <ul style="list-style-type: none"> <li>- 1.2 spaces / 2-bed room dwelling.</li> <li>- 1 visitor space per 5 units or part of dwellings</li> <li>- 1 space per 16.4 m2 GLFA... for shop</li> </ul> </li> </ul> <p>So total required spaces = 7</p> <ul style="list-style-type: none"> <li>· Available parking....             <ul style="list-style-type: none"> <li>- the existing development provides 8 parking spaces, 7 spaces will remain available once the list has been introduced.</li> </ul> </li> </ul> <p>Parking provisions satisfy the DCP requirements.</p> <p><u>Access and swept paths:</u></p> <ul style="list-style-type: none"> <li>· No change in vehicular access.</li> <li>· Swept paths are not required.</li> </ul> <p><u>Pedestrian safety:</u><br/>No concerns.</p> <p><u>Conclusion</u></p> <p>In view of the above, the development proposal can be approved with conditions.</p> |



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

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

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

The proposed development application is for a new lift. The proposal does not increase the building footprint nor does it increase the density of the building. As such, the proposal is not considered to be a substantial redevelopment or refurbishment of the existing building. The proposal does not involve the erection of a new building and it is not a conversion of an existing building. Therefore the proposal does not meet any of the provisions under Part 4(1A) of the SEPP, and this policy does not apply.

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

The proposal involves the alteration of a BASIX building with an estimated construction cost of more than \$50,000.

No BASIX Certificate has been provided as part of the application. This will form a reason for refusal.

#### **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.

#### **SEPP (Coastal Management) 2018**

The site is classified as land within the coastal environment area and land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

#### **12 Development on land within the coastal vulnerability area**

*Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*

- (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
- (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
- (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

The proposed works would be within the existing building footprint and would not require excavation or alteration of the land form. The proposal has been reviewed by Council's Coasts & Catchment Officer who has raised no objections to the proposed works.

**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 would be within the existing building footprint and would not require excavation or alteration of the land form. The proposal has been reviewed by Council's Coasts & Catchment Officer who has raised no objections to the proposed works. The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP

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

Comment:

The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP. The proposal has been reviewed by Council's Coasts & Catchment Officer who has raised no objections to the proposed works.

#### 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 has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP

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

*Development consent must not be granted to development on land within the coastal zone unless the*

*consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment:

The proposed works would be within the existing building footprint and would not require excavation or alteration of the land form. The proposal has been reviewed by Council's Coasts & Catchment Officer who has raised no objections to the proposed works. The proposal is not likely to cause an adverse impact upon the matters listed in clause 15 of the CM SEPP

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

**Coastal Management Act 2016**

The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.

The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. The proposal has been reviewed by Council's Coasts & Catchment Officer who has raised no objections to the proposed works.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies  |
|----------------------|-------------|----------|-------------|-----------|
| Height of Buildings: | 8.5m        | 10.45m   | 22.94%      | <b>No</b> |

Compliance Assessment

| Clause                                  | Compliance with Requirements              |
|-----------------------------------------|-------------------------------------------|
| 4.3 Height of buildings                 | No<br>(see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | No                                        |
| 5.3 Development near zone boundaries    | Yes                                       |
| 5.8 Conversion of fire alarms           | Yes                                       |
| 6.1 Acid sulfate soils                  | Yes                                       |
| 6.2 Earthworks                          | Yes                                       |
| 6.4 Development on sloping land         | Yes                                       |

Detailed Assessment

**4.3 Height of buildings**

The proposal has a maximum building height of 10.45m which does not comply with the stipulated 8.5m requirement. This represents a variation of 22.94% This measurement is based on interpolated ground levels for the site (preexcavation) and AHD levels as per the Building Height definition under WLEP 2011.

\*It is noted that the site has been noticeably excavated in a previous development. Caselaw in the LEC Court, including the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 have made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those made through excavation).

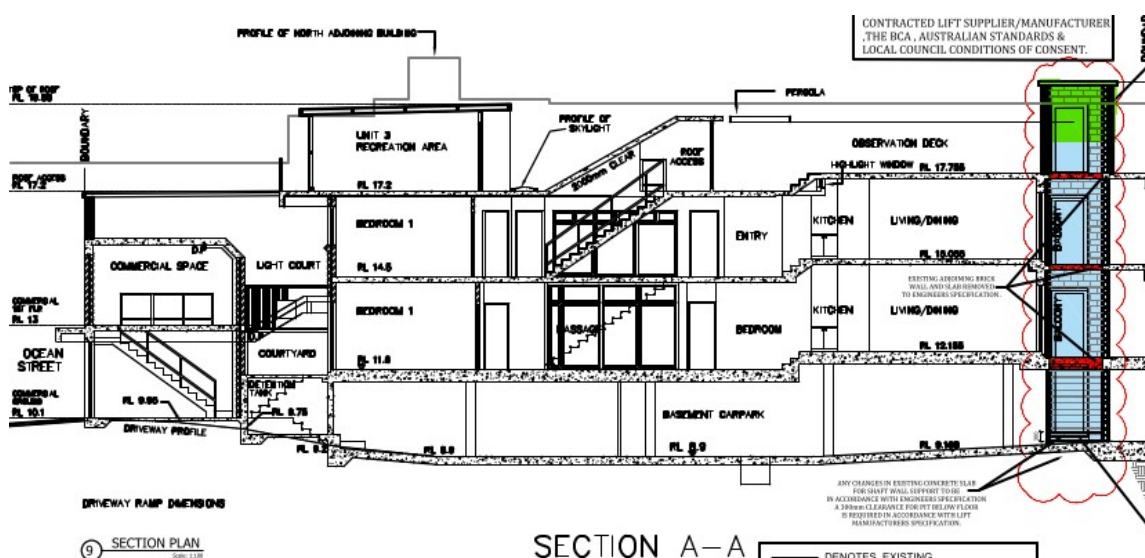


Figure 1: Section plan - Height of building variation in green

#### 4.6 Exceptions to development standards

Description of non-compliance:

|                                      |                     |
|--------------------------------------|---------------------|
| Development standard:                | Height of buildings |
| Requirement:                         | 8.5m                |
| Proposed:                            | 10.45m              |
| Percentage variation to requirement: | 22.94%              |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

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

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

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



Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *The proposed additions will maintain the general bulk and scale of the existing surrounding mixed use buildings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed development will provide for improved amenity for the occupants of the building within a built form which is compatible with the surrounding character of Ocean Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed minor addition to the mixed use development is considered to promote good design by an internal vertical passenger lift which improves the access for all occupants throughout the building and enhances the residential amenity of the buildings' occupants, which is consistent with the Objective 1.3 (g).*

Planner's comment:

This assessment does not support the justification provided in relation to the environmental planning grounds provided.



It is considered that the height of the proposed lift would be inconsistent and incongruent with the adjoining open rooftop terraces of surrounding buildings particularly as viewed from the public realm to the east. The height, location and design of the lift would result in a visually intrusive structure which would add to the overall bulk and scale of the building, particularly as viewed from North Narrabeen Beach and Birdwood Park carpark to the east. Whilst it is acknowledged that the proposed lift would provide improved access for residents, it is considered that a more sensitive design could facilitate access to the rooftop without the need for a visually intrusive structure located 2 metres above the required height limit. As such, the proposed lift is not considered a good design outcome.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

It is considered that the height of the proposed lift would be inconsistent and incongruent with the adjoining open rooftop terraces of surrounding buildings particularly as viewed from the public realm to the east. As demonstrated in the image below, as viewed from North Narrabeen Beach and Birdwood Park carpark, the existing buildings along Ocean Street are characterised by open roof terraces free of any visible structures. While it is acknowledged that the subject site and

adjoining buildings contain structures on the upper level which protrude above the stipulated 8.5m, these structures have been appropriately setback from the rear boundary and are not readily visible from the public domain to the east. The proposed location of the lift shaft, with a setback of 1.3m from the rear boundary, would result in a visually prominent structure, which is not considered to be visually compatible with adjoining development as viewed from the public realm to the east.

It is considered that the development does not satisfy this objective.



**Photo 1** - Photo of subject site taken from North Narrabeen Beach and Birdwood Park carpark located to the east.

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

Comment:

The height, location and design of the proposed lift would result in a visually intrusive structure which would add to overall the bulk and scale of the building particularly, as viewed from the public realm to the east. As such, the proposal is not considered to appropriately minimise the visual impact of the development.

The proposal is not considered to result in unreasonable loss of views, privacy and solar access.

It is considered that the development does not satisfy this objective.

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

Comment:

As above, the height, location and design of the proposed lift would result in a visually intrusive structure which would add to overall the bulk and scale of the building as is considered to visually impact the scenic quality of Warringah's coastal environment.

It is considered that the development does not satisfy this objective.

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

Comment:

The proposal would be located next to a prominent public place, that being North Narrabeen Beach and Birdwood Park carpark. As discussed above, it is considered that the height of the lift overrun would be inconsistent and incongruent with the adjoining open rooftop terraces of surrounding buildings particularly as viewed from this public area to the east. The proposed location of the lift shaft, with a setback of 1.3m from the rear boundary, would result in a visually prominent structure, which is not considered to be visually compatible with adjoining development. It is considered that the height, location and design of the proposed lift would result in a visually intrusive structure which would add to overall the bulk and scale of the building. As such the proposal is not considered to appropriately minimise the visual impact of the development when viewed from the adjoining public place.

It is considered that the development does not satisfy this objective.

## **Zone objectives**

The underlying objectives of the B1 Neighbourhood Centre zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal would maintain small-scale retail, business and community uses. The works proposed are to the residential aspect of the development only.

It is considered that the development satisfies this objective.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposal would maintain a village-like atmosphere and safety and comfort for pedestrians.

It is considered that the development satisfies this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The proposal would not result in a conflict between land uses in the zone and adjoining zones. The proposal would retain the amenity of adjoining and nearby residential land uses.

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 B1 Neighbourhood Centre zone.

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

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

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

**Warringah Development Control Plan**

Built Form Controls

| Built Form Control         | Requirement      | Proposed | % Variation* | Complies |
|----------------------------|------------------|----------|--------------|----------|
| B5 Side Boundary Setbacks  | Merit Assessment | 3.4m     | N/A          | Yes      |
|                            | Merit Assessment | 3.4m     | N/A          | Yes      |
| B7 Front Boundary Setbacks | Merit Assessment | 30m      | N/A          | Yes      |
| B9 Rear Boundary Setbacks  | Merit Assessment | 1.3m     | N/A          | No       |

Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | No                           | Yes                         |
| B6 Merit Assessment of Side Boundary Setbacks                          | Yes                          | Yes                         |
| B7 Front Boundary Setbacks                                             | Yes                          | Yes                         |
| B10 Merit assessment of rear boundary setbacks                         | No                           | No                          |
| 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                         |
| D2 Private Open Space                                                  | Yes                          | Yes                         |

| Clause                                             | Compliance with Requirements | Consistency Aims/Objectives |
|----------------------------------------------------|------------------------------|-----------------------------|
| D3 Noise                                           | Yes                          | Yes                         |
| D6 Access to Sunlight                              | Yes                          | Yes                         |
| D7 Views                                           | Yes                          | Yes                         |
| D8 Privacy                                         | Yes                          | Yes                         |
| D9 Building Bulk                                   | No                           | No                          |
| D10 Building Colours and Materials                 | Yes                          | Yes                         |
| D11 Roofs                                          | No                           | No                          |
| 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                         |
| E7 Development on land adjoining public open space | Yes                          | Yes                         |
| E10 Landslip Risk                                  | Yes                          | Yes                         |
| F1 Local and Neighbourhood Centres                 | No                           | No                          |

#### Detailed Assessment

#### **B10 Merit assessment of rear boundary setbacks**

Clause B10 of WDCP 2011 prescribes that the rear boundary setback is to be determined on merit with regard to streetscape, amenity of surrounding properties, setbacks of neighbouring development and the objectives of the control. The proposed lift would be 1.3m from the rear boundary.

While it is recognised that the proposal is within the existing building footprint and that the existing building and surrounding development is built with a nil setback to the rear boundary, it is not considered that the proposed rear setback is sufficient to mitigate the height and bulk of proposed lift as viewed from the public realm to the east. As discussed throughout this report, it is considered that the height of the proposed lift would be inconsistent and incongruent with the adjoining open rooftop terraces of surrounding buildings particularly as viewed from the public realm to the east. The height, design and the location and of the lift, adjacent to the rear boundary, would result in a visually intrusive structure which would add to overall the bulk and scale of the building, particularly as viewed from North Narrabeen Beach and Birdwood Park carpark to the east (rear). As such the proposal is not considered to meet the objective of this control which seeks to maintain the existing visual continuity and pattern of buildings.

Based on the above, the proposed development is inconsistent with the requirements and objectives of this clause and is recommended for refusal on this basis.

#### **C2 Traffic, Access and Safety**

The proposal has been reviewed by Council's Traffic Engineer who has raised no objections with regards to parking access and pedestrian safety associated with proposed lift development within the existing carpark. If the application were approved, appropriate conditions could be applied to maintain safe pedestrian access.

### **C3 Parking Facilities**

The proposed loss of one parking space to facilitate the proposed lift has been assessed by Council's Traffic Engineer who has raised no objections. Please see Council's Traffic Engineer referral response for further comments.

### **D7 Views**

No unreasonable view loss was identified. Adjoining neighbours to the north and south would retain expansive views of the ocean of their rear (eastern) boundaries. No submissions in relation to view loss have been received from surrounding neighbours.

### **D9 Building Bulk**

Clause D11 of the WDCP requires good design and innovative architecture to minimise the visual impact of development when viewed from adjoining public land.

The location, height and design of the proposed lift, being approximately 2m above the stipulated 8.5m height requirement and 1.3m from the rear boundary, would result in a visually prominent and obtrusive structure which accentuates overall building bulk, particularly as viewed from adjoining public spaces to the east. The height and location of the lift is not visually compatible with adjoining development as viewed from the adjoining public realm, specifically, North Narrabeen Beach and Birdwood Park carpark to the east. As such, it is not considered that the proposal encourages good design and innovative architecture to minimise the visual impact of development when viewed from adjoining public land as required by this control.

As discussed within this report with regards to the building height control in WLEP 2011 and within Urban Design referral comments, the proposed lift height results in a bulk and scale of development that is considered to be excessive and obtrusive, having a negative impact on adjoining public open space and the character of the area.

Based on the above, the proposed development is inconsistent with the requirements and objectives of this clause and is recommended for refusal on this basis.

### **D11 Roofs**

Clause D11 of the WDCP requires that lift overruns should be minimised and designed not to detract from the appearance of roofs, and that roofs shall complement the forms of the existing buildings in the streetscape.

As demonstrated in the photo 1 of this report (within *Clause 4.6 Exceptions to development standards*), as viewed from the public realm to the east, the existing buildings along Ocean Street are characterised by open roof terraces free of any visible structures. While it is acknowledged that the subject site and adjoining buildings contain structures on the upper level above the stipulated 8.5m, these have been appropriately setback from the rear boundary and are not readily visible. The proposed location of the lift shaft, with a setback of 1.3m from the rear boundary, would result in a visually prominent structure, which is not considered to be visually compatible with adjoining development particularly as viewed from the public realm to the east.

It is considered that the height, location and design of the proposed lift would result in a visually intrusive structure which would add to overall the bulk and scale of the building. It is not considered that the proposal encourages good design and innovative architecture and would detract from the appearance of the existing and adjoining roofs. A more sensitive design could facilitate appropriate access to the rooftop without the need for a visually intrusive structure located approximately 2 metres above the required height limit.

Based on the above, the proposed development is inconsistent with the requirements and objectives of this clause and is recommended for refusal on this basis.

### **F1 Local and Neighbourhood Centres**

Clause F1 of WDCP specifies that within neighbourhood centres, buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.

The proposal does not meet this requirement. The location, height and design of the proposed lift, being approximately 2m above the stipulated 8.5m height requirement and 1.3m from the rear boundary, would result in a visually prominent structure which accentuates overall building bulk as viewed from adjoining public spaces. The height and location of the lift is not visually compatible with adjoining development as viewed from the public realm to the east. It is not considered that the proposal encourages good design and innovative architecture.

As discussed above with regards to the building height control in WLEP 2011 and within Urban Design referral comments, the proposed lift height results in a bulk and scale of development that is considered to be excessive and obtrusive, having a negative impact on adjoining public open space and the character of the area. This issue has also been raised as a concern by Council's Urban Design Advisor in the comments detailed above. These concerns are concurred with and this issue has been given determining weight as a reason for refusal of the development 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 \$ 930 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 186,016.

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

Council is not satisfied that:

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

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

2) The proposed development will not be in the public interest because it is inconsistent with the objectives of the development standard

This proposal, for alterations and additions to an existing mixed use building comprising of the construction of a new passenger lift has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the building height development standard of more than 10%.

The assessment of the application has found that the proposal in its current form cannot be supported as there are insufficient environmental planning ground provided by the applicant to justify contravening the 'Height of Buildings' Development Standard under the WLEP 2011 to the extent proposed (ie. 22.94%). It is also considered that the proposal is inconsistent with requirements and objectives of Clause B10 Merit assessment of rear boundary setbacks; D9 Building Bulk; D11 Roofs and F1 Local and Neighbourhood Centres of WDCP 2011.

The proposal would be located next to a prominent public place, that being North Narrabeen Beach and Birdwood Park carpark. Overall, it is considered that the height of the proposed lift shaft would be inconsistent and incongruent with the adjoining open rooftop terraces of surrounding buildings particularly as viewed from this public area to the east. The proposed location of the lift shaft, with a setback of 1.3m from the rear boundary, would result in a visually prominent structure, which is not



considered to be visually compatible with adjoining development. It is considered that the height, location and design of the proposed lift would result in a visually intrusive structure which would add to overall the bulk and scale of the building.

Accordingly, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation of this assessment. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

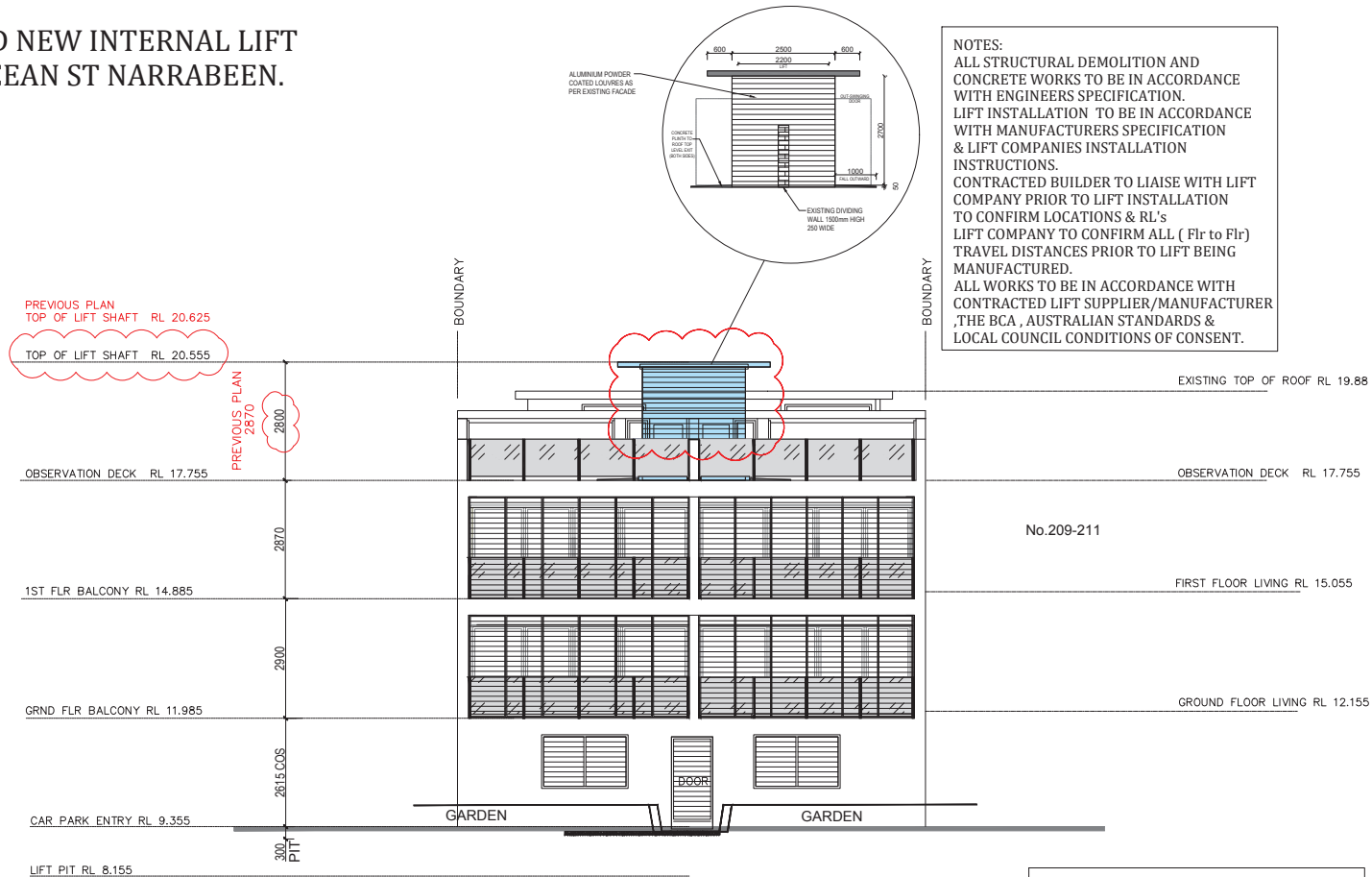
## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/2493 for the Alterations and additions to an existing mixed-use building on land at Lot 2 DP 235823,205 - 207 Ocean Street, NARRABEEN, 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 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
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 B10 Merit Assessment of Rear Boundary Setbacks of the Warringah 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 D9 Building Bulk of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11 Roofs of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause F1 local and Neighbourhood Centres of the Warringah Development Control Plan.



PROPOSED NEW INTERNAL LIFT  
TO 207 OCEAN ST NARRABEEN.



NOTES:  
ALL STRUCTURAL DEMOLITION AND  
CONCRETE WORKS TO BE IN ACCORDANCE  
WITH ENGINEERS SPECIFICATION.  
LIFT INSTALLATION TO BE IN ACCORDANCE  
WITH MANUFACTURERS SPECIFICATION  
& LIFT COMPANIES INSTALLATION  
INSTRUCTIONS.  
CONTRACTED BUILDER TO LIAISE WITH LIFT  
COMPANY PRIOR TO LIFT INSTALLATION  
TO CONFIRM LOCATIONS & RL's  
LIFT COMPANY TO CONFIRM ALL ( Flr to Flr)  
TRAVEL DISTANCES PRIOR TO LIFT BEING  
MANUFACTURED.  
ALL WORKS TO BE IN ACCORDANCE WITH  
CONTRACTED LIFT SUPPLIER/MANUFACTURER  
'THE BCA , AUSTRALIAN STANDARDS &  
LOCAL COUNCIL CONDITIONS OF CONSENT.



NOTE:  
THE HEIGHT OF THE LIFT IS 970mm ABOVE  
THE WALL OF THE ADJOINING BUILDING  
No.209-211

6 EAST ELEVATION

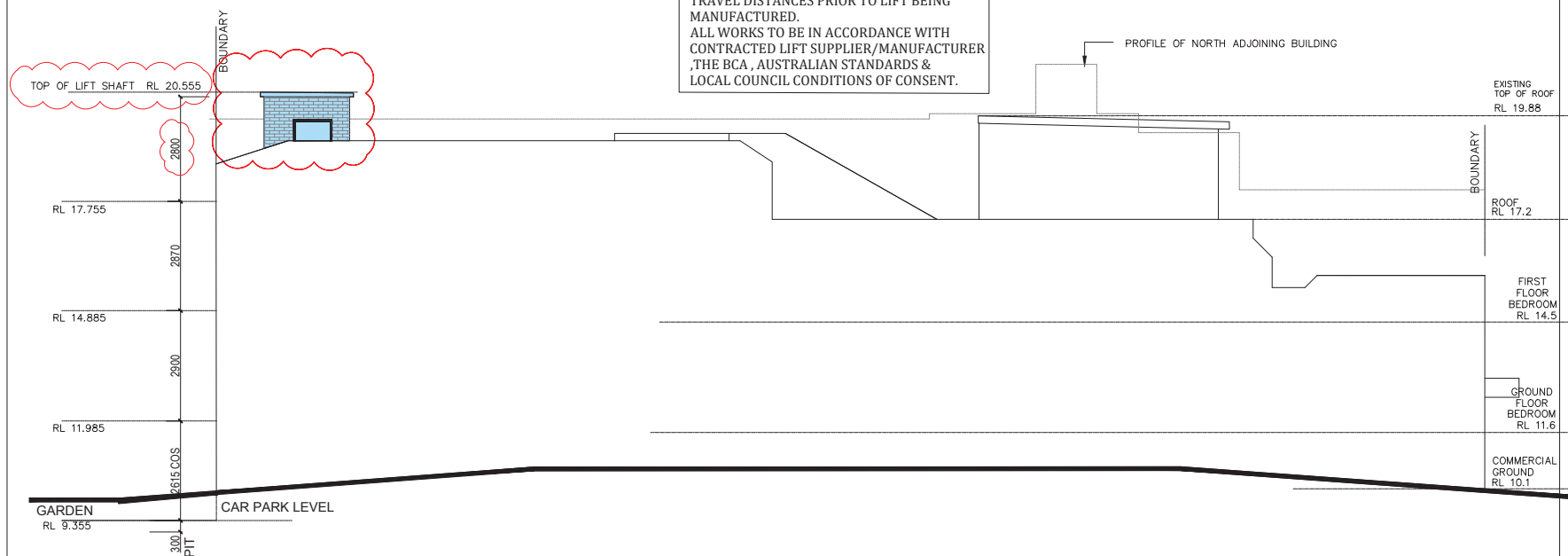
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-  DENOTES EXISTING  
 DENOTES AREA OF ALTERATION  
 DENOTES NEW WORK

[illegible]

NOTE:  
THE HEIGHT OF THE LIFT IS 970mm ABOVE  
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LOCAL COUNCIL CONDITIONS OF CONSENT.



7 NORTH ELEVATION

 DENOTES EXISTING  
 DENOTES AREA OF ALTERATION  
 DENOTES NEW WORK

[illegible]

NOTES:  
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Scale: 1:100

-  DENOTES EXISTING  
 DENOTES AREA OF ALTERATION  
 DENOTES NEW WORK

[illegible]

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**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

**205-207 OCEAN STREET, NARRABEEN**

**PROPOSED ADDITIONS AND ALTERATIONS TO THE EXISTING MIXED USE DEVELOPMENT**

**For:** Proposed construction of a new lift to the existing mixed use development  
**At:** 205-207 Ocean Street, Narrabeen  
**Owner:** Adams & Edwards Pty Ltd  
**Applicant:** Adams & Edwards Pty Ltd  
C/- Vaughan Milligan Development Consulting

**1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

**2.0 Background**

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed intends to provide for a first floor addition to the existing dwelling.

Due to the siting of the existing building, the proposed lift overrun will be up to approximately 10.52m in height. The proposal therefore does not comply with Council's maximum height control.

The extent of the building's lift overrun which exceeds the 8.5m height control is detailed in Figure 1 (over page).

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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### Is clause 4.3 of WLEP 2011 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of a development and includes:

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

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

### 3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

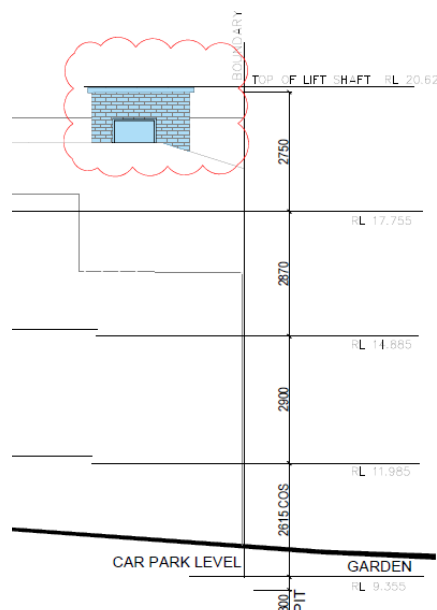


Fig 1: Section extract to indicate area of lift overrun exceeding the 8.5m height control

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#### 4.0 Objectives of Clause 4.6

Clause 4.6(1) of WLEP provides:

- (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.*

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 the LEP 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.*

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the WLEP.



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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 maximum building height control development standard pursuant to clause 4.3 of WLEP which specifies a maximum building height of 8.5m in this area of Narrabeen. The proposed lift overrun will result in a maximum building height for the new work of 10.52m, which exceeds the maximum height control by 2.02m or 23.76%.

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 Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to

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be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

- (5) *In deciding whether to grant concurrence, the 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.*

Council 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), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (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 development will achieve a better outcome in this instance as the site will provide for the TV development will achieve a better outcome in this instance as the site will provide for construction of alterations and additions to an existing mixed use development, which is consistent with the stated Objectives of the B1 Neighbourhood Centre Zone, which are noted as:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

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- To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.
- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.

As sought by the zone objectives, the proposal will provide for the construction of a new internal vertical passenger lift to the existing mixed use development, which is sensitive to the location and the topography of the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will maintain the predominant form of the existing mixed use development and retain the character and function of the local residential neighbourhood.

#### 5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of WLEP.
- 5.2 Clause 4.3 of WLEP specifies a maximum building height of 8.5m in this area of Narrabeen.
- 5.3 The proposed lift overrun at the first floor level will have a maximum height of 10.52m which exceeds the height control by 2.02m or 23.76%.

#### 6.0 Relevant Caselaw

- 6.1 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].*

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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.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of WLEP a development standard?
  2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
    - (a) compliance is unreasonable or unnecessary; and
    - (b) there are sufficient environmental planning grounds to justify contravening the development standard
  3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the B1 Neighbourhood Centre zone?
  4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

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

**7.0. Request for Variation**

**7.1 Is compliance with clause 4.3 unreasonable or unnecessary?**

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by three storey mixed use development the surrounding development.

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

The site adjoins public reserve to the east and given the central location of the lift overrun within the existing roof area, no shadow is cast on living spaces of adjoining private properties.

Similarly, as the lift is located at the eastern side of the development, the existing roof features of the building facade obscure the view from properties to the west and therefore no unreasonable loss of private views will occur.

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

The proposal presents a modest external changes and is not visually prominent within this coastal locality.

The proposal will not require the removal of any significant vegetation.

The proposal is therefore not considered to detract from the scenic quality of the coastal and bush locality.

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

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The proposed works will maintain a bulk and scale that is in keeping with that of existing surrounding development. The proposal is not considered to present an excessive appearance to the public domain.

**7.2 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].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed additions will maintain the general bulk and scale of the existing surrounding mixed use buildings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity for the occupants of the building within a built form which is compatible with the surrounding character of Ocean Street which also promotes the orderly and economic use of the land (cl 1.3(c)).

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- The proposed minor addition to the mixed use development is considered to promote good design by an internal vertical passenger lift which improves the access for all occupants throughout the building and enhances the residential amenity of the buildings' occupants, which is consistent with the Objective 1.3 (g).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of an internal vertical passenger lift which improves accessibility for all occupants of the development. This is a benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

**7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the B1 Neighbourhood Centre Zone?**

- (a) Section 4.2 of this written request suggests the 1<sup>st</sup> test in Wehbe is made good by the development.
- (b) Each of the objectives of the B1 Neighbourhood Centre Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone.*"

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In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height which as a consequence of the substantial slope of the site towards the south and the location of the existing development, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the B1 Neighbourhood Centre Zone for the following reasons:

- ***To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Mixed Use development is a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for the installation of an internal vertical passenger lift within an existing mixed-use development which other than the lift overrun at the first floor level, is not visible from the surrounding public or private areas.

The existing commercial component of the building will be retained and will continue to conserve the surrounding neighbourhood.

- ***To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.***

The proposed works will not impact on the local neighbourhood Centre or impact on the safety and comfort of pedestrians.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.***

The proposal will not impact on the adjoining residential zone and is not promptly viewed from the adjoining public and private spaces.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

#### **7.4 Has Council obtained the concurrence of the Director-General?**

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.



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**7.5 Has the Council considered the matters in clause 4.6(5) of WLEP?**

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed mixed-use development for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

**8.0 Conclusion**

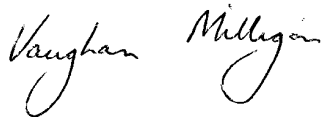
This development proposes a departure from the maximum building height control, with the proposed vertical passenger lift to provide for a lift overrun to a height of 10.52m.

This written request to vary the maximum building height control specified in Clause 4.3 of the Warringah LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of WLEP 2011 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



**VAUGHAN MILLIGAN**  
Town Planner

## 5.0 NON PUBLIC MEETING ITEMS

|                     |                                                                                                                                                                                      |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ITEM 5.1            | MOD2022/0022 - 43 BOORALIE ROAD, TERREY HILLS -<br>MODIFICATION OF DEVELOPMENT CONSENT DA2016/0523<br>GRANTED FOR DEMOLITION WORKS, CONSTRUCTION OF A<br>SERVICE STATION AND SIGNAGE |
| AUTHORISING MANAGER | Steve Findlay                                                                                                                                                                        |
| TRIM FILE REF       | 2022/276926                                                                                                                                                                          |
| ATTACHMENTS         | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plans & Elevations                                                                                                 |

### PURPOSE

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

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2022/0022 for Modification of Development Consent DA2016/0523 granted for demolition works, construction of a service station and signage at Lot 1 DP 545812,43 Booralie Road, TERREY HILLS, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                                           |                                                                                                                             |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | Mod2022/0022                                                                                                                |
| <b>Responsible Officer:</b>               | Adam Mitchell                                                                                                               |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 545812, 43 Booralie Road TERREY HILLS NSW 2084                                                                     |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2016/0523 granted for demolition works, construction of a service station and signage |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned IN2 Light Industrial                                                                         |
| <b>Development Permissible:</b>           | No                                                                                                                          |
| <b>Existing Use Rights:</b>               | Yes                                                                                                                         |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                                                    |
| <b>Delegation Level:</b>                  | NBLPP                                                                                                                       |
| <b>Land and Environment Court Action:</b> | No                                                                                                                          |
| <b>Owner:</b>                             | Eastden Pty Ltd                                                                                                             |
| <b>Applicant:</b>                         | Chapman Planning Pty Ltd                                                                                                    |
| <b>Application Lodged:</b>                | 08/02/2022                                                                                                                  |
| <b>Integrated Development:</b>            | No                                                                                                                          |
| <b>Designated Development:</b>            | No                                                                                                                          |
| <b>State Reporting Category:</b>          | Refer to Development Application                                                                                            |
| <b>Notified:</b>                          | 16/02/2022 to 02/03/2022                                                                                                    |
| <b>Advertised:</b>                        | 16/02/2022                                                                                                                  |
| <b>Submissions Received:</b>              | 1                                                                                                                           |
| <b>Clause 4.6 Variation:</b>              | Nil                                                                                                                         |
| <b>Recommendation:</b>                    | Approval                                                                                                                    |

### EXECUTIVE SUMMARY

This Section 4.55(2) Modification Application seeks consent to lower the height of a petrol station canopy by 500mm.

The application is returned to the Northern Beaches Local Planning Panel (NBLPP) as they had previously applied conditions pertinent to the canopy design to earlier consents. An earlier application (MOD2019/0024) was approved by the NBLPP to increase the height of the canopy, subject to special condition 1B relating to light overspill and screening. That condition required works to be complete by a specified time. The works were not carried out, and a subsequent application (MOD2020/0113) was submitted to alter that condition and was subsequently refused. A Notice of Intention to Issue an Order has been sent to the applicant which has resulted in this subject application.

In its proposal to reduce the existing canopy height by 500mm, the application also seeks to delete special condition 1B.

One (1) submission has been received which neither objects to nor supports the application, but rather requests that the site be monitored during works to ensure works are carried out within the construction hours designated on the parent consent. Those construction hours and original conditions remain applicable.

The assessment of this application has found that there is no material harm caused by the lowering of the canopy height.

This report concludes with a recommendation that the NBLPP **APPROVES** the modification application.

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for two things:

### 1. Lowering of canopy height

The application seeks to modify approved Condition 1 to supersede architectural plans to incorporate a lowering of the approved canopy height by 0.5m, thus providing a 4.5m distance to the underside of the canopy with a 1m parapet above.

### 2. Deletion of Condition 1B

Condition 1B (extracted in the Site History component of this report) was imposed under MOD2019/0024 which related to the addition of a 0.5m screen beneath the existing underside of the canopy along the south-eastern edge. The applicant contends that the lowering of the canopy achieves the intended result of Condition 1B and it is therefore redundant.

During the course of this application revised plans were requested, requiring the removal of certain pieces of signage from the building which do not exist. For clarity, this application does not include (nor approve if approval is granted) any modification to existing or installation of additional signage or lighting, and does not alter the approved operations of the service station.

## ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - D12 Glare and Reflection

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 1 DP 545812 , 43 Booralie Road TERREY HILLS NSW 2084                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Detailed Site Description:</b> | <p>The site is located on a corner allotment on the south eastern corner of Booralie Road and Tepko Road.</p> <p>The site is irregular in shape and has a surveyed area of 1,088m<sup>2</sup> with a street frontage to Booralie Road of 31.1m and to Tepko Road of 45.3m.</p> <p>Presently the site accommodates a self-service petrol station with a canopy structure, and signage.</p> <p>The site is upon land zoned for IN2 Light Industrial and is bound by similarly zoned land to the south and west. North and east of the site is land zoned for R2 Low Density Residential development and accommodates residential accommodation of varying forms. A narrow strip of land zoned for RE1 Public Recreation runs along the eastern edge of the site and connects to Myoora Road. This strip of land provides a landscaped buffer between the residential and industrial zones.</p> <p>The allotment is generally flat with no topographical features and does not have any significant or noteworthy vegetation.</p> |

Map:



## SITE HISTORY

A review of Council records has revealed that the subject site has operated as a service station and associated uses over the past 30+ years.

### DA2016/0523

Development Application No. DA2016/0523 for demolition works and construction of a service station and signage was approved by the Northern Beaches Development Assessment Panel (NBDAP) on 12 October 2016.

### MOD2016/0324

Modification Application No. MOD2016/0324 sought to change the approved hours of operation and signage illumination approved under DA2016/0523. Due to concerns in relation to impacts on surrounding residential amenity, the NBDAP refused the application.

### MOD2017/0223

Modification Application No. MOD2017/0223 sought to change the approved hours of operation and signage illumination. The proposed hours were:

- Monday to Friday - 5.00am - 11.00pm;
- Saturday - 6.00 am - 11.00pm; and
- Sunday and Public Holidays - 7.00am - 10.00pm

The assessment report recommended the proposed hours be reduced and that they should be subject to a 12 month trial period. The recommended hours were:

- Monday to Friday - 6.00am - 11.00pm;
- Saturday - 6.00am - 11.00pm;

- Sunday and Public Holidays - 7.00am - 10.00pm

The application was approved by the NBDAP on 13 December 2017.

#### **MOD2019/0024**

Modification Application No. MOD2019/0024 sought a retrospective approval for increasing the height of the service station canopy from 5.5m to 6.0m. The application was approved by the NBLPP on 3 July 2019 with special condition 1B imposed in relation to the installation of shields.

#### **Amendment to the approved plans**

The installation of a new screen to shield visibility of the soffit and lights of the existing service station canopy from the south east.

The new screen is to:

- extend for the entire length of the portion of the canopy facing 37 Booralie Road, Terrey Hills
- be located immediately below the existing fascia
- have a finished dimension of not less than 0.5 m below the underside of the existing soffit and fascia
- match the existing fascia in material and colour
- be constructed in a manner that will ensure its long term durability and stability
- be constructed in a manner that will ensure no light can penetrate between it and the existing fascia.

The screen shall be installed by 30 September 2019.

Details of the proposed screen are to be provided to Council for approval by the Manager Development Assessment or Executive Manager Development Assessment no later than 31 August 2019.

Reason: To reduce the effect of the canopy lighting on the adjoining public land and 37 Booralie Road, Terrey Hills to that which would have applied under the pre-existing approval.

Note: there is no record of details being provided to Council before 31 August 2019.

#### **MOD2020/0113**

Modification Application No. MOD2020/0113 sought to amend the above Condition No. 1B by proposing an alternative screen solution including the installation of 250mm aluminium light screen boxes around each canopy down-light.

The application was refused by the NBLPP on 01 July 2020 due to unreasonable glare and reflection.

#### **EPA2021/0212**

A complaint was received on 28 July 2021 to investigate:

*Light screen as per Condition 1B of Mod2019/0024 has not been installed. The applicant applied for an alternative solution under Mod2020/0113, which was refused by the Panel on 01 July 2020. The applicant's appeal rights have since expired, which leaves the applicant with the only option to construct the light screen.*



The investigation of that complaint found that the works detailed above were inconsistent with any approvals and a Notice of Intention to issue an Order was sent to the applicant on 30 August 2021.

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0523, in full, with amendments detailed and assessed as follows:

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

| Section 4.55 (2) - Other Modifications                                                                                                                                                                                                                          | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0523 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The works are limited to the reduction in an approved and constructed canopy above the petrol station filling areas from a height of 6m (FFL to ridge) to 5.5m.</li> <li>• No changes are proposed to the layout of structures on the site or the operation of the site as a service station.</li> </ul> |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of                                                                                                                                                       | Development Application DA2016/0523 did not require concurrence from the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |



| Section 4.55 (2) - Other Modifications                                                                                                                                                                                                                                                                                                                                            | Comments                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and                                           | relevant Minister, public authority or approval body.                                                                                                                                                                            |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require,<br><br>or<br><br>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.                                                                                                                                                                                  | See discussion on "Notification & Submissions Received" in this report.                                                                                                                                                          |

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration'                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument        | See discussion on "Environmental Planning Instruments" in this report.                                                                                                                                                                                                                                                                                                                                                               |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for industrial purposes for an extended period of time. The proposed development retains the industrial use of the site, and is not considered to create any additional contamination risks. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan               | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                         |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning                              | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                     |

| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| agreement                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)                                                          | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Council requested that the applicant revised the submitted 'existing elevations' to reflect what is currently on the site.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Section 4.15 (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Notification & Submissions Received” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Section 4.15 (1) (e) – the public interest                                                                                                                                         | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

## EXISTING USE RIGHTS

Existing Use Rights were established in the parent development consent assessment and no further assessment on this matter is required.

#### **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 16/02/2022 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 1 submission/s from:

| <b>Name:</b>        | <b>Address:</b>                        |
|---------------------|----------------------------------------|
| Mr Daniel Gary Cook | 37 Booralie Road TERREY HILLS NSW 2084 |

During the exhibition of the application one submission was received which read:

*Can we ensure this site is monitored to be inline with the approval for hours of work during this construction. In previous construction on this site construction out of the applicable hours was a problem. This included the construction work, deliveries and emptying of skip bins. At one point skip bins were being emptied at 3am. Construction was happening out of hours and deliveries were coming at all hours.*

#### Comment

The recommendations of this report do not alter authorised construction hours. If any construction works and/or removal of materials occur outside of authorised hours then Council's Building Compliance department should be contacted.

#### **REFERRALS**

| <b>Internal Referral Body</b>                      | <b>Comments</b>                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Assessment - Fire and Disability upgrades | <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> |
| Environmental Health (Industrial)                  | <p><b>General Comments</b></p> <p>The proposal to lower the service station canopy by 500 mm to match the original height approved via DA2016/0523 is satisfactory. We agree that it serves the same purpose as adding a 500 mm light barrier, and support the application without objection.</p>                                                                         |
| NECC (Development Engineering)                     | <p>Applicant seeks to modify the approved canopy height. No Development Engineering objection with no conditions.</p>                                                                                                                                                                                                                                                     |
|                                                    |                                                                                                                                                                                                                                                                                                                                                                           |

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Traffic Engineer       | <p><b>Basic Details</b></p> <ul style="list-style-type: none"> <li>· DA2016/0523 had been approved for the service station with a canopy height of 5.5 m.</li> <li>· MOD2019/0024 was approved to increase the height of the canopy from 5.5m to 6m. During the approval process, Council added condition of consent 1B for the installation of a new screen to shield the visibility of the soffit and lights of the existing service station to reduce the effect of the canopy lighting on the adjoining public land and 37 Booralie Road, Terrey Hills.</li> <li>· Mod2022/0022, S4.55(2) application seeks amendments to the development consent plans to lower the height of the canopy by 500mm, and subsequently delete the condition of consent 1B. The canopy height will be reduced to that originally approved under DA2016/0523 and resolve the light spill issues currently resulting from the raised canopy height.</li> </ul> <p><b>Traffic:</b></p> <p>No additional traffic impact due to the modification.</p> <p><b>Parking:</b></p> <p>No additional parking requirements or changes due to the modification.</p> <p><b>Access and swept paths:</b></p> <p>Vehicular access is not modified, hence swept paths are not required.</p> <p><b>Pedestrian safety:</b></p> <p>No concerns due to the modification.</p> <p><b>Conclusion</b></p> <p>Given the above, there are no traffic engineering concerns with approval of the modification and no additional conditions to add.</p> |

| External Referral Body | Comments                                                                                                                       |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid who provided a response stating that they have no objections to the proposed development. |

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

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

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

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

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

##### SEPP 55 - Remediation of Land

The lowering of the existing canopy height is found unlikely to disturb any potential contamination on the land.

##### 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.

#### 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

| Development Standard | Requirement | Approved     | Proposed     | Complies |
|----------------------|-------------|--------------|--------------|----------|
| Height of Buildings: | 8.5m        | Canopy: 6.0m | Canopy: 5.5m | Yes      |

Compliance Assessment

| Clause                               | Compliance with Requirements |
|--------------------------------------|------------------------------|
| 4.3 Height of buildings              | Yes                          |
| 5.3 Development near zone boundaries | Yes                          |
| 6.2 Earthworks                       | Yes                          |
| 6.4 Development on sloping land      | Yes                          |

**Warringah Development Control Plan**

Built Form Controls

| Standard                                          | Requirement  | Approved                       | Proposed               | Complies  |
|---------------------------------------------------|--------------|--------------------------------|------------------------|-----------|
| B3 Side Boundary Envelope                         | South - 4.0m | No encroachment                | No change              | No change |
|                                                   | East - 4.0m  | No encroachment                | No change              | No change |
| B5 Side Boundary Setbacks                         | South - 0.9m | 0.9m                           | No change              | No change |
|                                                   | East - 0.9m  | 2.0m                           | No change              | No change |
| B7 Front Boundary Setbacks - Booralie Road        | 4.5m         | Store - 22.5m<br>Canopy - 3.5m | No change<br>No change | No change |
| B7 Secondary Front Boundary Setbacks - Tepko Road | 4.5m         | Store - 2.0m<br>Canopy - 2.6m  | No change<br>No change | No change |
| D1 Landscaped Open Space and Bushland Setting     | 40%          | 0.3% (34.7sqm)                 | No change              | No change |

Note: the application seeks only to lower the overall height of the canopy by 500mm and therefore does not change any of the above built form control compliance and therefore, no further assessment on these clauses is required.

Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | Yes                          | 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                         |
| D3 Noise                                                               | Yes                          | Yes                         |
| D6 Access to Sunlight                                                  | Yes                          | Yes                         |
| D7 Views                                                               | Yes                          | Yes                         |
| D8 Privacy                                                             | Yes                          | Yes                         |
| D9 Building Bulk                                                       | Yes                          | Yes                         |
| D10 Building Colours and Materials                                     | Yes                          | Yes                         |
| D11 Roofs                                                              | Yes                          | Yes                         |
| D12 Glare and Reflection                                               | Yes                          | Yes                         |
| D14 Site Facilities                                                    | Yes                          | Yes                         |
| D18 Accessibility and Adaptability                                     | Yes                          | Yes                         |
| D20 Safety and Security                                                | Yes                          | Yes                         |
| 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                         |
| E7 Development on land adjoining public open space                     | Yes                          | Yes                         |
| E10 Landslip Risk                                                      | Yes                          | Yes                         |

#### Detailed Assessment

#### **C2 Traffic, Access and Safety**

The modifications sought are not anticipated to generate any access issues within the site, noting that heavy rigid vehicles (tankers) are generally 4300mm in height and will therefore be able to pass beneath the canopy.

#### **D6 Access to Sunlight**

The lowering of the canopy roof by 500mm will not generate any overshadowing to neighbouring properties over and above the existing development.

#### **D9 Building Bulk**

The reduction of the existing canopy height by 500mm will similarly equate to a reduction in the overall perceived bulk of the building.

#### **D12 Glare and Reflection**

In its previous decisions the NBLPP requested specific conditions pertaining to the lighting design to the underside of the canopy, including an overhanging fascia edge which was to mitigate any unreasonable light overspill into neighbouring properties, specifically to no. 37 Booralie Road to the southeast.

The proposed lowering of the canopy structure by 500mm achieves a similar light overspill mitigation commensurate to that of the condition already imposed on the consent. In addition to that, the plans submitted detail a 500mm 'screen' (overhanging fascia edge) and a 300mm screen around the lights fixed to the underside of the canopy structure.

These three elements in combination will achieve a similar level of glare and reflectivity protection to neighbouring properties compared to the approved consent, and it is therefore supported to delete the condition as requested subject to endorsing the revised architectural plans.

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

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

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

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

#### **POLICY CONTROLS**

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

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

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

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

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



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

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

This assessment has found that the reduction in the existing canopy height above the petrol filling area from 6m (floor to ridge) to 5.5m (floor to ridge) is without impact to any neighbouring properties and does not create any non-compliance with the prevailing planning controls over and above that of the approved development.

The application is lodged in attempt to remedy on-going enforcement action and in this instance, it is considered that the proposed solution is acceptable from a planning perspective and it is therefore recommended that the Northern Beaches Local Planning Panel **APPROVES** the Section 4.55(2) Modification 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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0022 for Modification of Development Consent DA2016/0523 granted for demolition works, construction of a service station and signage on land at Lot 1 DP 545812,43 Booralie Road, TERREY HILLS, subject to the conditions printed below:

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

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

#### a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp |                  |                          |
|-----------------------------------------------------|------------------|--------------------------|
| Drawing No.                                         | Dated            | Prepared By              |
| TP02 Rev. A - Site Layout New Canopy Levels         | 30 December 2021 | United Petroleum Pty Ltd |
| TP03 Rev. C - Proposed Canopy Elevations            | 06 April 2022    | United Petroleum Pty Ltd |
| TP04 Rev. D - Light Screen Option Details           | 13 December 2021 | United Petroleum Pty Ltd |

| Reports / Documentation – All recommendations and requirements contained within: |                 |                              |
|----------------------------------------------------------------------------------|-----------------|------------------------------|
| Report No. / Page No. / Section No.                                              | Dated           | Prepared By                  |
| Construction Management Plan (Issue 01)                                          | 12 January 2022 | LAP Steel Consulting Pty Ltd |

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

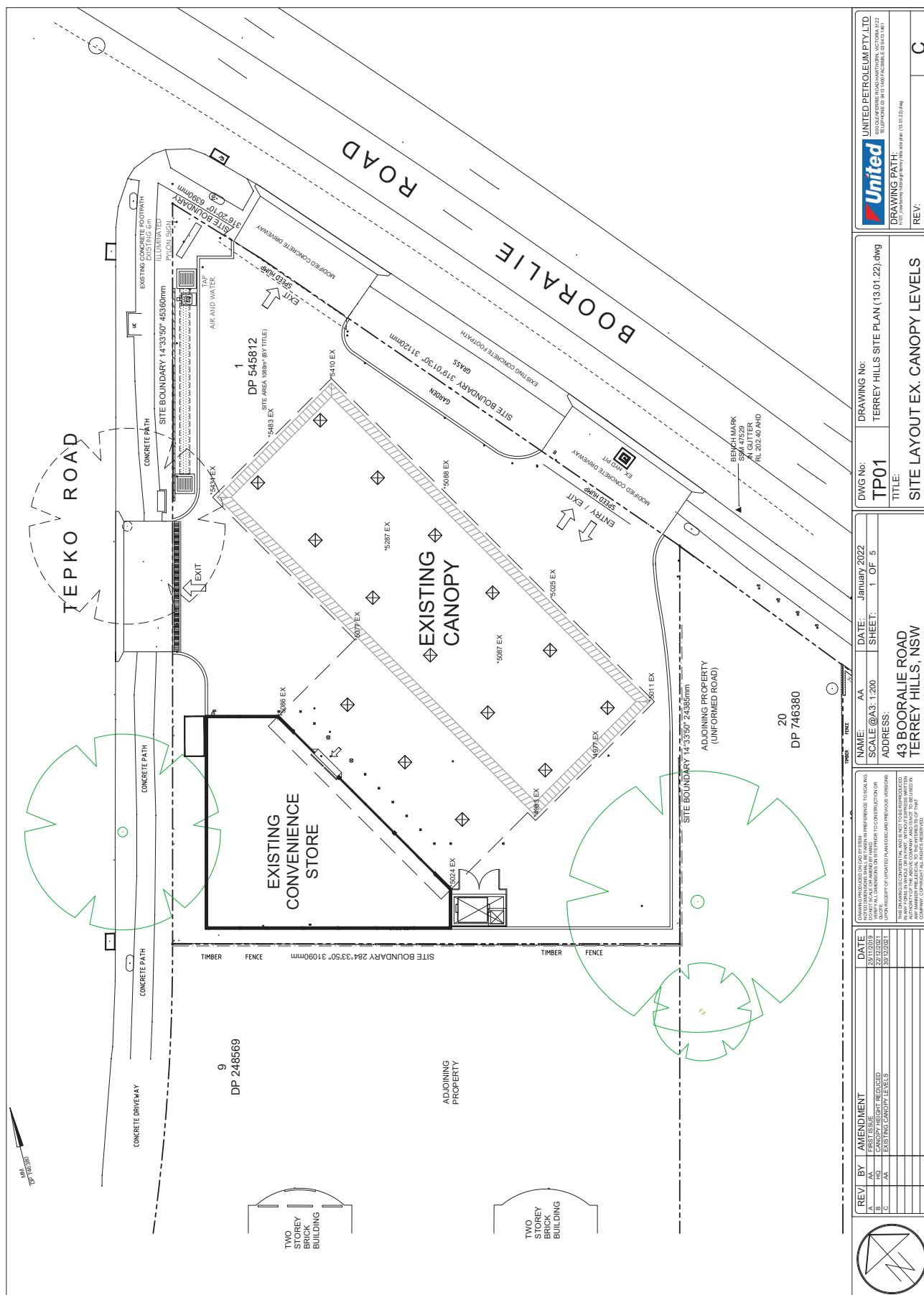
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

### B. Delete Condition No. 1B.

### C. Add Condition No. 3A - No Approval for Signage - to read as follows:

No approval is granted under MOD2022/0022 for the modification of any existing, or installation/erection of any signage.

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



**ITEM 5.2**

**MOD2021/0904 - KIMBRIKI ROAD, INGLESIDE -  
MODIFICATION OF DEVELOPMENT CONSENT DA96/371  
GRANTED FOR KIMBRIKI RECYCLING AND WASTE CENTRE  
TO PERMIT ADDITIONAL EXCAVATION AND LANDFILLING.**

**AUTHORISING MANAGER**

**TRIM FILE REF** 2022/277034

**ATTACHMENTS**

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site Plans

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2021/0904 for Modification of Development Consent DA96/371 granted for Kimbriki Recycling and Waste Centre to permit additional excavation and landfilling on land at Lot 301 DP 1254796, Kimbriki Road, INGLESIDE, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                                           |                                                                                                                                              |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | Mod2021/0904                                                                                                                                 |
| <b>Responsible Officer:</b>               | Adam Mitchell                                                                                                                                |
| <b>Land to be developed (Address):</b>    | Lot 301 DP 1254796, Kimbriki Road INGLESIDE NSW 2101                                                                                         |
| <b>Proposed Development:</b>              | Modification of Development Consent DA96/371 granted for Kimbriki Recycling and Waste Centre to permit additional excavation and landfilling |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned SP2 Infrastructure<br>Warringah LEP2011 - Land zoned RE1 Public Recreation                                    |
| <b>Development Permissible:</b>           | Yes                                                                                                                                          |
| <b>Existing Use Rights:</b>               | No                                                                                                                                           |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                                                                     |
| <b>Delegation Level:</b>                  | NBLPP                                                                                                                                        |
| <b>Land and Environment Court Action:</b> | No                                                                                                                                           |
| <b>Owner:</b>                             | Northern Beaches Council                                                                                                                     |
| <b>Applicant:</b>                         | Kimbriki Environmental Enterprises Pty Ltd                                                                                                   |
| <b>Application Lodged:</b>                | 25/11/2021                                                                                                                                   |
| <b>Integrated Development:</b>            | Yes                                                                                                                                          |
| <b>Designated Development:</b>            | No                                                                                                                                           |
| <b>State Reporting Category:</b>          | Refer to Development Application                                                                                                             |
| <b>Notified:</b>                          | 03/12/2021 to 24/01/2022                                                                                                                     |
| <b>Advertised:</b>                        | 03/12/2021                                                                                                                                   |
| <b>Submissions Received:</b>              | 0                                                                                                                                            |
| <b>Clause 4.6 Variation:</b>              | Nil                                                                                                                                          |
| <b>Recommendation:</b>                    | Approval                                                                                                                                     |

### EXECUTIVE SUMMARY

The Modification Application seeks consent to modify the approved clean water diversion system (CWDS) at the Kimbriki Resource Recovery Centre (KRRC). The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as Northern Beaches Council is the land owner.

The parent Development Application (DA-96/371 approved in 1996) to this modification included drainage infrastructure generally in the form of an open channel system with associated access tracks. In a 2018 Modification Application (MOD2018/0472) the NSW EPA imposed a condition which read:

- *Condition 103: Prior to the issue of a Construction Certificate, detailed stormwater management plans shall be approved by Council and the Environmental Protection Authority which relate to*

*the construction of the diversion drain to be operational by 2024.*

In July 2020 MOD2020/0349 was lodged with Council and sought to formalise the CWDS through revised siting and design of perimeter stormwater management infrastructure. That modified consent was further changed by MOD2021/0248 which deleted Construction and Occupation Certificate requirements and s.12 contribution conditions.

The modifications subject of this current application seek to further rationalise the approved CWDS through a decreased extent of excavation (4,600m<sup>3</sup> less fill and 1,860m<sup>3</sup> less cut) and proportional changes to the channel. The modifications do not alter the location or capacity of channels.

The modification application has attracted no submissions from the community and is supported by Council's referral departments. The applicant has obtained General Terms of Approval from the Natural Resources Access Regulator.

This report concludes with the recommendation that the NBLPP as the consent authority **APPROVES** the modification application subject to conditions.

#### PROPOSED DEVELOPMENT IN DETAIL

[From Statement of Environmental Effects]: *This application seeks to modify development consent DA-96/371 as modified with regard to parts of the approved Clean Water Diversion System (CWDS), being the Eastern (Ch 0 – Ch 380) and Western (Ch 0 – 1230) Diversion Drains.*

*For reference purposes, the approved design consists of a combined drain / access track with a grated / covered low flow channel. The capacity of the combined drain / track was to convey the 100 year ARI stormflow event without overtopping.*

*Within this context, a summary of the proposed modifications to the Eastern (Ch 0 – Ch 380) and Western (Ch 0 – 1230) Diversion Drains are listed below and Figure 2.*

- *Revised channel arrangement consisting of a combined drain / access track (3m wide) with a low flow spoon drain that is not grated.*
- *The re-configured drain will enable maintenance vehicles to directly access the channel during periods of low flow.*
- *New block walls of varying height are proposed to ensure stormwater flows are contained within the modified channel design relative to the reduced channel depths.*
- *Minor amendments to access ramps to enable vehicular access. However, it is noted that temporary access ramp locations and turning bays from the approved design have been maintained.*
- *Additional safety measures are proposed to mitigate debris or unauthorised access into the channel include the installation of gates, guard rails, and 1.8m high safety fencing.*
- *Step irons or ladders will be installed in the drainage channels which exceed 1.2m in depth to enable maintenance staff to exit the channel in an emergency.*



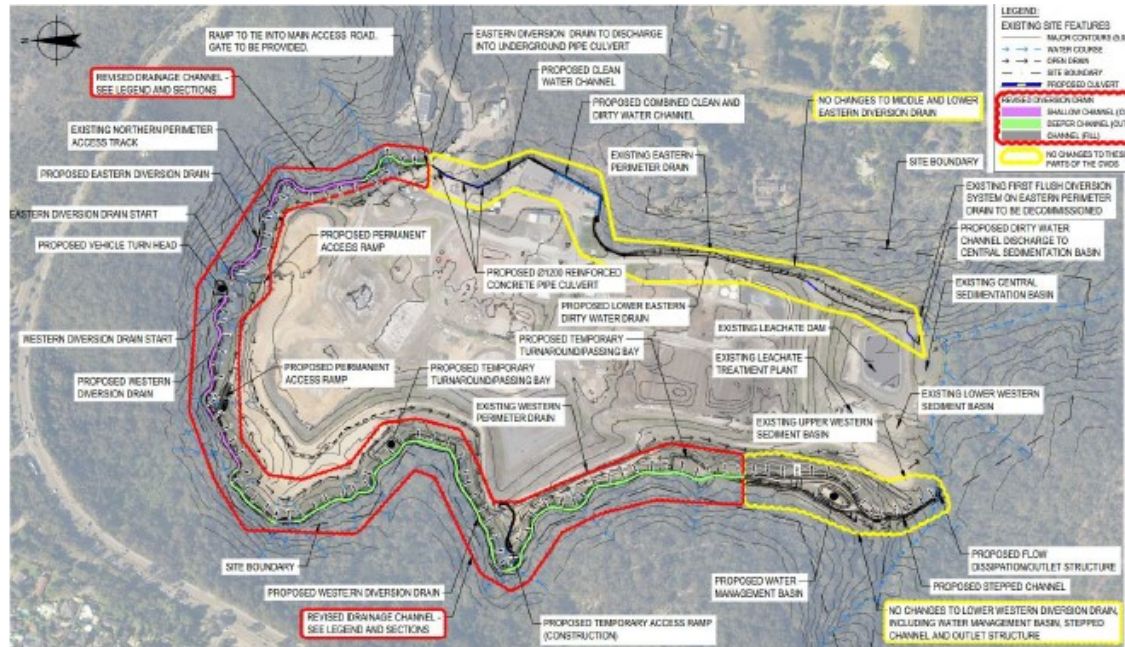


Figure 2: Proposed modifications to Civil (Site) Plan – Modified channel design as marked in red (Source: GHD)

*In relation to hydrology, hydraulics and stormwater conveyance, the revised drain configuration conveys the same storm event (100-year ARI) without overflow into the site.*

*It is noted that the proposed revisions to the channel arrangement are fully sited within the approved development footprint to ensure no additional impacts to flora and fauna or bushfire constraints.*

*Furthermore, the modification results in the substantial reduction in earthworks (approximately 4,600m<sup>3</sup> less fill (-43%) and 1,860m<sup>3</sup> less cut (-6%)) relative to the approved CWDS.*

To facilitate the above changes the applicant requests modifications to Conditions 1B, 20, 86A, 86B, 86G and 100C.

Herein this report these works are described as the 'modifications'.

## ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - F4 SP2 Infrastructure Zone

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 301 DP 1254796 , Kimbriki Road INGLESIDE NSW 2101                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Detailed Site Description:</b> | <p>Kimbriki Resource Recovery Centre is located on the western side of Kimbriki Road, Ingleside. It is a regional waste and recycling facility servicing the local government areas of Northern Beaches and Mosman.</p> <p>Kimbriki Resource Recovery Centre adjoins Garigal National Park to the south and west and a small number of rural residential properties to the east.</p> <p>The subject site is owned by Northern Beaches Council and is classified as Operational Land under the Local Government Act 1993.</p> |

Map:



## SITE HISTORY



The Kimbriki Resource Recovery Centre was established in 1974 initially as a landfill for the disposal of waste collected by local councils, residents and commercial users. The facility now also provides disposal services for special wastes, resource recovery services, the sale of recycled and reclaimed products, and waste management educational activities.

On 10 July 1997 the Land and Environment Court issued Development Consent 96/371 for the continued use of the non-putrescible landfill, the extension of the life of the landfill by increased recycling, expansion of the landfill volume through quarrying, the construction of water pollution control facilities, and the rehabilitation of the site to an appropriate end use.

On 19 April 2012 the Minister for Planning and Infrastructure approved Application No. 10\_0065 for a materials recovery facility (60,000 tonnes/year of dry recyclable materials) and a resource recovery facility (100,000 tonnes/year of food/garden waste and mixed residual waste). The facility is located to the east of the landfill site and adjoins Kimbriki Road.

On 9 July 2014 Council approved DA2014/0308 for “demolition works and the construction of an administration building for a waste management facility with associated carparking and landscaping”.

On 27 August 2015 The Minister for Planning and Infrastructure approved a modification to the approval for Application No. 10\_0065. The modifications related to changes to the approved intersection upgrade concept plan, the use of Front End Loaders on the site, changed timing for completing of studies, amended clearing / biodiversity offset areas, and other minor administrative amendments.

2016: A Part 5 Assessment was lodged with Northern Beaches Council for the construction and operation of a leachate treatment plant, sewer pumping station and rising main to sewer at the KRRC.

2017: The abovementioned Part 5 Assessment was approved by Council on 19 June 2017.

On 25 January 2017 Application Mod2017/0066 was lodged to modify Development Consent 96/371 to delete a condition requiring a contribution towards the provision of traffic lights if they become necessary. The application was withdrawn on 20 April 2017.

On 29 June 2017 Application Mod2017/0174 was lodged to modify Development Consent 96/371 but was withdrawn on 26 September 2017.

2019: Modification to Development Consent (96/371) (MOD2018/0472) was approved in early 2019 to permit additional excavation and landfilling of Area 4A.

PLM2020/0062 - A Pre-lodgement meeting was held with Council Officers on 14 April 2020 to discuss Consent 96/371 (as modified) regarding the installation of perimeter catch drains and associated modification to Condition 64 and 103. The key issue raised by Council officers in pre-lodgement was as follows:

*“No objection to the proposed condition changes is raised, subject to the advice in these notes, and subject to the Applicant ensuring the proposed condition changes do not affect the intention of other conditions. Any/all updated reports and plans required for the condition changes must relate to each other.”*

Mod2020/0349 - Modification of Development Consent DA96/371 granted for Kimbriki Recycling and Waste Centre to permit additional excavation and landfilling was approved 16 December 2020.

MOD2021/0248 - Modification of Development Consent DA96/371 (as modified by MOD2020/0349) to change conditions relating to the staging of a Construction Certificate and Occupation Certificate to refer to Prior to Commencement of the Works, and Prior to the Operation of the Clean Water Diversion System. The application also sought to delete the development contributions condition.

Several conditions were amended, however the development contributions condition was not deleted.

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA96/371, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.56- Other Modifications                                                                                                                                                                                                                                                                                                                                                 | Comments                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:                                                                                                                                           |                                                                                                                                                                                                                                  |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and                                                                                                                   | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA96/371.                                                   |
| (b) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require,<br><br>or<br><br>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan. |
| (c) it has notified, or made reasonable attempts to                                                                                                                                                                                                                                                                                                                               | Written notices of this application have been                                                                                                                                                                                    |

| Section 4.56- Other Modifications                                                                                                                                                                                                           | Comments                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and | sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA96/371. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.                                            | No submissions were received in relation to this application.                                                             |

#### Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.15 'Matters for Consideration'                                                                                  | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument                                             | See discussion on "Environmental Planning Instruments" in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan                                                    | Warringah Development Control Plan applies to this proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement                                                          | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> |

| Section 4.15 'Matters for Consideration'                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                    | <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.                                                                                                                                                                                                                                                                            |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development                                                                                                             | The site is considered suitable for the proposed development.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs                                                                                             | See discussion on “Notification & Submissions Received” in this report.                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Section 4.15 (1) (e) – the public interest                                                                                                                                         | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.                                                                                                                                                                                                                                                                                                                                                                                |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

An addendum Bush Fire Report (to a previous report dated 23 September 2020, both produced by Building Code and Bushfire Hazard Solutions) was submitted with the application stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/12/2021 to 24/01/2022 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 of the application Council received no submissions.

## REFERRALS

| Internal Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Assessment - Fire and Disability upgrades | <p><b>Supported, no conditions</b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Landscape Officer                                  | <p><b>Supported, no conditions</b></p> <p>The comments from Council's Bushland and Biodiversity section indicating that no issues are raised are noted.</p> <p>The comments of Bushland and Biodiversity are concurred with and no objections are raised with regard to landscape issues.</p> <p>Existing conditions are considered to still be relevant and adequate.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| NECC (Bushland and Biodiversity)                   | <p><b>Supported, no conditions</b></p> <p>The development footprint for the revised Clean Water Diversion System is contained within the approved footprint of the original consent and assessed in the Biodiversity Development Assessment Report and the BMP prepared by Niche. No additional removal of vegetation or species habitat is required as part of the proposed modification.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| NECC (Development Engineering)                     | <p><b>Supported, with conditions</b></p> <p>A further information letter received from Kimbriki enterprises (KEE) clarified the previous raised Development Engineering issues as follows:</p> <ol style="list-style-type: none"> <li>1) KEE has stated the Clear water diversion system (CWDS) is not a site access road only only performs the function of providing a stormwater diversion drain up to the 1/100 AEP storm event. The only permitted access to the CWDS is for trained KEE staff or contractors to perform maintenance and repair to the CWDS.</li> <li>2) KEE will have a WHS management system in place for to control maintenance and vehicle access as the CWDS will have Velocity vrs Depth ratio in larger storm events that will be unsafe for maintenance access.</li> <li>3) Conditions will be provided to ensure the CWDS is fenced to ensure that access and appropriate warning signs are provided to warn the public of the stormwater hazard in all storm events.</li> </ol> <p>No objections to the proposed modification subject to conditions.</p> |
| NECC (Riparian Lands and Creeks)                   | <p><b>Supported, no conditions</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

| Internal Referral Body              | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | The proposed modification is consistent with the design intent and Development Consent DA-96/371 and the Clean Water Diversion System (CWDS) that was approved by Council in December 2020 (Mod2020/0349) and modified in June 2021 (Mod2021/0248).<br>No objections to the proposed channel modifications.                                                                                                                                         |
| Parks, reserves, beaches, foreshore | <b>Supported, no conditions</b><br><br>The proposed modification footprint for the revised Clean Water Diversion System drainage channel arrangement is contained within approved alignments and work areas of consents.<br><br>There are no changes proposed for the proposed interface works between adjoining natural bushland areas and the revised Clean Water Diversion System drainage channel arrangement, and thus no concerns are raised. |
| Waste Officer (Council Land)        | <b>Supported, no conditions</b><br><br>Waste Management Assessment<br>Recommendation - acceptable, without conditions.<br>Referral to Waste Management not required for this DA.                                                                                                                                                                                                                                                                    |

| External Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.)                             | <b>Supported, with conditions</b><br><br>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.                                                                                                                                                                                   |
| NSW Rural Fire Service – local branch (s4.14 EPAA) | <b>Supported, no conditions</b><br><br>The NSW RFS has reviewed the plans and documents received for the proposal and subsequently raise no concerns or issues in relation to bushfire.                                                                                                                                                                                                                                                                                                                 |
| Aboriginal Heritage Office                         | <b>Supported, with conditions</b><br><br>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.<br><br>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.<br><br>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural |

| External Referral Body                                                                                                                                                   | Comments                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                          | Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.                                                                                                                         |
| Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse) | <p><b>Supported, with conditions</b></p> <p>NRAR has reviewed the application and has provided their General Terms of Approval (GTA).</p> <p>Note: The GTA issued by NRAR do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to NRAR for the relevant approval after development consent has been issued by Council and before the commencement of any work or activity.</p> |

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

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

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

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

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

##### SEPP 19 - Bushland in Urban Areas

The magnitude of change sought in this application does not modify the conclusions reached in the Assessment Report of MOD2021/0248 which read:

*Clause 9 of SEPP 19 provides that where land adjoins bushland zoned for public open space purposes Council must consider the effect of the proposed development on that bushland and any other matters relevant to the protection or preservation of that bushland.*

*The ecological reports submitted with the application and reviewed by Niche Environment and Heritage address the requirements of SEPP 19.*

##### SEPP 44 - Koala Habitat Protection

The magnitude of change sought in this application does not modify the conclusions reached in the Assessment Report of MOD2021/0248 which read:



*The ecological reports submitted with the application identify that the land is core koala habitat and address the requirements of State Environmental Planning Policy (Koala Habitat Protection) 2019 (formerly SEPP 44 - Koala Habitat Protection).*

*The SEPP (Koala Habitat Protection) prescribes a statutory process associated with the conservation and management of areas of natural vegetation that provide habitat for koalas.*

*It is noted that no Koalas have been recorded on the subject site during two (2) field surveys since 2017. However, in accordance with the provisions of the Koala Habitat Protection SEPP, the site meets the definition of "Core Koala Habitat" as it supports "highly suitable koala habitat" with greater than 15% of trees recorded as koala feed trees. Furthermore, there are local records of the species within 2km of the site. The Koala is also listed as vulnerable under the EPBC Act and therefore require Assessment of Significance. This assessment forms part the BDAR prepared by Niche Environment and Heritage which concluded that:*

*"The project is unlikely to result in a significant impact on the Koala due to the size of the habitat impacted (1.78ha) and the retention of a large expanse of similar habitat in good condition surrounding the subject land. However, given that the habitat in the subject land meets the definition of 'core koala habitat' as defined in the Koala Habitat Protection SEPP, offsetting for the project would include the purchase of 70 koala credits to offset the impacts to koala habitat."*

*Given the above it is considered that the proposed development satisfies this SEPP.*

#### **SEPP 55 - Remediation of Land**

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. The existing landfill site is contaminated and the proposal will continue the use of the land for landfill and recycling – the site is considered to be suitable for this purpose in its contaminated state. No change of use is sought so there is no requirement for a preliminary assessment pursuant to clause 7 (2).

#### **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.



### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

The modifications sought do not alter the approved level of compliance achieved when measured against the applicable Principal Development Standards and therefore no further assessment on this matter is required.

#### Compliance Assessment

| Clause                               | Compliance with Requirements |
|--------------------------------------|------------------------------|
| 5.3 Development near zone boundaries | Yes                          |
| 6.2 Earthworks                       | Yes                          |
| 6.4 Development on sloping land      | Yes                          |

### Warringah Development Control Plan

#### Built Form Controls

The modifications sought do not alter the approved level of compliance achieved when measured against the applicable Built Form Controls and therefore no further assessment on this matter is required.

#### Compliance Assessment

| Clause                                                                 | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------------------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                                                         | Yes                          | Yes                         |
| C2 Traffic, Access and Safety                                          | 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                         |
| D3 Noise                                                               | Yes                          | Yes                         |
| D6 Access to Sunlight                                                  | Yes                          | Yes                         |
| D7 Views                                                               | Yes                          | Yes                         |
| D8 Privacy                                                             | Yes                          | Yes                         |
| D9 Building Bulk                                                       | Yes                          | Yes                         |
| D14 Site Facilities                                                    | Yes                          | Yes                         |
|                                                                        |                              |                             |

| Clause                                                                                                                                  | Compliance with Requirements | Consistency Aims/Objectives |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------|
| D18 Accessibility and Adaptability                                                                                                      | 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                         |
| E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat | Yes                          | Yes                         |
| E5 Native Vegetation                                                                                                                    | Yes                          | Yes                         |
| E6 Retaining unique environmental features                                                                                              | Yes                          | Yes                         |
| E7 Development on land adjoining public open space                                                                                      | Yes                          | Yes                         |
| E8 Waterways and Riparian Lands                                                                                                         | Yes                          | Yes                         |
| E10 Landslip Risk                                                                                                                       | Yes                          | Yes                         |
| F4 SP2 Infrastructure Zone                                                                                                              | Yes                          | Yes                         |
| Kimbriki Recycling and Waste Disposal Centre (Waste or Resource Management Facility), Ingleside                                         | Yes                          | Yes                         |

#### Detailed Assessment

#### **C2 Traffic, Access and Safety**

The modifications are not anticipated to give rise to any traffic, access or parking impacts over and above that of the approved development.

It is noted that during the construction process of these works commensurate to the approved works the construction will result in:

- 20% less deliveries.
- Shorter construction period.
- Less heavy plant and machinery.
- Reduction in the number of contractor staff/subcontractors on the site.

#### **F4 SP2 Infrastructure Zone**

The modifications sought do not inhibit the ability for the KRRC to provide its core business function as a waste or resource management facility, consistent with the intent of F4 SP2.

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

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

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

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

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

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

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

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

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

This Assessment Report has demonstrated that the proposed modifications are a contemporary rationalisation of a stormwater system that was originally approved some 28 years ago. The upgrading of existing stormwater diversion infrastructure at the KRRC generates no impacts above and beyond the already approved system, but is an approved design with a lesser environmental impact by way of excavation.

In the absence of any detrimental impacts generated by the proposal, it is recommended that the NBLPP as the consent authority **APPROVES** the modification 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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0904 for Modification of Development Consent DA96/371 granted for Kimbriki Recycling and Waste Centre to permit additional excavation and landfilling on land at Lot 301 DP 1254796, Kimbriki Road, INGLESIDE, subject to the conditions printed below:

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

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

#### a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp           |                 |             |
|---------------------------------------------------------------|-----------------|-------------|
| Drawing No.                                                   | Dated           | Prepared By |
| General Arrangement Plan - 21.28290-C701 Rev. D               | 22 October 2021 | GHD         |
| Drawing Reference Plan - 21.28290-C703 Rev. D                 | 22 October 2021 | GHD         |
| Summary Tables - 21.28290-C704 Rev. A                         | 22 October 2021 | GHD         |
| Western Drain Layout Plan Sheet 1 of 5 - 21.28290-C711 Rev. A | 22 October 2021 | GHD         |
| Western Drain Layout Plan Sheet 2 of 5 - 21.28290-C712 Rev. A | 22 October 2021 | GHD         |
| Western Drain Layout Plan Sheet 3 of 5 - 21.28290-C713 Rev. A | 22 October 2021 | GHD         |
| Western Drain Layout Plan Sheet 4 of 5 - 21.28290-C714 Rev. A | 22 October 2021 | GHD         |
| Western Drain Layout Plan Sheet 5 of 5 - 21.28290-C715 Rev. A | 22 October 2021 | GHD         |
| Eastern Drain Layout Plan Sheet 1 of 6 - 21.28290-C801 Rev. A | 22 October 2021 | GHD         |
| Eastern Drain Layout Plan Sheet 2 of 6 - 21.28290-C802 Rev. A | 22 October 2021 | GHD         |

| Reports / Documentation – All recommendations and requirements contained within: |                  |                                             |
|----------------------------------------------------------------------------------|------------------|---------------------------------------------|
| Report No. / Page No. / Section No.                                              | Dated            | Prepared By                                 |
| Addendum to Bushfire Assessment Report (ref:210376A)                             | 27 October 2021  | Building Code and Bushfire Hazard Solutions |
| Biodiversity Advice - Clean Water Diversion System Design Changes                | 04 November 2021 | Niche Environment and Heritage              |
| Concept Design and Engineering Assessment Report (ref: 2128290)                  | November 2021    | GHD                                         |
|                                                                                  |                  |                                             |

|                         |                    |                   |
|-------------------------|--------------------|-------------------|
| Review of Noise Impacts | 29 October<br>2021 | Acoustic Dynamics |
|-------------------------|--------------------|-------------------|

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

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

#### **B. Add Condition No. 1E - Compliance with other Department, Authority or Service Requirement**

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

| Other Department,<br>Authority or Service | EDMS Reference         |
|-------------------------------------------|------------------------|
| Natural Resources Access<br>Regulator     | NRAR Referral Response |

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

#### **C. Modify Condition No. 20. Access Track to read as follows:**

A small access track running around the perimeter of the landfill site (as shown on the Clean Water Diversion System - Stormwater Concept Plans prepared by GHD, Drawing Nos: 21-28290-C001 to C301, Rev A, dated 21 May 2020) and where amended by Drawing Nos: 21.28290-C701 Rev. D to 21.28290-C833 Rev. A dated 22 October 2021 shall be constructed to allow litter and weed control.

Reason: Weed control and maintenance.

#### **D. Modify Condition No. 86A Detail Design Documentation to read as follows:**

A certificate from a Civil Engineer, stating that the Clean Water Diversion System, referred to as the CWDS, has been designed in accordance with the Statement of Environmental Effects and its supporting documentation (MOD2020/0349 including GHD Concept Design Report, April 2020 and drawings 21-28290-C001 Rev A to 21-28290-C421 Rev A) and where updated by the Statement of Support (dated November 2021) and its supporting documentation (including Concept Design and Engineering Assessment dated November 2021). All documentation is to be developed to detail design and the drawings shall be "Approved For Construction" prior to any site construction works.

Reason: Protection of the receiving environment.

#### **E. Modify Condition No. 86B Soil and Water Management Plan to read as follows:**

The soil and water management plan must be updated for the following:

- Works adjoining the influent water channels and the unnamed creek shall only be conducted once sufficient sediment and erosion controls are in place.
- A depth marker shall be installed, and regular ongoing monitoring of sediment accumulation, within the western water management basin. Accumulated sediment shall be removed when approximately 30% of the overall basin volume is filled with sediment (as per GHD MOD2020/0349 Stormwater Impact Assessment and the Concept Design and Engineering Assessment dated November 2021).

Reason: To protect the surrounding environment from the effects of sediment and erosion.

**F. Modify Condition No. 86G Implementation of Biodiversity Management Plan to read as follows:**

All requirements in the Biodiversity Management Plan (Niche Environment & Heritage dated 1 July 2020) and the Biodiversity Addendum (Niche Environment & Heritage dated 4 November 2021) are to be implemented prior, during and post construction.

Kimbriki Environmental Enterprises (KEE) shall install, monitor, maintain and upgrade as appropriate the environmental controls detailed in MOD2020/0349 (and the Biodiversity Addendum (Niche Environment & Heritage dated 4 November 2021) to minimise the generation of sediment discharge both from the construction activity and passing through the onsite sediment controls.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Construction of the CWDS temporary culverts within the influent stormwater channels (as per GHD Draft Project Specific Soil and Water Management Plan and the Concept Design and Engineering Assessment dated November 2021) must be conducted at times that avoid rainfall. Construction of the CWDS western drain outlet works within the unnamed creek must be conducted at times that avoid rainfall. Works adjoining the influent water channels and the unnamed creek shall only be conducted once sufficient sediment and erosion controls are in place.

A depth marker shall be installed, and regular ongoing monitoring of sediment accumulation, within the western water management basin. Accumulated sediment shall be removed when approximately 30% of the overall basin volume is filled with sediment (as per GHD MOD2020/0349 Stormwater Impact Assessment and the Concept Design and Engineering Assessment dated November 2021).

Kimbriki Environmental Enterprises (KEE) shall maintain for the duration of the Works, and make available to Council officer upon request, an inspection record of all sediment and erosion controls that includes inspection of these prior to, during and after rainfall to check compliance. Council proactively regulates construction sites for sediment management.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997 in accordance with the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004) "blue book".

Reason: Biodiversity / Vegetation Conservation Management.

**G. Modify Condition No. 100C Environmental Report and Management Program to read as follows:**

Kimbriki Environmental Enterprises (KEE) shall provide an environmental monitoring and management program report committing to, and detailing the following:

- A slope monitoring and management program, particularly following rain events. Kimbriki Environmental Enterprises (KEE) shall provide a report to the Catchment Team at Council (submit via [catchment@northernbeaches.nsw.gov.au](mailto:catchment@northernbeaches.nsw.gov.au)) once a year for five years detailing the batter conditions and works related to the slope management program.
- A watercourse stability monitoring and management program incorporating the recommendations of Section 5.1 of the MOD2020/0349 Watercourse Geomorphic Assessment.
- Regular visual inspections monitoring for signs of increased geomorphic instability or adjustment. Signs of instability can include bank erosion, creek bed erosion, excess downstream sedimentation or vegetation stripping.
- A program of revegetation following initial channel adjustments after a moderate to large flow event (i.e. greater the 5 year ARI) to re-establish fringing vegetation that supports the resilience and ecological function of the watercourse.
- The depth marker installed within the western water management basin shall be monitored for sediment accumulation. Accumulated sediment shall be removed when approximately 30% of the overall basin volume is filled with sediment (as per GHD MOD2020/0349 Stormwater Impact Assessment and the Concept Design and Engineering Assessment dated November 2021).

The watercourse should be allowed to adjust to new conditions within reasonable limits and monitored for signs of major instability and adjustment once a year for five years or after a major storm event (5% AEP or above). If major destabilisation occurs, appropriate stabilisation methods should be investigated and implemented.

Reason: To protect the surrounding environment from the effects of sediment and erosion from the site.

**H. Add Condition No. 100E Positive Covenant Clean Water Diversion System to read as follows:**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and repair of the Clean Water Diversion System structure within this development consent. The terms of the positive covenant 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 operation of the Clean Water Diversion System.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational

standard.

**I. Add Condition No. 100F Clean Water Diversion System to read as follows:**

The Clean Water Diversion System works shall be certified as compliant with the approved GHD engineering plans, all relevant Australian Standards and Codes by a NER or RPENG qualified civil engineer.

Details demonstrating compliance including the submission of a compliance certificate are to be submitted to the Principal Certifying Authority prior to the operation of the Clean Water Diversion System.

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

**J. Add Condition No. 100G Safety Fencing/Signage for the Clean Water Diversion System to read as follows:**

The Clean Water Diversion System is to be fenced and gated to a minimum height of 1.8m from ground level to prevent public egress. The safety fencing and access gates shall be certified as compliant with all relevant Australian Standards and Codes by a structural engineer. Additionally, the system is to be signposted at appropriate locations as a floodway in accordance with Australian Standards.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to operation of the Clean Water Diversion System.

Reason: Public and private safety.

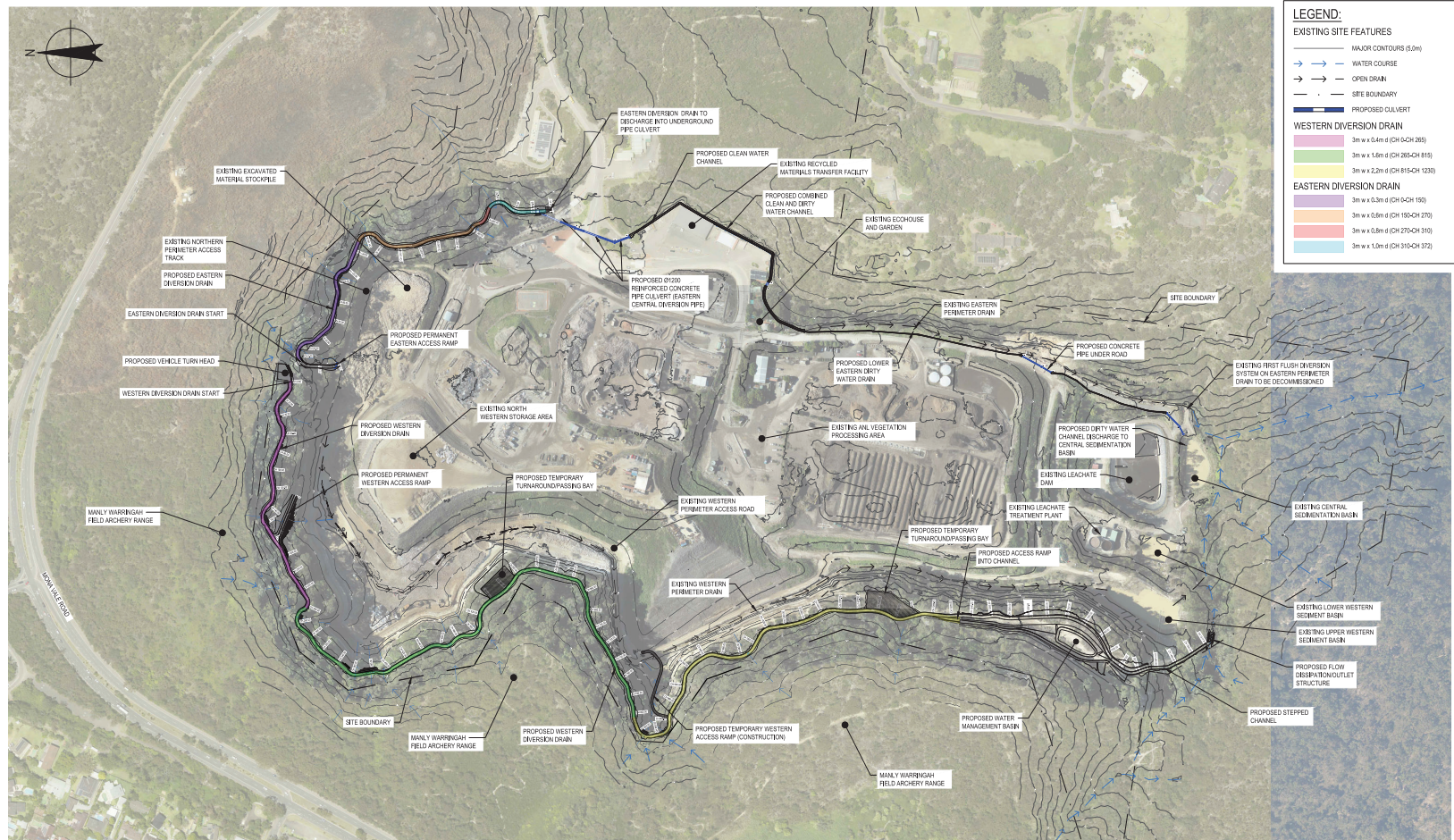
**K. Add Condition No. 104A WHS Management - Clean Water Diversion System to read as follows:**

The applicant is to prepare a WHS Management System for the cleaning, maintenance and access to the Clean Water Diversion System.

The WHS Management System is to be prepared by a suitably qualified person requiring all contractors accessing and working within the system to have been inducted according to the requirements of the system.

Reason: To ensure site safety.





**GENERAL ARRANGEMENT PLAN**  
SCALE 1:200

**PRELIMINARY**

|                                                                                                      |       |     |                  |          |
|------------------------------------------------------------------------------------------------------|-------|-----|------------------|----------|
| D DRAFT DETAILED DESIGN                                                                              | KG    | MP  | AR               | 22.10.21 |
| C FINAL DRAFT CONCEPT DESIGN RE-ISSUED                                                               | KG    | MP  | AR               | 20.08.21 |
| B FINAL DRAFT CONCEPT DESIGN                                                                         | KG    | MP  | AR               | 28.07.21 |
| A DRAFT CONCEPT DESIGN                                                                               | KG    | MP  | AR               | 14.07.21 |
| No. Revision: Note: * Indicates signatures on original issue of drawing or last revision of drawing. | Drawn | JCC | Project Director | Date     |

0 20 40 60 80 100m

SCALE 1:200 AT ORIGINAL SIZE

**KIMBRIKI**

Level 19, 133 Castlereagh Street, Sydney NSW 2000 Australia  
T 61 2 9239 7100 F 61 2 9239 7160  
E sydney@ghd.com W www.ghd.com

**DO NOT SCALE**

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Drawn: K.GORDON  
Design Check: R.DAM  
Approved (Project Director):  
Date: 1:2000

Client: **KIMBRIKI ENVIRONMENTAL ENTERPRISES**  
Project: **CLEAN WATER DIVERSION SYSTEM**

Design: A.AHMAN  
Design Check:  
Title: **GENERAL ARRANGEMENT PLAN**

Drawn: **A1**  
Drawing No: **21-28290-C701**

Rev: **D**





|                     |                                                                                                                        |
|---------------------|------------------------------------------------------------------------------------------------------------------------|
| ITEM 5.3            | DA2022/0356 - 2/67 NEW STREET, BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO SHOP TOP HOUSING.                      |
| AUTHORISING MANAGER | Rodney Piggott                                                                                                         |
| TRIM FILE REF       | 2022/277063                                                                                                            |
| ATTACHMENTS         | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plans & Elevations<br>3 <a href="#">↓</a> Clause 4.6 |

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

---

## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the 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. DA2022/0356 for alterations and additions to shop top housing on land at Lot CP SP 18537, 67 New Street, BALGOWLAH HEIGHTS, Lot 2 SP 18537, 2 / 67 New Street, BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                                           |                                                                                                                           |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>                | DA2022/0356                                                                                                               |
| <b>Responsible Officer:</b>               | Stephanie Gelder                                                                                                          |
| <b>Land to be developed (Address):</b>    | Lot CP SP 18537, 67 New Street BALGOWLAH HEIGHTS NSW 2093<br>Lot 2 SP 18537, 2 / 67 New Street BALGOWLAH HEIGHTS NSW 2093 |
| <b>Proposed Development:</b>              | Alterations and additions to shop top housing                                                                             |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned B1 Neighbourhood Centre                                                                        |
| <b>Development Permissible:</b>           | Yes                                                                                                                       |
| <b>Existing Use Rights:</b>               | No                                                                                                                        |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                                                  |
| <b>Delegation Level:</b>                  | NBLPP                                                                                                                     |
| <b>Land and Environment Court Action:</b> | No                                                                                                                        |
| <b>Owner:</b>                             | Leigh Kestell Mason                                                                                                       |
| <b>Applicant:</b>                         | Rapid Plans Pty Ltd                                                                                                       |
| <b>Application Lodged:</b>                | 18/03/2022                                                                                                                |
| <b>Integrated Development:</b>            | No                                                                                                                        |
| <b>Designated Development:</b>            | No                                                                                                                        |
| <b>State Reporting Category:</b>          | Residential - Alterations and additions                                                                                   |
| <b>Notified:</b>                          | 28/03/2022 to 11/04/2022                                                                                                  |
| <b>Advertised:</b>                        | Not Advertised                                                                                                            |
| <b>Submissions Received:</b>              | 0                                                                                                                         |
| <b>Clause 4.6 Variation:</b>              | 4.4 Floor space ratio: 29.12%                                                                                             |
| <b>Recommendation:</b>                    | Approval                                                                                                                  |
| <b>Estimated Cost of Works:</b>           | \$ 82,750.00                                                                                                              |

### EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to shop top housing.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application proposing a variation of the Floor Space Ratio (FSR) development standard of more than 10%. In this regard the proposed FSR is 1.29:1 (351.07m<sup>2</sup>), seeking a variation of 29.12% (79.17m<sup>2</sup>).

It is important to note, the existing Floor Space Ratio is 1.23:1 (333.44m<sup>2</sup>) and the proposal for the loft storage presents a 0.06:1 (17.63m<sup>2</sup>) variation to the existing Floor Space Ratio.

The application was notified in accordance with Northern Beaches Council's Community Participation Plan and zero (0) submissions were received.

Critical assessment issues included Floor Space Ratio non-compliance, and setback controls.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development comprises of the following works:

- Addition of a storage loft;
- Alterations to first floor to provide stair access to storage loft.

## **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 Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2  
Manly Development Control Plan - 4.2.8.2 Setbacks

## **SITE DESCRIPTION**

|                                   |                                                                                                                             |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot CP SP 18537 , 67 New Street BALGOWLAH HEIGHTS NSW 2093<br>Lot 2 SP 18537 , 2 / 67 New Street BALGOWLAH HEIGHTS NSW 2093 |
| <b>Detailed Site Description:</b> | The subject site consists of one (1) corner allotment located                                                               |



on the southern side of New Street and eastern side of Beatrice Street.

The site is irregular in shape with a primary frontage of 13.715m along New Street and a secondary frontage of 16.765m along Beatrice Street. The site has a surveyed area of 271.9m<sup>2</sup>.

The site is located within the B1 Neighbourhood Centre zone from Manly Local Environmental Zone 2013 and accommodates a two storey building containing three (3) commercial premises on the ground floor and two (2) residential units on the first floor.

The site slopes gently from the southern side boundary downwards to the northern primary boundary over approximately 1 metres.

The site contains minimal vegetation with garden beds, potted plants, and synthetic grass. There are no details of any threatened species on the subject site.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by commercial premises to the south and west that form the Balgowlah Heights Neighbourhood Centre. To the north and east of the subject site are residential dwelling houses that vary in architectural style and design.

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:

**BC0006/2016**

Unauthorised Works Building Certificate for Roof/Awning over existing balcony.  
Approved on 17 August 2016.

**APPLICATION HISTORY**

Following the preliminary assessment of the application, on 19 April 2022 Council requested that the applicant submit further information in relation to Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 and Clause 4.6 (Exceptions to development standards) of the Manly Local Environmental Plan 2013. It was noted that the Floor Space Ratio was based on 0.4:1, however as detailed on the Manly Floor Space Ratio Map the subject site is located on land detailed as 'N' on the Manly Floor Space Ratio Map, requiring a FSR of 1:1.

On 27 April 2022, the applicant provided amended Master Plans, an amended Statement of Environmental Effects, and a Clause 4.6 variation request. However, upon review of the further information, the storage loft was not included in the FSR calculations. In accordance with the dictionary definition under Manly Local Environmental Plan 2013, the loft storage is to be included in the gross floor area. On 28 April 2022, the applicant provided amended Master Plans, an amended Statement of Environmental Effects, and an amended Clause 4.6 variation request that included the loft storage in the gross floor area and subsequently the FSR.

As the amended plans did not alter the environmental impact, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

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

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

| Section 4.15 Matters for Consideration                                               | Comments                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument        | See discussion on "Environmental Planning Instruments" in this report.                                                                                                                                                                                                                                                                                                                                         |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan               | Manly Development Control Plan 2013 applies to this proposal.                                                                                                                                                                                                                                                                                                                                                  |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement                     | None applicable.                                                                                                                                                                                                                                                                                                                                                                                               |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental                           | Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development                                                                                                                                                                                                                                                                                      |

| Section 4.15 Matters for Consideration                                                                                                                                             | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planning and Assessment Regulation 2000 (EP&A Regulation 2000)                                                                                                                     | <p>consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the calculation of the Floor Space Ratio. The applicant provided amended Master Plans, an amended Statement of Environmental Effects, and an amended Clause 4.6 in response to the request for further information.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |



| Section 4.15 Matters for Consideration                                                 | Comments                                                                                                            |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
|                                                                                        | impact on the locality considering the nature of the existing and proposed land use.                                |
| Section 4.15 (1) (c) – the suitability of the site for the development                 | The site is considered suitable for the proposed development.                                                       |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report.                                             |
| Section 4.15 (1) (e) – the public interest                                             | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/03/2022 to 11/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

### REFERRALS

| Internal Referral Body                             | Comments                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Assessment - Fire and Disability upgrades | <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> |

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

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and

Council Policies have been considered in the merit assessment of this application.

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

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP 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 alterations and additions to shop top housing involving the addition of a storage loft. In this instance the proposed works are considered to be of minimal redevelopment to a two storey building comprising of two residential dwellings.

Therefore, as per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

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

A BASIX certificate has been submitted with the application (see Certificate No.A431975\_02 dated 22

December 2021).

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### 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                            | 8.03m                               | -                             | Yes      |
| Floor Space Ratio    | FSR: 1:1 (271.9m <sup>2</sup> ) | FSR: 1.29:1 (351.07m <sup>2</sup> ) | 29.12% (79.17m <sup>2</sup> ) | No       |

#### Compliance Assessment

| Clause                                             | Compliance with Requirements |
|----------------------------------------------------|------------------------------|
| 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                          |
|                                                    |                              |

| Clause                    | Compliance with Requirements |
|---------------------------|------------------------------|
| 6.4 Stormwater management | Yes                          |
| 6.12 Essential services   | Yes                          |

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

|                                      |                                |
|--------------------------------------|--------------------------------|
| Development standard:                | Floor space ratio              |
| Requirement:                         | 1:1 (271.9m <sup>2</sup> )     |
| Proposed:                            | 1.29:1 (351.07m <sup>2</sup> ) |
| Percentage variation to requirement: | 29.12% (79.17m <sup>2</sup> )  |

##### Assessment of request to vary a development standard:

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

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

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

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

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

(4) *Development consent must not be granted for development that contravenes a development*

standard unless:

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

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

The applicants written request argues, in part:

- *The variation is considered minor, this application is in keeping with a local neighbourhood zoning and environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this noncompliance as it is considered existing, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.*
- *In this circumstance, it is unreasonable and unnecessary to strictly comply with the FSR standard given that the proposed new area provides for storage only, with resulting development absent of any negative environmental or planning outcomes.*
- *The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the streetscape and general locality.*

It is agreed that the additional increase of gross floor area for the purposes of a loft storage results in a minor numerical increase to the existing Floor Space Ratio (FSR). The FSR requirements for the site is 1:1 (271.9m<sup>2</sup>). The existing FSR is 1.23:1 (333.44m<sup>2</sup>) and the proposed FSR is 1.29:1 (351.07m<sup>2</sup>), resulting in an increase of 0.06:1 (17.63m<sup>2</sup>). The location of the loft storage is compliant with the Height of Buildings development standard under Manly Local Environmental Plan 2013. Additionally, the loft storage is considered to be appropriately setback from the front, side and rear boundary lines in order to maintain amenity for adjoining sites. The proposal is consistent with the locality and neighbouring developments within the vicinity. In terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality, as the proposal is considered to be an appropriate design to preserve the neighbourhood amenity. Overall, the requested variation is relatively minor that is suitable to provide greater amenity whilst preserving the character within a neighbourhood centre setting.

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 Floor space ratio development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

The proposal is compliant with the maximum height of buildings development standard under Manly Local Environmental Plan 2013. Additionally, the proposal is sufficient setback from the primary frontage as to not detract from 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,***

Comment:

The proposal has mitigated any unreasonable bulk, by articulating the loft storage area from the existing first floor by increasing the setbacks. The proposal will not result in any unreasonable impact of important landscape and townscape features.

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

Comment:

Due to the siting of the loft storage area, and the setbacks from the primary and secondary frontages, the proposal is unlikely to unreasonably alter the visual aesthetics as viewed from the streetscape.

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

Comment:

The proposal does not give rise to any 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:

As the storage loft is associated with a residential unit, there is no change to the existing commercial premises or changes to the viability of business zones or business activities.

### **Zone objectives**

The underlying objectives of the B1 Neighbourhood Centre zone are:

- ***To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.***

Comment:

The proposal does not alter the existing ground floor commercial premises that will continue to provide small-scale retail, business and community uses to serve the needs of people in the neighbourhood.

- ***To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.***

Comment:

The proposal will not detract from the existing village-like atmosphere and safety of pedestrians within the neighbourhood centre.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.***

Comment:

The amenity of the adjoining residential zone to the east has been considered with the proposal, and will not result in any unreasonable amenity impacts.

### Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

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

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

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



## Manly Development Control Plan

### Built Form Controls

| Built Form Controls -<br>Site Area: 271.9m <sup>2</sup> | Requirement                                                     | Proposed              | % Variation*                               | Complies |
|---------------------------------------------------------|-----------------------------------------------------------------|-----------------------|--------------------------------------------|----------|
| 4.2.8.2 Setbacks                                        | Primary Frontage (North):<br>Established building alignment     | 3.402m to<br>3.410m   | -                                          | Yes      |
|                                                         | Secondary Frontage<br>(West): Established building<br>alignment | 8.135m to<br>8.197m   | -                                          | Yes      |
|                                                         | Side (East): 2.70m (based on 1/3<br>wall height)                | 2.39m to<br>2.45m     | 11.48% to<br>12.96%<br>(0.31m to<br>0.35m) | No       |
|                                                         | Rear (South): 8m                                                | 10.687m to<br>10.690m | -                                          | Yes      |

### Compliance Assessment

| Clause                                                                                                        | Compliance<br>with<br>Requirements | Consistency<br>Aims/Objectives |
|---------------------------------------------------------------------------------------------------------------|------------------------------------|--------------------------------|
| 3.1 Streetscapes and Townscapes                                                                               | Yes                                | Yes                            |
| 3.1.3 Townscape (Local and Neighbourhood Centres)                                                             | 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                            |
| 3.5.7 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                            |
| 4.2 Development in Business Centres (LEP Zones B1<br>Neighbourhood Centres and B2 Local Centres)              | Yes                                | Yes                            |
| 4.2.1 FSR (Consideration of Exceptions including Arcades)                                                     | N/A                                | N/A                            |
| 4.2.2 Height of Buildings (Consideration of exceptions to Building<br>Height in LEP Business Zones B1 and B2) | N/A                                | N/A                            |
| 4.2.3 Setbacks Controls in LEP Zones B1 and B2                                                                | N/A                                | N/A                            |
| 4.2.8 Neighbourhood Centres (LEP Zone B1)                                                                     | Yes                                | Yes                            |
| 4.2.8.1 Height                                                                                                | Yes                                | Yes                            |
| 4.2.8.2 Setbacks                                                                                              | No                                 | Yes                            |

| Clause                                                    | Compliance with Requirements | Consistency Aims/Objectives |
|-----------------------------------------------------------|------------------------------|-----------------------------|
| 4.2.8.3 Landscaping                                       | N/A                          | N/A                         |
| 4.2.8.4 Residential Density                               | N/A                          | N/A                         |
| 4.2.8.5 Carparking, Vehicular Access and Loading Controls | N/A                          | N/A                         |
| 4.2.8.8 Waste Management                                  | N/A                          | N/A                         |
| 4.2.8.10 Local Character provisions                       | Yes                          | Yes                         |
| 4.4.1 Demolition                                          | Yes                          | Yes                         |
| 4.4.2 Alterations and Additions                           | Yes                          | Yes                         |

#### Detailed Assessment

#### **4.2.3 Setbacks Controls in LEP Zones B1 and B2**

As the subject site is located within a Neighbourhood Centre, the specified setback provisions are detailed under Clause 4.2.8.2 of Manly Development Control Plan 2013 within this report.

#### **4.2.8.2 Setbacks**

Under Clause 4.2.8.2 of Manly Development Control Plan 2013, the requirements for side setbacks are as follows:

*Buildings will be constructed with a nil setback to the side boundary except where:*

*(i) it adjoins land zoned residential in the LEP (including E3 & E4), in which case consideration must be given to residential setback controls at paragraph 4.1.4 of this plan; or where*

In this instance the subject site adjoins land zoned R2 Low Density Residential to the east. Therefore, the side setback is to be not be less than one third of the height of the adjacent external wall of the proposed building as outlined under Clause 4.1.4 of the MDCP 2013.

The proposed eastern side setback is required to be 2.70m based on 1/3 of the wall height. The proposed eastern side setback is 2.39m to 2.45m, resulting in a 11.48% to 12.96% variation to the control.

The variation to the side setback control has been assessed against the controls outlined below. In this instance, the variation is supportable as the objectives of the control have been met.

#### Merit consideration

The Manly DCP 2013 does not include objectives for this clause. As such an assessment of the objectives of the parent Clause 4.2.8 Neighbourhood Centres (LEP Zone B1) has been carried out below:

***Objective 1) To accommodate a range of small scale development permitted by the LEP within established residential neighbourhoods where such development is compatible with the amenity of the surrounding area.***

#### Comment:

The proposed loft storage is considered to be appropriately sited and setback in this instance to ensure the amenity of the adjacent residential dwelling is not unreasonably impacted. The loft storage does not

contain any windows along the eastern façade to ensure any unreasonable privacy concerns have been mitigated. Additionally, the loft storage does not contribute to any unreasonable solar access or overshadowing to the residential property to the east.

***Objective 2) To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design.***

Comment:

The proposal is compliant with the maximum height of buildings development standard under Manly Local Environmental Plan 2013. The proposal provides a more than compliant rear setback to the south. The eastern side setback provides an appropriate distance, that will maintain the amenity of the neighbouring residential site and contribute to the overall amenity of the building and surrounds. There are no changes to the existing landscape conditions on site as part of the development application.

Conclusion

Having regard to the above assessment, it is concluded that the applicable objectives of the control are achieved. Therefore, the application is supportable on merit in this particular circumstance.

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

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

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

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

#### **POLICY CONTROLS**

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

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

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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.

This proposal, for Alterations and additions to shop top housing has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of the Floor Space Ratio development standard of more than 10%.

There were zero (0) objections received for the proposed development.

The critical assessment issues have been addressed and the proposed alterations and additions to shop top housing is consistent with the Floor Space Ratio Development Standard under Manly Local Environmental Plan 2013. Furthermore the proposal is consistent with the setback controls of Manly Development Control Plan 2013.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 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 DA2022/0356 for Alterations and additions to shop top housing on land at Lot CP SP 18537, 67 New Street, BALGOWLAH HEIGHTS, Lot 2 SP 18537, 2 / 67 New Street, BALGOWLAH HEIGHTS, 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 - DA1003                                  | 28 April 2022 | Rapid Plans |
| Demolition First Floor Plan - DA1006                | 28 April 2022 | Rapid Plans |
| First Floor Plan - DA2002                           | 28 April 2022 | Rapid Plans |
| Loft Plan - DA2003                                  | 28 April 2022 | Rapid Plans |
| Roof Plan - DA2004                                  | 28 April 2022 | Rapid Plans |
| Section 1 - DA3000                                  | 28 April 2022 | Rapid Plans |
| Section 2 - DA3001                                  | 28 April 2022 | Rapid Plans |
| Elevations 1 (West & North) - DA4000                | 28 April 2022 | Rapid Plans |
| Elevations 2 (East & South) - DA4001                | 28 April 2022 | Rapid Plans |

| Reports / Documentation – All recommendations and requirements contained within: |                  |                          |
|----------------------------------------------------------------------------------|------------------|--------------------------|
| Report No. / Page No. / Section No.                                              | Dated            | Prepared By              |
| BASIX Certificate (No.A431975_02)                                                | 22 December 2021 | Rapid Plans              |
| BCA Compliance Report                                                            | 4 November 2021  | John J Briggs Associates |

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

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

| Waste Management Plan |
|-----------------------|
|                       |

| Drawing No/Title.     | Dated        | Prepared By |
|-----------------------|--------------|-------------|
| Waste Management Plan | 1 March 2022 | Rapid Plans |

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

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

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 | 29 April 2022 |

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

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

3. **Prescribed Conditions**

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

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

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of

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

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



cover to any spa containing water and is to be consistent with the following;

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

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

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

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

**CERTIFICATE****6. 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.

**7. Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

**8. 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.

**9. External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

#### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

11. **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.

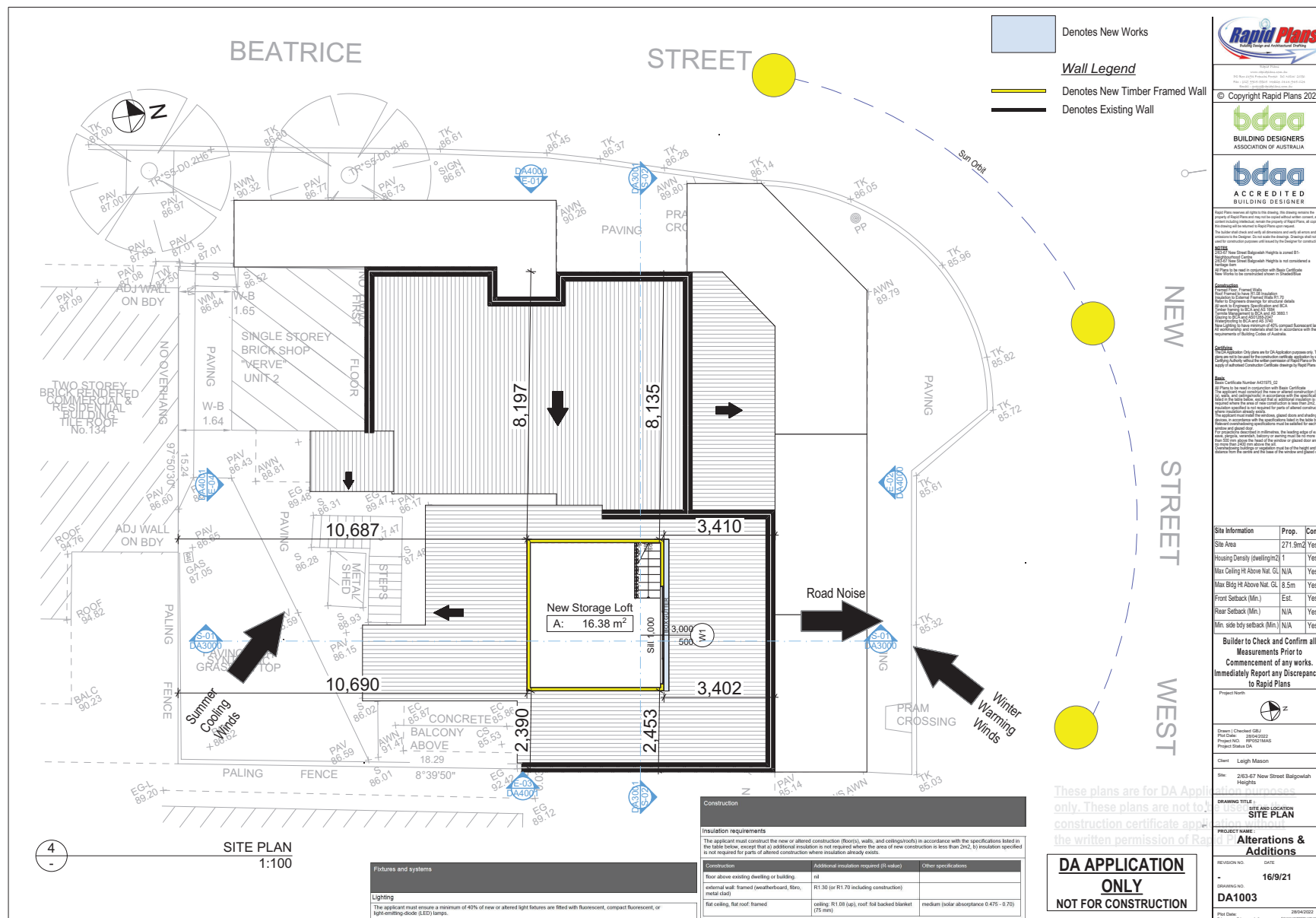
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

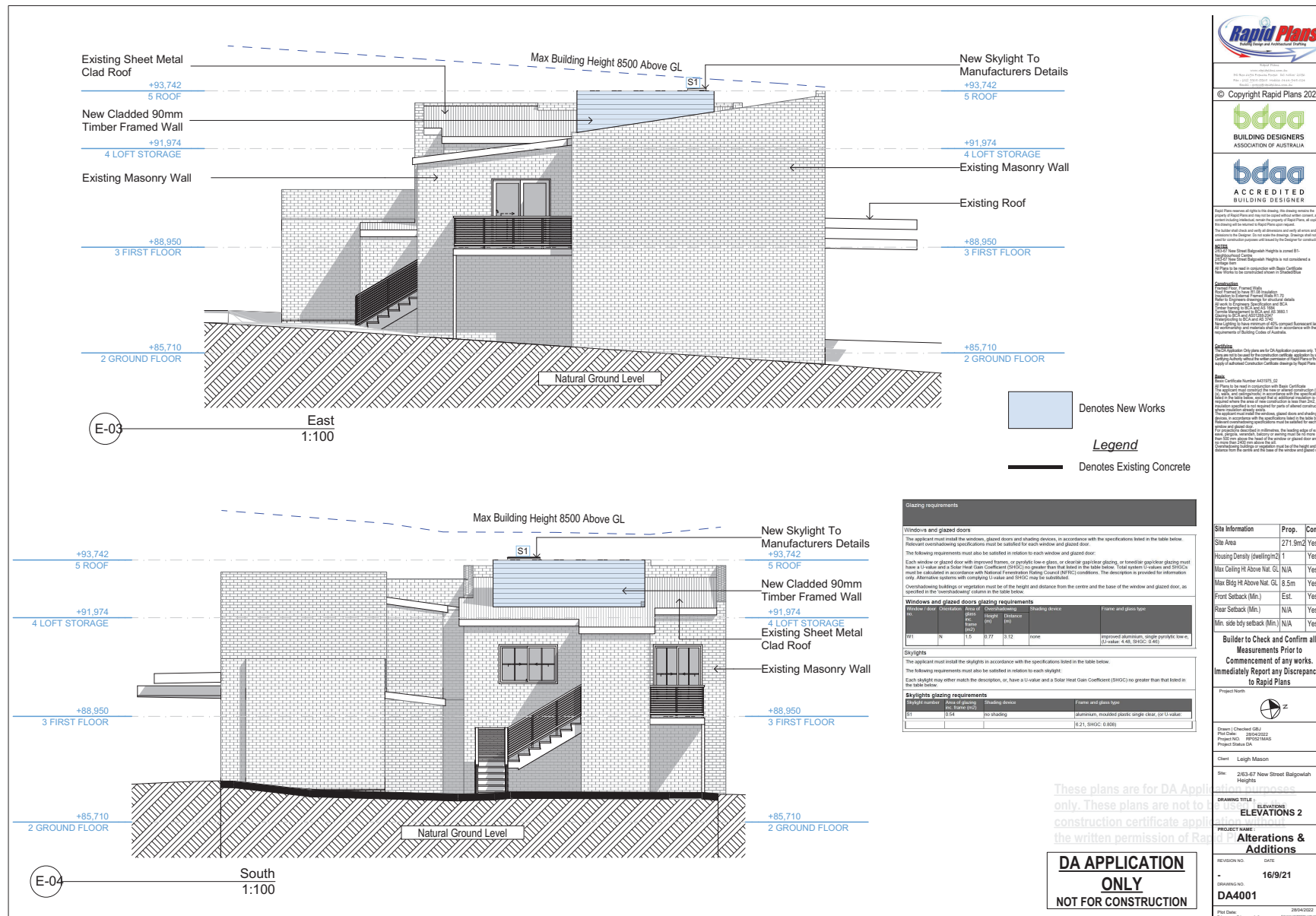
12. **Waste Management Confirmation**

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.









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Clause 4.6 Variation To Development Application 34 Wood Street, Manly, NSW

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**Clause 4.6 Variation  
To Development Application  
For  
2/67 New Street West,  
Balgowlah Heights  
NSW 2093  
For  
Leigh Mason**

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**RAPID PLANS**

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|            |                                      |
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Thursday, April 28<sup>th</sup>, 2022  
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## 1 INTRODUCTION

This report pertaining to a Clause 4.6 Variation accompanies the Development Application for the proposed additions at 2/67 New Street West, Balgowlah Heights.

### 1.1 Site

The residence is located on the southern side of New Street West in the residential neighbourhood of Balgowlah Heights.

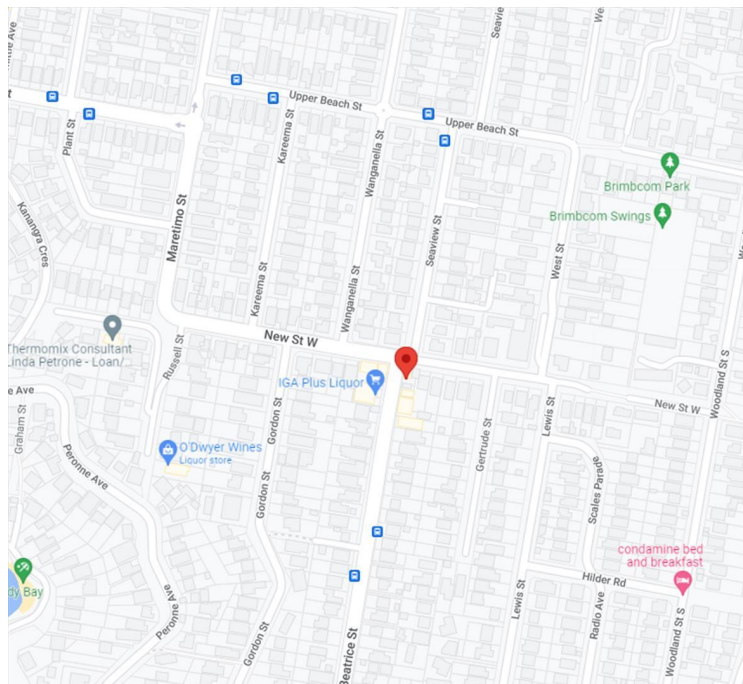


FIGURE 1: LOCATION PLAN 2/67 New Street West, Balgowlah Heights. <sup>1</sup> Source Google Maps.

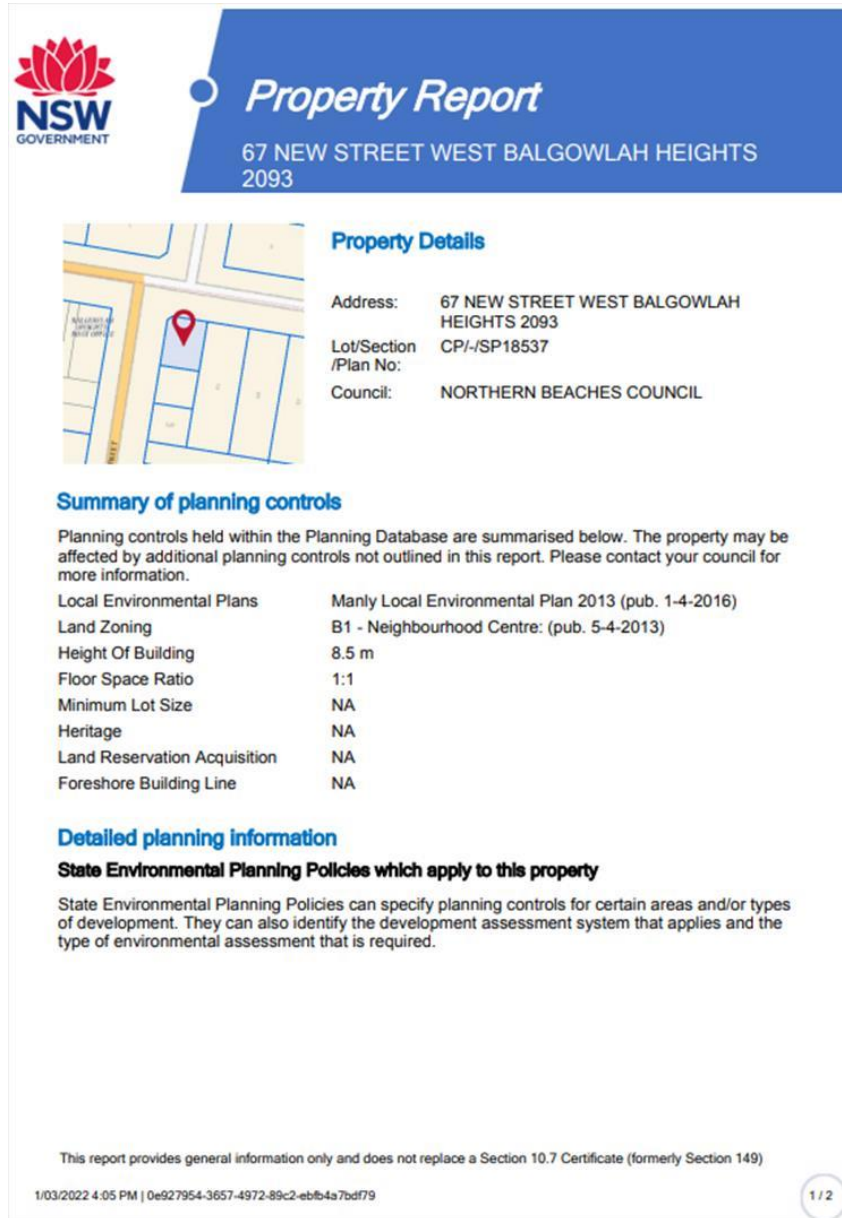
### 1.2 Local Authority

The local authority for this site is:  
Northern Beaches Council (Manly)  
Civic Centre, 725 Pittwater Road,  
Dee Why NSW 2099  
DX 9118 Dee Why  
Telephone: 9942 2111

<sup>1</sup> 2/67 New Street West, Balgowlah Heights;  
<<https://www.google.com/maps/place/2%2F136+Beatrice+St,+Balgowlah+Heights+NSW+2093/@-33.8008133,151.2569353,17.21z/data=!4m5!3m4!1s0x6b12ab9530b63b59:0x61afb161019496b!8m2!3d-33.8007637!4d151.2575184>>.

### 1.3 Planning Controls

Planning controls used for the assessment of this Development Application are:  
Manly Local Environment Plan 2013  
Manly Development Control Plan 2013



**Property Report**  
67 NEW STREET WEST BALGOWLAH HEIGHTS  
2093

**Property Details**

Address: 67 NEW STREET WEST BALGOWLAH HEIGHTS 2093  
Lot/Section /Plan No: CP/-/SP18537  
Council: NORTHERN BEACHES COUNCIL

**Summary of planning controls**

Planning controls held within the Planning Database are summarised below. The property may be affected by additional planning controls not outlined in this report. Please contact your council for more information.

|                              |                                                     |
|------------------------------|-----------------------------------------------------|
| Local Environmental Plans    | Manly Local Environmental Plan 2013 (pub. 1-4-2016) |
| Land Zoning                  | B1 - Neighbourhood Centre: (pub. 5-4-2013)          |
| Height Of Building           | 8.5 m                                               |
| Floor Space Ratio            | 1:1                                                 |
| Minimum Lot Size             | NA                                                  |
| Heritage                     | NA                                                  |
| Land Reservation Acquisition | NA                                                  |
| Foreshore Building Line      | NA                                                  |

**Detailed planning information**

**State Environmental Planning Policies which apply to this property**

State Environmental Planning Policies can specify planning controls for certain areas and/or types of development. They can also identify the development assessment system that applies and the type of environmental assessment that is required.

This report provides general information only and does not replace a Section 10.7 Certificate (formerly Section 149)

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1 / 2

FIGURE 2: Property report, Spatial Viewer DoIPE. Source DoPIE Planning Portal <<https://www.planningportal.nsw.gov.au/spatialviewer/#!/find-a-property/address>>.

### **1.1 Objectives of the Zone**

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of manly

Comment:

It is considered that the proposed development meets the objectives of the Zone R2 Low-Density Residential. This opinion is justified on the basis that this application provides for the owner's housing needs within the low-density area that is consistent with surrounding properties elevated developments. The proposal allows currently unusable areas to be usable for the owners to assist in day to day living without adversely impacting the low-density environmental aspects as no substantial vegetation is proposed for removal. The works proposed will significantly improve the design and aesthetic quality of the site with the built form outcome complimenting newer style properties along Queenscliff Road.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

## **2 Clause 4.6 Variation To Development Application**

### **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.*

### **2.1 Background**

The application is in regards to alterations & additions for the construction of a new storage loft area, with minor refurbished internal areas to provide for new loft storage access stairs. These works will include much needed storage areas that will be more useful for the owners & future tenants of the dwelling.

## ***2.2 Development Standards Being Varied***

After reviewing Manly Council LEP 2013 we advised that a Clause 4.6 Exception to a Development Standard is required due to:

1. This development is classified as a non-complying development due to an encroachment to the Floor Space Ratio (Manly LEP 2013 Part 4 4.4 Floor Space Ratio)
2. This development is classified as a non-complying development due to an encroachment to the Building Height (Manly LEP 2013 Part 4 4.3 Building Height)

The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

## **3 Manly LEP 2013 Part 4 4.4 Floor Space Ratio**

### ***3.1 Objectives of the Development Standard***

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.

Clause 4.6 Variation To Development Application 34 Wood Street, Manly, NSW

| Description                      | Floor Space Ratio (n:1)        |
|----------------------------------|--------------------------------|
| MLEP 2013 (Area by DP)           | 1:1 = 271.9m <sup>2</sup>      |
| Existing Floor Space Ratio (FSR) | 333.44 m <sup>2</sup> = 1.23:1 |
| Proposed Floor Space Ratio (FSR) | 351.07 m <sup>2</sup> = 1.29:1 |

*Streetscape* – The visual quality of the streetscape is to be maintained to the front façade as the loft addition is well set back from the front of the dwelling and visually protected via a street awning and upper floor wall parapet. The front of the building is to remain unchanged under this application. The proposed FSR is slightly increased by only 6% with the new area providing storage only. The location of the works provides a generally consistent pattern of development with regard to adjoining front building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape.

*Bulk & Scale* is maintained for the area as the proposal uses the existing footprint of the dwelling to located the new loft addition. Although the bulk & scale of the building is slightly increased with the loft, as the loft is well hidden from the public domain the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development.

*Site Access & Circulation* is maintained, in relation to the FSR, with access provided around the property. The proposed development will have no detrimental impact on traffic flow.

*Landscape Open Space Area* has been maintained for the proposed development. The FSR does not affect the landscaped area.

*Openness* - A sense of openness has been maintained with the loft addition complying to the Council height requirements & maintaining the open look to the front of the property. The proposed design creates flow between the internal & open space areas for the owners with elements of the proposal to the side & rear to still allow for a sense of openness to support the desired future character of the Manly low density area.

*Planting* – There has been generous amount of area allocated for the provision of planting in the rear area of the property with native shrubs planted along the side & front boundaries.

### ***3.2 Numeric value of the development standard in the environmental planning instrument***

MLEP2013 = FSR 1.1

### ***3.3 Proposed numeric value of the development standard in your development application***

Existing FSR = 1.29:1 (measured within the existing internal walls including the party walls)

### ***3.4 Percentage variation between the proposal and the environmental planning instrument***

Existing FSR = 23%

Proposed FSR = 29%

Change = 6%

## **4 Reason for the Variations to the controls**

### ***4.1 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?***

The variation is considered minor, this application is in keeping with a local neighbourhood zoning and environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this noncompliance as it is considered existing, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the FSR standard given that the proposed new area provides for storage only, with resulting development absent of any negative environmental or planning outcomes.

The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the streetscape and general locality.

- *Bulk & Scale - Streetscape* – The visual quality of the streetscape is to be maintained with the alterations to the property in keeping with the adjacent properties with the existing and proposed landscaping maintaining the streetscape to complement the existing built form. The proposed works have a very minor increase to the existing overall FSR and does not detract from the streetscape along New Street West as a flat pitched roof is used to reduce pitch & height. The proposed additions provide a generally consistent pattern of development with regard to adjoining building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics for the building height conform to the zoning requirements for the Balgowlah Heights neighbourhood area complying with the zoning objectives and the streetscape along New Street West & the desired future character of the area.

*Public & Private Views* - The view lines are maintained for the subject & surrounding dwellings with minimal impact on adjacent dwellings. in the vicinity of the height encroachment. The aerial photo below indicates the area of the height encroachment area shown below with substantial separation to the surrounding dwellings & maintained view lines from the dwelling to north with their roof line above the subject properties proposed roof.

*Site Access & Circulation* is maintained with access provided via the pedestrian stair access to the rear of the dwelling, with pathways & a levelled grassed area to the rear yard. It is anticipated that the proposed development will have no detrimental impact on access.

*Planting* – There has been generous amount of area maintained for the provision of planting in the rear areas of the property. The proposed works to the front of the property are in keeping with the adjacent properties with this proposal.



**4.2 *How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?***

The proposal extends the existing built form of the subject property with well-designed additions improving the much needed storage areas on the ageing dwelling. The proposed works add to the amenity of the dwelling and as such strict compliance in this regard would limit the objects being fully attained. The proposed provide a more efficient and orderly development on the neighbourhood zoned land that which maximises the sites development potential along with providing appropriate housing stock within the locality.

**4.3 *Is the development standard a performance based control?***

The objectives of the development standard provide the controls to allow a performance based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

**4.4 *Would strict compliance with the standard be unreasonable or unnecessary?***

Yes, please refer to answer preceding.

**4.5 *Are there sufficient environmental planning grounds to justify contravening the development standard?***

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.

- The proposal provides improved private open space and landscaping.
- The proposal provides improved housing in a low-density environment.

The variation to the maximum FSR requirements are, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

## 5 CONCLUSION

### 5.1 Summary

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining where possible the conditions set out by Manly Local Environment Plan 2013 by achieving the objectives outlined under Part 4.4 Floor Space Ratio. We consider that the proposal will impose minimal impact and maintains the streetscape & character of the neighbourhood & request that council support the Clause 4.6 Variation of the Development Application.