



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 15 JUNE 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 15 June 2022

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 1 JUNE 2022

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 1 June 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/2313 - 177 SEAFORTH CRESCENT, SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE.
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2022/341551
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 it is the subject of 10 or more unique submissions by way of objection and 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 Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as conditioned in the recommendation the applicant's written request adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2313 for Demolition works and construction of a dwelling house at Lot 180 DP 4889, 177 Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2313
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 180 DP 4889, 177 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ryan James King Candace Yingying Huang
Applicant:	Baxter & Jacobson Architects Pty Ltd
Application Lodged:	07/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/12/2021 to 18/01/2022
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	4.3 Height of buildings: 48.24% (as proposed by applicant) 28.4% (as proposed by conditions to reduce height)
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,002,000.00

EXECUTIVE SUMMARY

The proposal seeks consent for demolition works and construction of a three- storey dwelling house.

Ten (10) submissions were received raising concerns including bulk and scale, view loss, overshadowing, visual and acoustic privacy, parking, biodiversity and earthworks. Two (2) submissions of support were also received from neighbouring properties. These issues form the key environmental planning issues of this application. A detailed assessment has been conducted and found the application to be satisfactory for approval.

The proposal has a building height between 3.9m to 12.6m and seeks a variation to the height of buildings development standard of up to 48.24% or 4.1m, pursuant to clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP). The assessment has found that the most significant components of the building (music room and a void space) above the height are not justified, however the garage and foyer which exceed the height are acceptable. These components are proposed to be deleted by conditions, which will reduce the height to 10.9 metres which represents a variation to the height control of 28.4%

The proposed development complies with the Special Height provisions and Floor Space Ratio development standards of Manly LEP.

The application has been referred to the Northern Beaches Local Planning Panel due to having more than 10 unique submissions.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition works and construction of a three- storey dwelling house with double garage, spa pool, outdoor living and associated landscaping.

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 - 4.3A Special height provisions
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

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

SITE DESCRIPTION

Property Description:	Lot 180 DP 4889 , 177 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern (lower) side of Seaforth Crescent. The site is irregular in shape with a frontage of 17.38m along Seaforth Crescent and an average depth of 95.5m. The site has a surveyed area of 1821m². The site is located within the C3 Environmental Management zone and accommodates a dwelling house. The site slopes from 32m from the street frontage to the rear property boundary being Power Bulk Bay. The site is located in the Littoral Rainforest Proximity Area and Coastal Environment Area pursuant to State Environmental Planning Policy (Coastal Management) 2018. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development typically multi storey dwelling houses.

Map:



SITE HISTORY

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

DA2021/0782 - Subdivision of one lot into two, including demolition works and the construction of two dwelling houses, a swimming pool and inclinor. (Withdrawn 28 October 2021).

CURRENT APPLICATION

Following a preliminary assessment of the application Council wrote to the applicant on 22 April 2022, outlining concerns that would not allow for Council to support the application in its current form. The concerns related to building height non-compliance, bulk and scale and insufficient information. Following receipt of the letter the applicant advised Council that they intended to amend the development application. Council agreed to accept amendment to the application.

Amended plans were provided to Council on 20 May 2022 and 31 May 2022. The changes proposed reduced the overall bulk and scale of the proposed dwelling to the rear and deletion of the rear deck. As the proposed development reduced the size and scale of the overall development renotification was not required in accordance with the Northern Beaches Council Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).

Section 4.15 Matters for Consideration	Comments
planning instrument	Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to Height of Buildings non-compliance and water management. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance 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.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Baxter Jacobson, dated 9 November 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/12/2021 to 18/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mrs Trudy Ann Box Mr Ian Box	179 A Seaforth Crescent SEAFORTH NSW 2092
Mr Anthony Ng	1100 Oxford Falls Road OXFORD FALLS NSW 2100

Name:	Address:
Mr Tancred Fredrick Rowley	94 Seaforth Crescent SEAFORTH NSW 2092
Mr William Perkins	90 Seaforth Crescent SEAFORTH NSW 2092
Mr Ronald Jaensch	155 A Seaforth Crescent SEAFORTH NSW 2092
Mr Geoffrey Norman George Shaw	116 Seaforth Crescent SEAFORTH NSW 2092
Mr Ronald James King	40 Ryan Place BEACON HILL NSW 2100
Mr Marcus Jonathan Tuck Mrs Rowena Jean Tuck	98 A Seaforth Crescent SEAFORTH NSW 2092
Mr Christopher Andrew Lee	165 Seaforth Crescent SEAFORTH NSW 2092
Mrs Rachel Merylin Lee	165 A Seaforth Crescent SEAFORTH NSW 2092
Mr Andrew James Charlton Hill Mrs Caroline Alexandra Jane Hill	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Crispin Chapman	Address Unknown

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

- **Building Height and Clause 4.6 non-compliance;**
- **Bulk and Scale;**
- **Solar Access;**
- **View Loss;**
- **Privacy (visual and acoustic);**
- **Built form non-compliance;**
- **Excavation;**
- **Biodiversity; and**
- **Streetscape**

The matters raised within the submissions are addressed as follows:

- **Building Height and Clause 4.6 non-compliance**

Comment:

A number of submissions received raise concerns with the height of the proposed development and noted that the clause 4.6 request to vary the height is insufficient. As discussed with regard to clause 4.3 of MLEP 2013, the application seeks consent for a maximum height of 12.6m, representative of a 48.27% departure from the 8.5m height prescribed by MLEP 2013. In summary, the proposed written request from the applicant has been considered and is found to have adequately demonstrated the matters required to be demonstrated by subclause (3) (a) and (b). The maximum height non-compliance is as result of the significant drop of the property against the rock shelf. With the extent of non-compliance decreasing towards the front of the site. The non-compliant portion of the development does not attribute to any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height of the proposal is supported, subject to conditions reducing the size and scale of the entry floor level.

Conditions have been included which delete the offending portions of the building, (music room

and void) whilst other components (garage and foyer) have been assessed as appropriate.

The maximum height non-compliance is as result of the steeply sloping site. With the extent of non-compliance decreasing towards the front of the site. It is noted that the extent of variation to the height control as a result of the proposed conditions will be 28.4%.

- **Bulk and Scale**

Comment:

Concern is raised in regard to the overall bulk of the dwelling house. The proposed design of the house does not respond sufficiently to the topography. Conditions have been included to delete portions of the building so that the building steps down the slope, reducing the bulk and scale to an acceptable outcome.

- **Solar Access**

Comment:

Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development is multi storey, will be excavated into the natural landform and the site has a north-south orientation. The shadow diagrams, detail the shadowing impacts upon neighbouring properties. The development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. No properties adjoin the site to the south. The proposal complies with the requisite provisions of CI 3.4.1 of the Manly DCP.

- **View Loss**

Comment:

Concern was raised in regards to loss of water views from the north from both private property and public open space. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140* in this report.. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy (visual and acoustic)**

Comment:

Concern was raised about privacy impacts (acoustic and visual) from the proposed dwelling particularly to outdoor living area and parking area. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP, subject to conditions.

- **Built form non-compliance**

Comment:

Concern is raised in regards to the extent of built form (wall height, number of storeys and setbacks) non-compliance proposed under this application. This matter is addressed in detail elsewhere within this report (refer 4.1 of Manly DCP 2013 section of this report). Clause 4.15 (3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken. As described above, and further in the report, components of the building are conditioned to be deleted reducing to an acceptable level the non-compliances of the built form.

- **Excavation and Geotechnical report.**

Comment:

Concern was raised in regards to the extent of excavation works and impacts on adjoining properties. These matters have been considered under Clause 4.4.5 of the Manly DCP- Earthworks (Excavation and Filling). In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical report (prepared by Grozier Geotechnical Consultants dated November 2021) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction

- **Biodiversity (Impact on trees and fauna)**

Comment

Council's landscape and biodiversity officer raised no objection to the proposed tree removal on site as indicated in both the landscape architectural plan and arboricultural report. It is noted that the proposal meets the minimum native tree requirement under Clause 4.1.5.2 of the Manly DCP.

- **Streetscape**

Comment:

Concern has been raised stating the proposed development will be inconsistent with the character of the street. The proposed development is proposed beneath the centre point of the road adjoining the subject site, consistent with the desired character of the area. Seaforth Crescent presents a range of dwelling houses with a variety of different sized dwelling houses.

- **Subdivision**

Comment:

Concern is raised that if the proposed development is approved it would allow for the future subdivision of the subject site, noting the previous application on this site (DA2021/0782). The application proposes a new dwelling house on the existing lot only. Any future plans for subdivision, would be subject to a new application and a full assessment. Consent for a dwelling house under this application does not make it ensure the future subdivision of this property.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions The development application is for a new dwelling and associated external works. Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • DCP section 4: Development Controls and Development Types,

Internal Referral Body	Comments
	including but not limited to clauses 4.1.5 Open Space and Landscaping. The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment. The site is vegetated with a number of trees to the lower slopes along the foreshore, whilst the middle and upper slopes are a combination of native and ornamental small trees and other vegetation, with the exception of a Norfolk Island Pine within the frontage of the property. Existing rock outcrops occur to the middle slope. A Landscape Plan and a Arboricultural Impact Assessment accompany the development application. The Landscape Plan is conceptual in design and indicates landscape treatments throughout the property. An Amended Landscape Plan will be required at Construction Certificate stage should the application be approved, to provide detailed landscape design information. The landscape treatment to ground areas is sufficiently documented including timber decking, walling, and pavements, however the following requires updated information: planting scheme with plant selection, quantities and pot container sizes; and location of proposed trees to ensure existing trees approved for removal are replaced, as determined in consideration of existing views from neighbouring properties. The Landscape Plan indicates bush regeneration to the middle and lower slopes without any detailed information including a Vegetation Management Plan for the area to be dedicated for bush regeneration, and this component shall satisfy any requirements imposed by Council's Biodiversity Referral. All landscape works shall be contained within the legal boundaries, and no new landscape works are permitted beyond boundaries and any landscape works within the road reserve is not approved under the development application, and a minor encroachment application under the Roads Act is required for approval or otherwise. The Arboricultural Impact Assessment provides assessment of trees required to be reported under the DCP, and reports on twenty seven existing trees within the development site and four street trees within the road reserve. Should the applicant be approved, all street trees and all trees and vegetation within adjoining properties shall be protected by conditions of consent. The Arboricultural Impact Assessment reports that the property contains five trees of high retention value including the following as

Internal Referral Body	Comments
	identified: T6 Norfolk Island Pine within the front setback; T22, T23 and T26 Sydney Red Gum located within the lower slopes of the property; and T27 She Oak located within the lower slopes of the property. These five trees shall be retained and protected in accordance with imposed conditions. A total of five prescribed* existing trees are proposed for removal based on the impact from the development proposal, including: T13 Paperbark, T14 Sydney Peppermint, T18 Wattle, T20 Sydney Red Gum, and T30 She Oak. All are assessed in the Arboricultural Impact Assessment with low retention values due to arboricultural issues as reported, and thus no objections are raised by Landscape Referral subject to tree replacement within the site with three additional native trees: 1 x Sydney Peppermint, 1 x Sydney Red Gum, and 1 x Port Jackson Fig. * (protected under the DCP and requiring Council approval for removal) A total of fifteen Exempt Species are indicated for removal, which do not require Council consent and these are existing trees that are exempt due to either: age and size; weeds; dead, dying, diseased or declining; and structurally defect and unstable. The Exempt Species as reported in the Arboricultural Impact Assessment include: T5, T7, T8, T9, T10, T11, T12, T15, T16, T17, T19, T21, T24, T29 and T31. A Tree Management Plan is provided within the Arboricultural Impact Assessment for existing tree T6 Norfolk Island Pine, and conditions shall be imposed for the protection of all other existing trees within the property recommended for retention and the existing street trees, requiring as Tree Protection Plan prior to Construction Certificate, should the application be approved. Should the application be approved and subject to conditions of consent, Landscape Referral raise no objections should.
NECC (Bushland and Biodiversity)	Supported, subject to conditions The proposal has been assessed against the following provisions: • SEPP (Coastal Management) - Littoral Rainforest Proximity Area and Coastal Environment Area • Manly LEP Clause 6.5 (Terrestrial Biodiversity) The submitted arboricultural report assess 31 trees and proposes five prescribed trees for removal. These are: • T13 (Melaleuca quinquenervia) • T14 (Eucalyptus piperita) • T18 (Acacia linifolia) • T20 (Angophora costata) • T30 (Casuarina glauca)

Internal Referral Body	Comments
	Council's Landscape Referrals Body has recommended conditions of consent for replacement of these trees, in addition to retention of high value prescribed trees and those within the road reserve. The area of yard between the proposed dwelling and the foreshore is identified in the Landscaped Areas Plan (Dwg. No. 1.21, Issue 2, Baxter & Jacobson, 2/11/21) as 'open space - bushland regeneration area'. The Statement of Environmental Effects also states that "the existing rear setback is maintained to enable an extensive bush regeneration area fronting the waterway". In order to achieve consistency with recommendations of the submitted Bush Fire Report, this area is to be managed to control weeds and landscaped with appropriate species, in addition to retention of Trees 22, 23, 26 and 27. This has been conditioned and this condition should be applied in conjunction with those recommended by the Landscape Referrals Body. This will assist in reducing weed encroachment into surrounding bushland, address bush fire risk considerations, and improve consistency of the proposal with MLEP 6.5 (Terrestrial Biodiversity) and desired local character. Sedimentation and erosion controls applied by Council's Coastal Referrals Body will serve to prevent downstream impacts to Littoral Rainforest to the east of the site, while consent conditions for tree retention, weed control and replanting will protect coastal vegetation. The proposal is therefore considered to be consistent with MLEP Clause 6.5 (Terrestrial Biodiversity) and SEPP (Coastal Management).
NECC (Coast and Catchments)	Supported, subject to conditions This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 11 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. Noting all works are above the foreshore building line, do not affect the waterway, and will occur within an open/ previously disturbed area of the site. Construction is proposed on the upper gradient and thus estuarine planning levels are not relevant. As the site is within proximity to littoral rainforest, ecological and scenic values will be retained where clearing is minimised and significant vegetation is avoided. Please refer to the Bushland & Biodiversity Unit assessment with regard to matters concerning clause 11 of the SEPP (Coastal Management).

Internal Referral Body	Comments
	The application is supported subject to conditions: • Stormwater management (prior to construction certificate) • Installation and maintenance of erosion and sediment controls (prior to commencement) • Pollution control (during works)
NECC (Development Engineering)	Supported, subject to conditions The existing driveway crossing is to remain which is acceptable. Stormwater disposal is also satisfactory. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported, subject to conditions The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. Refer water management referral controls and conditions for water quality objectives. NECC Riparian Lands has no objection to the application.
NECC (Water Management)	Supported, subject to conditions Update 26/05/2022 The addition of a short vegetated swale prior the discharge off the site will be conforming with water quality treatment chain requirements. Rainwater harvesting, sediment and gross pollutant filtration and vegetated swale will form the stormwater strategy for the site. The proposal is satisfactory, subject to conditions. The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The relevant water management Policy principles are: • Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland. • Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events. • Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources. The application is triggering controls to protect the environment as per Council Water Management for Development Policy. The drainage plan is showing the proposed stormwater stormwater network. The stormwater runoff generated by the hard surfaces is piped to an energy dissipation area prior to discharge into Sydney

Internal Referral Body	Comments
	Harbour. Rain water tanks are noted, no water quality system are proposed. The proposal need to be amended to include a stormwater quality system. The stormwater quality objectives are defined in the Water Management for Development Policy, likely the General Stormwater Quality Requirements (table 5). The proposal is not demonstrating compliance with Council Water Management for Development Policy for water quality.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	Supported, no conditions
	The proposal has been referred to Heritage as the subject site adjoins a heritage listed item, being Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour, listed in Schedule 5 of Manly Local Environmental Plan 2013. It is also in the vicinity of a heritage item and located within the Manly Foreshore Scenic Protection Area. Item I279 - Remnant natural bushland and baths - Sangrado Park/Reserve, Powder Hulk Bay (off Lancaster Lane)
	Details of heritage items affected
	Details of this heritage item, as contained within the Northern Beaches Heritage Inventory, are: Item I1 - Harbour foreshores <u>Statement of significance:</u> Natural landscape type - Aesthetic. <u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures. Item I279 - Remnant natural bushland and baths <u>Statement of significance:</u> Remnant natural bushland with a good example of remnant rainforest and Wet Gully flora. Aesthetic and scientific significance. Populations of native fauna. Aboriginal heritage. <u>Physical description:</u> Bushland reserve around creekline. Upper part of creek piped and heavy infestation of weed flora. Large waterfall, and along creekline lies the remnant rainforest vegetation, surrounded by open dryschlerophyll forest. Lower parts of creek is a good example of remnant rainforest gully flora with coachwood (Ceratopetalum Apetalum and Cabbage Tree Palms (Livistona Australis)). Pathway with interpretive signs, also stone retaining walls and stone. Timber

Internal Referral Body	Comments		
	swimming enclosure on Middle Harbour foreshore. Upper part of reserve includes the Seaforth Scout Hall and open space area.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	This application seeks consent for the demolition of the existing dwelling on site and the construction of a 3 storey dwelling, including removal of trees and substantial excavation. The site is located within the scenic protection area in the harbour foreshores.		
	The heritage listed item, Harbour Foreshores, is located adjacent to the northern boundary of the subject site, away from the proposed works. However, the subject site is visible from the Harbour, and it is considered, that the bulk and scale of the proposed development could be reduced to minimise the visual impact to and from the Harbour. Given the separation afforded by the existing/retained outcrop and landscaping on the subject site and the distance between the heritage listed reserve and the subject site, the proposal is considered to not impact upon the heritage items or their significance.		
	Therefore, no objection is raised on heritage grounds and no conditions required.		
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
Further Comments			
COMPLETED BY: Oya Guner, Heritage Advisor			
DATE: 22 December 2021			

Internal Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported, subject to conditions No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1162316S_02 dated 7 December 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	73

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.

SEPP (Coastal Management) 2018

The site is classified as land in proximity to coastal wetlands or littoral rainforest, 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:

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposed development is not expected to cause any unreasonable environmental impact to land containing littoral rainforest.

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:

Provided that conditions of consent are satisfied, the proposal will not adversely nor unreasonably affect the biophysical, hydrological and ecological environments. Existing public access to the foreshore area will not be affected by the proposal. Subject to conditions, the proposal will also have no impact on indigenous heritage.

- (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:

Provided that conditions of consent are satisfied, the siting of the proposed development will not have foreseeable adverse impacts with regard to the matters raised within clause (1).

14 Development on land within the coastal use area

- (1) (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*

- (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The building position is within an established urban zone and does not create any adverse environmental impacts on the coastal environment or unreasonable visual impacts on public places.

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 hillside position of the house is sufficiently setback from the coastal hazard area to comply with the objectives and requirements of the SEPP to ensure no increased risk. The site is subject to SEPP Coastal Management (2018) as the boundary extends along the Middle Harbour Foreshore area. The site is readily visible from the harbour area due to the steep land and shoreline area below the site. The proposal is in close proximity to similar density development and various buildings in the vicinity that have a westerly outlook (to the water). The proposal has been considered in the context of the SEPP requirements.

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

SEPP (Biodiversity and Conservation) 2021

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(2) (aims of the Chapter), Section 10.11 (nominated planning principles), Section 10.20 (relating to public access to and use of foreshores and waterways), Section 10.21 (relating to maintenance of a working harbour), Section 10.23 (relating to interrelationship of waterway and foreshore uses), Section 10.23 (relating to foreshore and waterways scenic quality), Section 10.24 (relating to maintenance, protection and enhancement of views) and Section 10.24 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was considered necessary.

The subject site adjoins Zone W8 (Scenic Water: Passive Use).

The objectives of this zone are as follows—

- (a) to give preference to unimpeded public access along the intertidal zone, to the visual continuity and significance of the landform and to the ecological value of waters and foreshores,
- (b) to allow low-lying private water-dependent development close to shore only where it can be demonstrated that the preferences referred to in paragraph (a) are not damaged or impaired in any way, that any proposed structure conforms closely to the shore, that development maximises open and unobstructed waterways and maintains and enhances views to and from waters in this zone,
- (c) to restrict development for permanent boat storage and private landing facilities in unsuitable locations,
- (d) to allow water-dependent development only where it can be demonstrated that it meets a demonstrated demand and harmonises with the planned character of the locality,
- (e) to ensure that the scale and size of development are appropriate to the locality and protect and improve the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or areas of public access.

While not located within the zone itself, the proposed dwelling house is generally consistent with the objectives of the zone, noting that the proposed work include works for a dwelling house is to be used for private purposes and will not have any significant impact upon the ecological value of the adjoining harbour and general foreshore.

The proposal was referred to Foreshore and Waterways Planning and Development Advisory Committee on 27 January 2021. No response has been received within the 30 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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	3.9m (Front of dwelling) - 12.6m (Rear of dwelling) Conditions proposed to reduce height to 10.9m	- 48.24% 28.4% (as conditioned)	No
Special height provisions	RL38.33	RL37.780	-	Yes
Floor Space Ratio	FSR: 0.4:1 (728.4sqm)	FSR: 0.175:1 (318.9sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3A Special height provisions

The prescribed Height of buildings limitation pursuant to Clause 4.3A of the MLEP 2013 is a development standard. Buildings must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot, in the instance the centre point of the road is RL38.33. The proposed dwelling houses proposes a maximum height of RL37.780, compliant with the numeric requirement.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	3.9m -12.6m *10.9metres as conditioned
Percentage variation to requirement:	48.24% (28.4% as conditioned)

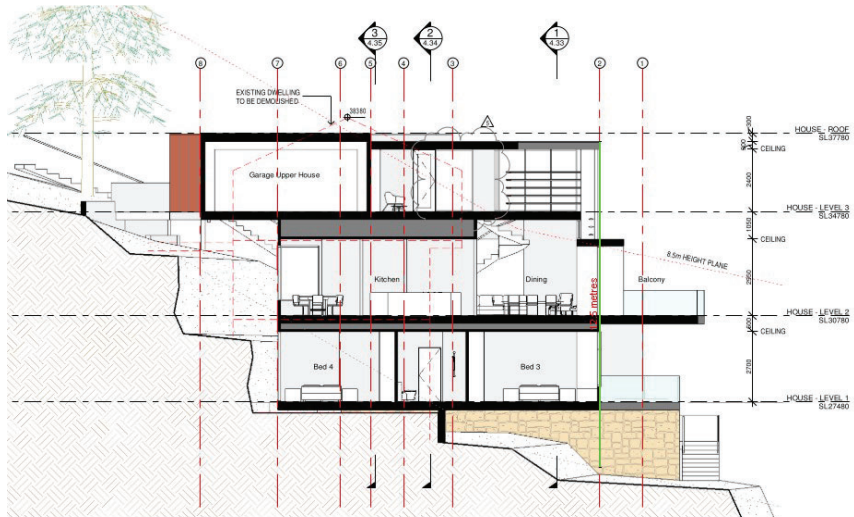


Figure 1 - Maximum building height as measured from Section Plan AA

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has not fully demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The non compliance is proposed to be reduced by conditions to only involve the garage and foyer, removing the music room and reducing the size of the void adjoining the stairs.

Subject to the conditions to delete the music room and reduce the void, the applicant's written request satisfactorily addresses the remaining component of the building that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

The conditions will reduce the overall height of the building from 12.6m to 10.9m and 48.24% to 28.24% variation.

(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 proposal satisfies the objectives of the E3 Environmental Management zone and the objectives of the development standard for height of buildings.
- The site is opportune for its purpose, having regard to its context, such as to provide a small proportion of new residential accommodation within the locality, that is subsequently able to utilise existing facilities and services within the precinct, without placing undue pressure on existing infrastructure.
- Regardless of the development standard, the design of the proposed dwelling is entirely consistent with the character of the locality along the foreshore.
- The proposed dwelling design will not compromise the visual catchment of the foreshore area, and its associated natural setting, as a result of retaining the vegetation that is characteristic of the natural foreshore setting, thus preserving the public interest, when considering the proposed built form from the waterway.
- The dwelling design, and particularly the non-compliant component thereof, will not have any adverse impact from the streetscape of Seaforth Crescent, instead providing a more refined approach to the composition to the streetscape, without dominating this with car parking structures, such that there would be limited, if any, visual intrusion imposed on the public domain as a result of this proposed dwelling.
- The dwelling design has an increased setback distance and lower proportion of building form to the interface with the south-western neighbour to maximise solar access to the adjoining property.
- The proposed building height will not compromise views from the public domain."

Council's Assessment of the Clause 4.6 Request

It is not considered that the proposal to significantly vary the height involving the music room and void have sufficient environmental planning grounds. The variation involving the garage and foyer have a less intrusive and smaller extent of variation providing for essential access to the dwelling, is considered to satisfy the objectives of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the conditioned proposed works to the ageing building will not have impact upon views

when viewed from the public domain.

- The conditioned changes to the development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property and will not have an unreasonable impact on the foreshore area noting the substantial rear setback proposed between the dwelling house and foreshore.

In this regard, the applicant's written request has demonstrated that the conditioned 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.

In the context of the changes to the design by conditions of consent, 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).

Clause 4.6(3) Conclusion

Despite the deletion of the music room and void area imposed via condition under the recommendation, the proposed development will still result in a variation to the Height of Buildings development standard of up to 10.9m (28.4% variation). An assessment of the conditioned development has been undertaken above and Council is satisfied that the proposed height variation is supportable, pursuant to clause 4.6 of the Manly LEP.

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 C3 Environmental Management 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 MLEP 2013 are:

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

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

Comment:

The site topography presents a challenge to provide a numerically compliant building height,

notwithstanding the non-compliance, the height and scale of the proposed development is generally consistent with that of other dwellings on the northern (lower) side of Seaforth Crescent.

b) to control the bulk and scale of buildings,

Comment:

As noted above, the site topography presents a challenge to provide a numerically compliant building height while also ensuring other essential elements, including parking and access can be provided on the site. However, the inclusion of additional gross floor space in the way of a music room and void areas, contributes to a unreasonable level of bulk. To ensure a reasonable sized dwelling on the site, conditions have been imposed to delete the music room and reduce the void area at level 3 (Entry level). The removal of these two elements from level 3 will allow ensure articulation of bulk and stepping down to lower levels. The removal of these elements would result in a approximate building height of 10.9m.

c) to minimise disruption to the following:

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

Comment:

The proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

The proposed development is considered to be designed and sited in a manner that adequately mitigates visual impact, view loss, privacy and solar access impacts to adjacent properties, subject to conditions.

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

Comment:

The proposed building height non-compliance will not compromise the adjoining aquatic land use or nearby bushland.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposed development is located entirely within the subject site and is consistent with low density residential development within the immediate vicinity. The development will have a negligible impact on the nearby foreshore, bushland or aboriginal heritage.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The works will have a negligible impact on the scenic foreshore protection area in which the site is located and will not compromise any special ecological, scientific or aesthetic values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed works will not have an unreasonable impact on tree canopies. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will fit comfortably within its surrounds.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the the harbour.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The development does not significantly alter the existing landscape component for the site and will have no discernible impact on nearby bushland or harbour.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of

the C3 Environmental Management zone.

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

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

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

6.10 Limited development on foreshore area

The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

The proposed new dwelling house is not proposed within the foreshore area, therefore this clause does not apply. The proposed deck shown on the landscape plan has been deleted by way of condition as requested by the applicant.

As such, the works proposed are deemed to be acceptable under this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1821sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North-east: 8m (based on gradient 1:4)	12.1m (entry level void)	51.25%	No
	South-west: 8m (based on gradient 1:4)	8.5m	6.25%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.4m	-	Yes
	Pitch: maximum 35 degrees	Flat roof	-	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.1m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	4.03m (based on north-east entry level (void area) wall height)	5.1m 1.3m - 1.4m	- 67.6%	Yes No
	4.01m (based on north-east entry level (music room) wall height)			
	2.83m (based on south-west entry level wall height)	2.5m	11.7%	No
	Windows: 3m	1.4m - 5.1m	up to 53%	No
4.1.4.4 Rear Setbacks	8m	Dwelling - 65m		Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	71.1% (1296sqm)	-	Yes
	Open space above ground 25% of total open space	5.1% (66.7sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	94.89% 1229.9sqm	-	Yes
	4 native trees	>4 Trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.15m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	4.6m	100%	No
	1m curtilage/1.5m water side/rear setback	5.7m curtilage, 5.9m water edge	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	4 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

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

Comment:

Hardstand Parking

Visual and acoustic privacy concerns have been raised from the adjoining property owner to the west of the subject site (No, 173 Seaforth Crescent, Seaforth). Of particular concern is the hardstand parking structure at entry floor level. The aspect of the development provides additional 2 parking spaces for the occupants of the dwelling, on top of the proposed double garage. The hardstand parking area is setback 2.5m from the western property boundary. The parking area is unlikely to give rise to any

unreasonable visual privacy impacts to the living areas, noting that while there is a limited setback between the hardstand parking area and adjoining balconies the intensity of use of the parking structure is minor when compared to that of a living areas, with the area to be utilized for entering and exiting vehicles. In regards to acoustic impact, vehicle parking is not deemed to be unreasonable in this residential setting.

Balconies

Concern is raised in regards to the proposed balconies proposed to the rear (Northern side of the dwelling house). From a view of what is visible from the site it is evident there are some sight lines into the balconies and rear yards including swimming pool of the adjoining northern property. However, the sightlines are not the dominant views (which is directly to the rear of the subject site to the west) and inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties. To further mitigate potential overlooking to the adjoining western property a condition of consent has been imposed to extend the screening across the western side of the level 1 balcony.

Other

External stairs and access along the south-west and rear side of the dwelling house will not result in any unreasonable visual privacy impacts to adjoining properties. The intensity of use of the external staircase is not high and will purely be utilised for access from the dwelling house to the rear yard and foreshore. It should be noted that the east facing balconies of the adjoining property to the west No. 173 Seaforth Crescent are extremely vulnerable to potential overlooking between these two dwellings and the expectation of complete privacy to these balconies is not deemed reasonable in this residential context.

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

Comment:

Given the above at Objective 1, the proposed development retains adequate privacy for the adjoining residential developments while allowing sufficient access to light and air, and balancing of views

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

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

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received two submissions from the occupants of Nos. 173 and 94 Seaforth Crescent, Seaforth raising view loss as a concern.

Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposed development will result in a negligible loss of view from neighbouring properties to Middle Harbour. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

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

Comment:

VIEWS FROM NEARBY AND ADJACENT DEVELOPMENT

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. 173 Seaforth Crescent, Seaforth

Views affected from this property are bushland views filtered through existing development.

No. 94 Seaforth Crescent, Seaforth

Views affected from this property are harbour views filtered through existing development and vegetation.

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. 173 Seaforth Crescent, Seaforth

The views affected from this property are obtained over the side boundary from the ground floor private open space and first floor living rooms and balconies to the rear of the subject property from

a standing position. It should be noted that the views obtained from the sitting position are of a lesser value than those obtained in the standing position.

No. 94 Seaforth Crescent, Seaforth

The views affected from this property are obtained over the front boundary from the ground floor living room and private open space and first floor bedroom and balconies to the front of the property from a standing position.

3. Extent of impact

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

Comment to Principle 3:



Photo 1 - View from first floor balcony looking east over subject site (Existing dwelling to the right side of photo)



Photo 2 - View looking north to harbour from 173 Seaforth Crescent

No. 173 Seaforth Crescent, Seaforth

Occupants of this property currently enjoy views towards the harbour and the land water interface in a northern direction from the living rooms, balconies and private open space from the rear of the dwelling. This view will not be impacted by the proposed development (See Photo 2). The occupants of the dwelling also have district views across the eastern side boundary looking across the rear setback of the existing dwelling (Photo 1). The proposed development is likely to result in minor loss of district bushland views. Noting the collective existing views from this property, the proposed development on a whole will have a negligible impact upon the amenity of this dwelling. The likely impact is not considered to be unreasonable, as a similar impact upon district views would otherwise arise with a compliant built form.



Photo 3- View looking north from ground floor private open space. (Red arrow indicates approximate location of subject site).



Photo 4 - View looking north from ground floor private open space



Photo 5 - View looking north from first floor balcony



Photo 6 - View looking north from first floor bedroom.

No. 94 Seaforth Crescent, Seaforth

Occupants of this property currently enjoy views towards the harbour and the land water interface in a northern direction from living rooms and bedroom and balconies to the front of the dwelling house. The existing views are obtained over the front property boundary over the top of No. 179B Seaforth Crescent and public reserve (Sangrado Park). The proposed development is likely to result in a negligible loss of harbour views, noting that the subject site is largely shielded by existing vegetation, while the land and water interface will be retained in full. In consideration that existing views are not taken over the top of the subject site, the proposed development on a whole will have a negligible impact upon the amenity of this dwelling.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The development proposes a non-compliant Height of Buildings development standard under Clause 4.3 of the MLEP as well as wall height and side setback controls under clause 4.1 of the MDCP. However, the non-compliance in relation to building height and setbacks will not impact the view from the adjoining properties.

No. 173 Seaforth Crescent, Seaforth

Concern was raised from the owners of this property in regards to potential loss of harbour and land water interface views. None of these views will be impacted by the proposed development as seen in the photos above. Existing bushland views directly to the east of this property will be impacted. The current view lines from No. 173 Seaforth Crescent over the eastern side boundary are extremely vulnerable to any form of new development on this site. While it is acknowledged that No. 1173

Seaforth Crescent has benefited from views obtained through the subject site based on existing conditions, the views likely to be lost are highly vulnerable to future development and are not deemed to be valuable views

Noting that existing highly valued harbour views from the site will be retained, the proposed views afforded to this property by the development is deemed to be acceptable.

No. 94 Seaforth Crescent, Seaforth

Noting the existing views from this property, the proposed development on a whole will have a negligible impact upon the amenity of this dwelling. The likely impact is not considered to be unreasonable, as a similar impact would otherwise arise with a compliant built form.

The question of a more skilful design has been considered in that a close analysis of the plans identifies the only opportunity to retain the existing view lines from this property would require the development be restricted to the existing building footprint of the dwelling house.

Overall, the application has demonstrated that disruptions to views from adjacent development have been reasonably minimised, and view sharing between properties has been achieved.

VIEWS FROM THE PUBLIC DOMAIN

Comment:

In determining the extent of potential view loss from the public domain, the five (5) planning principles outlined within the Land and Environment Court Case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* are applied to the proposal.

1. Nature and Scope of Views

"The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:

- Any existing obstructions of the view;
- Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);
- Are existing obstruction permanent or temporary."

Comment to Principle 1:

The affected view contains are oceans views, with a corridor over the top of the subject site and neighbouring properties. Existing obstructions to the view include dwellings and vegetation on private property and the road reserve. The built obstructions are permanent in nature.



Photo 7 - View of Seaforth Crescent looking west towards subject site.



Photo 8 - View of subject site from the road.



Photo 9 - View of subject site from the road.

2. Locations of View Interruptions

"The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed."

Comment to Principle 2:

The affected views are available from the road along Seaforth Crescent. There is no footpath adjoining the subject site or adjoining properties

3. Extent of Obstructions

"The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people."

Comment to Principle 3:

The proposed development will obstruct minor views to the harbour from a small portion of the road and nature strip.

4. Intensity of the use of the Relevant Public Spaces

"The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obscured, in whole or in part, by the proposed development."

Comment to Principle 4:

Seaforth Crescent is a secondary road, used to gain access to the residential properties along the road. Intensity of use for the purpose of a Coastal Walk is unknown.

5. Documentation of the View

"The final step to be identified is whether there is any document that identifies the importance of

the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views."

Comment to Principle 5:

Seaforth crescent is a popular street for the public to view the harbour. The view loss from the public domain is caused by the proposed new entrance level. The garage structure is not compliant with the building height but is otherwise compliant with the special height provision pursuant to clause 4.3(A) of the MLEP and the front setback control under the MDCP. The dwelling is acceptable on merit in relation to building bulk and scale and consistency with the streetscape. In regard to view loss the level of views loss is at worst minor. It is noted that the area in which water views are affected is at best a small portion of the overall road which extend the whole of Seaforth Crescent. The area of which the view is impacted is not a single lookout in comparison to a public space where there is only a view from a single location. To relocate or reduce the size of the entrance way would not significantly improve view corridors to the harbour. It is therefore considered a reasonable development. The values of the view from the road are reasonably retained in that harbour views are still available to the site from the public domain

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

Comment:

The proposed works will not cause unreasonable loss of view. In regard to 'view creep' the proposal does not include unreasonable bulk which could lead to unreasonable future view loss.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

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

Clause 4.1.2 of Manly DCP permits a maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- North- East and South- West elevation: 1:4 gradient, which permits a maximum wall height of 8m wall height.

The maximum wall height of the proposed dwelling house is as follows:

- North- East wall: 12.1m, which represents a 51.25% variation from the numeric requirement.
- South- west wall: 8.5m, which represents a 6.25% variation from the numeric requirement.

Clause 4.1.2 of the MDCP 2013 also limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement.

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found

the proposal to be consistent with the objectives of Clause 4.3 subject to removal of building bulk contained on the entry level. The condition will reduce the wall height on the North – East wall to 10.6m which represents a 32.5% variation to the numerical controls.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 4.03m from the north-east boundary, 2.83m from the south-west boundary.

Clause 4.1.4.2 of the Manly DCP requires windows be setback 3m from side property boundaries.

Clause 4.1.4.4 of the Manly DCP requires buildings be setback 8m from the rear property boundary

The development proposes the following:

North- east side setback- 0.9m - 2.4m music room, 5.1 void area (up to 67.6% variation to the numeric control).

South- west side setback- 2.5m entry floor balustrade (11.7% variation to the numeric control).

Windows- 1.4m - 5.1 (up to 53% variation to the numeric control).

Rear setback- 6.3m deck, 65m dwelling (21.25% variation to the numeric control).

Merit consideration:

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

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

Comment:

The development proposed development complies with the 6.5m front setback control and is proposed the adjoining centre point of the road being Seaforth Crescent. The proposed development is therefore consistent with the spatial proportions of the street. Existing street trees and important vegetation within the front setback is proposed to be retained. The landscape character of the street is retained.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regard to sunlight access, the proposed development is

consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will not lead to any loss of significant view. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwelling will not result in any unreasonable impacts upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape Architect the proposal complies with this clause.

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

Comment:

The proposed development will maintain suitable access to bushland if required in a emergency.

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

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The recommendations included as part of this report have been included as part of the final conditions of consent.

The dwelling house does not respond appropriately to the sloping site. As discussed previously within this report the additional building bulk at entry floor level, for purposes other than access to the dwelling is deemed unacceptable. The bulk at this level does not allow for the dwelling house to step down with the sloping topography of the site and as a result the proposed development reads as a 3 storey development in one single vertical plane. The dwelling dominates the site and as such conditions have been imposed to ensure the bulk and scale of level 3 (entry floor level) is better reduced so that the building follows the topography of the site.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pool and spas be built on or in the ground and not elevated more than 1m above natural ground level. The proposed spa pool is located 4.6m above natural ground level, non-compliant with the control. This represents a 100% variation to the numeric control.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.

Comment:

Despite the numeric non-compliance, there will not be opportunities for increased overlooking into adjacent sites. The proposed spa also complies with the Manly DCP 2013 side setback requirements prescribed within this control. Furthermore, a condition has been included with this consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.

Comment:

The space is located to the rear of the property. The swimming pool will not be readily visible from the street. The resulting impact on the streetscape is negligible.

Objective 3) To integrate landscaping.

Comment:

Landscaping is proposed to the rear and front of the dwelling house. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape may further offset the visual impact of the spa pool from surrounding properties.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The subject site is located in a bush fire asset protection zone and may be a viable water resource during bushfire emergencies.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The generally limits excavation to 1m below the existing ground level. The proposed development involves excavation works of more than 1m to accommodate for the lower floor levels. As such, the proposal fails to satisfy the prerequisite.

Merit consideration

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

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

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

Comment:

The excavation is largely limited to the footprint of the dwelling, with the natural topography of the side boundary setback areas being largely retained. The extent of the excavation is generally consistent to what has occurred on the lower side of Seaforth crescent to accommodate dwelling houses. Furthermore, the proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality. The application has been accompanied by a Geotechnical Report (prepared by Grozier Geotechnical Consultants, dated November 2021), which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been included with this consent to ensure compliance with the recommendations within the Geotechnical Report.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$20,020 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,002,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that subject to Condition 12:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Building 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.

Final comment

The proposal seeks consent for demolition works and construction of a three-storey dwelling house.

When assessed against the MLEP 2013 and MDCP 2013 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment, subject to conditions reducing the size of the entry level.

Therefore, the application is recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2313 for Demolition works and construction of a dwelling house on land at Lot 180 DP 4889, 177 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
1.01/ Revision 2	2 November 2021	Baxter and Jacobson Architects
1.10/ Revision 2	2 November 2021	Baxter and Jacobson Architects
2.30/ Revision 2	19 May 2022	Baxter and Jacobson Architects
2.31/ Revision 2	10 May 2022	Baxter and Jacobson Architects
2.32/ Revision 2	2 November 2021	Baxter and Jacobson Architects
2.33/ Revision 5	19 May 2022	Baxter and Jacobson Architects
3.30/ Revision 6	30 May 2022	Baxter and Jacobson Architects
3.31/ Revision 6	30 May 2022	Baxter and Jacobson Architects
3.32/ Revision 4	30 May 2022	Baxter and Jacobson Architects
3.33/ Revision 3	30 May 2022	Baxter and Jacobson Architects
4.30/ Revision 6	30 May 2022	Baxter and Jacobson Architects
4.31/ Revision 5	30 May 2022	Baxter and Jacobson Architects

4.32/ Revision 1	30 May 2022	Baxter and Jacobson Architects
4.33/ Revision 6	30 May 2022	Baxter and Jacobson Architects
4.34/ Revision 6	30 May 2022	Baxter and Jacobson Architects
4.35/ Revision 6	30 May 2022	Baxter and Jacobson Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	November 2021	Grozier Geotechnical Consultants
Bushfire Assessment Report	9 November 2021	Bushfire Hazard Solutions
Arboricultural Report	16 November 2021	Naturally Trees
BASIX Certificate no. 1162316s_02	7 December 2021	Leith Schmidt Architect

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LC01/ Revision C	29 April 2022	Studio Plum
LC01/ Revision B	29 April 2022	Studio Plum

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	12 November 2021	Mark Baxter

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	N/A

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner

- that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$20,020.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$2,002,000.00.

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

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

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

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

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

6. Security Bond

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

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

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

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

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

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

7. Amended Landscape Plan

An Amended Landscape Plan will be required at Construction Certificate stage should the application be approved, based on the Landscape Plan submitted for development application, to provide detailed landscape design information, including:

- i) hard landscape elements as shown on the Landscape Plan including detail of finishes and levels,
- ii) planting scheme with plant selection, quantities and pot container sizes,
- iii) addition of three native replacement trees to be located within the property, as determined in consideration of existing views from neighbouring properties, and consisting of the following species: 1 x Sydney Peppermint (*Eucalyptus pipertia*), 1 x Sydney Red Gum (*Angophora costata*), and 1 x Port Jackson Fig (*Ficus rubiginosa*),
- iv) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- v) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 2.0 metres from common boundaries,
- vi) mass planting shall be installed at minimum 1 metre intervals for shrubs and screening plants of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers and other low height planting of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- vii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- viii) provision of a Vegetation Management Plan for the area to be dedicated for bush regeneration, and this component shall satisfy any requirements imposed by Council's Biodiversity Referral,
- ix) all landscape works shall be contained within the legal boundaries, and no new landscape works are permitted beyond boundaries.
- x) The landscape plan is to include low-growing species within the area between the foreshore setback and the new dwelling. New landscaping is to be composed of at least 80% species from the Manly Ward Native Plant List (available on Council's website) and must be consistent with Appendix 5 of Planning for Bush Fire Protection (2019).

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

8. **Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following trees:

- i) street trees identified as T1, T2, T3 and T4,
- ii) trees T6, T22, T23, T26 and T27.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes throughout the site for construction activity,
- iv) either / or all of the following: location of tree protection fencing / barriers, root protection in the form of mulching or boards proposed within the tree protection zone, and trunk and branch protection within the tree protection zone,
- v) location of stockpile areas and materials storage,
- vi) inspection hold points,
- vii) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites.

Reason: Tree protection.

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a suitably designed dissipater at the rear of the site.

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

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

10. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **Amendments to the approved plans**

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

- The proposed music room at level 3 is to be deleted from the plans.
- On level 3 the external building and architectural features to the north- west of the void is to be setback from the rear elevation. The external wall/glazing of the void at level 3 is not to extend more than 1 metre from the location of the stairs toward the rear elevation.
- A privacy screen is to provided across the extent of western side of the level 1 balcony to a height of 1.8m above finished floor level.
- The suspended path and deck with seat shown on the landscape plan (Dwg No LC01, prepared by Studio Plum, dated 29 April 2022) is to be deleted from the plans.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

13. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

14. **Elevated Parking Facility Design**

The Applicant shall submit a Structural Engineers' design and certification that the elevated parking facility is designed in accordance with this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

15. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

16. **Stormwater Management**

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

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

17. **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.

18. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

19. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree

protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

The Project Arborist shall be in attendance, supervise and provide arboricultural advice for all works in the vicinity of the existing trees and vegetation listed below:

- i) T6 Norfolk Island Pine within the frontage, T22, T23 and T26 Sydney Red Gum located within the lower slopes of the property; and T27 She Oak located within the lower slopes of the property,
- ii) development works near neighbouring property boundaries.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

21. **Tree Removal Within the Property**

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

- i) T13 Paperbark, T14 Sydney Peppermint, T18 Wattle, T20 Sydney Red Gum, and T30 She Oak
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal

Note: A total of fifteen Exempt Species are indicated for removal, which do not require Council consent and these are existing trees that are exempt due to either: age and size; weeds; dead, dying, diseased or declining; and structurally defect and unstable. The Exempt Species as reported in the Arboricultural Impact Assessment include: T5, T7, T8, T9, T10, T11, T12, T15, T16, T17, T19, T21, T24, T29 and T31.

Reason: To enable authorised development works.

22. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: Nos. 173 and 179B Seaforth Crescent, Seaforth

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

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

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

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

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

23. **Nest Boxes**

A minimum of two nest boxes are to be installed within retained trees on the site. One is to be designed to suit native birds and one is to be suited to native arboreal mammals.

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

Reason: To maintain wildlife habitat.

24. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

26. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment and the Tree Protection Plan.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment and the Tree Protection Plan.

e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection

27. **Road Reserve**

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

Reason: Public safety.

28. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

29. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on

approved plans.

31. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

32. **Impact to Wildlife**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

33. **Pre-clearance survey**

A pre-clearance survey is to be undertaken by the Project Arborist prior to any tree removals. The survey is to include inspection for native wildlife on the day before and/or immediately prior to tree removal. Should native wildlife be identified within trees proposed for removal, advice and direction from a qualified ecologist must be obtained prior to removal of that tree.

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

Reason: To protect native wildlife.

34. **Pollution Control**

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

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

35. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection.

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

36. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plan.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with the approved Amended Landscape Plan and with any conditions of consent.

Reason: Environmental amenity.

37. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

38. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

39. **Relocation of Hollows**

Any hollows within trees approved for removal must be reused as fauna habitat within areas of retained native vegetation on the site.

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

Reason: To protect wildlife habitat.

40. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

41. **Certification for the Installation of Stormwater Treatment Measures**

The applicant must install a filtration device (sediment control pit) that captures organic matter

and coarse sediments prior discharge of stormwater from the land.

A 5m length minimum vegetated sandstone swale/apron must be installed downstream of the stormwater pipe headwall prior discharge of stormwater from the land.

Vegetated measures must exhibit an 80 percent survival rate of plantings.

All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

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42. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

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

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

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

43. **Geotechnical Certification Prior to Occupation Certificate**

A suitably qualified geotechnical consultant is to provide confirmation that the development is consistent with the recommendations of the Approved Geotechnical referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

45. **Weed Management**

Priority and environmental weeds are to be removed from the site between the dwelling and the foreshore using an appropriate control method. Evidence of compliance is to be prepared by a suitably qualified horticultural practitioner or bush regenerator and provided to the Certifying Authority prior to the Occupation Certificate.

Reason: To manage weed encroachment into surrounding bushland.

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

46. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

47. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

48. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

49. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

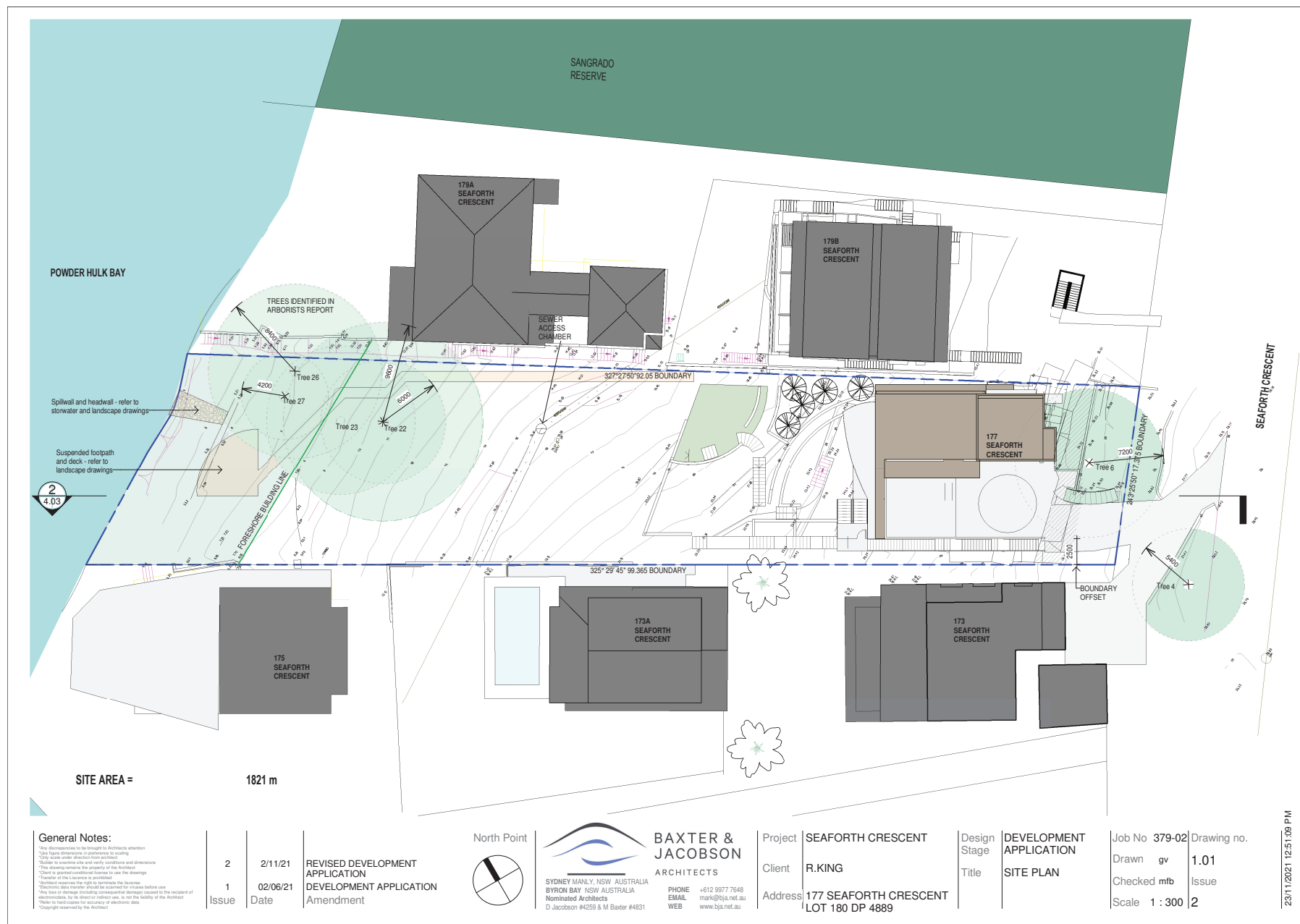
Reason: To ensure geotechnical risk is mitigated appropriately.

50. **Swimming Pool/Spa Motor Noise**

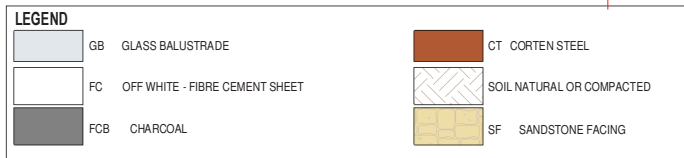
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

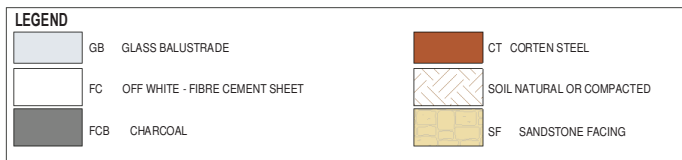
residential properties.







31-May-22 11:10:16 AM

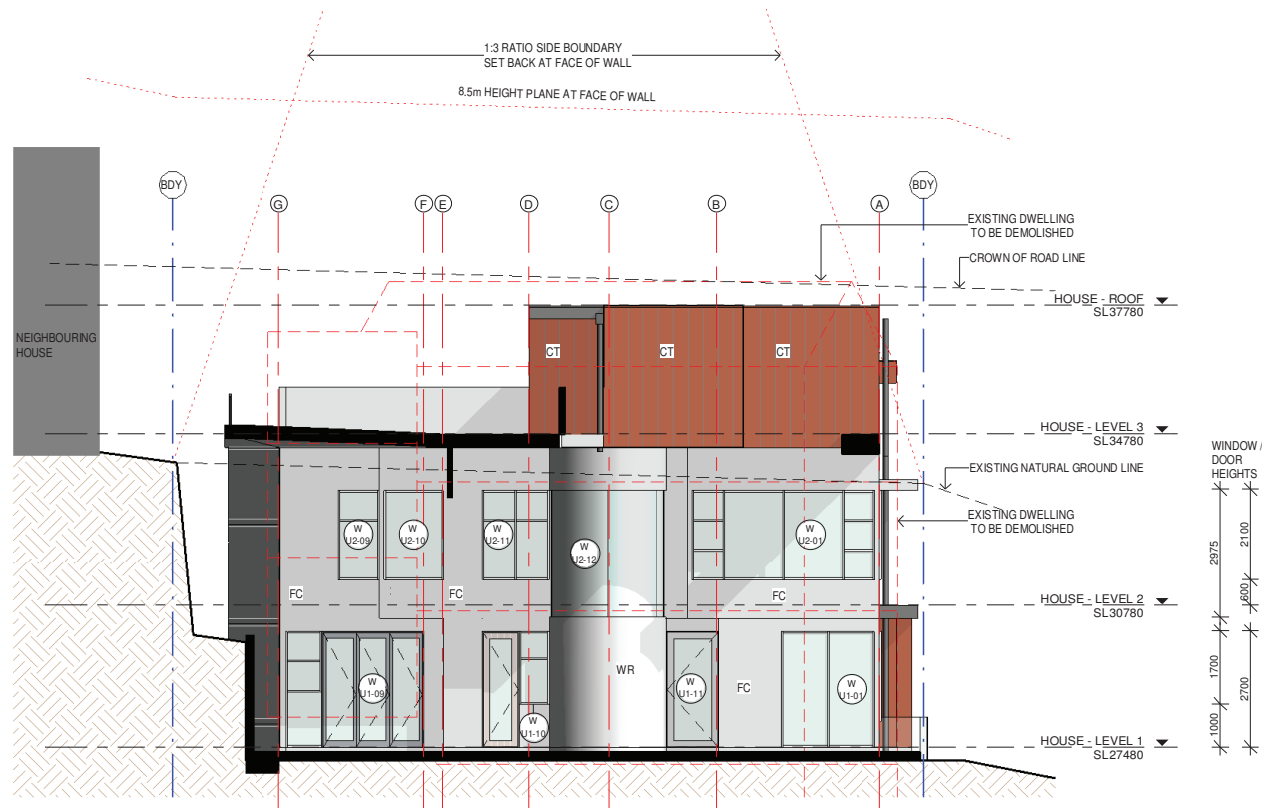


General Notes:				
*Any dimensions to be brought to Architects attention	4	30/05/22	ROOF LEVEL ADDED	
*Use these dimensions in preference to existing	3	19/05/22	REVISED D.A.	
*Only make under description alterations	4			
*Batten to square dimensions and with eavelets and dimensions	2	21/11/21	REVISED D.A.	
*This document remains the property of the Architect	1			
*Client is granted a conditional license to use drawings	2			
*Transfer of the License is prohibited	1			
*Architect reserves the right to terminate the license	2			
*Electronic data transfer should be secured for viruses before use				
*Any loss or damage (including consequential or incidental) caused by the recipient of the data is the responsibility of the recipient				
*Not to be relied upon for accuracy of electronic data				
	ISSUE	DATE	DEVELOPMENT APPLICATION	
			Amendment	



Project	SEAFORTH CRESCENT	Design Stage	DEVELOPMENT APPLICATION	Job No	379-02	Drawing no.
Client	R.KING	Title	HOUSE - SOUTH WEST ELEVATION	Drawn	MB	3.32
Address	177 SEAFORTH CRESCENT			Checked	DJ	Issue
				Scale	1 : 100	4

31-May-22 11:10:18 AM



LEGEND

GB	GLASS BALUSTRADE	CT	CORTEN STEEL
FC	OFF WHITE - FIBRE CEMENT SHEET	SF	SANDSTONE FACING
FCB	CHARCOAL		

General Notes:

*Any discrepancies to be brought to Architect's attention
 *See space dimensions in reference to scaling
 *Note shall under direction of architect
 *Builder to examine site and verify conditions and dimensions
 *The drawings remain the property of the Architect
 *Client is granted conditional license to use the drawings
 *Transfer of the license is prohibited
 *Architect reserves the right to terminate the license
 *Unauthorized disclosure shall be deemed to be a breach of the contract
 *Architect's liability is limited to the professional fee
 *Under no circumstances shall the Architect be held responsible for any loss or damage, by its direct or indirect use, in not the liability of the Architect
 *Under no circumstances shall the Architect be held responsible for any loss or damage, by its direct or indirect use, in not the liability of the Architect
 *Copyright reserved by the Architect

3	30/05/22	ROOF LEVEL ADDED
2	2/11/21	REVISED D.A.
1	02/06/21	DEVELOPMENT APPLICATION
Issue	Date	Amendment

BAXTER & JACOBSON
ARCHITECTS

SYDNEY MANLY, NSW AUSTRALIA
BYRON BAY, NSW AUSTRALIA
Nominated Architect D Jacobson #4259

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Project	SEAFORTH CRESCENT
Client	R.KING
Address	177 SEAFORTH CRESCENT

Design Stage	DEVELOPMENT APPLICATION
Title	HOUSE - SOUTH EAST ELEVATION

Job No	379-02	Drawing no.
Drawn	MB	3.33
Checked	DJ	Issue
Scale	1 : 100	3

31-May-22 11:10:19 AM



Manly Local Environmental Plan 2013 - Clause 4.6: Exception to Development Standards

Development Application for 177 Seaforth Crescent, Seaforth

The Development Application

This Request relates to a development application that seeks consent for demolition of existing buildings and structures on site and construction of a new dwelling house, with associated car parking and landscaping at 177 Seaforth Crescent, Seaforth (*the site*).

The Site

The site has a total area of 1,821m².

Figure 1: Site Location



Source: <https://developer.archistar.ai/>

The site is located in the E3 Environmental Management Zone, pursuant to cl. 2.2 of the Manly Local Environmental Plan 2013 (*LEP*) and the proposed use of *the site* for dwelling houses is permissible with development consent.

The development standard for height of buildings

The LEP map demonstrates that *the site* is affected by a maximum height of building standard of 8.5m. An extract of the map is shown below.

Head Office: Suite 404 | 203 - 233 New South Head Road | Edgecliff 2027

Parramatta Office: Suite 4103 | 11 Hassall Street | Parramatta 2150

Postal Address: PO Box 954 | Edgecliff 2027

02 9386 7000  www.hamptonspropertyservices.com

Hamptons Property Services Pty Ltd | ABN 66 141 622 433

Figure 2: Maximum Height of Building 8.5m



Source: <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>

Non-compliant section of the development

The non-compliances of the proposed development are demonstrated on the following drawings as follows:

Section A

- the building reaches a maximum height of 13.38m along Gridline 2, which predominately comprises the void space over the entry stair feature
- the habitable area of the dwelling, which is the music room reaches a maximum height of 12.33m, to the north of Gridline 3

Section B

- The building reaches a maximum height of 11.53m above the entry lobby (Gridline 3)

The building height complies with the development standard, as it aligns the southern property boundary.

The non-compliant section of the building, through to the Entry Lobby, is derived from the natural slope of the land, across the block. The non-compliance also derives from the need for suitable vehicular access to be provided into the site from Seaford Crescent, having regard to the levels from the street, into the site.

The purpose of this Request is to seek a variation to the development standard at cl. 4.3 of the LEP, relating to height of buildings, in accordance with cl. 4.6 and is to be read in conjunction with the Statement of Environmental Effects (**SEE**) accompanying the development application.

Is Clause 4.3 a development standard?

Clause 4.6 can only be used to vary a control that is a development standard. Development standards are relevantly defined in s1.4 of the EP & A Act as follows:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b)*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) – (o)*

Being a provision of the LEP in relation to the carrying out of development, under which a requirement is fixed in respect to the height of buildings, cl. 4.3 of the LEP is a development standard. Accordingly, clause 4.6 can be used to approve a variation of the standard.

As noted by the Chief Judge of the Land & Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [**Initial Action**], clause 4.6 is facultative in permitting a consent authority to grant consent for development even though that development would contravene a development standard imposed by an environmental planning instrument. However, clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Variation to development standards

Clause 4.6 of LEP provides, so far as relevant:

- (1) The objectives of this clause are as follows:*
 - (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other*



environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

These matters are addressed below.

That compliance with the development standard is unreasonable or unnecessary

The common approaches for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Randwick Council v Micaul Holdings Pty Ltd* [2017] NSWLEC 7 and, most recently, *Initial Action*, have confirmed that adopting the *Wehbe* principles remains an appropriate approach.

There are five alternatives set out in *Wehbe*, but only one need be satisfied as provided in the table below.

Table 3: The *Wehbe* Principles

The objective of the development standard is achieved notwithstanding non-compliance with the standard	In this case, the objective of the development standard is achieved, notwithstanding non-compliance with the standard.
The underlying objective or purpose of the development standard is not relevant	Not applicable
The underlying objective or purpose would be defeated or thwarted if compliance was required	Not applicable
The standard has been abandoned or destroyed	Not applicable
The zoning of the land was unreasonable or inappropriate such that the standards for the zoning are unreasonable or unnecessary.	Not applicable

Achievement of the objectives of the development standard

The objective for height of buildings is addressed below as it relates to the non-compliant parts of the building only.

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

With regard to the non-compliance, there is clear evidence of the fall of the land from the street, particularly at the south-western end of the allotment, such that a suitable physical relationship needs to be formed between the dwelling and the street, for vehicular access purposes, to enable a functional arrangement,



while also being responsive to the sharp fall in the topography of the land. This results in the need for balance having regard to strict compliance with the planning controls.

As is often the case with sloping sites, it is necessary for dwelling design to follow the topography of the land to ensure that compliance with the height standard is achieved; however, the practicalities of the design must also be considered such that this often alters the visual appearance and character of a locality, vis-à-vis a development standard, which is applied at a generic level and does not necessarily take account of site conditions which, in this case, reflect a site of significant fall from the front to the rear property boundary.

Further, in achieving adequate serviceability requires that the car parking structure and manoeuvring area are setback into the allotment so that adequate turning circles may be achieved, without compromising vehicular and pedestrian safety or the road network.

The recent matter before the NSW Land and Environment Court, being *SJD DB2 Pty Ltd v Woollahra Municipal Council* 2020 NSWLEC 1112 (***SJD***) establishes that character is not generated by generic planning standards that do not take account of particular site characteristics, but that the actual context of the site must also be considered. In ***SJD***, the proposed development sought for the erection of a building that derogated from the height and FSR controls pertaining to the allotment, similar to adjoining developments which had been approved.

Paragraphs 68-72 set out the parameters in which the context of ***the site***, as it goes to character, should be considered as follows:

The existing character is created by the buildings under construction to the east, the two-storey development to the west, together with, albeit to a lesser degree, the large buildings on the other side of Cross Street. The Site is perceived largely in its context on the southern side of Cross Street. I agree with Mr Lidis that the focus of the assessment of character is the more immediate context of the Site. Whilst the broader area of the Double Bay Centre can have some relevance, in the present circumstances, this portion of Cross Street is a well-defined component of the Centre, and has created its own character, a character which still forms part of the overall character of the Centre and is not an anathema to it.

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

The approved developments to the east are the driving force for development on the southern side of Cross Street. They are large and occupy in the order of half the relevant block. Those developments are obviously also the most proximate to the Site and set the built form context of the Site, together with the likely development to the west of the Site, which is shown on the image above. It is the



expectation of the experts that the site to the west will be redeveloped in due course, generally consistently with the controls to at least five storeys in height as distinct from its present two storeys.

*For these reasons I agree with Mr Lidis, as stated in the cl 4.6 objections, **that the approvals and buildings under construction to the east of the Site establish the desired future character of this part of Cross Street. Therefore, they set the desired future character for the purpose of the cl 4.6 objections.** It is worthy of note that those buildings are also consistent with the broader objectives for Cross Street in the DCP. They are referred to below.*

*The **design of the proposed development should sit comfortably with its neighbours to the east, and its neighbour to the west in order to meet the objective of the standards to be consistent with, and compatible with, the desired future character. The development on the Site is only perceived in that context.** It is not readily visible from any location other than within this block of Cross Street. Although one should not exclude from consideration in a more general sense the broader locality, it is here the immediate locality of this defined block on the southern side of Cross Street which is determinative of the preferred form of development for the Site.*

Taking the position in the above matter, the character of the locality must be considered in its immediate context and the design must fit comfortably with its neighbours to be consistent and compatible with the desired future character of the locality.

It is the Applicant's position that the DA, including the non-compliant aspect of the application, as it relates to building height, sits wholly within the confines of the above parameters.

The design outcome allows for the retention of the existing street tree as identified in the Arborist report, without providing parking structures that are hard up against the property boundary and otherwise inconsistent with the character of Seaforth Crescent in circumstances where the landform drops rapidly from the street frontage.

Therefore, in pushing the driveway further into the site and providing a turntable result in a far safer outcome for movement to and from the site, while responding to streetscape character, where it is undesirable that the Seaforth Crescent streetscape is dominated by vehicular entrances and exits. Instead, a minimalist approach has been derived for driveway composition, which retains the existing shared crossover, thus being consistent with the desired future character of the streetscape, particularly given Council's intent to ensure limited visibility of structures from Seaforth Crescent, which results in the car parking area being positioned into the site so as not to be visible from the crown of the road.

Therefore, despite non-compliance, the proposal strikes the balance of these aspects, between visibility and serviceability, despite resulting in non-compliance with the development standard for height.

In taking this approach from a design perspective also ensures the lack of visibility of built form from the street, such that the broader locality can be more easily appreciated, particularly the natural vegetation characteristics, again consistent with the objective.



In addition, if a garaging structure disconnected from the dwelling were required, direct from the street, vehicular manoeuvrability would be more restrictive and require reversing movements onto Seaforth Crescent, a situation which is more appropriately avoided as a result of the proposed design, despite non-compliance with the development standard.

The extent of geotechnical design and retaining structures that would be required to accommodate vehicular access further into the site would have adverse visual impacts when viewed from the foreshore, as well as the neighbouring properties to the east and west. Stability of the site would also be difficult and indeed the extent of excavation unnecessary, when an alternative and more practical solution is available.

If the non-compliant component of the building was moved closer to Seaforth Crescent, this would like result in increased shadow affectation to the neighbouring property to the south-west, particularly the upper floor windows.

Having regard to other adverse impacts that may result, the non-compliant component of the building height for the Upper House is considered the most appropriate and practical alternative.

In terms of the appearance from the foreshore, non-compliance with the height of building standards will have no impact on the appearance of the development from the foreshore, with the natural features, particularly relating to vegetation, being retained.

Aside from the character requirements contained in the zoning provisions, there are also those relevant to **the site** being located in an environmentally sensitive location in a foreshore area. These are contained in various planning instruments and may be summarised as follows:

- minimise the contrast between the built environment and the natural environment;
- maintain the visual dominance of the natural environment
- maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat
- not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas
- locate rooflines below the tree canopy
- consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features
- impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore
- measures to protect and improve scenic qualities of the coastline



- suitability of development given its type, location and design and its relationship with and impact on the foreshore,
- to preserve and enhance the amenity of areas visible from navigable water around Manly.

Cumulatively, these provisions seek to ensure that the natural environment is preserved and is the dominant visual element along the foreshore area. The extent of vegetation that is to be retained will remain the dominant visual element within the foreshore and the non-compliant height will have no bearing on the preservation of this.

The predominant area of non-compliance is confined to the Entry Lobby and Music Room which sit within the principal form of the dwelling and are representative of a high-quality design outcome that allows for a connection with the parking attached to the dwelling. The form of these is measured with a more light-weight appearance to modulate the façade above the height permitted, to ensure that the expression of this is not dominating of the visual landscape, particularly as it is dominated by more natural landscape characteristics.

In addition, when the development is viewed from the streetscape the presentation will be such that both the natural landscape and a traditional allotment presentation will be the only evidence of the development, which is below the crown of the street and indeed lower than the ridge height of the existing dwelling, despite the proposal being non-compliant.

These outcomes demonstrate that, regardless of the height of the buildings, the capacity of each allotment is such that the character of the locality will be entirely preserved and consistent with the character that is derived along this section of the foreshore of Seaforth.

Objective (b): to control the bulk and scale of buildings

The design of the proposed building form follows the topographical characteristics of the development, while being responsive to its streetscape, such that it sits below the crown of the roadway. In doing so, the non-compliant component of the building height is not visible from this location.

From the waterway frontage, the non-compliant component of the building height sits within the topography that is created by the cliff face at the front of the site and within the confines of the scale of development on the adjacent lots. This provides a consistent approach to bulk and scale, particularly at the upper section of the foreshore that is adjacent Seaforth Crescent.

The predominant area of non-compliance is confined to the Entry Lobby and Music Room which sit within the principal form of the dwelling and are representative of a high-quality design outcome that allows for a connection with the parking attached to the dwelling. The form of these is measured with a more light-



weight appearance to modulate the façade above the height permitted, to ensure that the expression of this is not dominating of the visual landscape, particularly as it is dominated by more natural landscape characteristics.

The non-compliant component of the dwelling sits comfortably below the adjoining property to the south-west such that the bulk and scale is not dominant, nor overbearing, when viewed from that adjoining property.

Objective (c): to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

The proposed development does not compromise any such views.

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

A detailed view sharing analysis has been prepared in the SEE and is provided below.

The location of the site means that the allotment benefits from highly valued views to the waterway located to the north-west of the site, known as Powder Hulk Bay. This view is similarly enjoyed from neighbouring properties to the north-east and north-west of the site, who also have the benefit of a view towards the waterway, in a north-westerly direction.

Given the undeveloped nature of the subject site, views are enjoyed across allotment boundaries from the adjoining properties to the north-west of the site, providing additional views. However, the most dominant view is that relied upon directly in front of each of the allotments, towards Powder Hulk Bay. A summary of the primary and secondary views from the adjoining properties is provided in the figure below.

View Impacts

The position of the proposed dwelling on the site is set back behind the building forms on the adjacent allotments such that there would be limited, if any, impact on the view enjoyed from the neighbouring property.

There is no impact on 179A Seaforth Crescent as this sits forward of the proposed development.

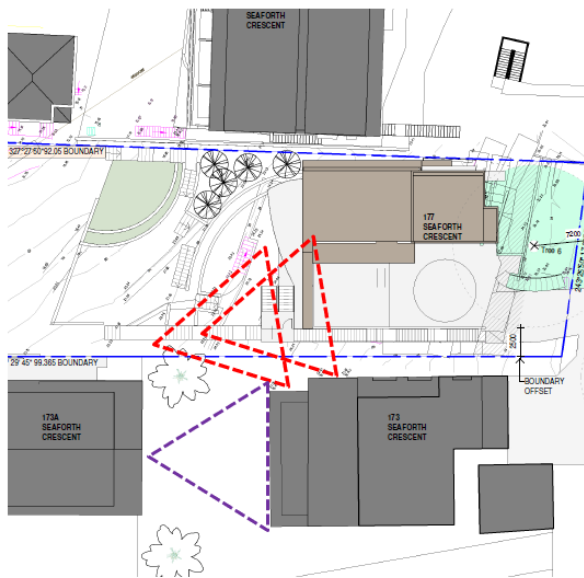
173 Seaforth Crescent, located to the south-west of the site sits in the same position, and forward of, the proposed development. There are a series of openings along the north-eastern façade of 173 as shown in the photograph below.



Figure 3: North-eastern elevation of dwelling at 173 Seaforth Crescent, as it interfaces with the site (Source: Baxter Jacobson Architects)



Figure 4: Primary and secondary view corridors for adjoining allotments



The above demonstrates that:



- the primary view is on the north-western side of the building both from the balcony and the habitable rooms otherwise attached to these, looking directly north-west and are not obstructed by the proposed development
- from the games room there is no opening which enables a side view across the subject site
- at the first floor, the view from the dining room is across a side boundary; however, this room also has a direct view north-west, towards Powder Hulk Bay, such that the proposed development does not compromise the primary view
- standing on the balcony adjacent the dining room, or the dining room itself, and looking across the side boundary, in a standing position, this would be at RL 36.11; the height of the balustrade of the proposed development on the third floor is positioned at RL 35.78, which is lower than when in a standing position on the adjoining property

The proposed development will therefore have no adverse impact on the view enjoyed from the first and second floor of the neighbouring property at 173 Seaforth Crescent.

View Sharing Analysis

The NSW Land & Environment Court provides a series of planning principles that are often used to assess development applications. In the case of view sharing from between private properties, the relevant case is *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29. An assessment of these principles is provided below having regard to the view sharing available from 173 Seaforth Crescent. As demonstrated previously, the view enjoyed from all other properties surrounding the site is sufficiently shared as a result of the skilful design of the proposed development.

Table 1: View sharing analysis

STEP/PRINCIPLE	ASSESSMENT OF PROPOSED DEVELOPMENT
<i>26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.</i>	The view to be affected is a water view directed towards Powder Hulk Bay. There is, however, no iconic view. The view is a partial view that is obscured by dense planting aligning the foreshore area of the subject site.
<i>27 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.</i>	The view is across a side boundary; the principle view from 173 Seaforth Crescent is not affected by the proposed development. The view has been assessed in a standing position from the ground, first and second floor of 173 Seaforth Crescent, and from both the

STEP/PRINCIPLE	ASSESSMENT OF PROPOSED DEVELOPMENT
<i>Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic</i>	balcony and internal associated spaces as shown at Figure 3.
<i>28 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.</i>	In this case, the view is impacted from principle living areas, being a dining room and a bedroom, as well as from a balcony. As demonstrated in Figure 2, above, there is no impact on this secondary view from a standing position as the height of the wall enclosing the roof slab is below standard eye height when standing in 173 Seaforth Crescent at the first floor. As such, there is no impact on the view from the secondary dining window, the adjacent balcony, or from the bedroom above.
<i>29 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.</i>	Despite non-compliance with the development standard for height, there is no impact on the view that is enjoyed from the aforementioned vantage points. Therefore, the design of the proposed development is considered reasonable and changes to the design are not warranted given the lack of impact which results from the proposed design.

The proposal therefore comfortably achieves the planning principle relating to view sharing and does not compromise views from nearby residential development to public space, such as the harbour or foreshore as a result of the proposed development.

(iii) views between public spaces (including the harbour and foreshores).

The proposed development does not have any public spaces in between that would compromise the view corridor from Seaforth Crescent to Powder Hulk Bay and vice versa.

Objective (d): to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

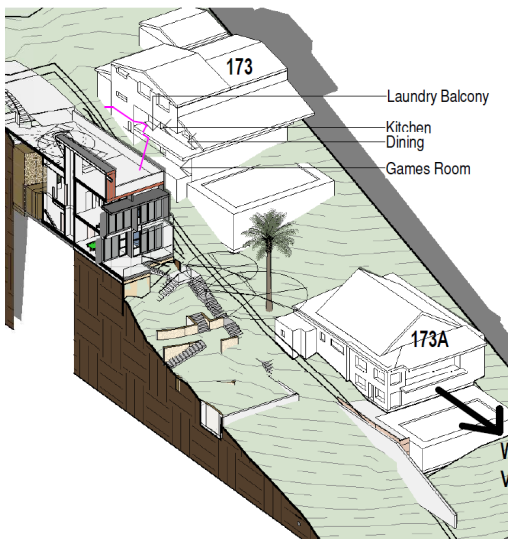


In terms of the impact of the proposed development on neighbouring properties, the affected dwelling is 173 Seaforth Crescent. The shadow diagrams demonstrate the following:

- at 9am, the adjoining dwelling will have its solar access increased to a lower ground floor window, with only a minor encroachment to the window that encloses the games room;



- at 10am, the impact caused by the existing dwelling on the neighbouring property is removed as a result of the proposed dwelling setback, at 2.5m, thus resulting in a nett improvement over the existing situation.



The proposal therefore provides sufficient solar access to neighbouring properties, whereby, the design maximises solar access to both internal and external living spaces for the subject development as well as the adjoining development. The design outcomes are also acceptable having regard to the zone, orientation and

topography of the site. The impacts are no more than those that would ordinarily flow from urban infill development and achieve the intentions of objective (d).

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

As demonstrated previously, the non-compliant height of the proposed development has no impact on the natural vegetation and improves the topographical outcomes that may be otherwise derived for the site, if an alternative design solution, particularly relating to driveway access, was implemented.

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

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

As Preston CJ explains in *Wehbe*:

“.. the focus of clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. Second the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under clause 4.6(a)(i) that the written request has adequately addressed the matter.”

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

- The proposal satisfies the objectives of the E3 Environmental Management zone and the objectives of the development standard for height of buildings.
- **The site** is opportune for its purpose, having regard to its context, such as to provide a small proportion of new residential accommodation within the locality, that is subsequently able to utilise existing facilities and services within the precinct, without placing undue pressure on existing infrastructure.
- Regardless of the development standard, the design of the proposed dwelling is entirely consistent with the character of the locality along the foreshore.
- The proposed dwelling design will not compromise the visual catchment of the foreshore area, and its associated natural setting, as a result of retaining the vegetation that is characteristic of the natural



foreshore setting, thus preserving the public interest, when considering the proposed built form from the waterway.

- The dwelling design, and particularly the non-compliant component thereof, will not have any adverse impact from the streetscape of Seaforth Crescent, instead providing a more refined approach to the composition to the streetscape, without dominating this with car parking structures, such that there would be limited, if any, visual intrusion imposed on the public domain as a result of this proposed dwelling.
- The dwelling design has an increased setback distance and lower proportion of building form to the interface with the south-western neighbour to maximise solar access to the adjoining property.
- The proposed building height will not compromise views from the public domain.

Strict compliance with the development standard for height would likely result in a disconnect between car parking structures and the dwelling itself, or otherwise result in the need for extensive excavation and/or additional built form, to achieve the desired levels as set out in the development standards. On balance, it is considered that the design outcome is responsive to the streetscape and environmental conditions, despite being non-compliant with the development standard. Further, the modulation provided to the design ensures that the non-compliant section of the building is recessive in materials and complements the balance of the dwelling design, without appearing as a solid or bulky element when viewed from the rear elevation.

The Public Interest

Clause 4.6(4) states as follows:

- (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*

The fourth element that the consent authority needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the standard's and zone's objectives. The former is addressed previously and the latter below.



Zone Objective	Comment
To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.	The proposed development retains the essential ecological, scientific and cultural values. The bulk and scale of the proposed dwelling is appropriate to the site and remains consistent with the overall architectural design within the locality.
To provide for a limited range of development that does not have an adverse effect on those values.	The proposal is for construction of one dwelling which will be suitably landscaped, complementing the vegetation that will be retained on the site. The proposal ensures the bulk and scale of the dwellings is not overbearing for the site, maintaining the amenity for the existing residents, while retaining the natural, cultural and ecological values of the locality.
To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.	The proposed dwelling avoids a stand of <i>Angophora costata</i> and a <i>Casuarina glauca</i> , which are deemed significant in terms of the natural scenic qualities that they provide to the foreshore. The proposal also retains and minimises disturbance to the <i>Araucaria heterophylla</i> at the top of the site which has been deemed significant. Works will take place in accordance with the directions provided in the Arboricultural Impact Appraisal and Method Statement to ensure their preservation. The design of the dwelling is sensitively positioned having regard to the existing cliff face which is incorporated into the design of the dwelling, again to reflect the natural scenic quality of the foreshore area. From a streetscape perspective, again existing vegetation is preserved to ensure the preservation of the tree canopy at the interface. The design of the dwelling allows for extensive open space and landscaping opportunities to provide an adequate balance of built-form to open space ratio.
To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.	As set out previously, a significant amount of existing vegetation on the site will be retained to ensure that the proposal does not have a negative impact on the foreshore, nor the appearance of the bushland character that this site presents, as well as retaining its existing appearance to the streetscape. Of those trees to be removed, the design has been limited to ensure that this occurs on a minimal basis.
To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.	The proposal includes an extensive bush regeneration area along the foreshore frontage and retention of significant trees along this in accordance with the Arborist's Assessment. This ensures that the impact of built form on the foreshore area is minimised. Additionally, the proposal does not lead to pollutants in

Zone Objective	Comment
	stormwater runoff or cause damage to the ecological characteristics of the locality, as the stormwater will be collected from both the proposed driveway and roof surfaces.
To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.	The height, bulk and scale of the proposed development is appropriate to the site and the overall context of the neighbourhood. The site is surrounded by residential developments of similar bulk and scale situated on a steep slope of land such that each dwelling located is able to take advantage of the views offered towards Powder Hulk Bay. The proposal does not lead to negative impacts on the adjoining dwellings, despite non-compliance with the development standard for height of buildings on the north-eastern side of the site. The position of the building form, and particularly that it is compliant on the southern side of the site, ensures minimal overshadowing of structures on adjoining properties, allowing retention of adequate sunlight to living rooms and open space.

As demonstrated, the proposed development will comprehensively meet the objectives of the development standards for height of buildings and the zone objectives for the zone.

Accordingly, the consent authority can be satisfied that it is in the public interest to vary the standard for the purpose of this development application. The implementation of the development, despite non-compliance, will ensure that existing resources are utilized without placing undue pressure on the surrounding environment, both natural and built, while complying with the relevant objectives and producing a better outcome for the development, due to its own site constraints.

The flexibility enabled by clause 4.6 will, in this case, produce a better environmental planning outcome than would result from strict compliance.

Secretary's concurrence

By Planning Circular dated 21 February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume concurrence to clause 4.6 requests except in the circumstances set out below:

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



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

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

Conclusion

The development application for the site does not comply with the development standard contained at clause 4.3 of the LEP. However, the proposal achieves the requirements pertaining to clause 4.6 of the LEP, which allows for development standards to be varied.

Accepting the control for height of buildings as a development standard, the component of the building that exceeds the height control provides a superior outcome for the site that is enunciated through a skilful and quality design that is consistent with the objectives of the standards and the zone objectives. Further, it reduces unnecessary excavation and additional building form that would otherwise be required to connect car parking with the dwelling proper, while ensuring that there is a positive outcome in streetscape terms. As such, it satisfies the public interest by deviating from the development standards.

The variation to the development standards should therefore be supported by the consent authority in the circumstances of the case.



ITEM 4.2

**DA2021/1506 - LOT 2506/ BUNDALEER, BELROSE -
CONSTRUCTION OF A NEW BOARDING HOUSE, INCLUDING
ALTERATIONS AND ADDITIONS TO AN EXISTING
BOARDING HOUSE.**

AUTHORISING MANAGER Steve Findlay

TRIM FILE REF 2022/341570

ATTACHMENTS

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

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

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/1506 for construction of a new boarding house, including alterations and additions to an existing boarding house at Lot 2506 DP 752038, Lot 2506/ Bundaleer Street BELROSE, for the reasons for refusal set out in the Assessment Report.



DEVELOPMENT ASSESSMENT REPORT

Application Number:	DA2021/1506
Responsible Officer:	Adam Susko – Principal Planner
Land to be developed (Address):	Lot 2506 DP 752038 Lot 2506/ Bundaleer Street BELROSE
Proposed Development:	Construction of a new boarding house, including alterations and additions to an existing boarding house
Locality:	Warringah LEP 2000 – C8 Belrose North
Category:	Category 2
Referred to DDP:	No
Referral to NBLPP:	Yes
Land and Environment Court Action:	No
Owner:	P L Wu
Applicant:	Vigor Master
Application Lodged:	30 August 2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – new multi-unit
Notified:	10/09/2021 to 24/09/2021
Advertised:	10/09/2021
Submissions Received:	6
Clause 20 Variation:	Housing Density
Recommendation:	REFUSAL
Estimated Cost of Works:	\$5,224,408.00

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1 Belgrave Street
Manly NSW 2095

Avalon Office:
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Avalon Beach NSW 2107

EXECUTIVE SUMMARY

The Development Application (DA) seeks consent for the construction of a new boarding house and alterations and additions to an existing boarding house on the same site.

The site falls within C8 Belrose North Locality in the 'Deferred Lands' pursuant to the Warringah Local Environmental Plan 2000 and is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposal seeks to vary the housing density development standard by more than 10%.

The public exhibition of the DA attracted six (6) submissions objecting to the proposal on the grounds of overdevelopment and impacts on the native landscape. The development, for a 31 room (plus manager's room) boarding house, in conjunction with the existing 35 room (plus manager's room) boarding house results in the site having the capability of accommodating up to 104 persons at any one time. This number significantly exceeds the housing density development standard of one dwelling per 20ha. The site is 1.64 ha and WLEP 2000 makes provision for one dwelling on the parcel.

The application is devoid of any comprehensive environmental assessment which analyses the vegetative impacts of the proposal against any mitigation measures.

On balance, the two primary grounds of objection are concurred with, and the refusal of the application is recommended partly on this basis. The proposal is a gross overdevelopment of the site by virtue of the excessive density and the impact on bushland is unacceptable.

The proposal displays little architectural merit, being almost a replica of the existing building on the site.

Council provided the applicant with the opportunity to address its concerns or to withdraw the application. The applicant did not address any of the concerns raised, and instead submitted a revised set of drawings which, in summary, only changed the internal layout of the building, added balconies to each room and changed the colour of the building.

This report considers that the site is already developed to its maximum capacity based on the planning controls and the impact on the environmental features of the site and that any further built form or vegetative impacts are unsatisfactory and not supported.

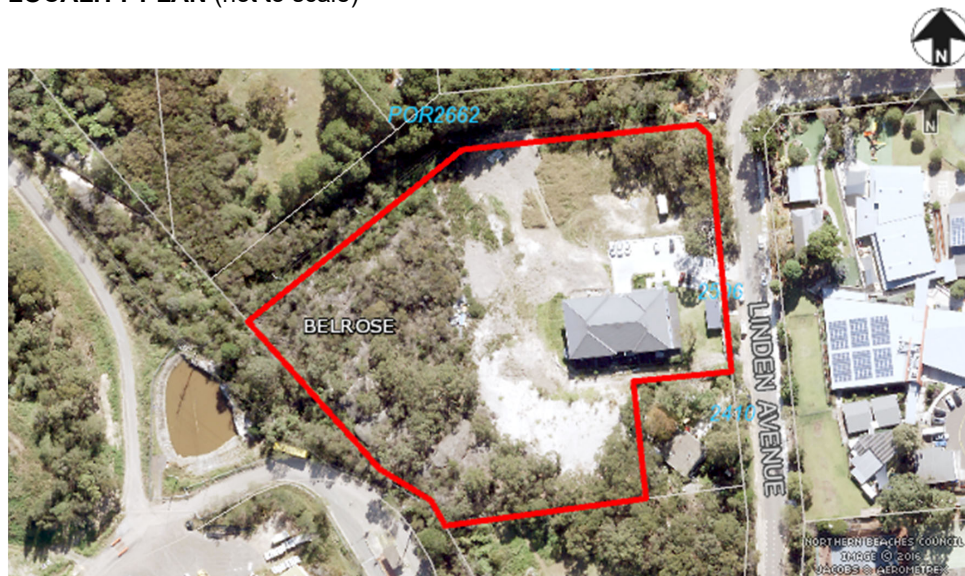
On that basis this report concludes with a recommendation that the NBLPP should **REFUSE** the Development Application.

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;
- Six (6) submissions were received in response to the exhibition of 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.

LOCALITY PLAN (not to scale)



SITE DESCRIPTION

The subject site is known as Lot 2506 Bundaleer Street, Belrose and falls within the C8 Belrose North Locality pursuant to the Warringah Local Environmental Plan 2000.

The site is a corner lot bound by Linden Avenue to the east and Bundaleer Street to the north. The site has a surveyed area of 16,410.8sqm.

Access to the site is from a formed driveway to Linden Avenue. Bundaleer Street (to the north) is an unmade Crown road that does not appear to be maintained (overgrown and gated).

The site presently accommodates a two-storey boarding house over one level of partial basement car parking with further at-grade car parking provided in a forecourt area. The boarding house has 35 rooms + a manager's room with an overall capacity of 72 persons.

As evident on site and from aerial images (as above), the eastern half of the site has largely been cleared of vegetation except for a patch of trees in the north-eastern corner. The western half of the site is bushland.

Immediately behind the subject site to the west is the former Belrose Landfill site (formally known as the Belrose Waste Management Centre) which ceased operations in 2014 and now accommodates a mountain bike complex. This 35ha site is almost entirely covered (below surface) with landfill.

SITE HISTORY

The site presently accommodates a part two/part three storey boarding house development with 35 rooms which has been the subject of a long development history. The relevant application history is summarised below:

- **DA2009/1024** for the construction of a two-storey dwelling house, approved March 2010. This dwelling had dimensions similar to that proposed (approved measured 19.8m x 29.88m).
- **DA2013/0587** for the construction of a 31 room + managers room boarding house, approved December 2013. The boarding house was externally identical to the approved dwelling house (approved under DA2009/1024) but now included at-grade car parking.
- **DA2014/1177** for the construction of a 45-room boarding house + managers room over one level of basement car parking, refused May 2015. That boarding house retained the shape and size of the approved boarding house, with a two-storey outrigger element projecting to the rear.
- **MOD2015/0160** to add a single level of basement car parking to the boarding house approved under DA2013/0587 with associated at-grade works and enlargement of the building, approved December 2015.

- **MOD2017/0162** to convert basement storage into four additional boarding rooms, refused on 12 February 2018 but subsequently overturned through Section 34 proceedings by the Land and Environment Court on 06 August 2018. Through the 34 conciliation it was agreed to delete the kitchens from the subject four rooms and to provide internal access to them.
- **MOD2019/0226** to install kitchens to the four basement rooms, refused 01 August 2019. Overturned and approved by LEC (appeal no. 19/242258) on 03 September 2020.

The boarding house approved under DA2013/0587 is constructed and has been operating for several years. The subsequently approved Modification for four additional basement rooms has been enacted and completed.

PROPOSED DEVELOPMENT

Development Consent is sought for the construction of a two-storey boarding house over a single level of basement car parking to be operated in conjunction with the existing boarding house on the site.

The key elements of the development are:

- 31 x single occupancy boarding rooms (including one accessible room).
- One x manager's room.
- Two x communal kitchens.
- Two x communal dining areas.
- One x communal laundry.
- 17 x car parking spaces.
- Seven x motorcycle spaces.
- Seven x bicycle spaces.

The proposal requires the existing driveway to be lengthened to provide vehicular access to the new basement level.

The Landscape Plan requires the removal of 11 trees. The Flora and Fauna Impact Assessment proposes vegetation removal "of about 0.27ha of native vegetation and 0.033ha of non-native vegetation", however the extent of this removal is not indicated on any plans.

The application also seeks to remove one kitchen from a boarding room in the existing boarding house.

AMENDMENTS TO THE SUBJECT APPLICATION

Council wrote to the applicant on 7 December 2021, requesting that the development application be withdrawn as it could not be supported.

In that request, Council raised concern with the absence of details in relation to tree removal, the significant volume of excavation and the already degraded state of the

land that would only be worsened by the proposed development. These factors were not considered to be consistent with the Desired Future Character (DFC) of the C8 Belrose North Locality.

The concerns also detailed that the construction of a proposed second boarding house on the site, which already accommodates a large boarding house, is not reflective of a *low intensity, low impact use*.

Council's Design and Sustainability Advisory Panel (DSAP) reviewed the proposal on 28 October 2021 and concluded that:

"The shape, materiality and form of the existing building fails to respond to its context or to the planning objectives for the area. Rather than 'establishing a precedent' in the Panel's view the very poor design of the existing building should not be repeated."

Further to those above issues, the following internal departments of Council raised issues with various elements of the proposal:

- Environmental Health (unsewered lands)
- Bushland and Biodiversity
- Development Engineering
- Traffic Engineering
- Water Management
- Waste Officer

In response to all the above concerns raised by Council, the applicant submitted only a revised set of drawings, which added balconies to the boarding rooms and added colour gestures to the façades of the building.

Given the minimal changes to the proposed development provided by the amended plans, they were not renotified to adjoining neighbours and revised comments from Council's experts were not required.

STATUTORY CONTROLS

- Environmental Planning and Assessment Act 1979 (EPA Act 1979);
- Environmental Planning and Assessment Regulations 2000;
- State Environmental Planning Policy No 55 - Remediation of Land;
- State Environmental Planning Policy (Infrastructure) 2007; and
- Warringah Local Environmental Plan 2000.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, and the Northern Beaches Community Participation Plan.

The public exhibition occurred between 10th and 24th September 2021 and the application was advertised on 10th September 2021 and a notice was placed on the site.

As a result of the public exhibition, Council received six (6) submissions objecting to the development application and raising the following concerns:

- **Boarding Houses in the Deferred Lands and applicability of SEPP ARH**
Submissions received note that there are several current / proposed boarding houses within the area identified as the Deferred Lands and note that the SEPP Affordable Rental Housing 2009 (SEPP ARH) does not apply to the land.

Council is aware that the SEPP ARH does not apply to the land, as detailed later in this report. Boarding houses are a Category 2 Land Use and are permitted in the C8 Belrose North locality. The fact that a boarding house already exists in the locality is not relevant to this application, however the fact that a boarding house already exists on the subject site, does hold relevance to this assessment as detailed later.

- **Low Impact / Low Intensity development**
A requirement of the Desired Future Character statement for the C8 Locality is that development should be limited to low intensity, low impacts uses. This matter is assessed in detail later in this report but in summary, the proposal development on the site is found to not constitute a low intensity, low impact uses, and this forms a reason for refusal of the application.
- **Building Character, Compliance and Built Form**
Submissions received state that the proposal is incongruous with the existing character of the area and, combined with the existing boarding house on site, results in an unacceptable built form and character. Concern is also raised regarding the proposed colours of the building, and the level of internal amenity afforded to future occupants.

These matters are all considered in detail under the General Principles of Development Control section of this report, and the concerns raised warrant the refusal of the application for the reasons detailed later in this report.

- **Availability of Infrastructure**
Concern is raised in submissions received that the development has inadequate access to parking, public transport, and sewerage infrastructure. These matters are discussed in detail later in this report.

In summary the provision of car parking and level of accessibility to public transport is considered acceptable, however the proposed sewerage treatment is not and forms a reason for refusal.

- **Land Clearing, Landscaping, and Impacts on Biodiversity**
Submissions received note that the land was significantly cleared in previous years and has never been properly rehabilitated. Concern is raised that this

development would result in further impacts to any remnant vegetation and biodiversity on the site and surrounding lands.

Council concurs with the concerns raised and this forms a reason for refusal.

- **Increased Bushfire Risk**

A submission received notes that the proposal may increase bushfire risk for neighbours and future occupants. The application is supported by the NSW Rural Fire Services subject to conditions.

REFERRALS

External Referrals

External Referral Body	Comments
Ausgrid	Supported, no conditions The proposal was referred to Ausgrid who raised no objections to the proposal and recommended no conditions.
Aboriginal Heritage Office	Supported, with conditions <i>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.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i> <i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural 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.</i>
NSW Rural Fire Service	Supported, with conditions The application was referred to the NSW Rural Fire Service who raised no objections to the proposal, subject to conditions including the establishment an inner protection zone for the area around the property as follows: • North & northwest for a distance of 31 metres; • West & southwest for a distance of 31metres; and • South & southwest for a distance of 24 metres.

Internal Referrals

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	Not supported [Extracts only copied below, full response available on website] <i>The design is wholly unsuited to its immediate site and context. The fact that there is an almost identical building constructed adjacent to the site further renders this project as an unsuitable building in this semi-rural setting.</i> <i>The shape, materiality and form of the existing building fails to respond to its context or to the planning objectives for the area.</i> <i>Rather than 'establishing a precedent' in the Panel's view the very poor design of the existing building should not be repeated.</i> <i>The proposal involves significant disturbance of the site. The basement requires significant excavation and from the obvious land clearing which has occurred on this site previously it clearly does not protect or enhance the natural vegetation and/or landform and resulting development could not be considered to have low impact or low intensity use.</i> <i>The proposal comprises two almost identical buildings which are significantly larger than the anticipated residential buildings in the area.</i> <i>The built form presents as monolithic and relentless. This is exacerbated by the similarity of the approved adjacent building. The building does not relate to the surroundings, in form, articulation or scale, in particular:</i> <i>The form, articulation, siting, orientation, and colour do not relate in any way to the site or surrounds;</i> <i>The building does not allow for balconies or outdoor space for the residents;</i> <i>The scale of the project (i.e. the facsimile of the design of the adjacent buildings) is oversized as compared with the surrounding residential buildings.</i> <i>Kitchens have not been provisioned for within accommodation rooms, meaning residents do not have the option of preparing food autonomously and cannot opt out of social interaction.</i> <i>The Panel is aware that the principal reason for not</i>

Internal Referral Body	Comments
	<i>providing individual kitchens is to circumvent the planning control that limit the density of 'dwellings'.</i> <i>This may be acceptable if adequate communal kitchen facilities were provided, however, only 1 small kitchen has been provided, with no provision for communal refrigeration. The Panel consider this a serious flaw of the design and one that would likely be the cause of social, wellbeing, health and safety issues if it were to proceed. In this respect, the design is not functional and would require significant amendment to meet an acceptable level of amenity. In other words, the current scheme is not realistic.</i> • <i>In addition to this there are further significant amenity deficiencies with the scheme:</i> - <i>The rooms are accessed from a double-loaded corridor with no light or ventilation;</i> - <i>There is no provision for natural cross ventilation to the rooms;</i> - <i>There is no sun shading provided;</i> - <i>There is no outdoor recreational space provided.</i> • <i>Facade treatments including fenestration elements are highly repetitive and in conjunction with massing and landscape treatments, contribute to a contiguous, monolithic appearance to the built form.</i> <i>The design does not appear to relate to the site's unique characteristics. There has been no attempt to modulate or articulate the built form or to provide any variation in the facade that might respond to the bushland setting/</i> <u><i>Conclusion</i></u> <i>The Panel does not support the proposal and advises that in its view the proposal is in no way consistent with the desired future character.</i> <i>The Panel notes the degree of impacts the existing development on the landscape including landforms and vegetation that would only be made worse by the proposal.</i> <i>It is the Panel's view that no additional structure should be added to the site</i> <i>The Panel advises that this is not related to the building typology that would be permissible, but to the impacts due</i>

Internal Referral Body	Comments
	to the site's topography existing vegetation, natural features and context. The Panel also notes the inadequacy of the kitchen arrangements, which appear to be solely focused on circumventing the density controls, and the poor social outcomes that will result. To be clear; given the impacts of the existing building on the site, NO additional structure should be envisaged. Instead, every effort should be made to restore the degraded site and increases indigenous vegetation and improve the amenity of the site facilities for existing residents.
Environmental Health (Contaminated Lands)	Supported, without conditions Environmental Health (Contaminated Lands) reviewed the available information, including the environmental site assessment from DA2013/0587, and have no objections to the proposal. The site was undeveloped until a boarding house was built, and therefore the likelihood of contamination since is very low.
Environmental Health (Industrial)	Supported, with conditions Given the current use of the site, Environmental Health (Industrial) view the impact on surrounding amenity to be minimal with regard to the nuisance aspects under the Protection of Environment Operations Act 1997. As an extension of its current use, no objections are raised to the proposal.
Environmental Health (unsewered lands)	Not Supported Effluent from the boarding house, in combination with the existing boarding house is estimated to be more than 80% of the total capacity of the inground tank. Health has queries regarding the potential failure of the pump and subsequent overflow of the tank, and the capacity for the Sydney Water pressurised line to cope with 10,860L per day.
Landscape Officer	Not Supported The development application is for the construction of additional two-storey boarding house accommodating thirty-one (31) boarding rooms, manager's apartment, communal areas, communal open space area with associated basement car park, clearing of vegetation, and landscaping. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2000 deferred land clauses 12 (3)(b); 13; 52; 56; 58; 63 and 66, and the Locality Statement C8 Belrose North, and the State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3 Boarding Houses.

Internal Referral Body	Comments
	<i>A Landscape Plan is provided with the development application, and a total of seven (7) native canopy trees are proposed around the development, and minimal other planting such as small trees, shrubs and groundcovers typical of the bushland setting. It is considered inadequate landscape treatment is provided to satisfy clause 63 Landscaped open space of Warringah Local Environmental Plan 2000, and satisfy the desired future character under Locality Statement C8 Belrose North, including smaller trees and understorey vegetation to maintain and enhance the desired future character of the locality; enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale; and enable the establishment of indigenous vegetation and habitat for native fauna.</i> <i>An Amended Landscape Plan is required to demonstrate enhancement of the landscape outcomes with additional locally native tree, shrub, and groundcover planting to reduce the built form and provide a development that is enhanced by a landscape setting.</i> <i>The development footprint is substantially upon cleared land. Eleven (11) trees are shown for removal in the Landscape Plan amongst the native bushland vegetation area. All but three (3) are clear of development impacts, and based on the Flora and Fauna Impact Assessment, removal is required for the required Asset Protection Zone.</i> <i>The Flora and Fauna Impact Assessment proposes vegetation removal of "about 0.27ha of native vegetation and 0.033ha of non-native vegetation", however the spatial extent of this is not indicated on any plans and this information is required to be documented to ensure no additional vegetation is ultimately cleared.</i> <i>To protect other existing trees not required for removal, documentation is also to be provided that clearly illustrates which existing trees are to be removed by reference to tree number IDs on plans and by tag numbering on site, and additionally the documents shall show existing trees to be retained.</i> <i>Until the additional information referenced above is provided, Landscape Referral are unable to continue assessment and the current proposal does not meet the landscape outcomes of the relevant Warringah Local Environmental Plan 2000 clauses 12 (3)(b), 13, 52, 56, 58, 63 and 66; the Locality Statement C8 Belrose North, and the State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3 Boarding Houses.</i>

Internal Referral Body	Comments
	<i>The landscape outcomes under Warringah Local Environmental Plan 2000 are considered in the assessment of the development proposal, including:</i> <i>• clause 12 (3)(b): development is consistent with the desired future character described in the relevant Locality Statement.</i> <i>• clause 13: the provisions of a Locality Statement be considered as specifically described in the Locality Statement for the locality in which the development is proposed.</i> <i>• clause 52: development adjacent to bushland reserves is to complement the landscape character and public use and enjoyment of that land.</i> <i>• clause 56: development to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land.</i> <i>• clause 58: development to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</i> <i>• clause 63: requires development proposals to enable the establishment of appropriate plantings to maintain and enhance the streetscape and the desired future character of the locality; enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale; enhance privacy between dwelling; enable the establishment of indigenous vegetation and habitat for native fauna, and conserve significant features of the site. amongst other objectives.</i> <i>• clause 66: buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, and in particular appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</i> <i>Under the Locality Statement C8 Belrose North of the Warringah Local Environmental Plan 2000, the following considerations are assessed:</i> <i>• Desired Future Character: The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape.</i> <i>• Front building setback: The minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences.</i> <i>• Rear and side building setback: The minimum rear and side</i>

Internal Referral Body	Comments
	building setback is 10 metres. The rear and side setback areas are to be landscaped and free of any structures, carparking or site facilities other than driveways and fences. • Bushland setting: A minimum of 50 per cent of the site area is to be kept as natural bushland or landscaped with local species. The application is also assessed against State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3 Boarding Houses, including clause 29 - Standards that cannot be used to refuse consent (2) (b) landscaped area, and clause 30A - Character of local area, with relevance associated with the landscape character assessment within Warringah Local Environmental Plan 2000 deferred land clauses 12 (3)(b); 13; 52; 56; 58; 63 and 66, and the Locality Statement C8 Belrose North.
NECC (Bushland and Biodiversity)	Not Supported Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related legislation and controls: • Biodiversity Conservation Act 2016 • Biodiversity Conservation Regulation 2017 • Warringah LEP 2000 cl. 56 Retaining distinctive environmental features on sites • Warringah LEP 2000 cl. 58 Protection of existing flora • Warringah LEP 2000 cl. 59 Koala habitat protection • State Environmental Planning Policy (Koala Habitat Protection) 2021 The proposed development seeks consent for alterations and additions to the existing boarding house, as well as the construction of an additional two-storey boarding house accommodating thirty-one (31) boarding rooms, manager's apartment, communal areas, communal open space area with associated basement car park and landscaping. Vegetation clearing and the establishment of an Asset Protection Zone (APZ) is required to be established across a portion of the site in perpetuity. The site currently supports an existing boarding house within the eastern portion of the site along with associated driveway and approved APZ (DA2013/0587) and 10/50 clearing entitlement. It is noted that the following biodiversity related documentation has been reviewed in preparation of these referral comments:

Internal Referral Body	Comments
	• <i>Flora and Fauna Impact Assessment (Total Earth Care, May 2021)</i> • <i>Bushfire Protection Assessment (Travers Bushfire and Ecology, May 2021)</i> • <i>Landscape Plan (Vigor Master, March 2021)</i> • <i>NSW RFS Determination (RFS, September 2021)</i> <i>The proposed development is situated within existing cleared land and native vegetation. Native vegetation clearing and thinning/slashing is required for the construction of the boarding house and establishment of the APZ. The Ecologist identified that "the proposal would require the removal of about 0.3033 ha of vegetation for the proposed boarding house and required APZ". A small portion of vegetation within the lot is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values (BV) Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). As the development footprint (construction and APZ) are located outside the BV mapped area, the BOS is not triggered. The Ecologist has identified that the area clearing threshold for the site is 0.5ha, and as the proposal will result in the removal of approximately 0.30ha of native vegetation, which is below the vegetation clearing threshold value, the BOS is not triggered.</i> <i>However, all vegetation clearing to meet requirements under Planning for Bush Fire Protection 2019 (PBP 2019) must be considered for proposed development when determining whether the BOS applies. Where the 10/50 Vegetation Clearing Scheme applies and proposed development will result in a clearing entitlement, the 10/50 area must be included as part of the proposed clearing footprint to determine whether the BOS applies. If the BOS applies, a BDAR must be submitted with the development application. The Ecologist has not considered the future 10/50 vegetation clearing entitlement in calculating the native vegetation clearing threshold, and thus further information is required to address all potential future clearing on site in relation to triggering the BOS.</i> <i>It is noted that the conditions prescribed by the NSW Rural Fire Service (RFS) Determination Letter (dated 23 September 2021) identify that the APZ is to be consistent with an Inner Protection Area (IPA) to the following dimensions:</i> • <i>north & northwest for a distance of 31 metres;</i> • <i>west & southwest for a distance of 31 metres;</i> • <i>and,</i> • <i>south & southeast for a distance of 24 metres.</i> <i>These calculations differ from the recommendations of the Bushfire Report. Furthermore, the APZ provided in Table 2.1 of</i>

Internal Referral Body	Comments
	<i>the Bushfire Report identifies a smaller APZ than what is mapped in Schedule 1 of the report. Clarification and consistency is required.</i> <i>The proposed development, including future clearing entitlements associated with the proposed development, will result in expansion into the only area of remaining, relatively intact, native bushland and threatened species fauna habitats. The development, as submitted, will result in additional impact to the only remaining area of high-quality native vegetation and threatened species fauna habitat left on the site.</i> <i>The proposed development does not comply with the above listed WLEP 2000 clauses, including:</i> WLEP 2000 cl. 56 <i>The development has not been designed to retain and complement distinctive environmental features of its site and on adjoining and nearby land. The proposed development will directly and indirectly impact on native vegetation and threatened species habitat within the APZ and 10/50 entitlement.</i> WLEP 2000 cl. 58 <i>The development has not been designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</i> <i>It is noted that approximately 13 trees are shown for removal in the Landscape Plan amongst the native bushland vegetation area. Four (4) are situated within close proximity to the development footprint, whilst the other nine (9) are identified as requiring removal for establishment of the APZ (Total Earth Care, May 2021). Further information on exactly which trees are proposed for removal is required. Note, a number of <i>Corymbia gummifera</i> trees with glider scars are present on site. Such trees are to be prioritised for retention due to their important habitat values.</i> <i>Council's Biodiversity referrals team note the following comment from Council's Landscape Referrals team "To protect other existing trees not required for removal, documentation is also to be provided that clearly illustrates which existing trees are to be removed by reference to tree number IDs on plans and by tag numbering on site, and additionally the documents shall show existing trees to be retained".</i> <i>The proposal is considered inconsistent with Clause 56 Retaining distinctive environmental features on sites and Clause 58 Protection of existing flora of WLEP 2000. It is recommended that the proposal be redesigned to reduce</i>

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	<i>impact on the surrounding bushland areas. This may include moving the location of the development into existing cleared areas to reduce the impact of the APZ on bushland in the western area of the site.</i>
NECC (Development Engineering)	Not Supported <i>The proposed development requires on-site stormwater detention (OSD) in accordance with Council's Water Management Policy. The submitted stormwater management plan does not include OSD and relies upon the existing site drainage system which is under capacity for the additional impervious area and is unacceptable.</i>
NECC (Riparian Lands and Creeks)	Supported, with conditions <i>The location of the development and Asset Protection Zone is outside of the Riparian Buffer Zone and is therefore compliant with the relevant controls, subject to conditions.</i>
NECC (Water Management)	Not Supported <i>A Water Management Report is required to demonstrate compliance with Chapter 4 and Chapter 7 of the Water Management for Development Policy. For the purpose of the stormwater management objectives, it should be noted that the land is adjacent to a bushland endangered ecological community.</i>
Traffic Engineer	Not Supported <i>The proposed development is for construction of a 31-room boarding house with off-street parking for 17 vehicles (including a manager parking space), 7 motorcycles and 7 bicycles.</i> <u>Parking</u> <i>As the proposed boarding house is sited on land zoned "deferred matter" under the Warringah LEP 2011 it is not covered by the LEP. The Warringah LEP 2000 applies to such land however does not nominate a parking rate for boarding house development. The most similar types of development include backpackers accommodation for which the LEP advises that a parking rate should be determined by comparison with developments for a similar purpose or hostel development where a rate of 0.5 spaces per bedroom is nominated for a development by a person other than a community housing provider.</i> <i>Given the above, it is noted that a recent development approval was granted for a boarding house at 14 Wyatt Ave which provides 25 rooms (including a manager's room), 13 car parking spaces, 8 motorcycle spaces and bicycle storage. i.e.,</i>

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	<i>a rate of approximately 0.5 car parking spaces per room had been applied, with motorcycle parking at a rate of approximately 0.3 spaces per room.</i> <i>If these same rates are applied to the proposed 31 bed boarding house, 17 carparking spaces would be required together with 10 motorcycle spaces plus bicycle storage.</i> <i>The development provides 17 carparking spaces, including 2 disabled parking spaces. The quantum of parking is acceptable however it is noted one of the disabled parking spaces does not have a 2.4mx 5.4m load/unload area adjacent to the space as required by AS2890.6. The space is also sited immediately adjacent to the driveway into the carparking area meaning disabled drivers would be unloading in a vehicle circulation area. This disabled space should either be relocated to a more suitable location or reallocated as an able-bodied space. Parking space No.1 is sited at the end of a blind aisle and a 1m aisle extension is required by AS2890.1 section 2.4.2(c). The parking layout shall be revised to provide the aisle extension, or a swept path plot provided demonstrating that a B99 vehicle can enter and exit the space via no more than a 3-point turn.</i> <i>In terms of motorcycle parking the development proposes 7 motorcycle spaces which is considered acceptable and consistent with the rates provides by most boarding house development i.e., a rate of 0.2 spaces per bedroom.</i> <i>Finally, the proposed boarding house provides 7 bicycle spaces which is also considered acceptable and comparable to rates approved for most other boarding house developments.</i> <u><i>Access</i></u> <i>Parking spaces and aisle widths are sized in accordance with As2890.1. The carpark certification report submitted with the DA notes that the disabled parking space (carpark space No.17) adjacent to the carpark entry gate has no shared zone but comments that this is acceptable given the 600m widening adjacent to the space. This is inconsistent with Australian Standard requirements and exposes disabled drivers to circulating traffic which is considered unsafe. As noted above the space should be relocated or reallocated.</i> <i>The carpark certification report also refers to swept path diagrams however these have not been submitted with the report or with the other DA material. The commentary suggests that parking space 12 is only accessible by a small car which, given that it is allocated as a disabled parking space is considered inappropriate. Swept path plots should be providing</i>

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	<i>to demonstrate access to and from parking spaces 12, 13 and 1.</i> <i>It is noted that the access road to the development needs to cater for access by a fire truck. The Fire & Rescue NSW – Fire Safety Guideline specify that a minimum width of carriageway of 4.5m is required for access by General Fire appliance vehicles. The proposed access road, is more than 4.4m in width and has been assessed as suitable by the Bushfire Protection Assessment provided with the DA. A turning bay has been provided at the western end of the driveway to ensure that a fire truck can enter and exit the site in a forward direction. A swept path plot for a medium rigid vehicle shall be provided to confirm that satisfactory turning for fire appliance vehicles is possible.</i> <i>The driveway ramp to the carpark is curved and exceeds 5.5 in width and is of sufficient width to allow for two vehicles to pass.</i> <u><i>Access to Public transport</i></u> <i>The development is sited within 400m of a bus stop on Forest Way served by several buses which operate on a frequent basis to a range of destinations. While a footpath is present on the east side of Cotentin Ave and the south side of Bundaleer St. the Bundaleer St footpath terminates some 90m west of Forest Way. There is also no footpath between Bundaleer Street and the nearest bus stop on Forest Way and no hardstand area at the bus stop on Forest Way. To ensure that residents with mobility issues are able to access these buses it is considered that the footpath should be extended along Bundaleer Street to Forest Way and then north along Forest Way to the nearest bus stop (a length of approximately 120m of footpath in total at a width of 1.5m) and that a DDA compliant hardstand area should be provided at the Forest Way bus stop.</i> <u><i>Sight lines at boundary</i></u> <i>The pedestrian and vehicle sight lines at the development's Linden Ave boundary are acceptable</i> <u><i>Traffic Generation</i></u> <i>Traffic Generation has been calculated in the applicant's traffic report and estimated that the development will generate 13 trips in the am and pm peak hour. These volumes have been demonstrated by SIDRA modelling to have no appreciable</i>

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	impact on intersection operations at The Bundaleer St/Forest Way or Crozier Rd/Forest Way intersections. <u>Summary</u> Additional information in the form of swept path plots demonstrating access to and from carparking spaces 12, 13 & 1 are required together with MRV turning in the turning head at the end of the driveway. Relocation or reallocation of parking space No. 17 is also required. Details showing the proposed provision of footpath and DDA compliant hardstand areas to facilitate access to the Forest way bus stop are also required.
Waste Officer	Not Supported - The waste bin storage room is too small to accommodate the required number of bins. The room must be able to accommodate 29 x 240 litre bins. Isles between the rows of bins must be a minimum of 1 metre wide. - There is no bulky goods storage room. A room must be provided with a usable layout (square or rectangular) with a volume of 16 cu metres and floor area of 8 sq metres. - The path of travel from the basement bin room to a nominated collection point involves using the vehicular driveway. This is unacceptable. A separate path must be provided. <u>Presentation of bins for servicing.</u> The Boarding House Plan of Management states that the building manager will present the bins at the kerbside for Council collection. This is unacceptable. Bins must not be placed at the kerbside. Council will provide a "wheel out/wheel in service" (WO/WI) from a suitably located bin holding bay for the garbage and recycle bins. Council currently provides a WO/WI service to the existing boarding house bins from the bin room located at the front of the property. The truck is parked on the road pavement whilst the service is undertaken. <i>It is suggested that this bin room be suitably enlarged to allow</i>

Internal Referral Body	Comments
	<i>for storage of the bins from the proposed boarding house on collection day.</i> <i>The boarding house manager would be responsible for placing the bins in the holding area and returning them to the basement bin room after emptying.</i>

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

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	See discussion on “Draft Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	A Development Control Plan does not apply to the site.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	• The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent. • Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent. • Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter can be addressed via a condition of consent. • Clause 54 and 109 of the EPA Regulations 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the

Section 4.15 Matters for Consideration	Comments
and built environment and social and economic impacts in the locality	General Principles of Development Control in this report. In summary, those impacts are unsatisfactory. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not suitable for a further intensification of development in the manner proposed.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	6 submissions were received in response to the public exhibitions of the application.
Section 4.15 (1) (e) – the public interest	The proposed development is not in the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs) – As Applicable

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential an extended period of time with no prior land uses. In this regard Council's Environmental Health Contaminated Lands team 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.

State Environmental Planning Policy - Infrastructure

Clause 45 of the SEPP Infrastructure requires the Consent Authority (Ausgrid) 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

Ausgrid has raised no objections to the development.

Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2011 (WLEP 2011) – Does not Apply

The C8 Belrose North locality (which covers the land subject to this Application) under the WLEP 2000 was proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning, Industry and Environment deferred land in the Oxford Falls Valley and Belrose North areas from the Warringah Local Environmental Plan 2011 (WLEP 2011) in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000) - Applies

Desired Future Character (DFC)

Locality:	C8 Belrose North
Development Definition:	<i>Boarding house</i> (a) means any premises that— (i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and (ii) are used and occupied by at least 4 long term unrelated residents, and (iii) include a communal living space used for eating and recreation, and (iv) are not licensed to sell liquor, and (b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises.
Category of Development:	Category 2

Desired Future Character Statement:

"The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings

which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Middle Harbour."

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows:

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment

Insufficient information has been submitted with the application to detail what impacts are proposed to existing vegetation, specifically in that the submitted Flora and Fauna Assessment details that "about 0.27ha of native vegetation and 0.033ha of non-native vegetation" is required to be removed. The plans submitted do not accurately detail this loss.

Beyond the loss of vegetation, it is considered that the proposed landscaping plan is insufficient to mitigate the significant additional building bulk on the site.

As detailed within the above Design and Sustainability Advisory Panel comments, the building is uncharacteristically large and the concept of constructing a replica of a building directly alongside the original development that will negatively impact on the character of the locality and undermines the Desired Future Character.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

Comment

The proposal will result in two large buildings on the site which is not consistent with *detached style housing* typical of the locality. It is the opinion that the proposal

presents a significant departure, as the existing development is representative of detached style housing and this proposal will double what is considered appropriate. Further the development is required to conform as a "low intensity, low impact uses" as described in the Land and Environment Court judgement *Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*. The following definition was provided in that judgement:

Intensity - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "low intensity" would constitute a development which has a low level of activities associated with it.

Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape, privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

Low Intensity Assessment

The proposal, alongside the existing building on site, has the potential to accommodate 104 persons when operating at maximum capacity (72 in the existing building, and 32 in the proposed boarding house). In principle, notwithstanding the definition of a 'dwelling', this density is fundamentally flawed and excessive in locality that is, generally, formed by detached dwelling houses (albeit noted that there are other land uses within the locality).

As described later in this report, the variation sought to the housing density standard is not supported and forms a reason for refusal.

The intensity of the development results in both physical and environmental impacts to the land, but also amenity impacts as discussed below and throughout this report.

The provision of housing for up to 104 persons in a semi-rural area cannot be found to be low intensity.

Low Impact Assessment

The various provisions that form "impact" as quoted above are discussed in detail throughout this report.

Council's DSAP have found that the visual impact of the development is unacceptable and incongruous with the C8 Belrose North locality.

Council's Traffic Engineers have found that the traffic/access of the development is unacceptable as detailed above.

Council's Landscape Officer has found that the proposed landscape solution is both unacceptable in terms of its impacts, but also by means of its mitigation to screen the bulk of the building.

Acoustically, the socialising of occupants and the comings and goings of up to 104 persons on a single site are likely to generate acoustic impacts upon surrounding residential land and this has not been addressed by the applicant.

Overall, the impacts associated with the development could not appropriately be described as minimal, minor or negligible and thus the development cannot be found to be low impact.

***A dense bushland buffer will be retained or established along Forest Way.
Fencing is not to detract from the landscaped vista of the streetscape.***

Comment

This outcome is not applicable as the development is not located on Forest Way and does not propose any new fencing.

Development in the locality will not create siltation or pollution of Middle Harbour.

Comment

The application could be appropriately conditioned to ensure that it would not create siltation or pollution in Middle Harbour.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Control of the above locality statement:

Built Form Compliance Table C8 Belrose North Locality Statement				
CONTROL		REQUIREMENT	PROPOSED	COMPLIANCE
Housing Density		1 dwelling per 1.20ha*	35 'dwellings' as existing	No
Building Height	Ridge	8.5m	7.2m	Yes
	Ceiling	7.2m	6.6m	Yes
Front Setback		20.0m	63.8m	Yes
Side Setback (north)		10.0m	57.8m	Yes

Side Setback (south)	10.0m	54.3m	Yes
Rear Building Setback	10.0m	73.2m	Yes
Rear Setback Area	Free except fence and driveway	Free of all structures	Yes
Bushland setting	50%	83% (13,700sqm)	Yes

*Whilst Appendix C of the WLEP 2000 prescribes a Housing Density standard of 1 dwelling per 20ha, exception is made to the density control where this control would prevent one dwelling from being erected on an existing parcel of land. Therefore, as this lot is currently 1.64ha, the applicable standard would not prevent one dwelling from being erected. There is already a boarding house erected on this site.

Clause 20 Variation to a Development Standard

The application seeks to vary the housing density development standard pursuant to Appendix C – C8 Belrose North of the WLEP 2000. The applicable clause reads:

Housing density

The maximum housing density is 1 dwelling per 20 ha of site area, except—

- (a) where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and*
- (b) on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of “housing for older people or people with a disability”, and the development complies with the minimum standards set out in clause 29.*

However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.

The matters which shall be taken into consideration in deciding whether concurrence should be granted are—

- (a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the planning controls adopted by this plan.*

To measure housing density—

- *the site area (which does not include the area of any access corridor, whether such access corridor is to be created or is in existence at the time of application for development consent) is divided by the number of dwellings proposed on the site, including any existing dwellings which are to be retained, and*
- *the site is the allotment which existed on the day this plan came into effect, and*
- *granny flats are not considered to be a dwelling and are limited to one per allotment.*

In calculating housing density, the area of any access corridor (including any right-of-carriageway, access handle, accessway or other area that provides for vehicle access) is to be excluded, whether that access corridor is to be created or is in existence at the time of application for subdivision.

The development seeks to construct a new boarding house with two communal kitchens and no private (individual) kitchens. In doing this, the proposal also seeks to delete two private kitchens from the existing boarding house. The applicant contends that there is no change in the quantity of 'dwellings' on the site.

Whilst unstated by the applicant in their Statement of Environmental Effects, it is considered that the applicant is relying on the findings LEC judgement *Platform Architects Pty Ltd vs Northern Beaches Council [2020] NSWLEC 185* which debated the issue of housing density.

In [39] to [47] of that judgement, it was found that without the provision of a private kitchen and/or bathroom a boarding room could not be appropriately classified as a 'dwelling' or 'housing' and therefore concluded that, in that instance, the housing density standards pursuant to Appendix C did not apply.

This application is not the same circumstance. Irrespective of what exists on the land currently, the proposal seeks to construct a new boarding house *and* alterations and additions to the existing boarding house. The application seeks to swap out kitchens from one building to another to circumvent the applicability of this clause. Such an approach is not supported.

This application considers new kitchens in a new boarding house and the removal of kitchens in an existing boarding house. It is correct that no new 'independent dwellings' in the form of boarding room suites are being created however that does not mean that the measure of compliance with the housing density standard, or how that compliance is achieved, is changing.

The result of the swapping of kitchen locations from one building to another still results in there being at least 33 'dwellings' on the site – that is, boarding rooms with their own kitchens and bathrooms.

By virtue of Clause 20(2) the applicable standard is one dwelling per 16,410.8m². This proposal, with 33 dwellings, results in a density of 497.29m² per dwelling.

It is considered to be in the public interest and benefit to maintain the planning control as it permits the locality to remain congruent with its intended desired future character. It has been described elsewhere in this report how this proposal, by virtue of its size and scale, fails to achieve the desired future character of the C8 Belrose North locality.

The proposal is not supported for approval and therefore may be refused by Council without further referral to the Director (Minister for Planning). The applicant has not adequately addressed the considerations of this clause and the concurrence of the Director has not otherwise been gained by independent referral advice with or without the information provided by the applicant.

The applicant has not provided any submission to address the Clause 20 variation to demonstrate that consent may be granted to the proposed development, even if the development does not comply with one or more developments standards.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies Y/N	Comments	Complies Y/N
CL38 Glare & reflections	Y	Glare and reflection created from the proposed metal roof can be controlled by condition of consent requiring a dark colour to be used.	Y
CL39 Local retail centres	N	The site is not in a local retail centre.	N/A
CL40 Housing for Older People and People with Disabilities	N	The development is not for housing for older people and people with disabilities.	N/A
CL41 Brothels	N	The development is not for a brothel.	N/A
CL42 Construction Sites	Y	Construction works on the site could be appropriately managed by suitable conditions if consent were to be granted.	Y

General Principles	Applies Y/N	Comments	Complies Y/N
CL43 Noise	N	The proposal, combined with the existing boarding house, will result in up to 104 occupants living on the site at any one time. The application is not accompanied by an acoustic report, and the Statement of Environmental Effects lacks any detailed acoustic assessment, instead reading: <i>“Development will not result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants.”</i> The operation of the building at maximum capacity, and the noise generated from the comings-and-goings of occupants is likely to be significant and requires additional assessment which the applicant has elected not to undertake.	N
CL44 Pollutants	Y	Council's Environmental Health (Unsewered Lands) department has found that the proposed sewerage management is unacceptable. Further details were requested from the applicant however no information was provided, and thus Council cannot be satisfied that an acceptable pollutant outcome could be achieved.	N
CL45 Hazardous Uses	N	The use of the land as a Boarding House is not considered to be a hazardous use.	N/A
CL46 Radiation Emission Levels	Y	The development is not anticipated to generate any radiation emissions.	Y
CL47 Flood Affected Land	N	Whilst the site is not identified as flood affected land, Council requested a Water Management Report to detail potential water impacts both on the site and adjacent land. The applicant did not provide any response.	N/A

General Principles	Applies Y/N	Comments	Complies Y/N
CL48 Potentially Contaminated Land	Y	See comments from Environmental Health (Contaminated Lands)	Y
CL49 Remediation of Contaminated Land	N	The land is not identified as being contaminated land.	N/A
CL49a Acid Sulfate Soils	Y	The site is not readily identified as being impacted by acid sulfate soils, however appropriate conditions could be imposed to limited impacts of such if consent were to be granted.	Y
CL50 Safety & Security	Y	The development is not found to unreasonably prejudice the safety and security of the public domain.	Y
CL51 Front Fences and Walls	Y	The application proposes no new front fences or walls.	Y
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Y	The land adjoining the site to the west is subject to Schedule 1 (20) of the WLEP 2011 which permits its use for the purpose of a recreation facility (outdoors) and therefore cl.52 applies. That land is currently used as a BMX bike complex. The proposal is not anticipated to generate any impacts on the public open space, nor is that space anticipated to generate any impacts on the boarding house given the spatial separation between the two. However, it is noted that Council's Landscape Officer has requested further details to demonstrate a satisfactory outcome in relation to the neighbouring public land. The applicant has not responded to the Landscape Officer's request.	N
CL53 Signs	Y	No signs are proposed.	Y

General Principles	Applies Y/N	Comments	Complies Y/N
CL54 Provision and Location of Utility Services	Y	Whilst the proposal may have satisfactory electricity and water, Council's unsewered lands officer does not support the proposal for the reasons detailed above.	N
CL55 Site Consolidation in 'Medium Density Areas'	N	The site is not within a medium density area and no site consolidation is sought.	N/A
CL56 Retaining Unique Environmental Features on Site	Y	Refer to Referral comments from NECC (Bushland and Biodiversity).	N
CL57 Development on Sloping Land	Y	The proposal requires excavation for the partial basement car parking level. Whilst the level of excavation in and of itself is not unreasonable, it does contribute to the overall bulk and massing of the development and is therefore unsupported.	N
CL58 Protection of Existing Flora	Y	Refer to Referral comments from NECC (Bushland and Biodiversity).	N
CL59 Koala Habitat Protection	N	The site is not considered to constitute potential, or core koala habitat given the extent of previous disturbance.	N/A
CL60 Watercourses & Aquatic Habitats	Y	Council's Water Management Officer has identified that insufficient information has been submitted to assess the proposal, noting that the land is adjacent to a bushland endangered ecological community.	N
CL61 Views	Y	The development is not considered likely to unreasonably detract from any existing views to or from the public or private domain.	Y
CL62 Access to sunlight	Y	The development is not considered to unreasonably overshadowing nearby land.	Y
CL63 Landscaped Open Space	Y	Compliant.	Y

General Principles	Applies Y/N	Comments	Complies Y/N
CL63A Rear Building Setback	Y	Compliant.	Y
CL64 Private open space	Y	There are no applicable private open space controls. The provision of balconies or courtyards for each of the boarding rooms is considered sufficient for the purpose of a boarding house.	Y
CL65 Privacy	Y	The development is not anticipated to unreasonably impacts on the privacy of neighbouring properties. The two boarding houses do have secondary windows facing one another, however the spatial separation of 9m is sufficient to mitigate any unreasonable impacts of overlooking.	Y
CL66 Building bulk	Y	Clause 66 of the WLEP 2000 requires that buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominant the street or surrounding spaces. The site already accommodates a large two storey boarding house over a single level of basement. That built form is generally planar and basic without any noteworthy design or articulation features. This proposal seeks to construct a near identical boarding house westwards of the existing one, albeit with some minor fenestration changes. The individual bulk of the structure, let alone the bulk when combined with the existing structure, is vastly incongruent with the visual bulk of surrounding properties (the school being an exception) and presents with a scale significantly larger than structures on adjoining or nearby land. The height and proportions of the building fundamentally negate the ability	N

General Principles	Applies Y/N	Comments	Complies Y/N
		for plantings or fenestration detailing to minimise the perceivable building bulk. The built form is unacceptable for the reasons described above, and as detailed in the Design and Sustainability Advisory Panel report. Failure to adhere to Clause 66 forms a reason for refusal.	
CL67 Roofs	Y	The roof form is acceptable.	Y
CL68 Conservation of Energy and Water	Y	Clause 68 requires that development shall make the most efficient use of energy and water both through passive and built solutions. The proposal is inappropriately orientated on the site contrary to the requirements of cl.68. Specifically: • Half of the boarding rooms face due north and therefore receive a limited period of shading. • The other half of the boarding rooms are south facing and receive no direct solar access. • Only four of the boarding rooms are provided natural cross-ventilation, thereby necessitating mechanical ventilation in other rooms and communal spaces. • Inadequate landscaping for shading the building is provided. • No specific details as to the sustainability credentials of the building is provided.	N
CL69 Accessibility – Public and Semi-Public Buildings	N	The development is a privately owned boarding house.	N/A
CL70 Site facilities	Y	Site facilities including garbage and recycling bin enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for the needs	N

General Principles	Applies Y/N	Comments	Complies Y/N
		of users and are to have a minimal visual impact from public spaces. Council's Waste Officer does not support the proportions or operation of the waste room as detailed earlier in this report. From an urban design perspective, the enlargement of the existing bin room to meet the above requirements results in an unacceptable streetscape presence. The proposal provides no clothes drying areas available for use of the occupants. On balance in sufficient site facilities are provided for the occupants of the development.	
CL71 Parking facilities (visual impact)	Y	The proposed car parking is located in a semi-basement level and is largely screened from the public domain or neighbouring properties.	Y
CL72 Traffic access & safety	Y	Refer to Referral comments from Traffic Engineer.	N
CL73 On-site Loading and Unloading	Y	No dedicated on-site loading bay is provided however it is considered that sufficient space is available to accommodate this.	Y
CL74 Provision of Carparking	Y	Refer to Referral comments from Traffic Engineer.	N
CL75 Design of Carparking Areas	Y	Refer to Referral comments from Traffic Engineer.	N
CL76 Management of Stormwater	Y	Refer to Referral comments from Development Engineer.	N
CL77 Landfill	Y	No evidence is readily available to indicate that the site has been previously subjected to landfill. No concerns have been raised by Council's Contaminated Lands Officer.	Y

General Principles	Applies Y/N	Comments	Complies Y/N
CL78 Erosion & Sedimentation	Y	Insufficient details pertaining to erosion and sedimentation have been provided at this stage, however it is considered that conditions could be imposed to address these concerns.	Y
CL79 Heritage Control	Y	There are no nearby heritage items that could be jeopardised by the development.	Y
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Y	No objections have been raised by the local Aboriginal Heritage Officer, subject to conditions.	Y
CL82 Development in the Vicinity of Heritage Items	N	No adjacent heritage items.	N/A
CL83 Development of Known or Potential Archaeological Sites	N	The site does not constitute a known or potential archaeological site. Conditions have been imposed by the Aboriginal Heritage Office to address the event that any heritage items are located.	N/A

SCHEDULES

Schedule 6 - Preservation of Bushland

For the reasons earlier detailed by Council's Landscape Officer and NECC Bushland and Biodiversity Officer, the proposal is considered to inadequately address or respond to the objectives of Schedule 6.

Schedule 8 - Site analysis

Site Analysis	The development application is accompanied by a site analysis both in drawing form and in the Statement of Environmental Effects.
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Schedule 9 - Notification requirements for remediation work

Notification requirements for remediation work	There are no known or identified remediation works required to be carried out to facilitate the proposed development.
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Schedule 10 - Traffic Generating Development

Traffic Generating Development	The development is not Traffic Generating Development pursuant to Schedule 10.
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Schedule 11 - Koala Feed Tree Species and Plans of Management

Koala Feed Tree Species and Plans of Management	The site is not identified as being in a koala habitat protection area pursuant to Clause 59 as the site is not potential koala habitat given previous disturbance.
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Schedule 14 - Guiding Principles for Development near Middle Harbour

Consideration of the Matters under Schedule 14 of WLEP 2000	
(a) the desirability of increasing public access to, and use of, land on the foreshore,	N/A no foreshore in the vicinity of the site.
(b) the retention, management and use of land made available for public access or the use of other appropriate tenure mechanisms where public ownership is not possible,	The site is private land and does not facilitate public access through it.
(c) the retention and enhancement of public access links between existing foreshore open space areas,	N/A no foreshore in the vicinity of the site.
(d) the conservation of significant bushland and other natural features along the foreshore, where consistent with conservation principles, and their availability for public use and enjoyment,	N/A no foreshore in the vicinity of the site.
(e) the suitability of the site or part of the site for significant open space that will enhance the open space network existing along the Harbour foreshores,	N/A no foreshore in the vicinity of the site.

Consideration of the Matters under Schedule 14 of WLEP 2000	
(f) the protection of significant natural and cultural heritage values, including marine ecological values,	The site is not on the foreshore. The proposal does not impact on any significant natural or cultural heritage items.
(g) the protection and improvement of unique visual qualities of the Harbour, its foreshores and tributaries,	The site is not visible from the harbour or its foreshores.
(h) the relationship between use of the water and foreshore activities,	N/A no foreshore in the vicinity of the site.
(i) the conservation of items of heritage significance identified in an environmental planning instrument or subject to an order under the Heritage Act 1977 ,	The site has no heritage items.
(j) the scale and character of any development, derived from an analysis of the context of the site,	The scale and character of the development has been considered in the Statement of Environmental Effects and elsewhere in this report.
(k) the character of any development as viewed from the water and its compatibility and sympathy with the character of the surrounding foreshores,	The site is not visible from the harbour or foreshore.
(l) the application of ecologically sustainable development principles,	Addressed under cl.68 earlier in this report.
(m) the maintenance of a working-harbour character and functions by the retention of key waterfront industrial sites or, at a minimum, the integration of facilities for maritime activities into development and, wherever possible, the provision of public access through these sites to the foreshore,	N/A no foreshore in the vicinity of the site.
(n) the feasibility and compatibility of uses and, if necessary, appropriate measures to ensure co-existence of different land uses,	Not applicable to this development.
(o) increasing opportunities for water-based public transport	N/A no foreshore in the vicinity of the site.

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2021

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

A monetary contribution of **\$52,244** is required for the provision of new and augmented public infrastructure. The contribution is calculated at 1% of the total development cost of \$5,224,408.00.

CONCLUSION

This report concludes that the proposed development is inappropriate for the site and that inadequate information has been submitted for a full and proper assessment to be completed. The assessment undertaken concludes that the proposal is not consistent with the Desired Future Character and therefore as a condition precedent cannot be considered for approval

The density of the development is excessive, and the provision of amenity afforded to future occupants is unsatisfactory.

The design of the building is virtually identical to the existing building immediately adjacent to the proposal. The design, whilst numerically compliant, is not considered to be an appropriate intensification and expansion of the built form for the site and locality, despite the existing boarding house building on the site.

The proposal is not supported the Design and Sustainability Advisory Panel, Environmental Health Officers, Landscape Officers, Bushland and Biodiversity Officers, Water Management Officers, Waste Officers, Development Engineers and Traffic Engineers.

Despite allowing the Applicant to submit additional information, the applicant elected not to address and overcome the concerns.

This report therefore concludes that the NBLPP, as the consent authority should **REFUSE** the development application for the reasons listed below.

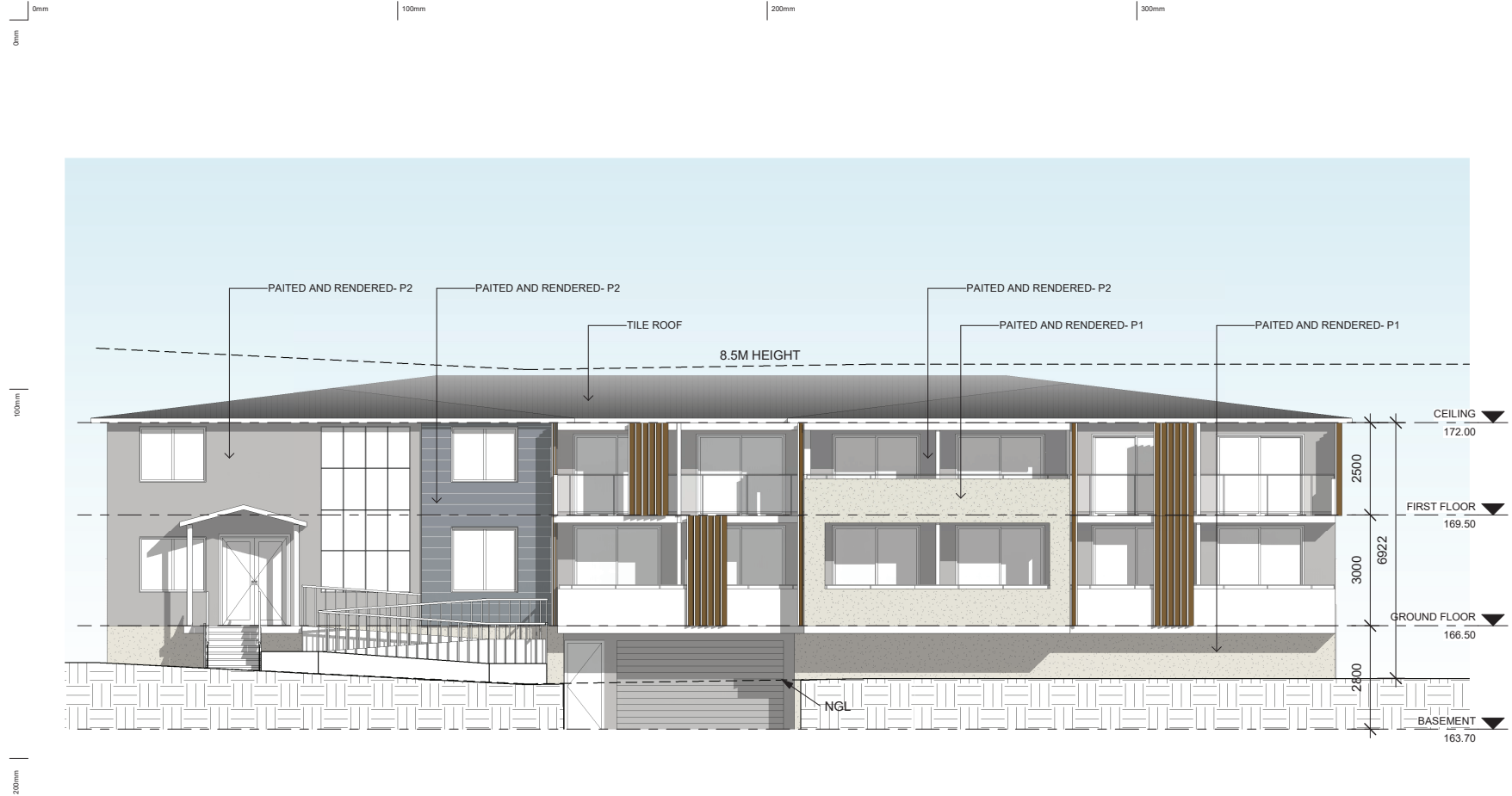
RECOMMENDATION - REFUSAL

Reasons for Refusal

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, the proposed development is inconsistent with Clause 12(3)(b) of the Warringah Local Environmental Plan 2000. In this regard, the proposal is inconsistent with the Desired Future Character Statement of the C8 Belrose North Locality in that the proposal will not be consistent with detached style housing or low intense, low impact uses.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, the proposed development is inconsistent with Clause 20 of the Warringah Local Environmental Plan 2000. In this regard, the proposal is inconsistent with the Built Form Control – Density Control within the C8 Belrose North Locality in that the proposal will create “dwellings” (as defined) which exceeds the max density.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, the proposed development is inconsistent with the following provisions of the Warringah Local Environmental Plan 2000:
 - a. Clause 43 – Noise
 - b. Clause 44 – Pollutants
 - c. Clause 52 – Development near parks, bushland reserves and other public open spaces
 - d. Clause 54 – Provision and location of utility services
 - e. Clause 56 – Retaining distinctive environmental features on site
 - f. Clause 57 – Development on sloping land
 - g. Clause 58 – Protection of existing flora
 - h. Clause 60 – Watercourses and aquatic habitats
 - i. Clause 66 – Building Bulk
 - j. Clause 68 – Conservation of energy and water
 - k. Clause 70 – Site facilities
 - l. Clause 72 – Traffic access and safety
 - m. Clause 74 – Provision of carparking
 - n. Clause 75 – Design of carparking areas
 - o. Clause 76 – Management of stormwater
 - p. Appendix C – Desired Future Character





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Date	Rev	Amendment

Project:
PROPOSED BOARDING HOUSE
DA
2506 Bundaleer Street, Belrose

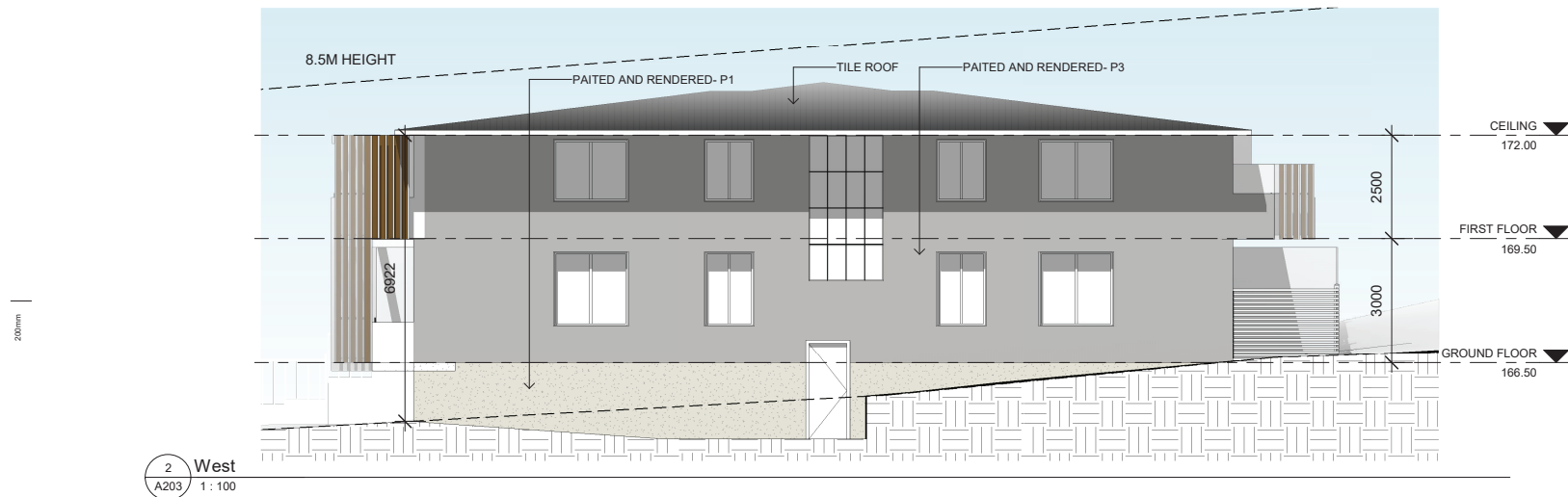
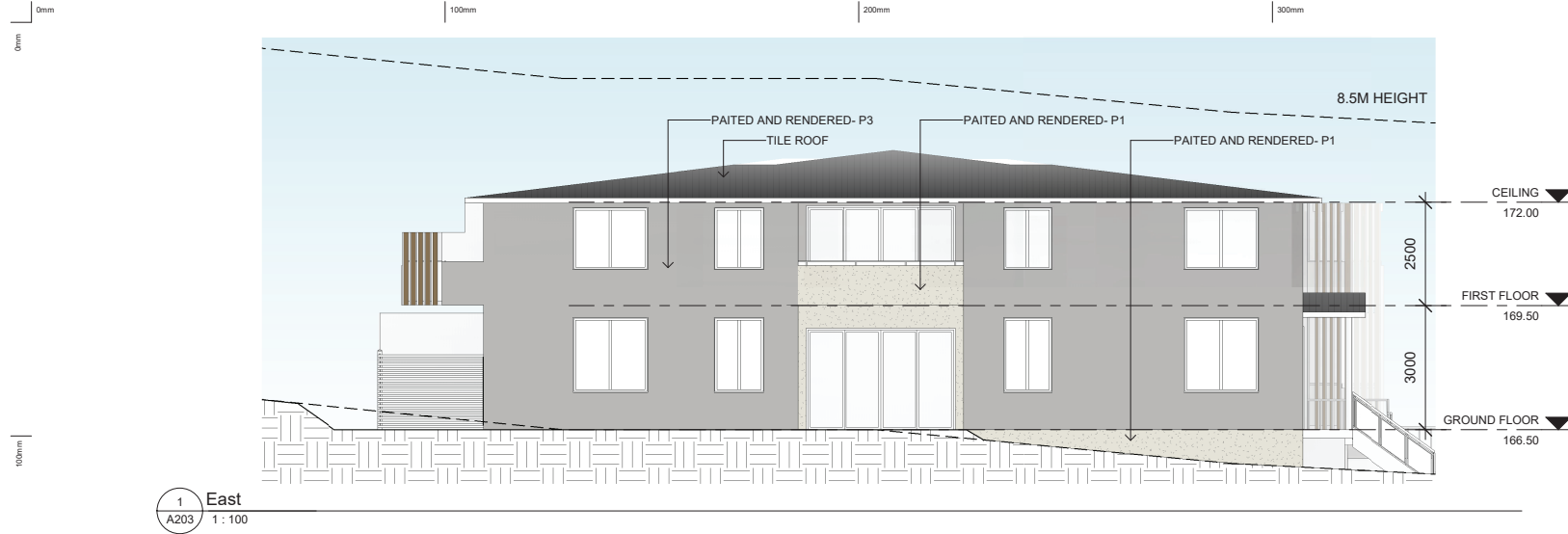


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Drawn by: RT
Checked by: MW
Title: **NORTH ELEVATION (FRONT)**

Scale @ A1:
Scale @ A3: 1 : 100
Job NO.: 2506DA0221
Date: 23.11.2021
Drawing NO.: A201
Rev:





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Date	Rev	Amendment

Project:
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Drawn by: RT
Checked by: MW
Title: **EAST & WEST ELEVATION**

Scale @ A1:
Scale @ A3: 1:100
Job NO.: 2506DA0221
Date: 23.11.2021
Drawing NO.: A203
Rev:



Design + Sustainability Advisory Panel Meeting Report – Date 28th October 2021

5. DA2021/1506 2506 Bundaleer Street BELROSE

PANEL COMMENT AND RECOMMENDATIONS

General

The proposal is for a Boarding house comprising 31 boarding accommodation rooms in a 3 storey building inclusive of on semi-basement parking (due to fall of land).

The subject site falls within the Deferred Lands pursuant to the Warringah Local Environmental Plan 2011, meaning that that whilst Boarding House development may be permissible on the site, there are no specific planning controls applicable to the use, save the C8 Character statement. In the absence of specific planning controls, the Panel have placed greater emphasis on the design quality of the proposal and its consistency with the planning objectives.

The applicant draws comparison existing boarding house approved on the site and constructed adjacent to the proposed new building.

The design is wholly unsuited to its immediate site and context. The fact that there is an almost identical building constructed adjacent to the site further renders this project as an unsuitable building in this semi-rural setting.

The shape, materiality and form of the existing building fails to respond to its context or to the planning objectives for the area.

Rather than 'establishing a precedent' in the Panel's view the very poor design of the existing building should not be repeated.

Strategic context, urban context: surrounding area character

It is not the role of the Panel to comment on the permissibility of the land use. However, in commenting on the 'quality' of the design, the Panel should and does consider the fit with the context, the site, and the desired future character of the area as well as the objectives of the planning controls.

In other words, the question of whether the land use is permissible can be separated from questions of whether the design, built form and arrangement of buildings achieve the planning objectives.

The objectives for the site are quite clear as expressed in the 'desired future character statement':

The present character of the Belrose locality will remain unchanged except in circumstances specifically addressed as follows.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

The proposal involves significant disturbance of the site. The basement requires significant excavation and from the obvious land clearing which has occurred on this site previously it clearly does not *protect or enhance the natural vegetation and/or landform* and resulting development could not be considered to have *low impact or low intensity use*.

The proposal comprises two almost identical buildings which are significantly larger than the anticipated residential buildings in the area.



Therefore, the scale of development is considered inconsistent with the desired future character statement in that it is neither low impact or low intensity in use.

There is also the question of whether the development poses a negative public benefit, especially relating to the following items which may be considered individually and in their aggregate:

- Landform and vegetation degradation
- Additional demand upon limited public transport
- Impacts upon adjacent land held by Metropolitan Local Aboriginal Land Council.

All these considerations have informed the comments and recommendations that follow.

General Recommendations.

1. This site is not suitable for the further intensification. The additional boarding house buildings is not supported.

Scale, built form and articulation

The built form presents as monolithic and relentless. This is exacerbated by the similarity of the approved adjacent building. The building does not relate to the surroundings, in form, articulation or scale, in particular:

- The form, articulation, siting, orientation and colour do not relate in any way to the site or surrounds;
- The building does not allow for balconies or outdoor space for the residents;
- The scale of the project (i.e. the facsimile of the design of the adjacent buildings) is oversized as compared with the surrounding residential buildings.

Recommendations.

2. The site is not suitable for an additional boarding house building due to the scale and monotony of the design.

Landscape

As much of the site has previously been cleared and so cannot be 'kept as natural bushland', 50% of the site must be landscaped with local species. The Panel considers that the landscape design is not consistent with Appendix C WLEP2000

Amenity

In addressing amenity, the Panel has considered the need for accommodation of this type as well as the requirements of the residents to live with access to reasonable levels of amenity.

Kitchens have not been provisioned for within accommodation rooms, meaning residents do not have the option of preparing food autonomously and cannot opt out of social interaction.

The Panel is aware that the principal reason for not providing individual kitchens is to circumvent the planning control that limit the density of 'dwellings'.

This may be acceptable if adequate communal kitchen facilities were provided, however, only 1 small kitchen has been provided, with no provision for communal refrigeration. The Panel consider this a serious flaw of the design and one that would likely be the cause of social, wellbeing, health and safety issues if it were to proceed. In this respect, the design is not functional and would require significant amendment to meet an acceptable level of amenity. In other words, the current scheme is not realistic.

The Panel refers to similar models of accommodation, such as student accommodation where, even in inner city locations with much greater convenience and access to shops, restaurants and other food outlets, kitchens are typically shared between a maximum of 5 occupants.

It appears that has been no research on these or similar types of accommodation to inform the design.



In addition to this there are further significant amenity deficiencies with the scheme:

- The rooms are accessed from a double-loaded corridor with no light or ventilation;
- There is no provision for natural cross ventilation to the rooms;
- There is no sun shading provided;
- There is no outdoor recreational space provided.

Recommendation.

This building is inconsistent with the objective of the controls and does not constitute a boarding house with adequate amenity.

Façade treatment/Aesthetics

Facade treatments including fenestration elements are highly repetitive and in conjunction with massing and landscape treatments, contribute to a contiguous, monolithic appearance to the built form.

The design does not appear to relate to the site's unique characteristics. There has been no attempt to modulate or articulate the built form or to provide any variation in the facade that might respond to the bushland setting/

Sustainability

BASIX certificate alludes to the provision of cooktops, fridges and ovens in every room. This is clearly inconsistent with the proposal.

PANEL CONCLUSION

The proposal is classified as Category 3 in the WLEP 2000 for the C8 locality. The LEP states *"the consent authority **must be satisfied** that the development is **consistent** with the desired future character described in the relevant Locality Statement, but nothing in a description of desired future character creates a prohibition on the carrying out of development.*

The Panel does not support the proposal and advises that in its view the proposal is in no way consistent with the desired future character.

The Panel notes the degree of impacts the existing development on the landscape including landforms and vegetation that would only be made worse by the proposal.

It is the Panel's view that no additional structure should be added to the site

The Panel advises that this is not related to the building typology that would be permissible, but to the impacts due to the site's topography existing vegetation, natural features and context.

The Panel also notes the inadequacy of the kitchen arrangements, that appear to be solely focused on circumventing the density controls, and the poor social outcomes that will result.

To be clear; given the impacts of the existing building on the site, NO additional structure should be envisaged. Instead, every effort should be made to restore the degraded site and increase indigenous vegetation and improve the amenity of the site facilities for existing residents.

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2022/0216 - 45 WIMBLEDON AVENUE, NORTH NARRABEEN - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL, SPA AND CABANA.
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/341584
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.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary Clause 7.8 Limited Development of Foreshore area Development Standard pursuant to clause 4.6 of PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0216 for Demolition works and construction of a dwelling house including a swimming pool, spa and cabana on land at Lot 49 DP 17694, 45 Wimbledon Avenue, NORTH NARRABEEN, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0216
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 49 DP 17694, 45 Wimbledon Avenue NORTH NARRABEEN NSW 2101
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool, spa and cabana
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Shane Christopher Casey Kelly Anne Casey
Applicant:	Shane Christopher Casey
Application Lodged:	01/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	10/03/2022 to 24/03/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Clause 7.8 Limited Development on Foreshore area
Recommendation:	Approval
Estimated Cost of Works:	\$ 968,000.00

EXECUTIVE SUMMARY

The application involves the demolition of the existing dwelling and the construction of a new dwelling.

The application is referred to the Northern Beaches Local Planning (NBLPP) as it involves a Clause 4.6 Variation to the development standard for the Foreshore Building line and the Foreshore Area under PLEP 2014.

The two (2) submissions received in response to the public exhibition of the application raise issues with regard to non compliance with the planning controls and non-compliance with the Foreshore Building Line, impact on character, amenity impact and visual impact. These submissions are

addressed in the report and do not warrant the refusal of the application.

An application to vary the Foreshore Building Line and Foreshore Area development standard is well founded and is supported. In particular, this is due to sufficient environmental planning grounds including the fact that the established building line does not accord with the required foreshore building line, and that the non-compliance will maintain appropriate character, amenity and will not restrict foreshore access.

Accordingly, the application is referred to the NBLPP with a recommendation for **APPROVAL**, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition and construction of a dwelling house and swimming pool.

Specifically, the proposal involves:

Ground Floor

- Formal Entry
- Open plan kitchen, living and dining
- Family room
- Study
- Bathroom
- Laundry
- Mudroom
- New double garage
- Outdoor recreational area
- Conversion of garage to be cabana with bathroom

First Floor

- Three bedrooms with ensuite
- Family room

External

- Swimming pool

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
 - A review and consideration of all documentation provided with the application (up to the time of determination);
 - A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - D11.6 Front building line
Pittwater 21 Development Control Plan - D11.7 Side and rear building line
Pittwater 21 Development Control Plan - D11.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 49 DP 17694 , 45 Wimbledon Avenue NORTH NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of an allotment located on the eastern side of Wimbledon Avenue. The site is irregular in shape with a frontage of 15.19m along Wimbledon Avenue and a depth of 38.4m. The site has a surveyed area of 689.2m². The site is located within the C4 Environmental Living zone and accommodates dwelling house. The site has a rear boundary which adjoins 'south creek' off Narrabeen Lagoon. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a

Section 4.15 Matters for Consideration	Comments
Regulation 2021 (EP&A Regulation 2021)	condition of consent. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/03/2022 to 24/03/2022 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 2 submission/s from:

Name:	Address:

Name:	Address:
Mr William Lethbridge King	255 Barrenjoey Road NEWPORT NSW 2106
Withheld Withheld	NORTH NARRABEEN NSW 2101

The above issues are addressed as follows:

- **Building Envelope, Front Setback and Side Setback**

Submissions have raised concerns that the proposal does not comply with the building envelope control, front setback and side setback controls.

Comment:

A consideration of the non-compliance with these numerical controls has been undertaken in this report. This consideration has found that the non-compliances will not lead to any unreasonable visual or amenity impact, and that the proposal will remain consistent with the overarching outcomes of each control. In particular, the substantial stepping and articulation in the design assists in providing the reasonable outcome.

- **Request for Landscaped Hedge along the southern boundary to be maintained at 2.1m**

This concern is raised as a high hedge and tall building will restrict opportunity for breezes and passive cooling.

Comment:

A condition is imposed to require amendment of the Landscape Plan to ensure all new shrubs and hedges along the southern boundary provide a mature height of no greater than 2.5m. This provides a reasonable balance for amenity.

- **Foreshore Building line**

A submission raised concerns with the non-compliance with Foreshore Building line and Foreshore Area and the potential to set an undesirable precedent.

It is suggested that habitable spaces in the foreshore have not been accepted in this area, but that outdoor deck areas have been an acceptable variation. Following from this, it is further suggested that the partially closed nature of the terrace area leads to it being a habitable area and therefore less acceptable as a non-compliance.

Comment:

A character has been formed in which the established and average building line is within the foreshore area. This includes that both neighbouring dwellings do not comply with the standard, and that the majority of sites in the street do not comply with the standard.

The objectives of the standard aim at protecting natural foreshore processes, the significance in the amenity of the area, and at maintaining public access. There is not a provision in the clause that provides reason for habitable or non-habitable space to be more or less acceptable.

A request to vary the standard has been submitted under Clause 4.6. This request has provided sufficient environmental planning grounds and has demonstrated consistency with the objectives of the clause (this is further explained in this report).

- **Conversion of Garage to Cabana**

A submission raised concern with the non-compliant side setback (955mm), being that the control is 1m.

A submission also raised concern with the non-compliance with the Foreshore Building Line.

Comment:

The proposal is for removal of the garage roof and conversion of the area to be a cabana. The walls of the garage remain as existing. The change of use from garage to cabana would not result in any unreasonable visual or amenity impact.

Further, the proposal is considered against the overarching objectives for setbacks, and for Foreshore Building Line. This consideration has found consistency with all objectives.

- **Windows/Privacy**

Concern is raised that there is a window on the northern side of the upstairs master bedroom (although it is not shown on plans).

A request is made for all windows facing north to be highlight or small windows with opaque glass.

Comment:

There is a window to the upstairs master bedroom and it is provided with louvres. A condition is imposed to require these louvres to be fixed.

All other windows at the northern elevation are either narrow or a highlight design. This ensures a reasonable minimisation of overlooking, and therefore a sufficient privacy outcome.

- **First Floor Balcony**

A request is made for a fixed privacy screen as opposed to movable louvres. A request is also made for the privacy screen to be on each elevation of the balcony.

Comment:

A condition is imposed for the louvres on the northern elevation to be fixed.

The other elevations are substantially separated from direct boundaries. As such, a screen on the northern boundary is sufficient to minimise overlooking.

- **Non-compliance with Landscaped area**

It is suggested conversion of the garage should be denied due to the non-compliance.

Concern is also raised with regard to drainage and flood water.

A request is also made that planting be provided in the location of the cabana.

Comment:

The proposal complies with the control for Landscaped area (including the allowable variation).

Further, Council's Development Engineer and Flood officer are satisfied the impact on drainage and flood water, subject to conditions.

- **Bulk and Scale**

The submissions raised concerns that proposal would not be in keeping with the scale of other development on Wimbledon Avenue.

Comment:

The proposal involves substantial articulation, stepping of the upper level, and stepping down the site (with single storey elements toward the rear. The proposal also complies with the development standard for building height. As such, the proposal will provide a sufficient presentation of bulk and scale.

- **Air-conditioning**

The submission raises concern that the plans do not identify air conditioners. It is requested that any air conditioner be located on the northern boundary (with the larger side setback).

Comment:

The proposal does not include any air-conditioners. Any air-conditioners would be subject to the requirements of the *State Environmental Planning Policy (Exempt and Complying Development Code)* or to a further consent.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	Supported (without conditions) Council has reviewed the acid sulfate soil investigation report and concur with the findings, acid sulfate soils will not be encountered during excavations. No objections to the proposal.
Landscape Officer	Supported (with conditions) Additional Information Comment 16/05/2022: The Arboricultural Impact Assessment by Complete Arborcare (29/04/2022) is noted. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the

Internal Referral Body	Comments
	following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D11 North Narrabeen Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. An Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. As outlined in the AIA, T2 will be retained and protected which is supported, subject to the imposed conditions. T1 is recommended for removal and Landscape Referral supports Bushland and Biodiversity condition of consent for 2:1 replacement and species selection. Tree replacement shall be additionally subject to the Landscape Completion imposed condition. <u>Original Comment:</u> The development application is for demolition works and construction of a dwelling house including a swimming pool, spa and cabana. The Survey identifies an existing street tree, and existing tree adjacent to the lake within the property boundary. Landscape Referral notes there is no Arboricultural Impact Assessment included in the application, however an assessment will be required to address these concerns: • the impact the proposed driveway location will have on the existing street tree, • the impact the proposed stormwater infrastructure will have on the existing tree adjacent to the lake. An Arboricultural Impact Assessment, prepared by an Arborist with minimum AQF Level 5 in arboriculture, is required to continue the Landscape Referral. The landscape proposal is generally in accordance with control C1.1. Planting shall be subject to the imposed conditions.
NECC (Bushland and Biodiversity)	Supported (with conditions) The application seeks approval for the demolition of the existing building, refurbishment of existing garage and retention of the existing boatshed. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant

Internal Referral Body	Comments
	environmental legislation and controls, including: Biodiversity Conservation Act 2016 (BC Act) State Environmental Planning Policy (Coastal Management) 2018 • Clause 11 Development on land in proximity to coastal wetlands or littoral rainforest • Clause 13 Development on land within the coastal environment area • Clause 15 Development in coastal zone generally – development not to increase risk of coastal hazards Pittwater Local Environmental Plan (PLEP) • 7.6 Biodiversity Protection Pittwater Development Control Plan (PDCP) • B4.15 Saltmarsh Endangered Ecological Community <u>Updated Recommendation - 17/05/2022</u> The supplied Arboricultural Impact Assessment (Complete Arborcare 2022), assesses the impacts of the proposal on two trees. Of these, Tree 1 (<i>Casuarina glauca</i>) located within the rear of the property, is proposed for removal due to poor condition and vigor. Despite the condition of this tree, as it is locally important species forming a part of an endangered ecological community, it is considered that 2:1 replacement plantings are required to mitigate the impact of removal. Subject to replacement, no objection is raised by Council's Biodiversity Referral Team, subject to 2:1 replacement with a locally-native tree species. <u>Original Recommendation - 8/04/2022</u> Council's Natural Environment - Biodiversity referral team do not have enough information to make recommendation on the proposal. As identified and requested by the Landscape referral team, an Arboricultural Impact Assessment is required to determine that the <i>Casuarina glauca</i> in the rear of the property can be safely retained. On receipt of the requested information, the Biodiversity referral team can reassess the application.
NECC (Coast and Catchments)	Supported (with conditions) The DA proposes to demolish the existing dwelling, construct a new dwelling house and swimming pool and convert an existing garage into a cabana at 45 Wimbledon Avenue, North Narrabeen. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy

Internal Referral Body	Comments
	(Resilience & Hazards) 2021 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Wetlands and Littoral Rainforest Area', 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (RH SEPP). Hence, Divisions 1 (Section 2.8), 3, 4 and 5 of the RH SEPP will apply to the subject DA. On internal assessment, the DA satisfies the requirements of Divisions 1 (Section 2.8), 3, 4 and 5 of the RH SEPP. As such, it is considered that the application does comply with the provisions of State Environmental Planning Policy (Resilience & Hazards) 2021 subject to conditions. Pittwater LEP 2014 and Pittwater 21 DCP Development on Foreshore Area It is noted that part of the development is proposed seaward of the foreshore building line and Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. In this regard, a clause 4.6 variation request has been submitted in support of the proposal which will be determined by planning assessment officers. No further coastal requirements relevant to the subject development were identified.
NECC (Development Engineering)	Supported (with conditions) Applicant Seeks approval for construction of a new dwelling and pool which is identified as High Flood Risk area. Should the development be approved by Council's Stormwater Floodplain Engineers, no Development Engineering objection subject to recommended conditions.
NECC (Riparian Lands and Creeks)	Supported (with conditions) This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. As the proposed development site is located on the foreshore of Narrabeen Lagoon the development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the lagoon.

Internal Referral Body	Comments
	Therefore , sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. It is noted that no Sediment and Erosion Plan was provided in the plans submitted for the development assessment, therefore one must be prepared and submitted prior to the issue of the Construction Certificate. The proposal, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Narrabeen Lagoon and its surrounding environment if conditions are adhered to.
NECC (Stormwater and Floodplain Engineering – Flood risk)	Supported (with conditions) The proposed DA generally meets the flood controls in the LEP and DCP. The development proposes to demolish existing structures and construct a new two storey dwelling with double lock up garage. The existing garage is retained and converted to a cabana. The ground floor is proposed to be suspended at the FPL (3.55m AHD) with open subfloor to allow free passage of flood water and minimise loss of flood storage. Likewise, the proposed garage and driveway access is also proposed to be suspended structures above the 1% AEP level. The proposed pool is located slightly above existing ground level and is considered satisfactory as there is no net loss in flood storage when compare with existing. The proposed pool fencing appear to be a solid type, hence will need to be modified to permeable type. Likewise front fencing is solid, hence will also need to be modified to a permeable type of construction. In emergency event evacuation is proposed to the first floor which is located above the PMF level. The building will need to be structurally designed to withstand the PMF flood water forces.
Parks, reserves, beaches, foreshore	Supported (with conditions) The development application is for demolition works and construction of a dwelling house including a swimming pool, spa and cabana. The property adjoins Narrabeen Lagoon downslope. Parks, Reserves and Foreshore supports the conditions for erosion and sediment controls as outlined by Riparian Lands and Creeks, and Coast and Catchments Referral's. No physical encroachments over the site boundaries are permitted. Parks, Reserves and Foreshores raise no concerns with the development proposal.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1266061S).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 2 Coastal Vulnerability Area

2.9 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
 - ii) other land, and
 - iii) 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 incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The proposal will not have a detrimental impact on the above and is not likely to alter coastal processes. This is a result of the lack of additional bulk proposed and the physical separation of the site from the coastal area.

Division 3 Coastal environment area

2.10 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.
- 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 subsection (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 generally retains the siting of the existing dwelling which is well separated from the coast. This physical separation from the coastline along with the proposed works being maintained within the existing siting, provides a circumstance in which potential impact is sufficiently minimised.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - v) Aboriginal cultural heritage, practices and places, 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 generally retains the siting of the existing dwelling which is well separated from the coastal use area. This physical separation from the coastline along with the proposed works being maintained within the existing siting, provides a circumstance in which potential impact is sufficiently minimised.

Division 5 General

2.12 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 new building works for the dwelling are well separated from the coast line, and therefore not likely cause increased risk of coastal hazards.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.7m	N/A	Yes (under Clause 2D)
	8m above Flood Planning Level	7.2m		

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development Standard:	Clause 7.8 - Limited development on Foreshore Area
Requirement:	Foreshore Building line
Proposed:	Dwelling footprint including terrace to extend into the Foreshore Area
Percentage variation to requirement:	N/A - Non-numerical standard

Assessment of Request to vary a Development Standard

The following assessment of the variation to Clause 7.8 - Limited development on foreshore area 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 7.8 - Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Argument

The applicants written request argues, in part:

- *The prescribed foreshore building line does not reflect the established building line. Further, strict compliance would require a setback that is well behind the established setback. The encroaching elements are minor in nature and will not impact on natural foreshore process due to location above MHW.*
- *The visual significance of the area will not be impacted due to single storey and lightweight nature. Adding to this, neighbouring two story elements of neighbouring elements, the proposed single storey elements to the rear of the proposal will not be visually inappropriate or jarring.*
- *Public access will not be compromised.*
- *Compliance with the development standard would require a design for the rear terrace/private open space area that would not provide an appropriate amenity outcome.*

It is agreed that a building line has been established by neighbouring properties and that this does not align with the foreshore building line. It is also agreed that the proposed new dwelling will appropriately complement the established building line so that an appropriate visual and amenity outcome is provided.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the **C4 Environmental Living** zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 7.8 – 'Limited development on foreshore area' of the PLEP 2014 are:

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

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:

The proposed dwelling house provides substantial stepping, articulation, and modulation to ensure a distribution of building bulk to an extent that impact on the area is minimised. Further, the proposal is well separated from the water area so that there would be no unreasonable impact on natural foreshore processes.

The proposal was also referred to Council's Parks, Reserves, Beaches, Foreshore; Coast and Catchments; Riparian Lands and Creeks and Bushland & Biodiversity Officers who raised no objection to the proposal with regards to impact on natural foreshore processes, subject to conditions.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The proposed works are entirely on private property would not impact upon public access along the foreshore area and to the waterway. The proposed works are also well separated from the waterway area.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposal provides stepping of the dwelling so that the built form comprises of single storey elements at the rear. Along with the compliant building articulation and stepping of the upper floor, this results in a building that provides a well distributed built form that will integrate appropriately with the natural environment.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living 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 Foreshore building line Development Standard is assumed by the Local Planning Panel.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development involves alterations to the existing garage. This includes removal of a roof and change of use to a cabana.

The proposal also involves a terrace area at the rear of the dwelling that is within the foreshore area.

As such, a clause 4.6 application to request variation of the development standard has been submitted.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the C4 zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore.

The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m	6.3m (dwelling) 4.8m (wall)	3%	No (see comments)
Rear Building Line	FBL	9.8m (cabana) 5.2m (swimming pool)	N/A	No (see comments under Foreshore Building Line)
Side Building Line	2.5m	1.9m-3.4m	N/A	No (see comments)
	1.0m	Dwelling: 1m-2.4m	N/A	Yes
		Cabana: 0.955m	6.9%	No (see comments)
Building Envelope	3.5m	Outside envelope	N/A	No (see comments)
Landscaped Area (Site Area: 689.2sqm)	60% (413.5sqm)	60% (414sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen 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	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D11.1 Character as viewed from a public place	Yes	Yes
D11.2 Scenic protection - General	Yes	Yes
D11.3 Building colours and materials	Yes	Yes
D11.6 Front building line	Yes	Yes
D11.7 Side and rear building line	No	Yes
D11.9 Building envelope	No	Yes
D11.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D11.12 Fences - General	Yes	Yes

Detailed Assessment

D11.6 Front building line

Description of Non-compliance

The front setback control for the site is 6.5m. The proposed dwelling involves minor numerical non-compliance at the family room (setback 6.3m) . The proposal also involves a new wall to the entry stairs which does not comply with the numerical control.

Merit Consideration

The variation to the front setback is a result of the proposed carport is considered against the outcomes of the control as follows:

Achieve the desired future character of the Locality.

Comment:

The proposed development involves a two storey dwelling with sufficient articulation, well distributed built form, and vegetation to surround the site to appropriately integrate in to the landscaped setting. As such the proposal is consistent with the desired future character.

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

Comment:

The proposal provides sufficient open corridors to minimise view impact by maintaining open corridors through the front, sides, and rear of the site.

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

Comment:

Living areas are well setback from the street and a relatively wide road reserve exists. This maintains amenity for residential development.

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

Comment:

The proposed development does not result in an impact to canopy trees and there are areas throughout the site for vegetation to be provided (as identified on the Landscape Plan).

Vehicle manoeuvring in a forward direction is facilitated.

Comment:

The proposal provides sufficient opportunity for vehicle manoeuvring.

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

Comment:

The proposed dwelling will remain generally below the height of the surrounding canopy trees. Further, the setbacks and articulation of the dwelling ensures that the development is appropriately integrated with the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

The articulation of the dwelling, stepping of the upper level and landscaping at the frontage ensures an attractive and appropriate frontage is maintained.

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

Comment:

The proposed dwelling involves substantial stepping, articulation, openness and landscaping at the front of the site. This provides an appropriate situation for the spatial characteristics of the existing urban environment.

The proposed development achieves the outcomes of the Pittwater 21DCP and is reasonable in the context of the site. Therefore, the variation to the control is supported in this circumstance.

D11.7 Side and rear building line

Description of Non-compliance

The Pittwater 21DCP requires development to be setback at least 2.5m from one side boundary and 1.0m from the other side. The proposal involves varied setbacks, being 0.955m-2.4m at one boundary

and 19.m-3.4m at the other boundary.

Merit Consideration

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

To achieve the desired future character of the Locality.

Comment:

The proposed development involves a two storey dwelling with sufficient articulation, well distributed built form, and vegetation to surround the site to appropriately integrate in to the landscaped setting. As such, the proposal is consistent with the desired future character.

To bulk and scale of the built form is minimised.

Comment:

The proposal involves substantial articulation, stepping of the upper level, and stepping down the site (with single storey elements toward the rear). The proposal also complies with the development standard for building height. As such, the proposal will provide a sufficient presentation of bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. and To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

The proposal involves suitable open corridors across the site and to the rear over single storey elements so that views and vistas are adequately maintained.

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

Comment:

The proposal provides a reasonable outcome for amenity as a result of adequate building separation, the stepped nature of the upper level and sufficient landscaping. Furthermore, the proposal complies with the requirements for solar access under the Pittwater 21DCP.

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

Comment

The proposed development involves landscaping and vegetation to surround the site. This provides for an attractive visual presentation and a suitable integration of natural form with the built form.

Flexibility in the siting of buildings and access.

Comment

Flexibility to the setback control is given in this situation as the proposed development will not have any unreasonable impact upon residential amenity or any unreasonable visual impact.

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

Comment:

Existing and proposed vegetation on site will suitably integrate with the built form to provide an appropriate balance between the built and natural environment on site.

To ensure a landscape buffer between commercial and residential zones is established.

Comment:

The proposed development does not adjoining a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D11.9 Building envelope

Merit Assessment

The proposal does not comply with the control for building envelope. Diagrammatic representation of the non-compliances is provided below:

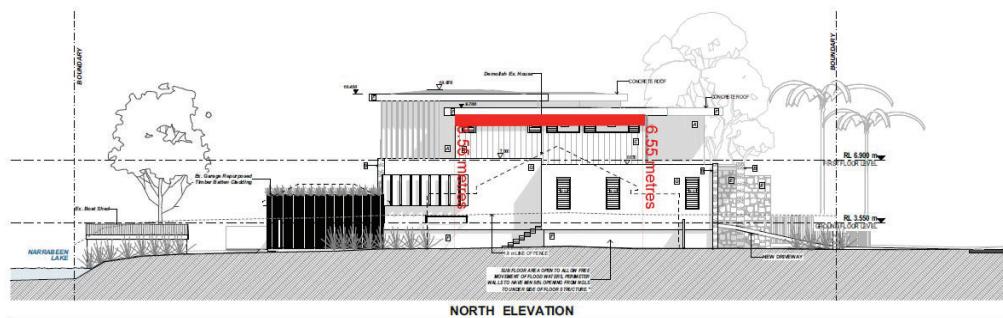


Figure 1: Representation of envelope non-compliance at north elevation

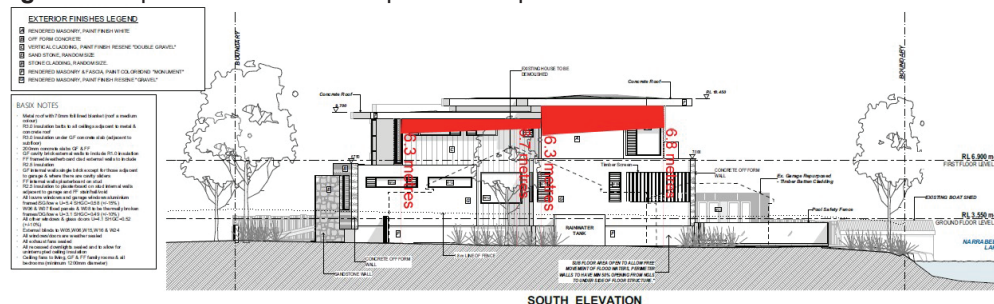


Figure 2: Representation of envelope non-compliance at south elevation

Merit consideration

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

To achieve the desired future character of the Locality.

Comment:

The proposed development involves a two storey dwelling with sufficient articulation, well distributed built form, and vegetation to surround the site to appropriately integrate in to the landscaped setting. As such the proposal is consistent with the desired future character. The bulk and scale of the built form is minimised.

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

Comment:

The proposed development remains generally below the existing tree canopy due to the compliant building height.

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

Comment:

The encroachments are satisfactory in regards to the design, scale, bulk and the height of the proposal. In particular, the proposal provides substantial articulation and stepping so that the natural environment is sensitively responded to.

The bulk and scale of the built form is minimised.

Comment:

The proposal involves substantial articulation, stepping of the upper level, and stepping down the site (with single storey elements toward the rear). The proposal also complies with the development standard for building height. As such, the proposal will provide a sufficient presentation of bulk and scale.

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

Comment:

This proposal involves stepping down of the development at the rear and a sufficient corridor of open space at the rear to allow for suitable retention of views.

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

Comment:

Subject to conditions, the proposal provides a suitable design for privacy, amenity, and solar access. This involves suitable physical separation between properties, screening, vegetation, and highlight window design. The distribution of bulk also ensures the proposal complies with the requirements for Solar access under the Pittwater DCP, and would not have another unreasonable amenity impact.

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

Comment:

The proposal maintains vegetation to surround the site, and also provides further vegetation on the proposed Landscape Plan. This will sufficiently reduce the presentation of built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 \$9,680 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$968,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore area 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.

Conclusion

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21DCP.

The proposal has non-compliances with a number of planning controls, however, these variations do not give rise to any unreasonable environmental impact, subject to conditions. In particular, the Clause

4.6 Variation for the Foreshore Building Line and Limited Development in the Foreshore Area under PLEP 2014 is well founded and is supported.

The resident submissions do not warrant further amendments or the refusal of the application.

It is recommended that the Northern Beaches Local Planning Panel **APPROVE** the application.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 7.8 Limited Development on Foreshore area development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0216 for Demolition works and construction of a dwelling house including a swimming pool, spa and cabana on land at Lot 49 DP 17694, 45 Wimbledon Avenue, NORTH NARRABEEN, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A.02 - Site Plan + Site Analysis - Rev A	15/02/2022	Gartner Trovato Architects
A.03 - Ground Floor Plan - Rev B	31/05/2022	Gartner Trovato Architects
A.04 - First Floor Plan - Rev A	15/02/2022	Gartner Trovato Architects
A.05 - West and East Elevations - Rev A	15/02/2022	Gartner Trovato Architects
A.06 - North and South Elevations - Rev A	15/02/2022	Gartner Trovato Architects
A.07 - Sections - Rev A	15/02/2022	Gartner Trovato Architects
A.08 - Sections and Material Board - Rev A	15/02/2022	Gartner Trovato Architects
A.13 - Demolition Plan - Rev A	15/02/2022	Gartner Trovato

	Architects
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Engineering Plans		
Drawing No.	Dated	Prepared By
Excavation, Sediment & Erosion Control Plan	14.12.2021	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flood Inundation & Risk Assessment Report	December 2021	Barrenjoey Consulting Engineers
Preliminary Assessment: Acid Sulfate	11 February 2022	Whit geotechnical group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	10.12.21	Cabarita Landscapes

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15/12/21	Applicant

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	26/04/2022

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,680.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$968,000.00.

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

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****7. Stormwater Disposal from Low Level Property**

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

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

8. Flooding

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 3.05m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Probable Maximum Flood, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level of 3.55 m AHD.

Floor Levels – C3

The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

Car parking – D5

The floor level of the proposed garage shall be set at or above the 1% AEP flood level.

Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry

standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

9. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

10. **Amendments to the approved plans**

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

- The Landscape Plan is to be amended to show all shrubs and hedges on the boundary to be an endemic species which reaches a maximum mature height of 2.5m.
- The louvers to the master bedroom and balcony at the northern elevation are to be fixed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

11. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect receiving waters from the effects of sedimentation and erosion from development sites.

14. **Stormwater Management**

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

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

15. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Tree Removal Within the Property

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

- i) located adjacent to the lake T1 - *Casuarina sp.*
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

17. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by a suitably qualified consultant prior to commencement of any other works on site. Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed, vegetation cover has been re-established across 70 percent of the site and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect receiving waters from the effects of sedimentation and erosion from the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. Tree and Vegetation Protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to

be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
i) section 9 Recommendations/Conclusions, in particular 9.1,
ii) appendix C.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

19. Road Reserve

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

Reason: Public safety.

20. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by a suitably qualified consultant prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

21. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

22. **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.

23. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

24. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be

inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

25. **Pollution Control**

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

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

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

26. **Landscape Completion**

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

- i) all tree planting (including replacement trees conditioned by Bushland and Biodiversity) shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees (including replacement trees conditioned by Bushland and Biodiversity) shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting (including replacement trees conditioned by Bushland and Biodiversity) shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of an Occupation Certificate, details from a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

27. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during

excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

28. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Northern Beaches Council's Water Management for Development Policy by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

29. **Replacement of Canopy Trees**

At least two (2) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to be consistent with the final determination for Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner bioregions, and be selected from the following species:

- Casuarina glauca
- Callistemon salignus
- Melaleuca quinquenervia

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

30. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

31. **Certification of the Structural Stability of the Building (B2)**

A suitably qualified structural engineer is to certify the structural stability of the shelter in place considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact of the Probable Maximum Flood (PMF) (4.98 m AHD) design flood depths and velocities.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW

Government policy.

32. **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.

33. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

34. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be

planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

35. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

36. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

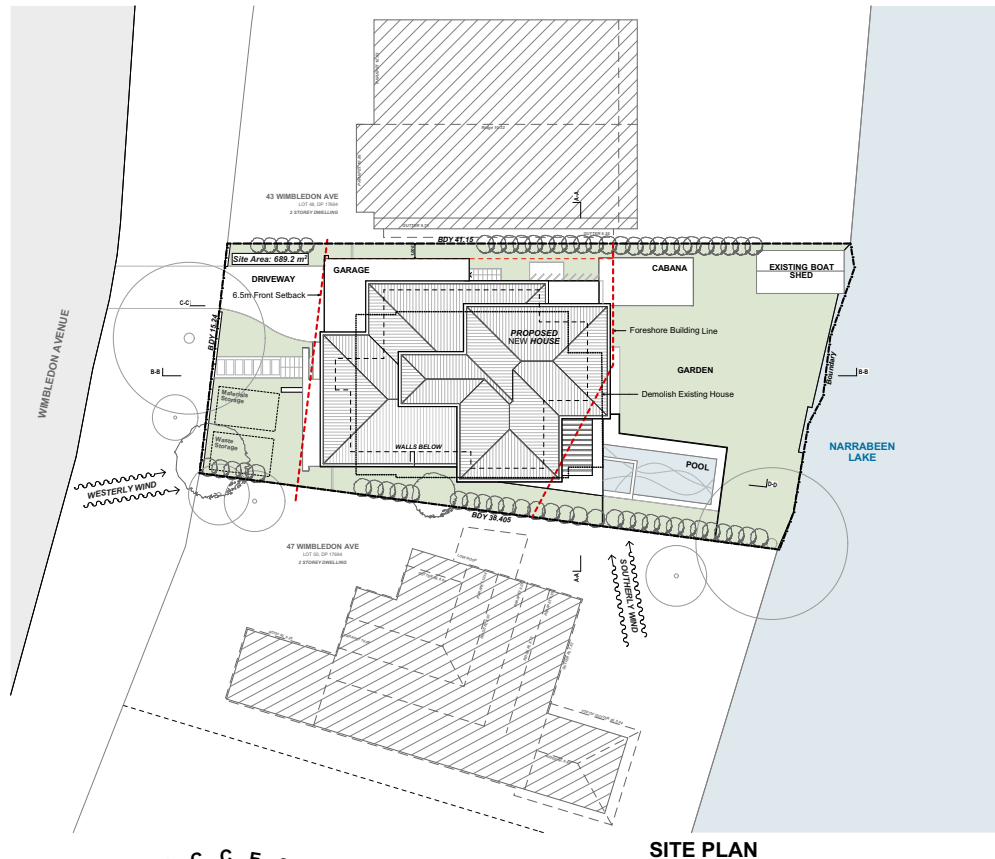
Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

37. **Swimming Pool/Spa Motor Noise**

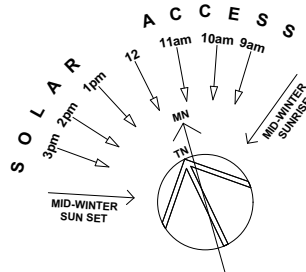
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



LOCATION PLAN

N.T.S.



DATE	REV	DESCRIPTION
15/02/2022	A	DA

PROJECT
NEW HOUSE + POOL
45 WIMBLEDON AVE, NTH NARRABEEN
LOT 49, DP 17894

FOR CASEY FAMILY

DRAWING TITLE
SITE PLAN + SITE ANALYSIS

PROJECT NO. 2137
SCALE 1:200 @ A2

DRAWN BY LT / RP
DRAWING NO. A.02

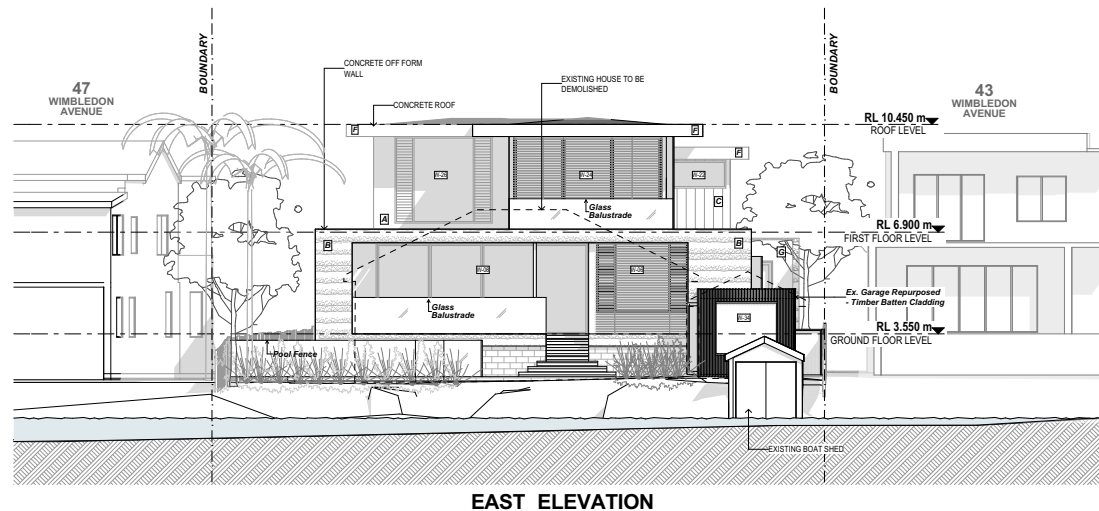
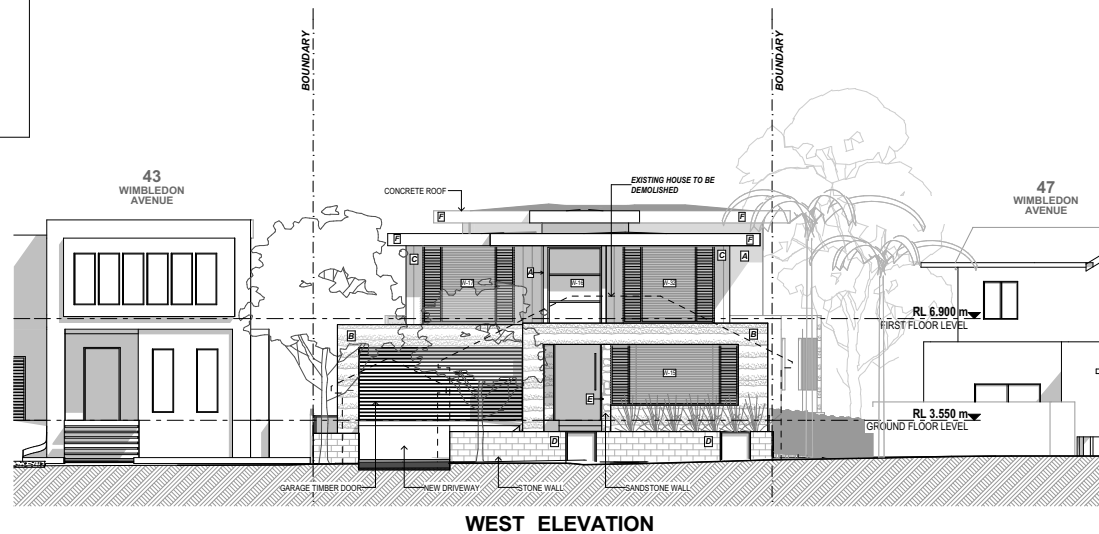
PLOT DATE 15/02/2022
REVISION A

EXTERIOR FINISHES LEGEND

- A RENDERED MASONRY, PAINT FINISH WHITE
- B OFF FORM CONCRETE
- C VERTICAL CLADDING, PAINT FINISH RESENE "DOUBLE GRAVEL"
- D SAND STONE, RANDOM SIZE
- E STONE CLADDING, RANDOM SIZE
- F RENDERED MASONRY & FASCIA, PAINT COLORBOND "MONUMENT"
- G RENDERED MASONRY, PAINT FINISH RESENE "GRAVEL"

BASIX NOTES

- Metal roof with 70mm foil lined blanket (roof a medium colour)
- R3.0 insulation batts to all ceilings adjacent to metal & concrete roof
- R3.0 insulation under GF concrete slab (adjacent to subfloor)
- 200mm concrete slabs GF & FF
- GF cavity brick external walls to include R1.0 insulation
- FF framed/weatherboard clad external walls to include R2.5 insulation
- GF internal walls single brick except for those adjacent to garage & where there are cavity sliders
- FF internal walls plasterboard on stud
- R2.5 insulation to plasterboard on stud internal walls adjacent to garage and FF stair/hall/void
- All louvre windows and garage windows aluminium frames/SGlow e U=5.4 SHGC=0.58 (+/-15%)
- W06 & W07 fixed panels & W08 to be thermally broken frames/DClow e U=3.1 SHGC=0.49 (+/-10%)
- All other windows & glass doors U=4.1 SHGC=0.52 (+/-10%)
- External blinds to W05, W06, W15, W16 & W24
- All windows/doors are weather sealed
- All exhaust fans sealed
- All recessed downlights sealed and to allow for uninterrupted ceiling insulation
- Ceiling fans to living, GF & FF family rooms & all bedrooms (minimum 1200mm diameter)

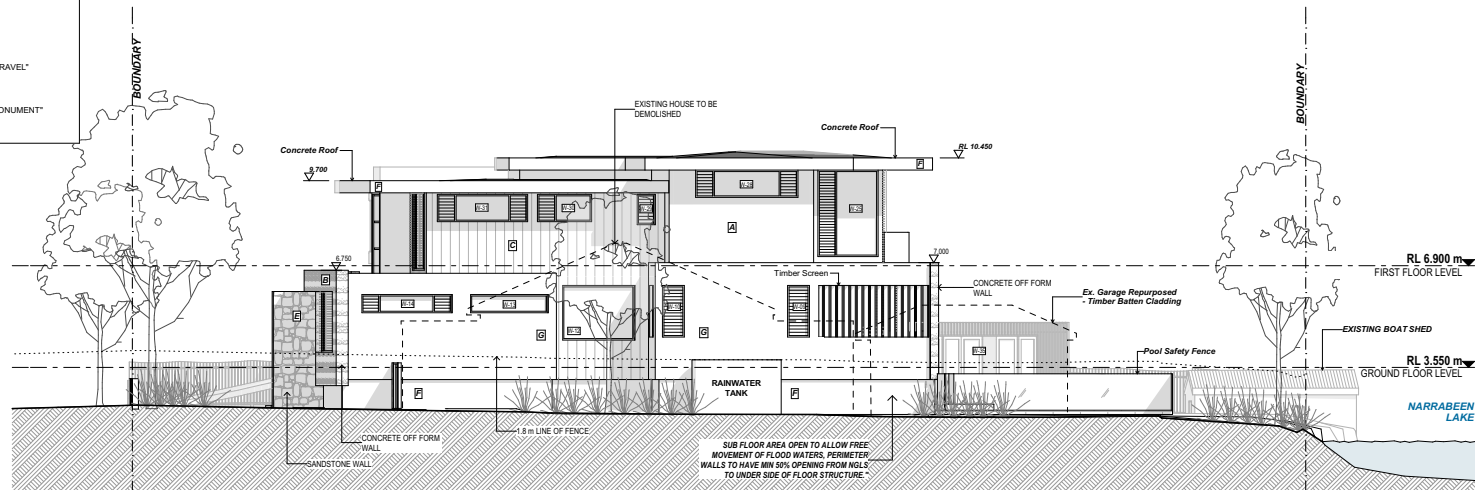


EXTERIOR FINISHES LEGEND

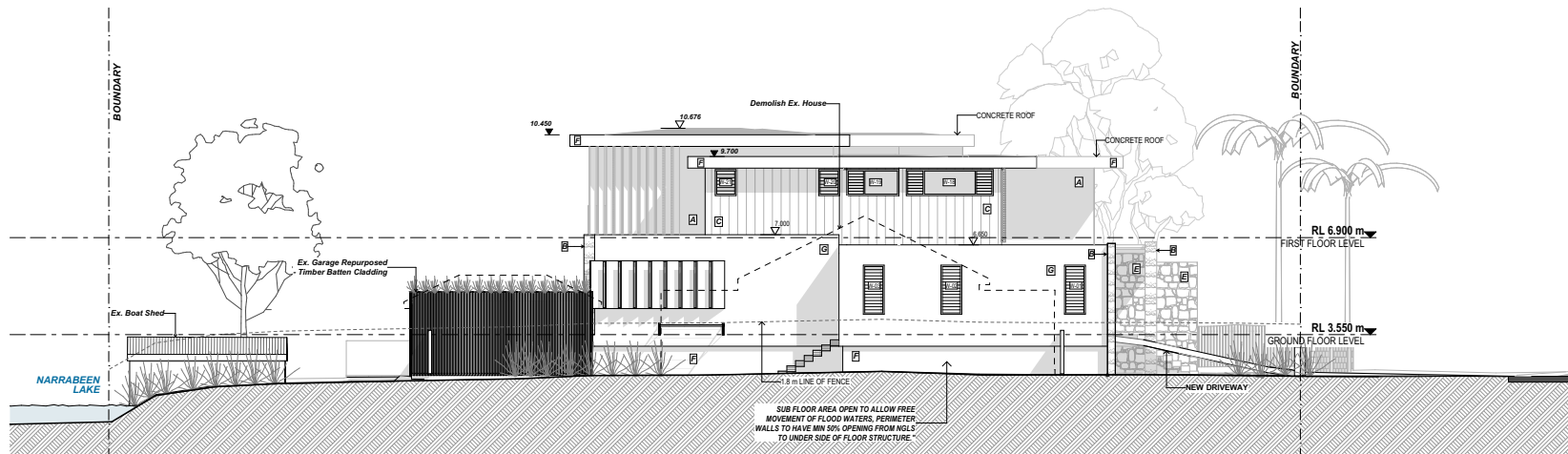
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- C VERTICAL CLADDING, PAINT FINISH RESENE "DOUBLE GRAVEL"
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- All exhaust fans sealed
- All recessed downlights sealed and to allow for uninterrupted ceiling insulation
- Ceiling fans to living, GF & FF family rooms & all bedrooms (minimum 1200mm diameter)



SOUTH ELEVATION



NORTH ELEVATION

GARTNERTROVATO		DATE	REV	DESCRIPTION	PROJECT	DRAWING TITLE		
ARCHITECTS		15/02/2022	A	DA	NEW HOUSE + POOL	NORTH & SOUTH ELEVATIONS		
A RETIRED PLACE					45 WIMBLEDON AVE, NTH NARRABEEN	PROJECT NO.	DRAWN BY	PLOT DATE
L1/13 10 PARK STREET					LOT 49, DP 17694	2137	LT / RP	15/02/2022
MOORE VALLEY, NSW 2536								
P 481 2 9670 4411					FOR CASEY FAMILY	SCALE	REVISION	
E 4798047 1208 AU						@ A2	A.06	A

Attachment 1

Clause 4.6 variation request

Limited Development on Foreshore Area

1.0 Introduction

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

2.0 Pittwater Local Environmental Plan 2014 (PLEP)

2.1 Clause 7.8 - Foreshore building line

Pursuant to Clause 7.8 of Pittwater Local Environmental Plan 2014 (PLEP) the subject site is identified as being subject to a foreshore building line as depicted on the on the foreshore building line map an extract of which is at Figure 1 below.

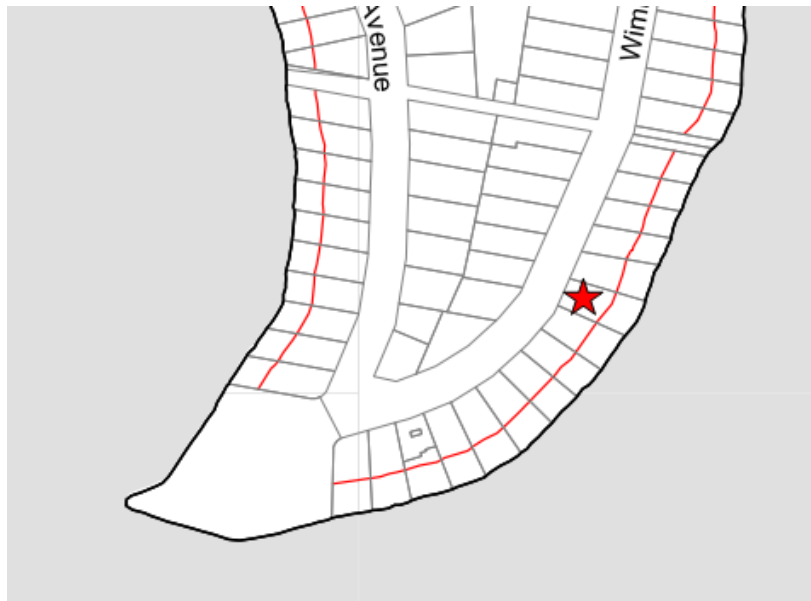


Figure 1 – PLEP Foreshore Building Line Map extract with site shown with a star

Clause 7.8(2) PLEP states:

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes –*

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the *Foreshore Building Line Map*.

The objectives of this standard are as follows:

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) to ensure continuous public access along the foreshore area and to the waterway.*

I confirm that the existing garage which is proposed to be converted to a cabana is located predominantly within the foreshore building line together with a portion of the proposed east facing terrace and pergola and first floor roof eaves as depicted in Figures 2 and 3 over page. I note that swimming pools and boat sheds are allowable encroachments within the foreshore building line.

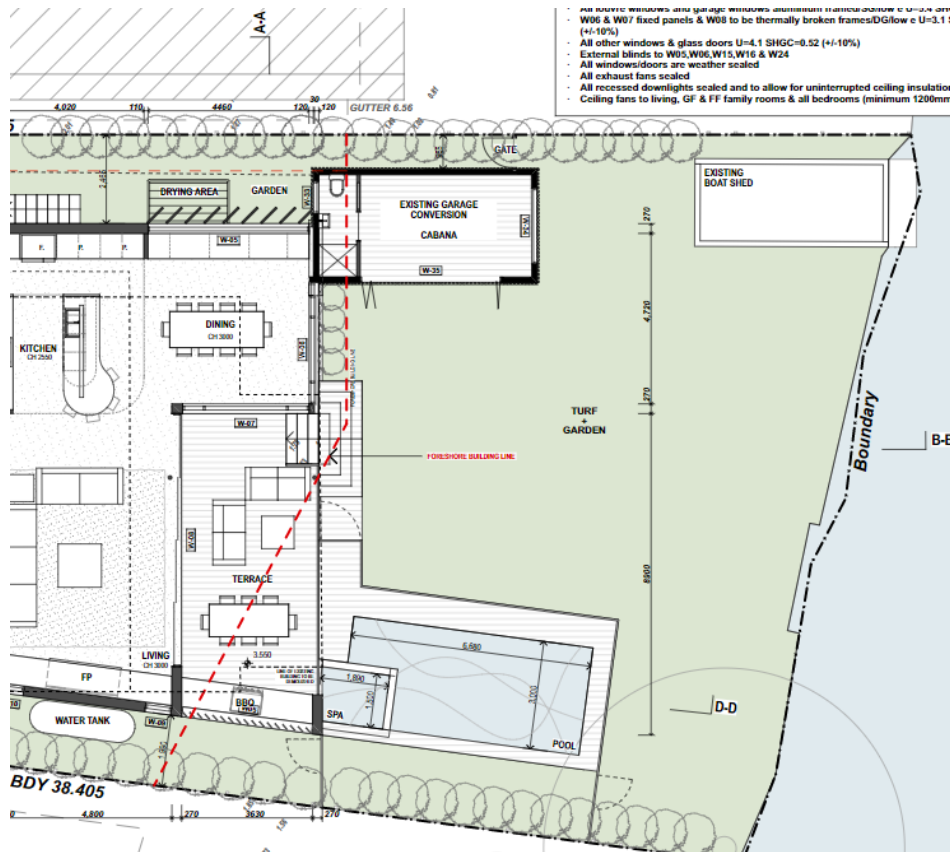


Figure 2 – Plan extract showing ground level foreshore building line breaching elements

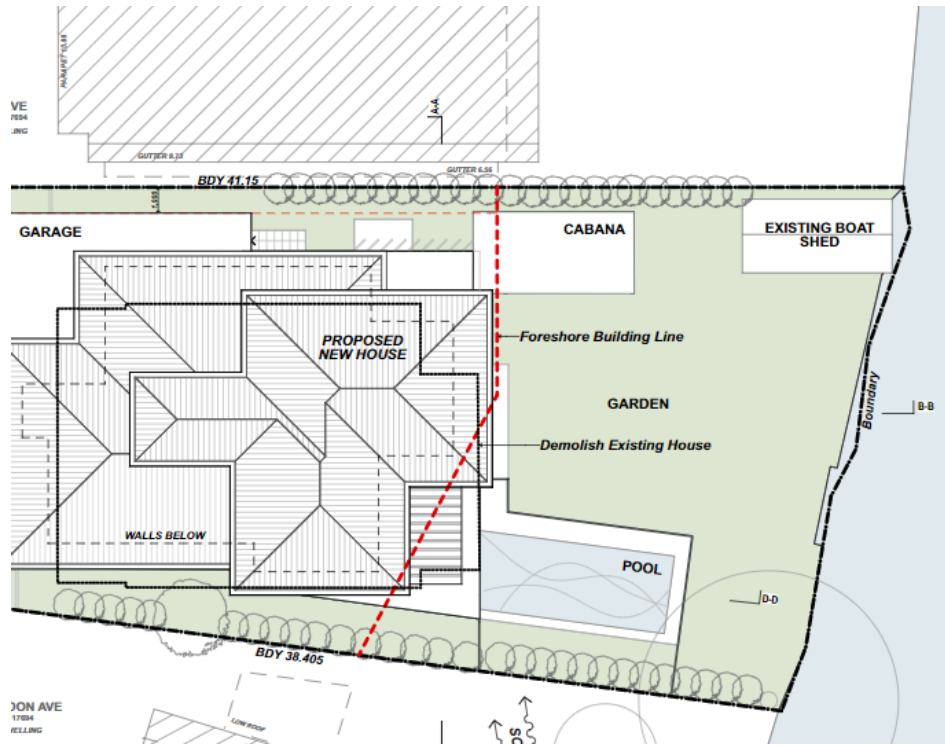


Figure 3 – Plan extract showing above ground foreshore building line breaching elements

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) *The objectives of this clause are:*

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

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

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

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

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

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

Clause 4.6(2) of PLEP provides:

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

This clause applies to the clause 7.8 PLEP development standard.

Clause 4.6(3) of PLEP 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 limited development on foreshore area standard at clause 7.8 of PLEP however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

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

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of PLEP provides:

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

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 7.8 of PLEP 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 7.8 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 7.8 of PLEP?

4.0 Request for variation

4.1 Is clause 7.8 of PLEP a development standard?

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

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

Clause 7.8 prescribes a standard that aims at controlling the location and siting of certain development. Accordingly, clause 7.8 is a development standard.

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

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

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

Consistency with objectives of the limited development on foreshore standard

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

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

Comment: The encroaching elements are minor in nature and will not impact on natural foreshore processes being located above MHWL and not causing additional flooding impact on the site or to adjoining properties. The encroaching elements will not affect the visual significance of the area and being single storey, lightweight and open in nature will not give rise to any amenity impacts on adjoining properties or the adjacent public domain in terms of overshadowing, privacy or view loss.

Given the 2 storey form and foreshore setbacks established by both adjoining properties, and properties generally along this section of Wimbledon Avenue, I am of the opinion that the single storey breaching elements will not be perceived as visually inappropriate or jarring in such context.

The minor breaching elements *will not impact on natural foreshore processes or affect the significance and amenity of the area*. The proposal achieves this objective notwithstanding the foreshore building line breaching elements.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment: The minor breaching elements will not compromise the continuous public access that exists along the foreshore area and to the waterway.

The proposal achieves this objective notwithstanding the foreshore building line breaching elements.

As the development achieves each objective of the standard it is both unreasonable and unnecessary to comply with the limited development on foreshore area standard in the circumstances of this case.

Consistency with zone objectives

The subject property is zoned E4 Environmental Living pursuant to the provisions of PLEP. The stated objectives of the zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment: The application proposes the construction of a new dwelling house and as such represents a low impact residential development. This objective is achieved.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The breaching elements will not impact the ecological, scientific or aesthetic value of the area given their modest single storey, lightweight and open form. This objective is achieved.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The development maintains a low density and low scale dwelling which does not require significant changes to landform or removal of significant vegetation. This objective is achieved.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: No riparian or foreshore vegetation is impacted by the modest works proposed and as such this objective is achieved.

The proposed works are consistent with the stated objectives of the zone.

As the development achieves the objectives of the limited development on foreshore area standard it follows that the development is also consistent with those objectives. It follows that the development is in the public interest because it is consistent with the objectives of the standard and the objectives of the E4 zone.

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

In Initial Action the Court found at [23]-[24] & [87] 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].*
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.*

Sufficient environmental planning grounds

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

Ground 1

Objective 1.3(c) of the EP& Act is:

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

The proposed development involves the construction of a new dwelling house located partially within the foreshore building line it being noted that the existing dwelling house and those located on the immediately adjoining property are located partially within the foreshore building line. That is, the prescribed foreshore building line does not reflect the established foreshore building alignment of development on the adjoining properties and development generally along this section of Wimbledon Avenue with the abrupt change in foreshore building line direction and geometry contributing to the extent of foreshore building line breach.

Strict compliance with the development standard would require the dwelling house and associated rear terrace to be located well behind the setbacks established by the 2 immediately adjoining properties and particularly the dwelling house to the south of the subject site in circumstances where the minor breaching elements will not give rise to any adverse residential amenity or foreshore/scenic protection impacts.

Ground 2

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

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

Compliance with the development standard would require the external terrace to be pulled further into the building envelope. Such outcome would result in loss of amenity to this area in relation to and obscuring of views in a north easterly direction and a reduction in solar access between 9am and 12 noon. Approval of the variation sought would achieve objectives 1.3(c) and (g) of the Act whereas refusal of the variation request would thwart such outcome.

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 7.8 and the objectives of the E4 Environmental Living zone

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

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

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

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

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

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

4.4 Secretary’s concurrence

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

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

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

5.0 Conclusion

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

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

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

Boston Blyth Fleming Pty Limited



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

ITEM 5.2

MOD2022/0012 - 27 CORKERY CRESCENT, ALLAMBIE HEIGHTS - MODIFICATION OF DEVELOPMENT CONSENT DA2020/0854 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL.

AUTHORISING MANAGER Rod Piggott

TRIM FILE REF 2022/341588

ATTACHMENTS

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979 and it is a modification of a determination or decision made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2022/0012 for the modification of Development Consent DA2020/0854 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 2 Sec. 12 in DP 758016, No. 27 Corkery Crescent, Allambie Heights subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	MOD2022/0012
Responsible Officer:	Sarah McNeilly (Independent Consultant Planner)
Land to be developed (Address):	Lot 2 Sec. 12 in DP 758016 – 27 Corkery Crescent, Allambie Heights
Proposed Development:	Modification of Development Consent DA2020/0854 for Alterations and additions to a dwelling house including a swimming pool
Zoning:	R2 Low density residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Joshua Jay Lang and Carly Alice Lang
Applicant:	Matthew Quattroville (Four Towns Pty Ltd)

Application Lodged	23/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/04/2022 to 18/04/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The modification application seeks to amend development consent DA2020/0854 relating to alterations and additions to a dwelling house including swimming pool approved by the Northern Beaches Local Planning Panel (NBLPP) on 11 November 2020.

The application is referred to the Local Planning Panel as the applicant is a relative of a staff member involved in the exercise of Council's functions under the Environmental Planning and Assessment Act 1979.

The modification application seeks to change the material of the decking to the rear of the property from timber to concrete. The modification is requested due to difficulties obtaining building materials.

Public notification of the application resulted in no submissions being received.

The proposed modification would not result in a change in the size or external form of the approved decking, nor would it result in an impact to adjoining neighbours.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(1a) of the Environmental Planning

and Assessment Act 1979 seeks to modify the approved materials under Development Consent DA2020/0854.

The modifications proposed include changing to proposed rear timber decking to concrete decking. The levels and dimensions of the decking are unchanged.

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

The proposed modification does not raise any compliance or environmental planning issues.

SITE DESCRIPTION

Property Description:	Lot 2 Sec 12 in DP 758016 27 Corkery Crescent, Allambie Heights, 2100
Detailed Site Description:	The subject allotment comprises a rectangular lot with front and rear boundaries of 20.725 metres and side boundaries of 30.48 metres. The area of the site is 631.7 m². The site is located within the R2 low density residential zone as mapped within the Warringah LEP and is legally identified as Lot 2 Section 12 DP 758016. Currently the site is occupied by a single storey brick residence with a tile roof incorporating a single garage. The site is fairly level but has a gradual fall to the street frontage. The lot sits on the higher side of the street above an existing small rock shelf. The surrounds of the lot are primarily turfed garden area. The approved works are partially constructed. Description of Adjoining and Surrounding Development The site is surrounded by detached one and two storey dwellings within landscaped settings, including a secondary

	dwelling immediately adjoining to the north east.
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Site Aerial



SITE HISTORY

Development Application (DA2020/0854) (the original application being the subject of this modification) – Development Application for Alterations and additions to a dwelling house including swimming pool was approved by Northern Beaches Local Planning Panel on 11 November 2020.

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

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; and
- 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 DA2020/0854, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) – Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, it is considered to be of minimal environmental impact for the following reasons: The modified development does not result in adverse streetscape, environmental or amenity impacts. In particular, there will be no discernable impacts for neighbours.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0854 for the following reasons: - The modified development will not have a materially different impact when compared to the approved development. - The modified development will not alter the land use of the site.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Yes The application was publicly exhibited or notified in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

development the subject of the application.

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

Section 4.15 – Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a) (ii) – Provisions of any draft environmental planning instrument	None applicable
Section 4.15 (1) (a) (iii)	Warringah Development Control Plan applies to this proposal.
Section 4.15(1) (a)(iia) – Provision of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the environmental Planning and Assessment Regulation 2000 (EP & A Regulation 2000)	<u>Division 8A</u> of the EP & A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP & A Regulation 2000 allow council to request additional information. No additional information was requested in this case. Clause 92 of the EP & A Regulation 2000 requires the consent authority to consider AS 2601 – 1991. The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clause 93 and/or 94</u> of the EP & A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP & A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality

Section 4.15 – Matters for Consideration	Comments
	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	No submissions were received.
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 amended works are consistent with the approved bushfire report, with the amended materials choice being consistent with BAL requirements. Based on the extent of the changes an amended bushfire report is not considered necessary.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 4 April 2022 to 18 April 2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, the relevant Development Control Plan and Council's adopted Community Participation Plan.

No submissions were received.

REFERRALS

No referrals were required for the minor materials change proposed.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

SEPP (Resilience and Hazards) 2021 formerly SEPP 55 – Remediation of Land

Clause 4.6(1) of SEPP (Resilience and Hazards) 2021 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 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

The original BASIX certificate would remain valid, as plans are the same as those submitted with the original Development Application (see Certificate No. A383299 dated 15 July 2020).

SEPP Transport and Infrastructure formerly SEPP (Infrastructure) 2007

Ausgrid

Clause 2.48 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 not required to be referred to Ausgrid for the minor materials changes proposed as there were no objections to the initial proposal.

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	Permitted	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	5.8m – 7.4m	No change	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan 2011

Built Form Controls

The proposed changes do not alter the Built Form Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spas	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	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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 2011;
- 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 does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of the Northern Beaches Council as the consent authority, APPROVE Modification Application No. Mod2022/0012 for the modification of Development Consent DA2020/0854 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 2 Sec. 12 in DP 758016, No. 27 Corkery Crescent, Allambie Heights, subject to the conditions printed below:

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

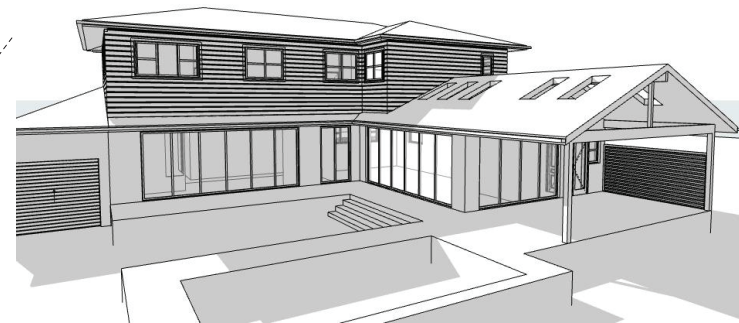
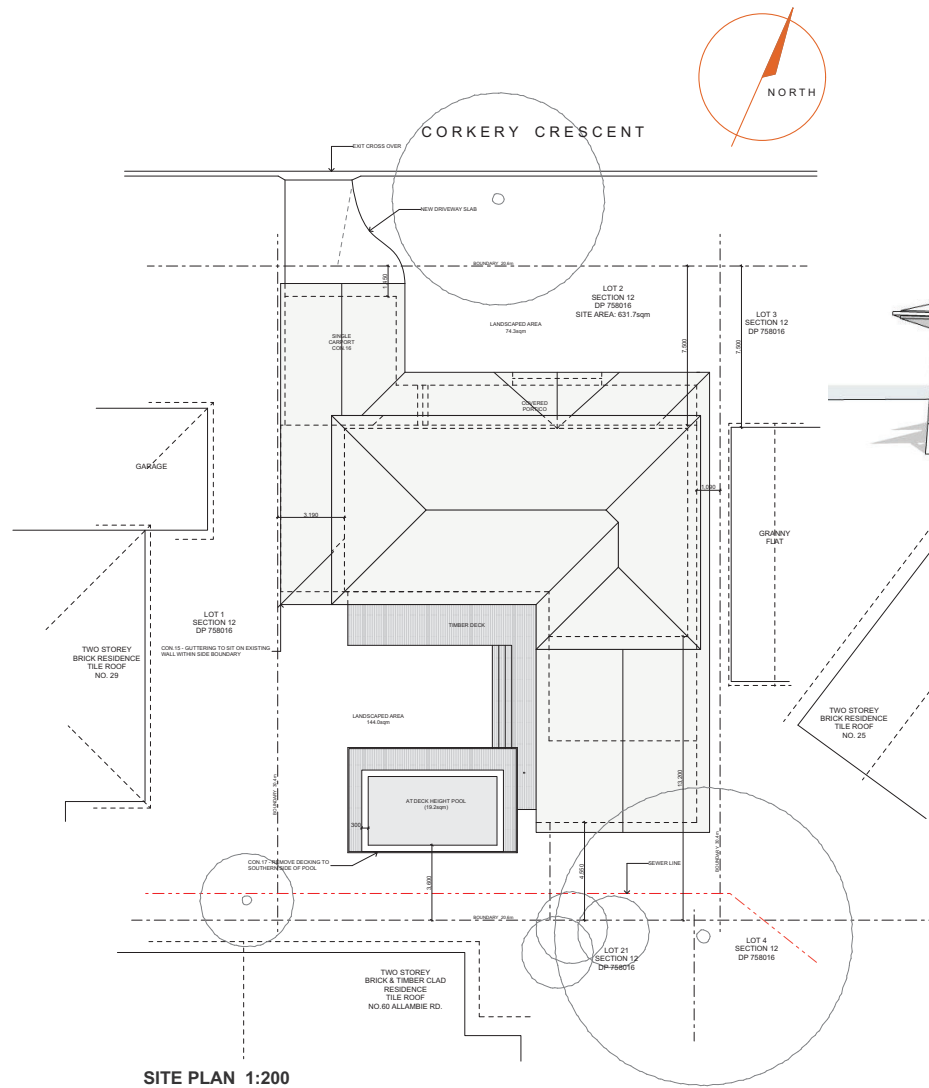
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

- a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp			
Drawing No.	Dated	Rev	Prepared By
1 Site Plan	3 June 2020	I	B + W
2 Ground Floor Plan	3 June 2020	I	B + W
3 First Floor Plan	3 June 2020	I	B + W
4 Elevations - Northwest & Northeast	3 June 2020	I	B + W
5 Elevations - Southeast & Southwest	3 June 2020	I	B + W
6 Sections - A-A & Pool	3 June 2020	I	B + W

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.

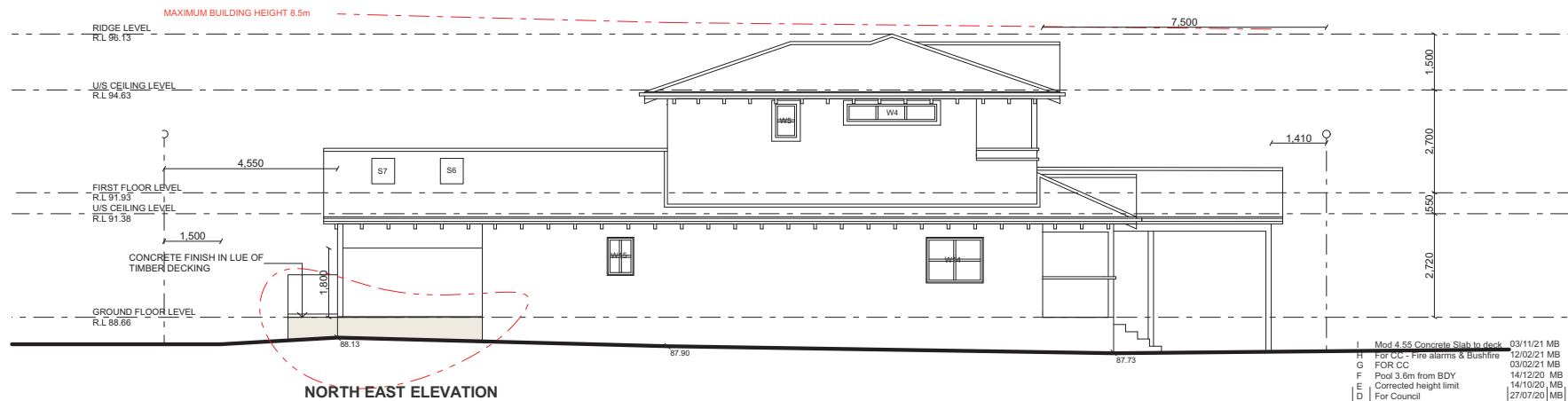


I	Mod 4.55 Concrete Slab to deck	03/11/21	MB
H	For CC - Fire alarms & Bushfire	12/02/21	MB
G	FOR CC	03/02/21	MB
F	Pool 3.6m from BDY	14/12/20	MB
E	Corrected height limit	14/10/20	MB
D	For Council	27/07/20	MB
C	For Council	22/07/20	MB
B	For Council	17/05/20	JV
A	For Review	14/05/20	MB
NO.	REVISION	DATE	BY



Project.
Proposed Alteration and Additions at
27 Corkery Crescent, Allambie Heights
MARCUS BETTS 0411363328 CAMERON WHITE 0422299519

CLIENTS Josh & Carly Lang
TITLE: DA Plans **PAGE NO.** 1 / 7
DRAWING NO. 0920 DA 1 **ISSUE** I
SCALE: 1: **DATE:** 03/06/2020 **DWN BY:** JV



BUSHFIRE STANDARD

ALL NEW WORKS ON THE NORTH WEST AND NORTH EAST ELEVATIONS SHALL COMPLY WITH SECTION 3 & 7 (BAL 29.5) AUSTRALIAN STANDARD AS3959-2018 - CONSTRUCTION OF BUILDINGS IN BUSH FIRE-PRONE AREAS

ALL NEW WORKS ON THE SOUTH EAST AND SOUTH WEST ELEVATIONS INCLUDING POOL DECKING SHALL COMPLY WITH SECTION 3 & 6 (BAL 19) AUSTRALIAN STANDARD AS3959-2018 - CONSTRUCTION OF BUILDINGS IN BUSH FIRE-PRONE AREAS



Project.
Proposed Alteration and Additions at
27 Corkery Crescent, Allambie Heights

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0411363328

CAMERON WHITE
0422299519

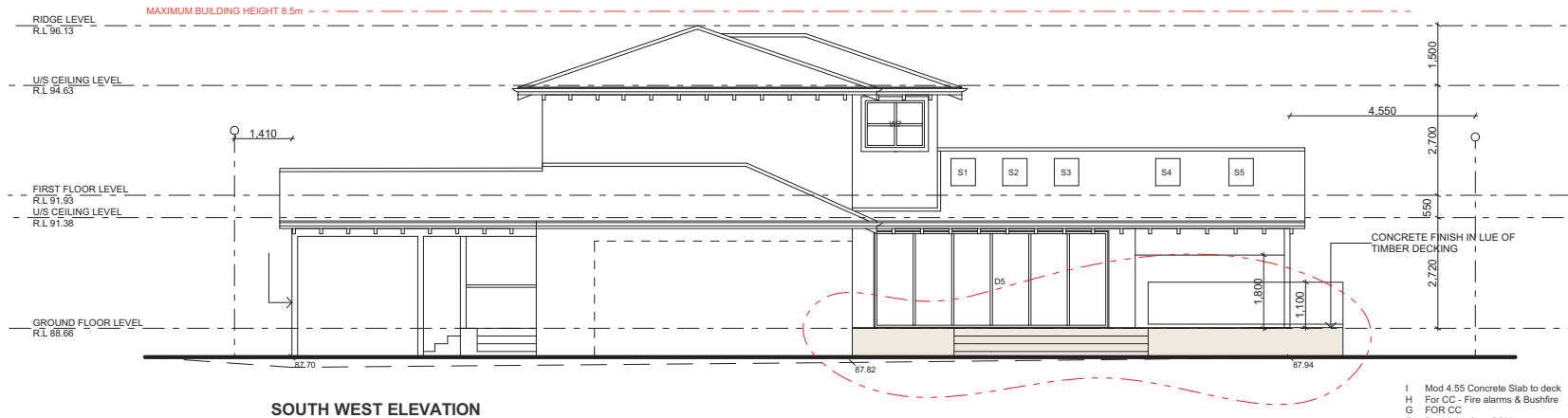
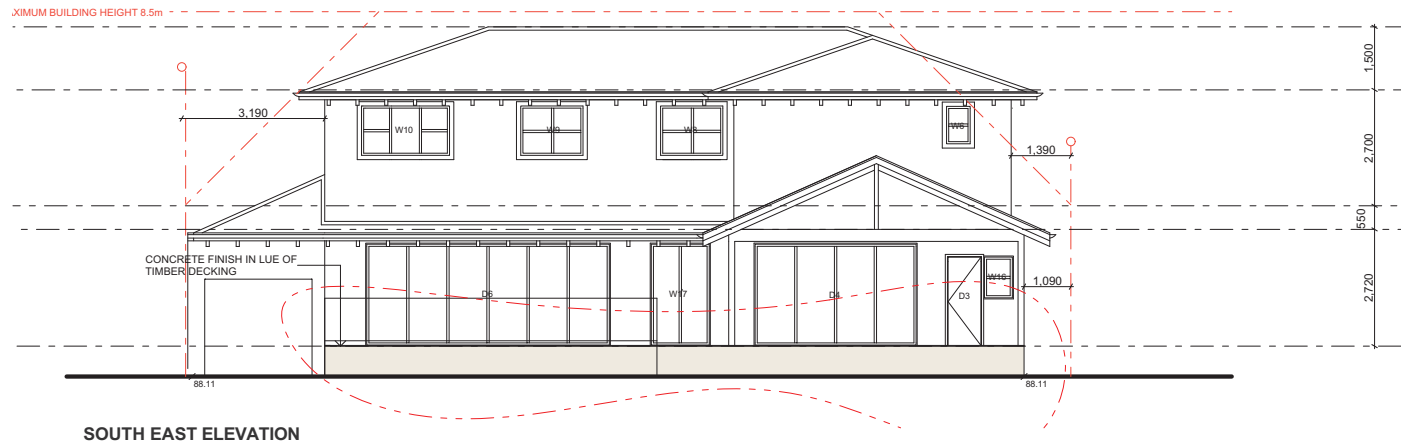
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A	For Review	14/05/20	MB
NO.	REVISION	DATE	BY

CLIENTS Josh & Carly Lang

TITLE: DA Plans **PAGE NO.** 4 / 7

DRAWING NO. 0920 DA 1 **ISSUE** I

SCALE: 1 : 100 **DATE:** 03/06/2020 **DWN BY:** JV



BUSHFIRE STANDARD

ALL NEW WORKS ON THE NORTH WEST AND NORTH EAST ELEVATIONS SHALL COMPLY WITH SECTION 3 & 7 (BAL 29.5) AUSTRALIAN STANDARD AS3959-2018 - CONSTRUCTION OF BUILDINGS IN BUSH FIRE-PRONE AREAS

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Project.
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NO.	REVISION	DATE	BY

CLIENTS Josh & Carly Lang
TITLE: DA Plans **PAGE NO.** 5 / 7
DRAWING NO. 0920 DA 1 **ISSUE** I
SCALE: 1 : 100 **DATE:** 03/06/2020 **DWN BY:** JV

ITEM 5.3

**MOD2021/0870 - 19 BUNGAN STREET, MONA VALE -
MODIFICATION OF DEVELOPMENT CONSENT DA2019/0748
GRANTED FOR DEMOLITION OF ALL EXISTING
STRUCTURES AND THE CONSTRUCTION OF A FOUR
STOREY SHOP TOP HOUSING DEVELOPMENT OVER
BASEMENT CAR PARKING.**

AUTHORISING MANAGER Steve Findlay

TRIM FILE REF 2022/341595

ATTACHMENTS

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

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 and it is a modification of consent.

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. Mod2021/0870 for Modification of Development Consent DA2019/0748 granted for Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking at Lot 200 DP 746507, 19 Bungan Street MONA VALE, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0870
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 200 DP 746507, 19 Bungan Street MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2019/0748 granted for Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking
Zoning:	B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Mona Vale Developments Pty Ltd
Applicant:	The Trustee for Mona Village Trust
Application Lodged:	16/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	29/11/2021 to 13/12/2021
Advertised:	29/11/2021
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 14.6% (reduction from previous 15.38% variation)
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks modifications to Development Consent No. DA2019/0748, granted on 19 February 2020, for demolition of all existing structures and construction of a four storey shop top housing development over basement car parking. The modifications include changes to the internal floor plans, the introduction of four (4) lift cores (two previously approved) and changes to access, allowances for services including a substation and roof top plant and changes to the external presentation.

The application reduces the density of the development from 36 apartments to 33 and the number of car parking spaces from 112 to 103 spaces (the amended parking scheme remains compliant with the relevant standards for retail and residential parking rates). The height, footprint, setbacks, landscape area and amenity outcomes of the modified development are generally as per the originally approved development, and improved in a number of areas.

The approved development had a maximum height of 15.0m, which represents a 2.0m non-compliance with the permitted 13.0m height limit. While the modified development involves a slight reduction in the maximum height of the approved development, the areas that breach the 13.0m height limit are situated in different areas of the roof of the building.

Whilst a modification of consent does not require a formal clause 4.6 request, an assessment of the proposed changes reveals that there will be no unreasonable impacts on the visual quality of the development and the streetscape, nor any impacts on neighbouring residential amenity as a result of the changes to the roof form.

The assessment reveals that there will be no unreasonable impacts on the visual quality of the development and the streetscape, nor any impacts on neighbouring residential amenity as a result of the changes to the roof form.

The application was referred to the Design and Sustainability Advisory Panel (DSAP), who support the application subject to design recommendations. The application has been amended to incorporate the design changes, including the provision of a retail lobby connection to the retail arcade, a legible residential lobby to Bungan Street which connects to a generous internal courtyard with improved public domain and amenity outcomes.

On balance, the modified scheme, presents a contemporary modulated façade with a refined palette of materials, including the use of face-brick with improved public domain and streetscape qualities. The internal amenity of the proposed apartments is improved and there are no new impacts on neighbouring residential amenity. Additionally, the modified scheme satisfies the provisions of SEPP 65 and the Apartment Design Guide.

The Section 4.55(2) application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to height variations (departures from development standard) being in a different position/location on the site that previously approved.

The application was exhibited in accordance with Council's Community Participation Plan (CPP) and no submissions were received.

This report concludes with a recommendation that the NBLPP should grant **APPROVAL** to the modification application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application is a Section 4.55(2) Modification Application seeking to modify the approved development DA2019/0748 granted on 19 February 2020 for demolition of all existing structures and construction of a shop top housing development.

The Statement of Modifications submitted by the Applicant describes the proposed changes as follows:

- *A reduction in the density from 36 units to 33*
- *A reduced in the overall height by 400mm and changes to the roof design*
- *Amended landscape works including the retention of the tree in Bungan Street (Note, the*

original consent required the retention of the tree in Bungam Street)

- *Amended basement plans and driveway design*
- *Amended external treatment (including changes to materials brick (painted white), metal cladding, aluminium doors and windows).*
- *The introduction of four (4) lift cores and changes to the internal access (Note: the approved development had two (2) lift cores)*
- *Allowances for servicing including a substation and mechanical plant for the retail tenancies.*
- *Minor adjustment re-alignment of the sewer line which results in changes to the basement including the removal of one (1) retail car parking space.*

In addition to the changes listed in the Statement of Modifications, the architectural plans also include the following:

- Roof top plant - Solar panels, 43 air conditioning units plus 5 ventilation plant with associated 1m - 1.5m high plant and acoustic screens
- Additional 1.5m of excavation and resultant changes in the FFL of the basement levels

As a result of the changes details above the proposal seeks to modify the following conditions:

- Condition 1 to be modified to reference the modified plans and supporting reports
- Condition 6 to be modified to reflect the modified cost of works
- Dot point 3 of Condition 11 to be modified to read maximum 2.5% fall
- Dot point 9 of Condition 11 to be deleted as we rely on the landscape plan as submitted
- Condition 13 to be modified to reference the modified geotechnical report
- Condition 25 to be modified to reference the modified acoustic assessment
- Condition 27 to be modified or deleted to reflect the modified landscape plans
- Condition 73 to be modified to reference the modified environmental reports
- Condition 73 to be modified to reference the modified acoustic assessment
- Condition 81 to be deleted having regard to the amended driveway design
- Condition 93 to be deleted based on the design outcomes achieved by the modified plans

A comparative analysis of the approved and modified development is as follows:

	Approved	Proposed
Total # apartments	36	33
1 bedroom	2 (8%)	3 (1%)
2 bedroom	29 (81%)	21 (62%)
3 bedroom	4 (11%)	9 (37%)
Car Parking	112	103
Retail	930sqm (24.3% of total GFA) 9 shops	924sqm (28% of total GFA) 5 shops

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - B6.8 Access Driveways and Works on the Public Road
Reserves on or Adjacent to a Commercial Centre Primary Road
Pittwater 21 Development Control Plan - C1.18 Car/Vehicle/Boat Wash Bays
Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D9.3 Building colours and materials
Pittwater 21 Development Control Plan - D9.6 Front building line

SITE DESCRIPTION

Property Description:	Lot 200 DP 746507 , 19 Bungan Street MONA VALE NSW 2103
Detailed Site Description:	The subject site is a rectangular shape with an area of 1,927 square meters (sqm). The site has a primary frontage to Bungan Street to the east measuring 44.96 meters (m) in width and a secondary frontage to Waratah Street to the south measuring 31.16 meters (m) in depth. The land slopes approximately 1.6 metres across its surface in an easterly direction. The site currently contains a two storey and a one and two storey commercial development known as "<i>Pittwater Plaza</i>" which occupy the eastern portion of the site fronting Bungan Road. An open car park is area is located on the western portion of the site. A publicly accessible retail arcade is located along the northern boundary of the site providing a pedestrian link between Bungan Street and Akuna Lane. Ground floor retail and commercial properties are located either side of the retail arcade. Four trees are located along the western boundary within the existing open car park area , additional non-native trees are located within the southern boundary and street trees are located along the

	Bungan Street and Waratah Street frontage. Adjacent development consists of a three / four storey shop top housing development to the west at No 24 Waratah Road on the corner of Waratah Road and Akuna Lane. A Woolworths Supermarket is located on the western side of Akuna Lane. A two storey commercial development is located to the north at 9 - 17 Bungan Street, further to the north is a four storey shop top housing development at 5 Bungan Street. A three storey mixed use building known as "Mona Vale Court" is located on the southern side of Bungan Road and Mona Vale Primary School is located on the southern side of Waratah Street.
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Map:



SITE HISTORY

Pre-lodgement Meeting - PLM2018/0087

A pre-lodgement meeting was held with Council on 17 May 2018 to discuss the redevelopment of the site for shop top housing.

Development Application - DA2019/0748

On 19 February 2020, Development Consent was to DA2019/0748 for the demolition of all existing structures and construction of a four storey shop top housing development over basement car parking. The approved development included the following characteristics:

- two levels of basement parking for 112 cars, 2 motorcycles and 16 bicycles
- vehicular access from Waratah Street
- nine (9) ground floor retail tenancies (combined retail GFA of 930sqm)
- 36 apartments comprising 3 x 1 bedroom, 29 x 2 bedroom and 4 x 3 bedroom
- 15% height breach to the 13m height limit (2m variation to clerestory windows)

Pre-lodgement Meeting - PLM2021/0232

A pre-lodgement meeting was held with Council on 23 September 2021 to discuss modifications to the approved shop top housing development. The PLM concluded as follows:

The proposal is considered to have merit, although a number of matters have been identified in these Notes and in the separate minutes provided by DSAP. The matters identified are considered to be relatively minor and easily overcome however, particular care is to be exercised in the final design to ensure that the proposal does not exacerbate or compound any non-compliant elements already considered in the approved DA2019/0748.

The PLM was also considered by the Design and Sustainability Advisory Panel (DSAP) who supported the proposal subject to a number of recommendations in respect to bicycle parking, landscaping, amenity and materials.

MOD2021/0870 (Current Application)

On 8 November 2021, the current modification was lodged.

Design and Sustainability Advisory Panel (DSAP)

On 3 February 2022, the modification application was considered by the DSAP. The Panel concluded:

The Panel is generally supportive of the scheme as noted in previous advice, however the response to the recommendations is not sufficient.

It is the Panel's view that further improvements including reconsideration of the overall circulation and access approach is required.

The Panel notes the reduction in the number of units from the original approval, however, it does appear that the quantum of floor space is adversely affecting amenity.

The Panel notes that the submitted scheme does not include any responses to recommendations 7, 8.

Refer to detailed discussion of DSAP recommendations in the Referrals section of this report.

Amended Plans and Additional Information

On 6 April 2022, amended plans were received in response to the issues raised by DASP and Council's Waste Officer. The report is based on an assessment of those amended plans.

On 27 May 2022, additional details were received in response to a request for further information in respect of the roof top plant, including an addendum acoustic report and letter prepared by ERVBAS in relation to mechanical plant.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0748, 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	Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states: <i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i> <i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i> <i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i> The applicant has provided the following justification to support their argument that the modifications are substantially the same development as originally approved:

Section 4.55 (2) - Other Modifications	Comments
	• The proposed use does not change, • The proposed residential density does not change, • The building form, footprint, setbacks, car parking, landscaping and drainage circumstances are not significantly altered, • The proposal maintains a complimentary and compatible streetscape presentation, • The modifications maintain the previously approved residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk, overshadowing and view sharing; and <i>On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.</i> In addition to the applicant's justification, it is noted that the proposal reduces the density of the development with the number of residential units being reduced from 36 to 33, the ground floor retail area is reduced from 930sqm to 924sqm and the total amount of car parking is reduced from 112 to 103. There is an increase in the depth of excavation (approximately 1.5m) with the finished floor level (FFL) of the basement from 7.10 to 7.3 to 5.95 which is required to ensure adequate tree protection zones. An amended geotechnical report confirms that this will not significantly alter the geotechnical aspects of the proposed development or the site from those on which the original report was based, including the critical aspects of further geotechnical investigation into ground conditions and groundwater and subsequent design and analysis of excavation support systems. The original geotechnical conditions therefore remain valid. In summary, the height, setbacks and built form are similar to the approved scheme, the density of the development is reduced (in terms of unit numbers and car parking) and the residential amenity and visual presentation improved and enhanced. The changes to the roof design in terms of the elements that breach the 13.0m height limit will not result in any adverse visual impacts to the streetscape or negative amenity impacts to neighbouring sites. On balance, the modified scheme results in a better environmental planning outcome to

Section 4.55 (2) - Other Modifications	Comments
	the previously approved development. In summary, in reviewing the above comments and the court judgement by Justice Bignold established in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289, it is concurred with that the proposed modification is consistent with the original consent and can be considered under Section 4.55 of the Act.
(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 DA2019/0748 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site was previously used as a service station and a phase 1 contamination report was submitted with the original application which was assessed by Council's Health Unit as acceptable subject to conditions. The subject modification is supported with an addendum to the Phase 1 (PSI) contamination report that confirms that the development remains substantially the same. In considering the minor changes to the basement, including the addition excavation, the report concludes that the recommendations of the previous PSI remain valid.
Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested to address the issues raised by the DSAP and Council's Waste Officer. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. An updated Design Verification Statement has been submitted with the subject modification.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed modified 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 modification 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 29/11/2021 to 13/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	Supported (Subject to Specific Recommendations) The application was presented to the DSAP on 3 February 2022. The

Internal Referral Body	Comments
	Panel noted that most of the recommendations made in response to the concept scheme presented at the prelodgement for PLM2021/0323 have been taken into consideration by the applicant and the Panel generally support the proposal subject to the following specific recommendations. The DSAP included a sketch plan indicating "suggested" amendments. The Applicant's response to the recommendations are included below. <i>1. Investigate the potential and benefits for amenity, the courtyard and circulation at the ground level that might come from reducing the scheme to 2 cores</i> <u>Response:</u> The applicant states that <i>"the ground floor addresses the intent of the other DSAP recommendations regarding the lobby, without requiring a change to the number of lift cores. We note that the 2 access core sketch plan suggested by DSAP is non-compliant on the upper floors in the following areas:</i> <i>(a) The 2 core sketch does not address the level differences across the site and this approach would require and additional building height / exceedance to be increased by circa 1.5 metres..</i> <i>(b) The 2 core arrangement will also not be compliant from a cross ventilation and solar perspective without re-introducing common corridors past bedroom windows, which we believe to be a poor design outcome in relation to the amenity of these apartments."</i> The Applicant's justification has been reviewed and is supported. <i>2. Investigate the potential of a generously proportioned shared access for residents and access to toilets off Bungan Street directly through to the courtyard with access to secure residential lobbies on either side.</i> <u>Response:</u> A retail lobby connection has been introduced to the retail arcade and a new generous residential lobby to Waratah Street in lieu of the original access via Bungan Street. The proposed modification demonstrates a significant improvement to the ground floor pedestrian residential and retail access. The retail and residential pedestrian access is clear, legible, generous and enhances the public domain and satisfies the intent of the DSAP Recommendation No. 2. <i>3. Rationalise access to garbage and fire egress.</i> <u>Applicants Response:</u> The waste access and bulky goods room configuration addresses the previous comments from Council's Waste Officer. The amended plans satisfactorily address the DSAP Recommendation No. 3.

Internal Referral Body	Comments
	<i>4. If the courtyard is treated as a 'working courtyard' it would be acceptable for the retail tenancies to traverse the courtyard to gain access to the garbage rooms.</i> <u>Response:</u> Back of house access is provided from the retail tenancies to the dedicated retail waste room without the need to traverse the courtyard and impact on the amenity of the users of that space. The amended proposal satisfies the intent of DSAP Recommendation No. 4. <i>5. Maximise the dimension of the courtyard and introduce planting at the ground level</i> <u>Response:</u> The dimension of the ground floor courtyard has been increased significantly, being 3.7m at the Waratah Street entrance, 4.0m wide along the length of the residential lobby and increasing to 5.7m wide in the centre. Larger planter beds have been included with sufficient soil depths to allow for significant planting with a skylight over open to the sky. The amended plans satisfy DSAP Recommendation No. 5. <i>6. Investigate deletion of the courtyard space on Level One</i> <u>Response:</u> The Applicant states that the deletion of the courtyard space on Level 1 was considered, however, ultimately retained as it provides significant amenity to the residential apartments by way of communal open space, acoustic separation to the retail, security and outlook. The amended landscape plans provide significant landscaping at both Ground Floor Level and Level 1 of the development, which will enhance the amenity of the development for future residents in compliance with the ADG. The Applicant's justification is supported. <i>7. Investigate natural lighting of fire stairs and lobbies.</i> <u>Response:</u> The Applicant states that <i>natural lighting is provided to 2 out of 3 residential lobbies which is considered reasonable given the number of apartments serviced from each of the lobbies. We have considered including natural lighting to fire stairs although have been advised of BCA / fire non-compliances due to separation requirements from fire sources and boundary.</i>

Internal Referral Body	Comments
	The Applicant's justification is supported. <i>8. Add external windows to bathrooms and utility rooms where possible, including ground level retail toilets.</i> <u>Response:</u> The applicant states that <i>"this recommendation has been addressed where possible and there are no ADG or DCP requirements regarding adding external windows to all bathrooms."</i> The Applicant's justification is supported.
Building Assessment - Fire and Disability upgrades	Supported, subject to conditions The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	Supported, subject to conditions Council reviewed the acoustic report, noting changes that have been made to the design of the construction. The proposed changes to the conditions associated with DA2019/0748 determination notification are: • Condition 25 to be modified to reference the modified acoustic assessment. • Condition 73 to be modified to reference the modified acoustic assessment. We support the changes to condition wording to reflect the updated acoustic report. See updated conditions below to account for condition 25, and for condition 75, simply replace acoustic report number 18287 with 2105067.
Landscape Officer	Supported, subject to conditions <i>updated comments 17 May 22:</i> A Supplementary Statement of Environmental Effects, amended Architectural Plans, and amended Landscape Plans are submitted for consideration. The Supplementary Statement of Environmental Effects includes a proposal to amend the wording of Condition 11 Public Domain Plan, regarding street tree planting in Waratah Street due to the technical requirements and thus constraints for street tree

Internal Referral Body	Comments
	planting from: Fire Truck emergency servicing locations; Substation clearances; Hydrant/booster clearances; driveway and driveway sightlines; pedestrian crossing sightlines and clearances; and pedestrian roundabout sightlines and clearances. Other Landscape Referral conditions require either amendment or deletion. The amended Landscape Plans shall be referenced in Condition 1. Approved Plans and Supporting Documentation, as Landscape Plans LA LP01 issue 05, LA LP02 issue 05, LA LP03 issue 01, and LA LP04 issue 02, prepared by Black Bettle Landscape Architects and Design, and dated 31.03.2022. Following review of the amended Landscape Plans, Condition 11 Public Domain Plan shall be amended to reflect the amended Landscape Plan LA LP01 issue 05, illustrating the scope of the public domain works. Following review and acceptance of the amended Landscape Plans, Condition 27. Amended Landscape Plans, shall be deleted as the scope of landscape and public domain works is acceptable, subject to conditions for the public domain works. Condition 62. Landscape Works, shall be amended to reflect accordance with the approved Landscape Plans under this modification. <i>previous comments:</i> The application is for modification of development consent DA2019/0748 for construction of a shop top housing development, to refine the architectural detailing and provide enhanced streetscape/ public domain, residential amenity and improved urban design outcomes, and in particular the detailing associated with the central courtyard and residential foyer areas and the retention and protection of the existing street tree adjacent to the Bungan Street frontage. The proposed modifications include the proposal to delete/modify the following conditions relevant to the landscape works: • Condition 1 to be modified to reference the modified plans and supporting reports. • Dot point 3 of Condition 11 to be modified to read maximum 2.5% fall. • Dot point 9 of Condition 11 to be deleted as we rely on the landscape plan as submitted. • Condition 27 to be modified or deleted to reflect the modified landscape plans. Modified Landscape Plans identified as LA LP01 - issue 04, LA LP02 - issue 04, and LA LP03 - issue 01 are submitted for consideration, as is an updated Arboricultural Impact Assessment dated October 2021. No concerns are raised with the recommendations of the Arboricultural Impact Assessment.

Internal Referral Body	Comments
	The modified Landscape Plans are acceptable for works within the property boundaries. The public domain works within the road reserve are subject to a Section 138 Application for Works in the Road Reserve under the Roads Act. In terms of the modification application the Development consent DA2019/0748 conditions shall be deleted or modified as follows: • Condition 1 Approved Plans and Supporting Documentation, shall be modified under this application to reference the modified Landscape Plans and updated Arboricultural Impact Assessment. • Condition 11 Public Domain Plan, remains relevant and separate to the development consent and the information as per conditions imposed shall be provided for the Section 138 Application. • Condition 27 Amended Landscape Plan, shall be removed as the modified Landscape Plan are acceptable.
NECC (Development Engineering)	Supported, subject to conditions The proposed modification plans have been reviewed and the proposal is supported. The submitted Stormwater Management Plans have been amended to suit the revised design which is acceptable. The Geotechnical letter also supports the modification. Development Engineering support the proposal subject to the following. Condition 1 a) reflecting the amended Stormwater Management Plans by Erbas, drawing number SYD21326-SW000, SW100, SW101, SW102 and SW201 Issue P3 dated 01/11/21. Condition 17 amended as follows. On-site Stormwater Detention Details The Applicant is to provide drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy Clause 9.3.1, and generally in accordance with the concept drainage plans prepared by Erbas, drawing number SYD21326-SW000, SW100, SW101, SW102 and SW201 Issue P3 dated 01/11/21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for Civil Engineering. The drainage plans must address the following: 1. The access grate within the retail waste room must be a solid cover.

Internal Referral Body	Comments
	2. A services plan for the outlet pipes in the road reserve. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate. Reason: To ensure appropriate provision for disposal and stormwater management arising from development.
NECC (Water Management)	Supported, subject to conditions <i>Updated comments 13/01/2022</i> This application was assessed under Pittwater 21 DCP B5.9. The development application DA2019/0748 was approved (19 February 2020) prior Council Water Policy endorsed version (26/08/20). The proposed modification is not presenting a major departure from a water quality management point of view. The applicant has included a sediment trap and trash screen in the pit placed prior to stormwater being discharged from the land. Conditions apply. The proposed mod is satisfactory under pre Water Policy Framework. Council note page 5 of the Statement of Environmental Effects (Modification of Development Consent DA2019/0748 Shop Top Housing) the following affirmation: " The ultimate outcome is a building of exceptional design quality which will make a positive contribution to the streetscape whilst maintain the residential amenity outcomes afforded to adjoining development through approval of the original scheme." In line with that statement Council expect to see consideration of water quality management best practice (filtration cartridges,...) to carry the project to the proposed outcome level. Sediment and erosion controls must be installed prior to any demolition on site and maintained until all works are complete and groundcover re-established.
Strategic and Place Planning (Urban Design)	The Urban Design assessment was under-taken by the DSAP, refer above.
Strategic and Place Planning (Development Contributions)	Supported, subject to conditions The updated cost estimate is from a registered quantity surveyor. The

Internal Referral Body	Comments
	request to modify the contribution condition is therefore supported.
Traffic Engineer	Supported, subject to a condition The application is for a modification to the approval granted under DA2019/0748 for a 4 storey shop top housing development with basement carparking. The approved development has 9 retail shops with a floor area of 930m², 36 residential apartments and 2 levels of basement parking containing 112 off-street spaces (69 residential, 12 visitor and 31 retail. 4 of the parking spaces are for disabled use). The approved development also incorporates 14 residential bicycle racks, 4 retail bike racks and 2 motorcycle parking spaces. The modification reduces the retail floor area to 902.8m² and reduces the number of residential apartments to 33 (4 x 1 bed, 20 x 2 bed and 9 x 3 bed). <i>Parking</i> Carparking requirement of modified proposal is for 62 residential spaces, 11 visitor spaces and 30 retail spaces, a total of 103 spaces. In response the modified development will provide 101 off-street spaces comprised of 63 residential spaces, 7 visitor spaces and 31 retail spaces. The residential and retail parking components exceed requirements by one space however there is a 4 space shortfall in terms of the visitor parking component. Given that the site is within 200m of the Mona vale B-Line bus stop the small shortfall in total parking supply and a relaxation of the visitor carparking requirement is supported. It is noted that this would still be consistent with the visitor parking requirements required under the RMS Guide to Traffic Generating Development which suggests 1 visitor space for each five units (7 spaces) for high density residential development. The modified development will provide bicycle parking for 37 bikes comprised of 33 secure resident bike racks in basement level 2 and 4 x retail bike racks on basement level 1. This is well in excess of the DCP requirement for 15 bike racks and is acceptable The DCP requirement is to provide 1 motor-cycle space for every 100 parking spaces for business or industrial developments. The modified development makes allowance for 3 motor cycle spaces on the basement 1 parking level and 2 motorcycle spaces for resident use on the basement 2 parking level. This exceeds DCP requirements and is acceptable Disabled parking spaces are sized and marked in accordance with AS2890.6 <i>Waste Collection</i>

Internal Referral Body	Comments
	Waste collection is proposed to occur from Waratah St within an existing No Stopping zone. There is a marked pedestrian crossing on Waratah St near Bungan St. There is requirement for 20m of No Stopping zone on approach to a pedestrian crossing to ensure adequate sight lines to children and other pedestrians using the marked pedestrian crossing. Council's Waste Collection contractors are however not permitted to collect waste during school drop off and pick up hours and collect waste from this location around 6am in the morning when use of the crossing would be minimal and collect waste from within No Stopping zones in many locations. Given the no objection is raised to proposed waste collection point. <i>Pedestrian Sight Lines</i> A sight line triangle 2.5m x 2.0m is proposed at the exit point from the driveway where it meets the footpath (AS2890.1 3.2.1(b)) and this has been confirmed on the plans. <i>Access</i> The access ramp has a width between kerbs of 5.5m which is adequate for two way traffic flow. The ramp has a gradient which does not exceed 5% for the first 6m inside the property boundary and the maximum gradient on the ramp does not exceed 20% with appropriately graded ramp transitions as required by AS2890.1. The access arrangements are satisfactory <i>Loading</i> The approved development has no off-street loading bay and one is not proposed as part of the modification, with deliveries to be made via Loading Zones on the surrounding streets, the nearest of which is on the site's Bungan Street frontage, another is also located diagonally opposite the site on the east side of Bungan Street, south of Waratah St. The approved development reduces the retail floor area on the site by some 170m² and the modification further reduces the retail component of the development by a further 27.2m². The development will therefore reduce, to some extent, the demand on the on-street Loading Zones. The Loading arrangements are not therefore opposed. <i>Summary</i> The changes proposed under the modification are acceptable and the traffic and parking impacts of the modification have been appropriately

Internal Referral Body	Comments
	addressed. There are no traffic engineering barriers to approval of the modification. <i>Additional comments 20 May 2022</i> Due to the changes in the basement to address the Sydney Water sewer adjustment one (1) retail car parking space will be removed in basement one (1). In addition, it is noted that the modification results in the removal of the previously approved car. Transport offer no objections to the loss of the retail car parking space as the modified car parking (residential and retail spaces) exceeds the DCP requirement. A condition is however required to convert one residential parking space to a car wash bay.
Waste Officer	Supported, subject to conditions Updated Assessment - Amended Plans (submitted 6/4/2022) Recommendation - Acceptable, subject to conditions. Previous Assessment Recommendation - Unacceptable. Specifically: Basement Waste Bin Room - The room is too small. To contain 4 rows of bins and 2 isles the room needs to be a minimum of 5 metres wide. Bulky Goods (hard waste) Room - The door to the room is too narrow. The door must be a minimum of 1200mm wide. - The door to the room opens inwards. The door must open outwards. Transfer of bins from Basement Bin Room to Ground Floor Holding Room - The Waste Management Plan states that the bins will be transferred via the vehicular driveway. This is unacceptable. A path that is separate from the vehicle driveway must be provided. Ground Floor Temporary Bin Holding Room - The service door to the room is too narrow. This door must be a minimum of 1200mm wide. - The width of the holding bay service access is too narrow, particularly were the wall ends adjacent to the driveway. This pathway must be a minimum of 1200mm wide. Additional Comments regarding Waste Storage and Access Arrangements - It is suggested that the temporary bin holding room be used as the permanent bin holding room. This room is of sufficient size and would be accessible to all 4 lift cores from the lobby areas via the addition of an access door for the residents into the room. This would eliminate the need to transfer the bins from and to the basement each week

Internal Referral Body	Comments
	removing the WHS issue of wheeling bins on the vehicular driveway. By not having to pay a caretaker to transfer the bins each week an ongoing financial burden is removed from the property owners. - The temporary bin holding area is also large enough to contain the bulky goods room on a permanent basis. This should be considered.

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

Detailed Assessment

SEPP No. 55 – Remediation of Contaminated Lands establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist Councils and Developers in determining when land has been at risk.

Clause 7 of the SEPP requires that:

(1) A consent authority must not consent to the carrying out of any development on land unless

(a) it has considered whether a site is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out,

and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subclause and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Planner Response:

A former service station with five (5) Underground Storage Tanks (UST) once occupied the site. Petrol stations are listed in Table 1 of the Contaminated Land Guidelines, as a potentially contaminating land use. As such, the land concerned falls within land specified in subclause 7(4) of SEPP 55. Sub-clause 7 (2) of SEPP 55 requires the consent authority to consider the findings of a preliminary site investigation report before the determination of a development that would result in a change of use of land specified in sub-clause 4.

In response to the Clause 7 requirements of the SEPP, a report titled "*Preliminary site investigation 19 Bungan Street, Mona Vale*" referenced as E24520_Rev0, prepared by Eiaustralia dated 24 January 2020 was submitted with the original application (DA2019/0748). The phase one (1) preliminary contamination report recommends. "*Prior to demolition works, a survey of the existing building be completed by a suitably qualified and experienced consultant, to identify any hazardous materials present within the building fabrics.*"

The report also recommends "*a detailed site assessment or phase 2 contamination report to be undertaken post demolition as the area of concern where the former UST were located from the previous development is located beneath the current development*"

It is noted that a detailed site investigation cannot be completed until the building has been demolished, therefore in order to address sub-clause 7(3) of SEPP 55, a Phase 2 report would be required immediately after the demolition of the structure and before any further work is carried out.

Council's Environmental Health Unit, in the assessment of the original DA and reviewing the Phase 1 report confirmed that the site is suitable for shop top housing subject to conditions. The subject modification is supported with an addendum to the Phase 1 (PSI) Contamination Report that confirms that the development remains substantially the same. In considering the minor changes to the basement, including the additional excavation, the report concludes that the recommendations of the previous PSI remain valid. The contamination conditions in the original consent therefore remain applicable to the development.

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 four storey residential flat 'housing' development plus basement car parking (103 spaces) for the provisions of 33 self-contained dwellings (reduced from 36 units), 924sqm of retail (reduced from 930sqm) and 112 car parking space (reduced from 112 spaces).

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 for the modified development.

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 ADVISORY PANEL

The application was referred to the Design and Sustainability Advisory Panel (DSAP) who supported the proposal subject to recommendations. The proposal has been amended to address the Panel's recommendations. Refer to discussion in the "Referrals Section" of 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 amended design continues to respond to the desirable elements of the neighbourhood character. The proposal retains the bulk, scale and massing of the approved 4 storey development and the building height sits below the tree canopy. The siting of the development is generally consistent with the approved development which responds to the setback of the adjoining developments. The amended scheme presents a contemporary modulated facade with a refined palette of materials including the use of face-brick. The DSAP commended the attention to architectural detail including curved walls and balcony edges.

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 overall building height and mass is consistent with the approved development which is appropriate given the corner location. The use of facade projections, such as balconies, planter beds and awnings provide articulation and break up the mass of the building. The ground floor presents a highly activated frontage to Bungan Street and the retail arcade. The amendment of the design to introduce generous and clearly legible pedestrian access enhance the public domain interface.

Principle 3: Density

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

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

Comment:

The total number of residential units has been reduced from 36 to 33, the total amount of retail floor space reduced from 930sqm (24.3%) to 924sqm (28%) and the car parking has been reduced from 112 spaces to 103 spaces.

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 apartments are designed around a central courtyard and receive good access to natural cross ventilation, daylight and sunlight. The modified design includes solar panels on the roof in compliance with the BASIX requirements.

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:

Amended landscape plans have been submitted which have addressed the intent of the DSAP recommendations in terms of improving the amenity of the landscaped courtyards at ground and first floor. The proposal is supported by Council's Landscape Officer, subject to conditions.

Principle 6: Amenity

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

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

Comment:

The amended design improves the internal amenity of the development for the future residents, by increasing the number of lifts and deleting the need for shared corridors and improving access to sunlight, natural ventilation and outlook.

The development, as modified, improves the relationship between the proposed western apartments and the apartments within No. 24 Waratah Street in terms of protecting visual privacy. The proposal maintains the setback of the northern wall to the common boundary resulting in a neutral impact on the future development potential of No. 17 Bungan Street.

Principle 7: Safety

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

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

Comment:

The proposal development, as modified, will improve the safety and security within the development as the inter-relationship of the public domain is enhanced.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The proposed development, as modified, will improve the mix of apartments providing the following:

1 bedroom = 3 (1%)
2 bedroom = 21 (62%)
3 bedroom = 9 (37%)

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:

As noted above, the DSAP supported the refined palette of materials with the use of face-brick.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Yes, the siting of the development as modified is generally consistent with the setbacks of the approved scheme and relates to its context.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Yes, the orientation of the development as modified is generally consistent with the setbacks of the approved scheme and maximises solar access.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	The development improves the transitions between the private and public domain with clearly legible pedestrian connections from Bungan Street and the retail arcade. Street trees are retained and supplemented with new planting. In summary, the amenity of the public domain is enhanced.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	The approved development provided 15% communal open space within the level 1 landscaped courtyard (209sqm) and at ground level. This is generally consistent with the amount of communal and public open space provided in the approved development. There is no reduction in the

		approved quantity of communal open space at level 1, however, the proposal improves the quality of this space. In addition, the ground level courtyard has improved significantly with a wide residential lobby and retail lobby linking to large central communal courtyard with landscape planting open to the sky. In addition, all units have areas of POS that typically exceed the minimum ADG size which provides enhanced outdoor amenity to the overall development.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	The deep soil, zones are compliant and consistent with the approved development. The planter beds in the ground floor courtyard are 1m deep to allow for significant planting. The planted beds in the first floor courtyard vary in depth from 600mm to 1400mm. Deep soil zones are provided in the arcade to support new trees and a "cut-out has been provided to the basement to ensure the retention of the street tree. New street panting is also proposed along Bungan Street.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms				The modified development maintains the central courtyard which allows for a 12m separation between habitable rooms and 8.3m between non-habitable rooms. In addition, vertical						
Building height	Habitable rooms and balconies	Non-habitable rooms												

	<table border="1"> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	batten screens provide privacy to the balconies and habitable rooms facing the courtyard. The modified scheme improves the relationship of the proposed upper floor western units to the units in the adjoining development at No. 24 Waratah Street. The northern wall is setback between 4.8m and 6m from the boundary with balconies and planter beds projecting further into the side 6m setback. The building separation to the north is generally consistent with the approved scheme which included the approval of north facing balconies within the 6m side setback. The subject design has been amended to reduce the length of the north facing balconies so they are not continuous. In addition, operable sliding screens are proposed to the balconies as opposed to the approved operable roller blinds screens to ensure the future development of the neighbouring site to the immediate north is protected.
Up to 12m (4 storeys)	6m	3m									
Up to 25m (5-8 storeys)	9m	4.5m									
Over 25m (9+ storeys)	12m	6m									
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	The proposal improves the building entries / pedestrian retail and residential access to connect and address the public domain. The ground floor units all have direct access to Bungan Street or the retail arcade.									

		The dimension of the access points are generous and are clear legible.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	The location of the vehicle access is retained at the south-west corner of the site. Council's Transport supports the modification which is noted to have acceptable traffic and parking impacts.
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	The development is zoned as B4 Mixed use. The proposal reduces the density of the development as previously approved. In addition, the DSAP at the PLM recommended a reduction in car parking spaces to allow for deep soil planting in the arcade. The total amount of parking has been reduced by 10 spaces from the approved scheme with a shortfall of 4 visitor parking spaces. The development provides: 30 Retail (31 Required) 7 Visitor (11 Required) 63 Residential Car Spaces (62 Required) 41 Bike racks (36 required) Council's Transport Engineers has no objection to the slight deficiency in visitor parking spaces noting that it is consistent with the visitor parking requirements under the RMS Guide to Traffic Generating development and is within 200m of the Mona Vale B line. The proposal increased the

		total number of bike spaces are provided (4 basement 1 for retail and 37 basement 2 for residents).
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:	Complies: 24/33 apartments (72%) receive a min 2 hours direct sunlight to living rooms and private open space. This is an improvement on the approved scheme.
	- Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. - A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Complies
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:	Complies: 27/33 apartments (82%) deemed to comply. This is an improvement on the approved scheme.
	- 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. - Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Complies, no change to the approved scheme.
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Complies, the ceiling heights to the ground floor retail units has increased from 2.7m - 3.7 to 3.8m - 3.9m
	Minimum ceiling height	
	Habitable rooms	
	Non-habitable	
	For 2 storey apartments	
	Attic spaces	
	If located in	

	mixed used areas	promote future flexibility of use											
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:		All apartments comply with minimum internal areas which is an improvement to the approved scheme which included one non-compliant 3 bedroom unit.										
	<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>			Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²
	Apartment type	Minimum internal area											
	Studio	35m ²											
	1 bedroom	50m ²											
	2 bedroom	70m ²											
	3 bedroom	90m ²											
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.												
	A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.												
	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.		All habitable room have a minimum glass area of 10% of the floor area of the room.										
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		All habitable room depths are less than 2.5x the ceiling height.											
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		The majority of north and south facing apartments have depth of between 8.2m and 8.8m from the glazing to kitchen wall. The approved scheme also included units with a non-compliant 8.0m depth. On merit there is no new non-compliance with the control and the minor breach of the 8.0m depth is on balance supported.											
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).		Complies											
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.		Complies											
Living rooms or combined living/dining rooms have a minimum width of:		Complies											

	3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments																
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Complies															
	<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m
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3+ bedroom apartments	12m ²	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.																	
	N/A																
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Four (4) apartments access a circulation core as compared to the approved development which had six (6) units per core.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Complies															
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²					
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2 bedroom apartments	8m ²																
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At least 50% of the required storage is to be located within the apartment.																	
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at	Where possible planting, circulation and non-habitable rooms are located to buffer external															

	least 3m away from bedrooms.	noise sources. The condition in the original consent requiring compliance with the acoustic report is still relevant although it has been updated to reflect the updated acoustic report.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The application is supported with an additional acoustic report that confirms that the noise emissions from the rooftop plant can comply with the requirements of the EPA's Noise Policy and all other sensitive receivers in the vicinity of the site through the implementation of standard noise mitigation measures, including noise barriers. The proposed 1m high noise barriers around the rooftop condenser units have been considered as part of the acoustic review. The review confirms that the proposed barriers will achieve compliance with the noise emission requirements.
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.	The unit mix has improved.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The design of the facades has improved and the Design Panel commend the external treatment of the development.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	The roof level pop-up windows and plant equipment are further setback from levels below to minimize the impact of built form to the street and neighbours.

		The roof top plant is setback from the edge of the roof to minimise any visual impacts from the street and neighbouring properties. The acoustic report confirms the plant will not give rise to any unreasonable acoustic amenity impacts.				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The amended landscape plan addresses the DSAP recommendations. The landscaping to the communal courtyards has improved and tree planting proposed along the arcade.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				The soil depth for planting in the communal courtyards is generally in compliance with the control to allow for planting of medium and small trees, refer above. The proposed planting has been assessed by Councils Landscape Officer as acceptable, subject to amended conditions.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm		6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the				Complies, 20% of the units	

	development incorporate the Livable Housing Guideline's silver level universal design features	shall be adaptable.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	The proposal can be accessed by public transport including the B-Line. The proposal as amended enhances the public domain with active retail units at ground level and clear legible pedestrian entries.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Awnings are proposed along sections of Waratah Street, Bungan Street and the retail arcade providing weather protection in areas of high pedestrian activity.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Complies: The proposal is supported with an amended BASIX certificate.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Complies: The proposal is supported with suitable water management plans and Council's Water Management Officer has no objections.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Complies: The proposal has been amended to address the concerns from Council's Waste Officer.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Complies: The development is designed to ensure the longevity and sustainability of the building.

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.

Planner Comment:

(a) The parking rate specified in Part 3J of the ADG does not apply in this case as the site is not within 800m of a railway station or light rail stop and is not zoned or within 400m of land zoned B3 or B4 in a nominated regional centre.

While the visitor parking does not comply with the P21DCP, it is consistent with the recommendations in the RMS Guide to Traffic Generating Development and no objections are raised by Council's Transport Engineer.

(b) The proposed internal floor area for each unit complies with the provisions of Part 4D of the ADG.

(c) The proposed ceiling heights comply with the provisions of Part 4C of the ADG.

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

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

(3) To remove doubt:

- (a) 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 proposal demonstrates that adequate regard has been given to the design quality principles of SEPP 65 and objectives/guidelines of the ADG. The modified development is supported by a Design Verification Statement from the new architect.

SEPP (Building Sustainability Index: BASIX) 2004

An amended BASIX certificate has been submitted with the application (see Certificate No.

1249649_03) prepared by Eco Certificates Pty Ltd dated 7 April 2022. The BASIX Certificate indicates that the development will achieve the following:

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

The amended BASIX certificate required the location of the solar panels to be annotated on the architectural drawings. The amended roof plan includes details of the solar panels in compliance with this requirement.

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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	13.0m	15.0m	14.9m	N/A	No

			(to the top of the acoustic screens)		
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The maximum permissible height under PLEP 2014 is 13.0m. The original application was supported with a Clause 4.6 Variation and the approved development has a maximum building height of 15.0m, which represented a 2.0m (15.38%) breach of the 13.0m height limit. Elements that breached the 13.0m height limit included the lift shaft, clerestory windows and roof elements.

The proposal development has a maximum height of 14.9m. The majority of the proposed development sits below the 13.0m height plane with elements such as pop out roof windows, the lift over-run and acoustic screens breaching the height plane in a similar manner, although noted to be in different locations to those in approved scheme.

Whilst the Clause 4.6 in relation to the PLEP 2014 Building Height development standard variation mechanism does not apply to an application seeking to modify a development consent, the acceptability of the increase in building height has been assessed against the objectives of the standard as follows:

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

Comment:

The applicant states that the modifications provide for a 400mm reduction in overall building height compared to the original approved scheme, with the modified proposal providing for overall building heights consistent with those previously approved.

The review of the approved versus modified schemes, notes that the maximum proposed height is 14.9m and the breaching elements consist of roof elements, pop-up windows, plant and associated screens. Given that the majority of these elements are setback from the perimeter of the roof, it is considered that the revised roof design will not impact on the design quality of the development or the streetscape. The height and scale of the development will remain generally consistent with the approved development and the desired character of the locality.

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

Comment:

As discussed above, the applicant states that the modifications provide for a 400mm reduction in overall building height compared to the original approved scheme. The modification is comparable to the approved height and scale of the approved development with elements breaching the height standard. The DSAP support the proposed modified design and raised no issues with the revised roof design. The modified scheme, notwithstanding the building height breaching elements, will remain complementary and compatible with the height and scale of surrounding and nearby development.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

The application is supported with shadow diagrams that demonstrate compliant levels of solar access are maintained to surrounding residential development.

(d) to allow for the reasonable sharing of views,

Comment:

View loss issues were raised in submissions from neighbours at No. 24 Waratah Street in response to the exhibition of the original development application. A view loss analysis confirmed that the original development would result in some minor impacts on distant districts views. It was noted at the time of the view loss assessment with the original design that a fully compliant scheme would have a similar impact.

While no submissions have been received in response to the notification of the modification application, the elements that breach the 13.0m height limit are in different locations to the approved scheme. Notwithstanding this, it is considered that there will be no additional view loss impacts as the subject modifications involve no increase in the overall height of the development, and the areas where the additional height has been repositioned, are also satisfactory

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

Comment:

The elements that breach the height standard are not a consequence of the natural topography of the site.

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

Comment:

The site is not located within the immediate proximity of any heritage conservation areas or heritage items. Notwithstanding this, it is noted that the majority of the elements that breach the 13.0m height plane are set back from the perimeter of the building and will not result in adverse visual impacts or detrimental streetscape impacts.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and

processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal will increase the depth of excavation by 1.5m. A supplementary geotechnical report has been submitted which confirms that the additional excavation will not result in any new impacts subject to compliance with the recommendations of the original geotechnical report. The geotechnical conditions of the original consent are still relevant to the subject modification.

The modified earthworks as assessed against the provisions of Clause 6.2 below which requires the consent authority to consider the following matters:

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition is included in the recommendation requiring compliance with the updated Plan.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions included in the original consent to limit impacts during excavation/construction are still relevant.

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

Comment: The excavated material will be processed according to the updated Waste Management Plan for the development. A condition of consent has been included to ensure compliance.

(f) the likelihood of disturbing relics

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

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

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

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

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

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

heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
Front building line	Primary frontage (Bungan Street) 3.5m up to a height of 8.49m, then 6m above a height of 8.5m Secondary frontage (Waratah Street) 50% less (subject to compliance with the outcomes of the control)	<u>Bungan Street</u> Ground - 3.5m - 2.9m at the corner Upper floors -3.5m - 1.2m <u>Waratah Street</u> Ground floor – 3.5m except for lobby Upper floors – 3.5m – 1.2m	<u>Bungan Street</u> Ground - 3.5m - 3.9m at the corner Upper floors - Max 4.1m to the external wall, 2m to balconies, 0.3m to planter beds <u>Waratah Street</u> Ground Floor 3.5m - nil Upper floors - 2.5m - 1.7m to balconies, nil to planter and 3.5m to external wall	No Refer to discussion
Rear building line	Nil	Nil to rear (west)	N/A	Yes
Side building line	The side setback provisions of SEPP 65 (ADG) Prevail over the DCP which requires a 6m setback to the side boundary up to 4 stories (12m)	6m to the external northern wall and a min 3.5m to some balconies	Generally the same	Refer to SEPP 65 discussion

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	No	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	No
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.3 Building colours and materials	No	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	Yes	Yes
D9.16 Character of the Public Domain - Mona Vale Commercial Centre	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The Desired Character requires:

The Mona Vale commercial centre status will be enhanced to provide a one-stop convenient centre for medical services, retail and commerce, exploiting the crossroads to its fullest advantage and ensuring its growth and prosperity as an economic hub of sub-regional status. The permissible building height limit is increased to promote economic growth within the centre.

The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

Comment:

The desired character statement refers to the permissible building height being increased in the Mona Vale town centre to promote economic growth. The proposed development remains consistent with the four storey height of the approved development comparable to the height approved under development (DA2019/0748). Elements including pop-out roof lights, plant and associated screens breach the 13.0m height plane, resulting in a maximum 1.9m (14.6%) breach of the height development standard.

Again, this is similar to the approved development, which resulted in a 2.0m (15%) breach of the height limit as a result of pop-up skylights. The pop-up skylights that breach the height limit are set back a minimum of 3.5m from the Bungan Street frontage and 3.9m - 5.6m from the Waratah Street frontage. The plant and associated screens are set back a minimum 8.4m from the Bungan Street frontage and 11.5m from the Waratah Street frontage. Due to the setback of these elements, they will not be readily discernible in the streetscape.

The design, scale and treatment of the modified scheme reflect the principles of good urban design embodied in SEPP 65 and the ADG as detailed in the relevant section of this report and the referral comments from DSAP. The ground floor retail tenancies have the potential to be used as food uses, subject to a separate DA, with associated outdoor seating.

On balance the proposal, as modified, is consistent with the desired character of the Mona Vale locality.

B6.3 Off-Street Vehicle Parking Requirements

The approved development has 9 retail shops with a floor area of 930m², 36 residential apartments and 2 levels of basement parking containing 112 off-street spaces (69 residential, 12 visitor and 31 retail. Four (4) of the parking spaces are for disabled use).

The modification reduces the retail floor area to 902.8m² and reduces the number of residential apartments to 33 (4 x 1 bed, 20 x 2 bed and 9 x 3 bed).

Pursuant to Clause B6.3 the modified development requires a total of 103 spaces comprising: 62 residential spaces, 11 visitor spaces and 30 retail spaces, a total of 103 spaces. The modified development proposes a total of 100 off street spaces comprising: 63 residential spaces, 7 visitor spaces and 30 retail spaces. The residential parking components exceed requirements by one space, however, there is a 4 space shortfall in terms of the visitor parking component.

Given that the site is within 200m of the Mona vale B-Line bus stop, the small shortfall in total parking supply and a relaxation of the visitor carparking requirement is supported. Furthermore, it is noted that the modified development is consistent with the visitor parking requirements required under the RMS Guide to Traffic Generating Development which suggests 1 visitor space for each five units (7 spaces) for high density residential development.

B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road

Detailed Assessment:

The Clause does not permit an access driveway from allotments adjoining Waratah Street, and Park Street in the Mona Vale Commercial Precinct onto either Bungan Street or Waratah Street where alternative access to a local road is available or can be made available via a right-of-way or easement.

The site bound by two primary roads, Waratah Street and Bungan Road with existing access via Waratah Street. The approved development granted consent for access via Waratah Street as there is no alternative access to a local road this arrangement. The subject modification maintains access via Waratah Street which has been assessed as acceptable by Council's Transport Unit.

C1.18 Car/Vehicle/Boat Wash Bays

A condition requires one (1) residential car park space to be converted to a car wash bay.

C2.22 Plant, Equipment Boxes and Lift Over-Run

Clause C2.22 requires:

Where provided, plant and equipment boxes and lift over-runs are to be integrated internally into the design fabric of the built form of the building.

Locate and design all noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar to protect the acoustic privacy of workers, residents and neighbours.

Variations

Subject to achievement of the outcomes of this control, consideration may be given to the location of plant, equipment boxes and lift over-runs on the roof a building where it can be shown that there will not be a non-compliance with Council's built form controls including building height and building envelope.

Where located on the roof any plant, equipment boxes and lift over-runs are to be adequately screened from view from adjoining properties and the public domain.

Comment:

The modified development includes the addition of plant (air conditioning units and solar panels) on the roof. The application is supported with a letter from ERBAS Engineers that confirms that many factors made the location of the plant on the roof the preferred location, including the need to avoid impacts on the neighbouring properties which was confirmed through consultation with the acoustic engineers. The letter notes that other options were considered, including: (A) *The basement which was assessed as unsuitable due to excessive heat generation and insufficient ventilation and (B) Balcony location which was assessed as unacceptable due to acoustic and visual amenity impacts. As discussed elsewhere in this report the application is also supported with an acoustic report that confirms that the location of the plant will not result in acoustic impacts subject to 1m high screens around the perimeter of the plant.* The proposal includes the acoustic screens which are annotated to be between 1.0m and 1.5m in height.

The applicant's justification for roof top plant is supported and subject to compliance with the recommendations of the Acoustic Report Council's Environmental Health Unit have confirmed that there will be adverse impacts on the acoustic amenity of the future residents or neighbours.

The plant is set back from the edge of the building and will not be readily discernible as viewed from the adjoining properties and the public domain. In order to ensure that the outcomes of the control are achieved in terms of reducing visual clutter of the roof top plant and restricting the scale and bulk of the plant a condition requires all screens to be a maximum of 1.0m in height in compliance with the recommendations of the acoustic report.

D9.3 Building colours and materials

The control requires external colours and materials shall be dark and earthy tones. The proposed external white brick has been assessed by the DSAP as acceptable in the context of the sites urban location and given the contemporary design of the building.

D9.6 Front building line

Detailed Assessment:

Clause D9.6 requires a 3.5m setback up to a height of 8.49m from the front property boundary, then 6.0m above a height of 8.5m. The control allows the following variation; a minimum setback of half the front building line. In this regard, subject to meeting the outcomes of the control, the setback to Waratah Street (the secondary street) can be reduced to 1.75m up to 8.49m and 3m above 8.5m.

Details of the proposed front and secondary setbacks as compared to the approved scheme is provided below:

Waratah Street

Ground level - The modified proposal has a 3.5m setback at the south- west corner and for a 10m length of the Waratah frontage, however, the fire booster assembly, retail waste room and sub-station

breaches the secondary setback. By comparison the approved development also had elements that breached the secondary setback including the residential lobby, as such, the proposal has a similar outcome.

Level 1 - The southern external wall has a fully compliant 3.5m setback and the balconies to the south facing apartments have a similar setback of approximately 2m to the street frontage compared to the approved scheme. The subject development introduces a planter bed with a nil setback to the southern boundary. Planter beds are however considered to be architectural feature that are permissible in the setback.

Level 2 and 3 - The proposed south facing balconies have a varied setback of between 1.7m and 2.5m which reduces the extent of the breach on the upper levels when compared to the approved scheme.

Bungan Street

Ground Level - The proposal retains a compliant 3.5m set back at ground level.

Level 1 - Planter beds and private terraces have a similar non-compliant 3.5m set back compared to the approved scheme.

Level 2 and 3 - With the exception of the corner apartments, the external east facing wall on all levels has a 3-6m -4.1m setback to the street with balconies and planter beds projecting further into the front 6m setback. The setback is generally comparable to the approved scheme which on merit allowed a reduced setbacks along the eastern façade as it was assessed as being generally consistent with the established building line of Bungan Street, where existing development has a nil setback to the street frontage.

Retail Arcade

A 3.5m set back is maintained at ground level along the frontage to the retail arcade along the northern boundary. The set back to Level 1, 2 and 3 is generally consistent with the approved development. The northern wall is setback between 4.8m and 6m from the boundary with balconies and planter beds projecting further into the side 6.0m setback.

Merit consideration

The development is considered against the outcomes of the clause:

Achieve the desired future character of the Locality.

Comment:

The proposal is consistent with the desired future character of Mona Vale and the non-complying elements to the street frontages provide articulation, interest and expression of the facade.

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

Comment

The elements that breach the front setback will not impacts on views and vistas

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

Comment

The elements that breach the front setback will not impact on residential amenity. Subject to conditions requiring compliance with the recommendations contained within the updated acoustic report prepared by Wilkinson Murray the minor breach of the front set back control will not impact on the amenity of the proposed apartments.

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

Comment:

The proposal retains the significant street tree in Bungan Street and additional planting will further enhance the quality of the streetscape and reduce the perceived bulk and scale of the development.

Vehicle manoeuvring in a forward direction is facilitated.

Comment:

Vehicles can enter and exit the basement car park in a forward direction.

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

Comment:

The development enhances the streetscape providing a well considered contextually appropriate development that is consistent with the desired future character of the Mona Vale town Centre. The modulation and articulation of the development with light weight balconies and planter beds reduces the massing, scale and density of the development. The street trees are retained and the height of the development is in keeping with the height of significant tree canopy.

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

The proposal presents an attractive active street presents to all three public frontages. Conditions require the submission of a public domain plan and paving and detailed treatment of the public domain to comply with Council's Policy.

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

Comment:

The development respond to, reinforces and relates to the spatial characteristics within the surrounding urban environment. The residential component of the development is centred around an internal level 1 courtyard which mirrors the courtyard to the adjoining development to the east. The retail arcade is enhanced and activated.

In summary, it is acknowledged that the variation of the control does not reference terraces / balconies. However, an exception to the clause has been assessed on merit as acceptable as the breaching elements provide articulation, interest and variation to the facade. The application was presented to DSAP who raised no objections to the proposal in terms of the proposed setbacks. The proposal has been amended to address the issues raised with respect to the courtyard design and pedestrian connections to the development. The non-complying elements will not have result in adverse impacts

on the streetscape or neighbouring amenity. The proposed setbacks are generally in accordance with the approved development and the proposal satisfies the outcomes of the control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

The modified proposal generally maintains the height, footprint, setback and landscape area outcomes of the approved development. While the elements that breach the 13.0m height limit are in a different location on the site to that approved under the DA, there will be no unreasonable impacts on the visual quality of the development, the streetscape or impacts on neighbouring residential amenity. The character, built form and scale is generally consistent with the approved development which reflects the emerging shop top housing character of the Mona Vale Town Centre locality as embodied in the

P21DCP.

The application was presented to the Design and Sustainability Advisory Panel who supported the application, subject to design recommendations, which generally related to the design of the internal courtyards. The recommendations have been addressed by the Applicant and have been incorporated into the amended plans to provide improve pedestrian connections to the public domain and a generous internal courtyard on the ground floor level.

The proposal reduces the density of the development in terms of a slight decrease in the number of apartments and car parking spaces.

On balance, the modified scheme, presents a contemporary modulated façade with a refined palette of materials including the use of face-brick which improves the presentation of the development in the streetscape and the internal amenity of the proposed apartments is enhanced and there are no new impacts on the amenity of neighbouring residential properties.

Accordingly, the modification application is supported and 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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0870 for Modification of Development Consent DA2019/0748 granted for Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking on land at Lot 200 DP 746507, 19 Bungan Street, MONA VALE, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 00 Rev B Cover Sheet and Drawing List	21.03.2022	PBD Architects
DA 001 Rev B Project Summary	21.03.2022	PBD Architects
DA 002 Rev A Demolition Plan	29.10.2021	PBD Architects
DA 003 Rev A Site Plan	29.10.2021	PBD Architects
DA 100 Rev C Basement 1 Plan	21.03.2022	PBD Architects
DA 101 Rev C Basement 2 Plan	21.03.2022	PBD Architects
DA 102 Rev C Ground Floor Plan	21.03.2022	PBD Architects
DA 103 Rev B Level 1 Plan	21.03.2022	PBD Architects
DA 104 Rev B Level 2 Plan	21.03.2022	PBD Architects
DA 105 Rev B Level 3 Plan	21.03.2022	PBD Architects
DA 106 Rev B Roof Plan	21.03.2022	PBD Architects
DA 300 Rev C Section A	21.03.2022	PBD Architects
DA 301 Rev D Section B	17.05.2022	PBD Architects
DA 302 Rev C Section C	17.05.2022	PBD Architects
DA 303 Rev D Section D	17.05.2022	PBD Architects
DA 304 Rev B Section E	21.03.2022	PBD Architects
DA 400 Rev B Elevations (south-west and north-east)	21.03.2022	PBD Architects
DA 401 Rev C Elevations (south -east and north-west)	21.03.2022	PBD Architects
DA 402 Rev B Elevations (courtyard south-east and north-west)	21.03.2022	PBD Architects
DA 403 Rev A Material Schedule	29.10.2021	PBD Architects
DA 404 Rev A Material Schedule	29.10.2021	PBD Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW000 P3 Cover Sheet, Legend and Drawing Schedule	October 2021	ERBAS Building Services
SW001 P3 Erosion and Sediment Control Plan	October 2021	ERBAS Building Services
SW100 P3 Stormwater Service Plan Basement 2 Plan	October 2021	ERBAS Building Services
SW101 P3 Stormwater Service Plan Basement 1 Plan	October 2021	ERBAS Building Services
SW102 P3 Stormwater Service Ground Floor Plan	October 2021	ERBAS Building Services
SW201 P3 Stormwater Service Detail Sheet 1	October 2021	ERBAS Building Services
SW201 P3 Stormwater Service Detail Sheet 1	October 2021	ERBAS Building Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Assessment Ref RWDI#2105067 Version B	03.11.2021	RWDI Australia Pty Ltd
BASIX Certificate number 1249649M_03	07.11.2022	Eco Certifiers
NatHERS Certificate No. 0006756520	07.11.2022	Eco Certifiers
Traffic and Parking Assessment Report	03.11.2021	Terraffic Pty Ltd
Livable Housing Design Guideline Ref P221_337-2	04.11.2021	Design Confidence
BCA Design Assessment Report Ref P211_337-4	10.11.2021	Design Confidence
Arboricultural Impact Assessment	October 2021	Urban Forestry Australia
Acoustic Assessment Rev B Ref RWDI#2105067	03.11.2021	Wilkinson Murray
Access Design Assessment Report Ref P221_337-2	04.11.2021	Design Confidence
Addendum to the Preliminary Site Investigation Report (Contamination)	03.11.2021	EI Australia
Addendum to the Geotechnical Assessment Project No 2018-132	04.11.2021	Crozier Geotechnical Consultants

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LA LP 01 / 05 Ground Level	31.05.2022	Black Beetle
LA LP 02 / 05 Level 01	31.05.2022	Black Beetle
LA LP 03 / 05 Level 02 & 03	31.05.2022	Black Beetle
LA LP 01 / 05 Notes, Legend, Plant Schedule	31.05.2022	Black Beetle

Waste Management Plan		
Drawing No.	Dated	Prepared By
Operational Waste Management Plan Rev C	04.11.2021	Elephants Foot Company

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

A. Add Condition 1D - Compliance with Ausgrid conditions

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the referral response from Ausgrid received on 13 December 2022.

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

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

B. Amend Condition 6 - Northern Beaches 7.12 Contributions Plan 2019 to read as follows:

A monetary contribution of \$146,367.16 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$14,636,716.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

C. Amend Condition 11 - Public Domain Plan to read as follows:

A Public Domain Plan shall be submitted for the Works within the Road Reserve under a Section 138 Application to Council, with sufficient detail design information including the following:

- i) alignment levels showing existing and proposed levels for altered driveway crossovers, kerbs, kerb

- ramps, and gutters,
- ii) details of any utility alignment and level changes,
 - iii) finished pavement gradients shall achieve a maximum 2.5% fall from building openings to top of kerb, and match existing levels to adjoining properties,
 - iv) the public domain pavement from building to kerb shall be granite paving 'Sesame Green' 600 x 300 x 40mm set onto a 30mm sand cement bed, set onto a 75mm unreinforced concrete slab, subject to structural engineering advice, and shall be set perpendicular to the kerb and building alignment,
 - v) existing utility pit lids are to be adjusted in level as required to match finished pavement levels and the lids shall be altered to paver infill types to accommodate the granite 'Sesame Green' 600 x 300 paver,
 - vi) tactile ground surface indicators at the pedestrian crossings / kerb ramps shall be in accordance with AS1428.4.1,
 - vii) street tree planting shall be in accordance with Northern Beaches Standard Drawing 1300 - Tree Pit Details, Plan and Section, including 4600 x 2200 strata cell system, 1600 x 1400 tree pit opening finished with eucalyptus mulch and groundcover planting,
 - viii) two (2) Brushbox (*Lophostemon confertus*) street trees shall be planted along Bungan Street, in consideration of existing street lighting and utilities, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,
 - ix) street trees shall include tree guard TG6 'Silva Guard', black in colour, manufactured by Street Furniture Australia,
 - x) groundcover planting to existing street trees and to proposed street trees shall consist of *Liriope 'evergreen giant'* at a rate of 12 per m² planted at 140mm pot size,
 - xi) retention of existing street trees T1 along Waratah Street, and T10 along Bungan Street, with nominated tree pit clearances from any slab for paving, including: a minimum 5m length along the kerb x 1.5m width unobstructed natural ground area for T10, and a minimum 2.5m length along the kerb x 1.0m width unobstructed natural ground area for T1, both subject to clarification and the recommendations of the Project Arborist.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council in place prior to commencement to conduct such works.

The approved Public Domain Plan is to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Compliance with Council standards for works on public land, and to enhance the public domain amenity.

D. Amend Condition 17 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans to read as follows:

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 3 June 2019 and 04 November 2021 and are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Specific reference is given to the following recommendations:

- An assessment of the water table and the potential for lowering the water table within adjacent Acid Sulfate Soils Class 1 to 4.
- Further geotechnical investigation in at least four locations within the site to provide accurate soil and bedrock strength parameters prior to structural design and construction.
- Confirming of the groundwater conditions at depth below the site by the installation (and potentially monitoring) of groundwater piezometers to confirm the requirement for tanking or

dewatering.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

E. Amend Condition 13 - On-site Stormwater Detention Details to read as follows:

The Applicant is to provide drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy Clause 9.3.1, and generally in accordance with the concept drainage plans prepared by Erbas, drawing number SYD21326-SW000, SW100, SW101, SW102 and SW201 Issue P3 dated 01/11/21.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for Civil Engineering.

The drainage plans must address the following:

1. The access grate within the retail waste room must be a solid cover.
2. A services plan for the outlet pipes in the road reserve.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

F. Add Condition 17A - Stormwater Treatment Measures - Minor to read as follows:

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

G. Amend Condition 25 - Noise Management Design to read as follows:

The recommendations contained in the noise assessment by Wilkinson Murray Pty Ltd Report Ref: 2105067 dated 3 November 2021 relating to design shall be incorporated in plans and specifications prior to the issue of a Construction Certificate.

Reason: To ensure compliant acoustic measures are included in the building design before work commences.

(a) Internal Acoustic Treatment of Apartments

The common walls between the bedrooms of one unit and the living rooms or bathrooms of an

adjoining unit are to be constructed to a minimum of 10Rw (sound reduction index) units above the minimum requirement specified in the Building Code of Australia for separating wall construction applicable to this building. Details are to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To protect internal acoustic amenity as required under Part 4H of the Apartment Design Guide.

(b) Acoustic Fence - Treatment for Rooftop Mechanical Plant

An acoustic fence to a maximum height of 1m is to be installed around the rooftop mechanical plant so that noise emissions comply with the residential noise emission criteria provided in the acoustic report.

Reason: To protect residential acoustic amenity.

H. Delete Condition 27 - Amended Landscape Plan

I. Add Condition 29A - Building Code of Australia requirements to read as follows:

The Building Code of Australia fire safety measures as detailed and recommended in the Building Code of Australia Design Assessment Report prepared by Design Confidence, dated 10/11/2021, Report Rev B, Ref No. P221- 337-4(BCA) LB are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

J. Add Condition 29B - Building Code of Australia Access to read as follows:

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. In this regard the report prepared by Design Confidence, Ref: P221-337-2 (Access) FMR dated 4/11/2021 is to be taken into consideration as a part of the determination of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

K. Add Condition 30A - Waste / Recycling Requirements to read as follows:

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

L. Amend Condition 60 - Waste / Recycling Requirements (Waste Plan Submitted) to read as follows:

During demolition and/or construction the proposal/works shall be generally consistent with the Operational Waste Management Plan Rev C dated 04 November 2021 prepared by Elephants Foot Consultancy.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

M. Amend Condition 62 - Landscape Works to read as follows:

Landscape works within the development site and within the public domain are to be implemented in accordance with the approved Landscape Plans LA LP01 issue 05, LA LP02 issue 05, LA LP03 issue 01, and LA LP04 issue 02, prepared by Black Beetle Landscape Architects and Design, and dated 31.03.2022, and any conditions of consent.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

N. Amend Condition 73 - Environmental Reports Certification to read as follows:

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Acoustic Assessment Ref RWDI#2105067 Version B, dated 03.11.2021, prepared by RWDI Australia Pty Ltd
- (b) BASIX Certificate number 1249649M_03, dated 07.11.2022, prepared by Eco Certifiers
- (c) NatHERS Certificate No. 0006756520, dated 07.11.2022, prepared by Eco Certifiers
- (d) Traffic and Parking Assessment Report, dated 03.11.2021, prepared by Terraffic Pty Ltd
- (e) Livable Housing Design Guideline Ref P221_337-2, dated 04.11.2021, prepared by Design Confidence
- (f) BCA Design Assessment Report Ref P211_337-4, dated 10.11.2021, prepared by Design Confidence
- (g) Arboricultural Impact Assessment, dated October 2021, prepared by Urban Forestry Australia
- (h) Acoustic Assessment Rev B Ref RWD1#2105067, dated 03.11.2021, prepared by Wilkinson Murray
- (i) Access Design Assessment Report Ref P221_337-2, dated 04.11.2021, prepared by Design Confidence
- (j) Addendum to the Preliminary Site Investigation Report (Contamination), dated 03.11.2021, prepared by EI Australia
- (k) Addendum to the Geotechnical Assessment Project No 2018-132, dated 04.11.2021, prepared by Crozier Geotechnical Consultants

O. Add Condition 74A - Underground telecommunications services to read as follows:

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services.

P. Amend Condition 75 - Noise Assessment to read as follows:

Prior to the release of occupation certificate, information must be provided to the Principal Certifier by a suitably qualified and experienced person, demonstrate that acoustic design controls have been implemented according to the noise assessment by Wilkinson Murray Pty Ltd Report 2105067 and other acoustic design requirements that form part of this development application determination.

Including, but not limited to: (a) internal acoustic treatment of apartments; and (b) Acoustic fence for rooftop mechanical plant.

Reason: To protect residential acoustic amenity and comply with design requirements.

Q. Replace Condition 81 - Basement Garage Traffic Signal System with condition 81 Car Wash Bay to read as follows:

One residential parking space shall be converted to a car wash bay.

R. Amend Condition 83 - Waste and Recycling Facilities Certificate of Compliance to read as follows:

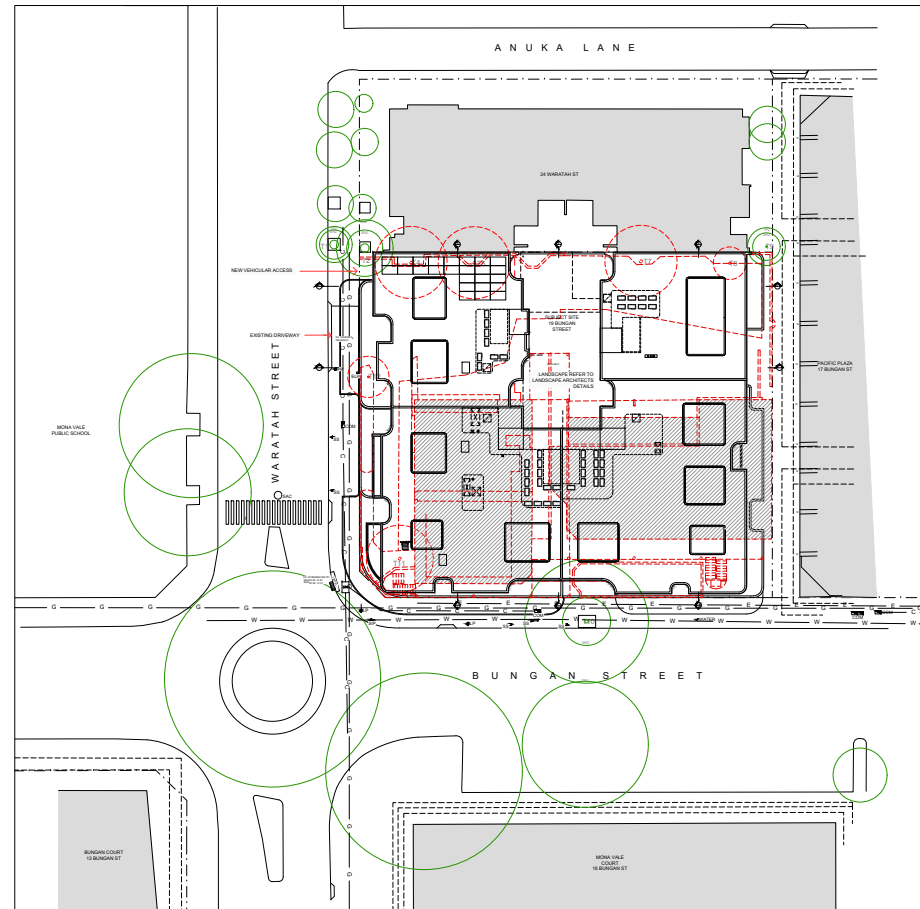
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

S. Delete Condition 93 - Privacy Measures

- GENERAL NOTES:**
- ALL WORK TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES, LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS.
 - DRAWINGS FOR THE PURPOSES OF AN ONLY - FURTHER CONSULTANT AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHEN ANY IMPACT ON DESIGN AND PLANNING IS NOTED.
 - ARCHITECT SHALL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
 - COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PRO ARCHITECTS AND AUTHORITY IS RESERVED FOR ANY REPRODUCTION.
 - AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY - FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED.
- LEGEND:**
- AW JAWING
 - HW HIGHLIGHT WINDOW
 - CU A/C CONDENSER UNITS
 - PH FIRE HYDRANT
 - FHW FIRE HOSE WHEEL
 - FS FIRE STAIRS
 - PMV MECHANICAL VENT TO FUTURE DETAIL
 - GC GARAGE CHUTE
 - PMV MECHANICAL VENT TO FUTURE DETAIL
 - PR PLANTERBOX
 - R RAIL, RECYCLING BIN
 - SK SKYLIGHT
 - ST STORAGE
 - WT HOT WATER UNITS



PROJECT: MIXED USE DEVELOPMENT 19 BUNGAN STREET MONA VALE NSW		ISSUE: A	DATE: 29/10/2021	DESCRIPTION: ISSUE FOR DA	ISSUE: A	DATE: 29/10/2021	DESCRIPTION: ISSUE FOR DA	DA003 SITE PLAN		PBD ARCHITECTS	
CLIENT: IPM PROPERTY		DATE: (08/2021)		PROJECT NO: 2132		DRAWN BY: MK		CHECKED BY: MM		P: 02 8558 8140 E: info@pbdarchitects.com.au W: www.pbdarchitects.com.au Level 2, 52 Nelson Street, Sydney NSW 2000 Not a Notified Architect: Paul D. B. Architects NSW 7788	

GENERAL NOTES:

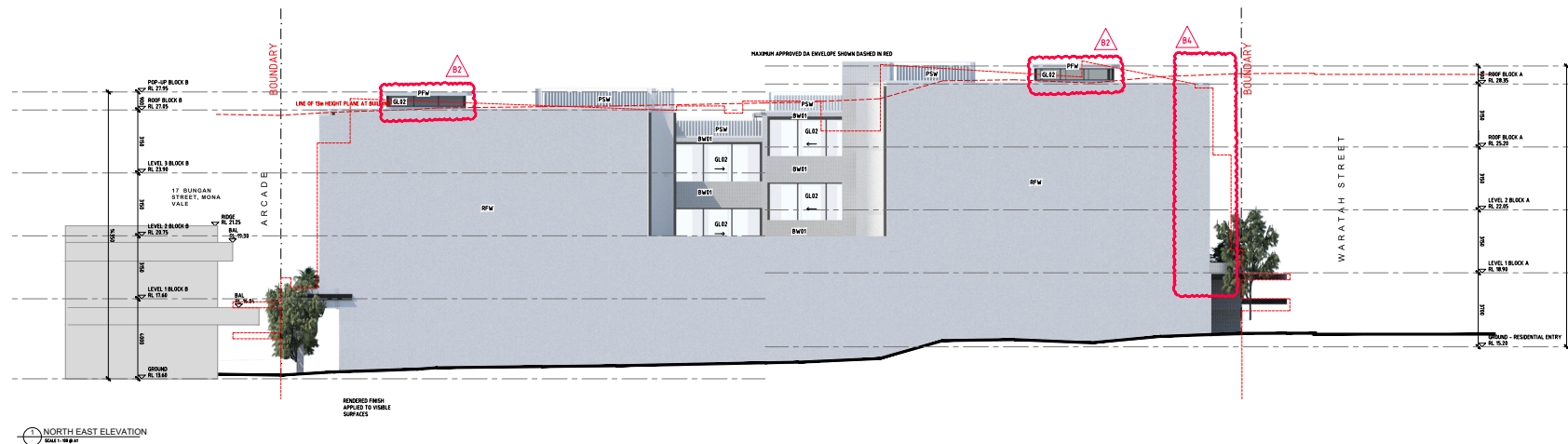
- ALL WORK TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES, LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS.
- DRAWINGS FOR THE PURPOSES OF AN ONLY, FURTHER CONSULTANT AUTHORITY COORDINATION WILL BE REQUIRED AT C STAGE WHEN ANY IMPACT ON DESIGN AND PLANNING IS IDENTIFIED.
- ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- COPYRIGHT OF DESIGN ORIGIN REMAINS RESERVED BY PRO ARCHITECTS AND AUTHORITY IS RESERVED FOR ANY REVISIONS.
- AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY - FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED.

LEGEND:

- AW - AWWING
- HW - HIGHLIGHT WINDOW
- CC - AIR CONDITIONER UNITS
- PH - FIRE HYDRANT
- FW - FIRE WIRE MESH
- FS - FIRE STAIRS
- PS - MECHANICAL RISER TO FUTURE DETAIL
- GC - GARAGE CHUTE
- MS - MECHANICAL TO FUTURE DETAIL
- PL - PLANTERBOX
- R - RAIL, RECYCLING BIN
- SK - SKYLIGHT
- ST - STORAGE
- WT - HOT WATER UNITS

LIST OF AMENDMENTS (Rev B):

- REVISED MAIN LOBBY ENTRY TO BUNGAN ST IN RESPONSE TO DA AMENDMENT
- POPIR LOCATIONS ADJUSTED
- NORTHERN ST TRACKS ADJUSTED
- HT AND MISS UPDATED TO RENDERED FINISH



PROJECT: MIXED USE DEVELOPMENT 19 BUNGAN STREET MONA VALE NSW		ISSUE: A 29.03.2021 B 21.03.2022		DESCRIPTION: ISSUE FOR DA AMENDED DA		DATE: (08/2021) PROJECT NO: 2132 DRAWN BY: MK CHECKED BY: MM		DA400 ELEVATIONS ISSUE: B PBD ARCHITECTS P - 02 9558 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au Level 2, 52 Monna Street, Monna Vale NSW 2205 Notified Architect: Pbd Subject NSW 7788	
CLIENT: IPM PROPERTY									

GENERAL NOTES:

- ALL WORK TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES, LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS.
- DRAWINGS FOR THE PURPOSES OF DA ONLY. FURTHER CONSULTANT AUTHORITY CONFIRMATION WILL BE REQUIRED AT C3 AND WHEN ANY IMPACT TO DESIGN AND PLANNING LAWS TO BE MADE IN CONFORMANCE WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- COPYRIGHT OF DESIGN ORIGIN REMAINS RESERVED BY PBD ARCHITECTS AND AUTHORITY IS RESERVED FOR ANY REVISIONS.
- AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY. FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED.

LEGEND:

- AW JAWING
- HW HIGHLIGHT WINDOW
- AC/C CONDENSER UNITS
- PH FIRE HYDRANT
- FHW FIRE HYDRANT
- FS FIRE STAIRS
- MECH MECHANICAL RISER TO FUTURE DETAIL
- GC GARAGE CHUTE
- PLUMBING TO FUTURE DETAIL
- PR PLASTERBOARD
- R RAIL, RECYCLING BIN
- SK SKYLIGHT
- ST STORAGE
- WT HOT WATER UNITS

LIST OF AMENDMENTS (Rev C):

- 1 - REVISED LOBBY ENTRY TO WARRAH ST IN RESPONSE TO DA AMENDMENT
- 2 - REVISED LOBBY ENTRY TO ARCADE IN RESPONSE TO DA AMENDMENT. RAMP REMOVED TO ACCOMMODATE
- 3 - POPUP LOCATIONS ADJUSTED
- 4 - FACADE UPDATED PRIVACY SCREENS ADDED TO NORTHERN FACADE
- 5 - COLUMN REMOVED
- 6 - LOBBY ENTRY CURVED ADDED
- 7 - SUBSTATION DIMENSIONS AMENDED FOR ASSURED COMPLIANCE
- 8 - WALL MATERIAL AMENDED TO RENDERED WALL



SOUTH EAST ELEVATION
SCALE 1:100 @ A1



NORTH WEST ELEVATION
SCALE 1:100 @ A1

PROJECT:
MIXED USE DEVELOPMENT
19 BUNGAN STREET
MONA VALE NSW

CLIENT: IPM PROPERTY

ISSUE	DATE	DESCRIPTION	ISSUE	DATE	DESCRIPTION
A	20.02.2021	ISSUE FOR DA			
B	01.02.2022	AMENDED SUBSTATION & BIN ROOM DESIGN			
C	21.03.2022	AMENDED DA			

SCALE 1:100 @ A1
SCALE 1:200 @ A3
5m

**DA401
ELEVATIONS**

ISSUE: C

DATE: 08/2021 PROJECT NO: 2132
DRAWN BY: MK CHECKED BY: MJM

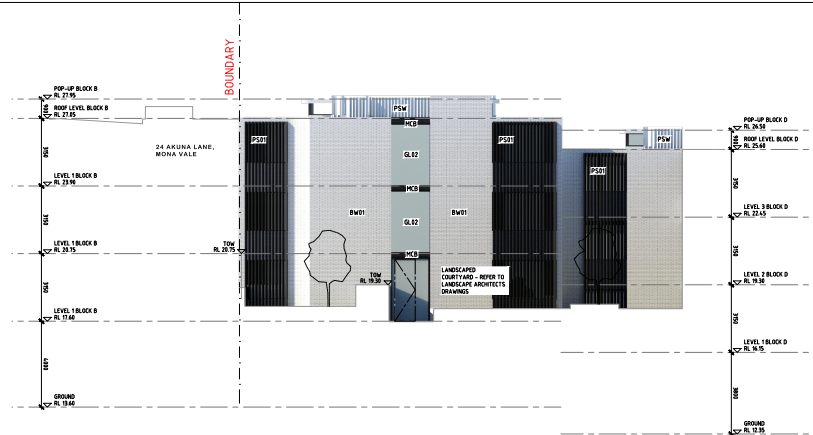
PBD | ARCHITECTS
ARCH NO: 147 220 000
P: 02 9558 8140 E: info@pbdarchitects.com.au W: www.pbdarchitects.com.au
Level 2, 52 Akuna Street, Akuna Vale NSW 2200
Notwithstanding to: PBD Architects NSW 7788

GENERAL NOTES:

- ALL WORK TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES, LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS.
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LEGEND:

- AW AIRING
- HW HIGHLIGHT WINDOW
- CU A/C CONDENSER UNITS
- PH FIRE HYDRANT
- FHW FIRE HOSE WHEEL
- FS FIRE STAIRS
- PPV MECHANICAL RISER TO FUTURE DETAIL
- GC GARAGE CHUTE
- PAIRING TO FUTURE DETAIL
- PS PLANTERBOX
- R RAIL, RECYCLING BIN
- SK SKYLIGHT
- ST STORAGE
- WT HOT WATER UNITS



COURTYARD - SOUTH EAST ELEVATION
SCALE: 1:100 @ A1



COURTYARD - NORTH WEST ELEVATION
SCALE: 1:100 @ A1

PROJECT:		DA402		ELEVATIONS	
MIXED USE DEVELOPMENT		19 BUNGAN STREET		MONA VALE NSW	
CLIENT: IPM PROPERTY		DATE: 08/2021		PROJECT NO: 2132	
		DRAWN BY: MK		CHECKED BY: MM	
		DATE: 08/2021		PROJECT NO: 2132	
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Design + Sustainability Advisory Panel Meeting Report – Date 03 February 2022

4 - Mod2021 0870 - 19 Bungan Street MONA VALE

PANEL COMMENT AND RECOMMENDATIONS

General

The application is a Section 4.55(2) Modification Application seeking to modify the approved development DA2019/0748 granted on 19 February 2020 for demolition of all existing structures and construction of a four storey shop top housing development over basement car parking at the site known as 19 Bungan Street, Mona Vale.

On 23 September 2021, PLM021/0232 was presented to the DSAP for a modification of the approved development. The modifications are generally consistent with the plans proffered in the subject Modification.

The Panel was generally supportive of the proposal, made 12 recommendations and concluded:

The Panel supports the proposal, subject to the recommendations above being incorporated.

Most of the recommendations have been taken into consideration in the current design, however a number of issues remain.

The most significant of these is the re-configuration of the central courtyard space that is discussed in detail below.

The design has also changed the circulation arrangement to include four rather than two lobbies. Generally this would result in better amenity, but in this case results in very convoluted circulation, fire egress and service access for the retail and access to garbage facilities for the residents that is, in the Panel's view, unworkable.

The Panel did not compare the modification to the originally approved DA but considered the design on its own merits.

For this reason, these comments focus solely on the aspects of the design that have changed from the Pre-DA and the Recommendations that have not been adequately addressed.

Recommendation 4: Consider a re-design of the central courtyard, and lobby spaces.

The Panel questions the desirability of locating the central landscaped courtyard at Level 1. Consideration should be given to lowering it to the ground level. The central landscape has the potential to be a rich architectural and landscaped space. The functional use of this courtyard might also suggest a looser separation between private and common open space, in keeping with its informal northern beaches environment.

Recommendation 6: Connect usable stairs from ground to first floor level to encourage active circulation.

The Panel sees a wonderful opportunity to improve the visual quality, amenity, connectivity (with the public domain) and circulation within of the central courtyard space. The lobby design and residential entry positions could be improved as part of this exercise.



Recommendation 9: Consider opening up fire stairs (if BCA compliance not affected) to maximise natural ventilation and daylight to lobbies.

Discussion

Recommendations 4,6,9 are inter-related and all are concerned with the circulation through the building and the use and character of the central courtyard.

It is not the role of the Panel to redesign proposals, however the Panel cannot understand the benefits of the four cores and four corresponding fire stairs that occupy a significant area and only appear to achieve one extra bedroom (courtyard bedroom in unit 102) and it would seem a relative simple matter to redesign the scheme to have 2 cores and 2 fire stairs.

Units 111 and 110 could be re-configure to be one cross through and one single aspect unit, unit 109 would lose 1 bedroom.

This would free up the planning of the courtyard, allow for natural lighting of the lobbies as well as possible increasing the amount of habitable floor area.

It is clear that there have been attempts to rationalise some parts of the ground floor, but the current proposal is simply unworkable in relation to service access and retail access crossing.

The Panel was supportive of the changes from the approved DA, but it is now clear that there is simply too much being fitted on the site.

The loss of two bedrooms would be more that balanced by the deletion of two fire stairs and two lifts (15 m² each as well as increasing the dimension of the courtyard.

It is not usual practice for the Panel to attach drawings, but in this case it will make these suggestions clearer than in words alone. It should be possible to reconfigure the apartments with the aim of maximising the courtyard dimension.

The apartments themselves are well planned however consideration should be given to punching the landscape atrium through to Bungan Street to provide a more coherent and articulated entrance to the development and greater access to the street.

Please treat these as **suggestions**- they are not **recommendations** and are offered in the spirit of collaboration.

Recommendations

1. Investigate the potential and benefits for amenity, the courtyard and circulation at the ground level that might come from reducing the scheme to 2 cores
2. Investigate the potential of a generously proportioned shared access for residents and access to toilets off Bungan street directly through to the courtyard with access to secure residential lobbies on either side.
3. Rationalise access to garbage and fire egress.
4. If the courtyard is treated as a 'working courtyard' it would be acceptable for the retail tenancies to traverse the courtyard to gain access to the garbage rooms
5. Maximise the dimension of the courtyard and introduce planting at the ground level
6. Investigate deletion of the court space on level one
7. Investigate natural lighting of fire stairs and lobbies.

Recommendation 12: Add external windows to bathrooms and utility rooms wherever possible including ground level retail toilets.

8. This recommendation has not been adequately addressed. Add external windows to bathrooms and utility rooms wherever possible including ground level retail toilets.



PANEL CONCLUSION

The Panel is generally supportive of the scheme as noted in previous advice, however the response to the recommendations is not sufficient. It is the Panel's view that further improvements including reconsideration of the overall circulation and access approach is required.

The Panel notes the reduction in the number of units from the original approval, however it does appear that the quantum of floor space is adversely affecting amenity.

The Panel notes that the submitted scheme does not include any responses to recommendations 7, 8.

Attachment: **Suggestions** for reconfiguration.

SEPP 65 DESIGN VERIFICATION STATEMENT

Prepared to accompany the Development Application submitted for the redevelopment of:

19 Bungan St, Mona Vale



Prepared on behalf of:

Mona Village Pty Ltd

Date: October 2021
Revision A

Prepared by:

PBD | ARCHITECTS

PBD Architects & Project Managers Pty Ltd
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Tel: 9698 8140 Email: info@pbdarchitects.com.au



PBD Architects + Project Managers Pty Ltd

Verification of Qualifications/ Statement of Design

Paul Buljevic is a Registered Architect in New South Wales and a member of the Australian Institute of Architects - Registration number is 7768. He is a qualified Architect with extensive experience in the design of residential housing developments of varying scale.

Paul Buljevic has been responsible for the design of this project since its inception and has worked with a professional consultant team in preparing the revised Development Application.

Statement of Design

PBD Architects has been responsible for the design of the project since its inception and have worked with related professional and experts in respect of the matter. The project has been designed to provide a development that is respectful of local planning and design controls and that responds to the best practice design principles of SEPP No. 65.

PBD Architects verify that the design quality principles set out in Schedule 1, Design quality principles of the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development are achieved for the proposed development described in the following document.



Paul Buljevic
Director
Registered Architect NSW, No. 7768

PBD Architects + Project Managers Pty Ltd

Site Description

The subject site known as 19 Bungan Street in Mona Vale comprising of 1 Lot:

- Lot 1 in DP 746507

The site is a corner lot with dual street frontages to Bungan St and Waratah St, where the primary frontage to Bungan St of 44.9m addresses the Bungan St retail precinct to the east. The Waratah Street frontage 37.1m to the south opposite Mona Vale Public School. A paved commercial arcade to the northern boundary allows foot traffic and pedestrian access to Pacific Plaza, number 17 Bungan Street and links Bungan Street with Akuna Lane.

The site has a fall of approximately 1.8m from its south-east corner to the north-east corner and approximately 2.4m from its south-west corner to the south-east corner. It currently accommodates two two-storey commercial cement rendered buildings with a concrete and bitumen car park to the west of the site.

The immediate context is characterized mainly of 2 and 3 storey commercial buildings.

The subject site is located within the Northern Beaches Council Local Government Area (LGA) formerly Pittwater Council and has a total surveyed site area of 1927 m². The subject site is zoned B4 (Mixed use) under Pittwater 21 Development Control Plan. A maximum building height of 13m applies to the site.

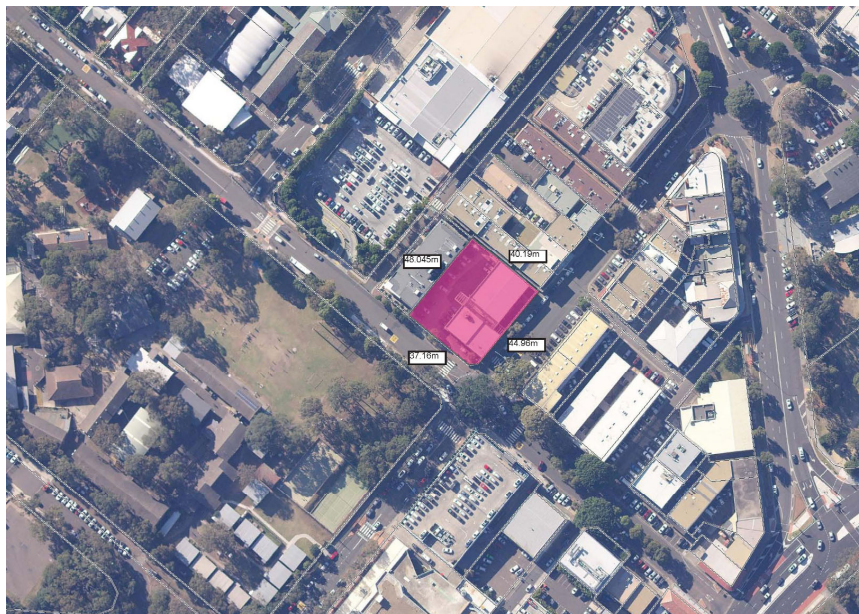


01 – Aerial map of subject site and context. (Source: Six Maps)

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02 – Aerial map of subject site and surrounding locality. (Source: Six Maps)



03 – Approximate dimension of subject site. (Source: Six Maps)

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04 – Subject site on 19 Bungan St, view from Bungan St. looking west (Source: Google Maps)



05 – View of adjacent 2 storey Commercial building at 17 Bungan Street to the north of subject site. A pedestrian arcade runs east to west along the northern boundary linking Bungan St to Akuna Lane. (Source: Google Maps)

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06– View of subject site and adjacent 3 & 4 storey residential buildings at 24 Waratah Street to the west.
(Source: Google Maps)

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Design Proposal

The development proposal incorporates:

- Demolition of the existing commercial building and ancillary structures.
- Construction of one four story shoptop residential building with ground floor retail, comprising of the following mix, inclusive of 7 Silver level units.

Apartment Mix	No.
1 Bed	4
2 Bed	20
3 Bed	9
Total	33

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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.

- The site is located at the corner of Bungan and Waratah Street.
- The Bungan street façade features retail tenancies addressing Bungan Street with a colonnade that wraps around the façade and lines the arcade between the subject site and the adjacent retail at Pacific Plaza at 17 Bungan Street. 3 levels of apartments sit above the ground floor retail.
- The proposal's driveway is to the south-west corner of the site, located near the existing crossover to the site. The Waratah St façade also provides pedestrian access to the residential lobby.
- A balanced palette of materials and a well-proportioned building form will ensure a sophisticated integration of the proposed building into the existing context.
- The proposed residential development at 19 Bungan St, is designed to respond cohesively to the existing neighbourhood and streetscape offering an updated and enhanced experience at ground level. Elements such as building form, landscaping and building alignment are used to respond thoughtfully to the immediate locality.



06 – View of Bungan St showing ground floor retail environment and apartments above.

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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.

- The proposed development adopts built form and scale in response to its immediate context, adopting a highly sculptural building form composed with balconies that are orientated towards the street and screened with a hit and miss brick treatment that offers diffuse natural lighting.
- The scale and bulk of the built form is designed to effectively moderate the scale of the building when perceived from the street and surrounding locations, it includes facades with hit and miss brick walls, rendered walls, deep balconies and using various architectural elements such as dynamic curved recesses, giving the building a distinct form.
- Pedestrian entry is accessed directly off the street to provide a clear sense of address articulated by integration of landscaping and curved brick articulation.



07 – View of the Waratah & Bungan Street corner

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- The elevations are varied in expression and designed primarily to respond to setbacks and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.
- The contemporary form and design will contribute to the immediate context in the form of a development that holds presence with the streetscape of Mona Vale.
- The building contains two levels of basement car parking accessible off Waratah street, allowing easy and secure undercover access to all apartments.
- Accordingly, the proposal responds well to the topography and greater urban context of the neighbourhood and the desired future character of the locality.



08 – View of articulated façade treatment and balconies.

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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.

- There is a total of 33 apartments in the development, with a mix of 1 bed, 2 bed and 3 bed apartments. The apartments are generous in size which is in alignment with the areas of Mona Vale. The proposal also reflects current market demands in relation to typologies and living patterns currently established in the local area.
- 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.
- As such the proposal provides an appropriate density for a residential development in the immediate context.

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.

A comprehensive analysis of the building has been undertaken as part of the BASIX Assessment however we note the following general inclusions as part of the proposal:

- Climate and location suitable plant selection (Refer to landscape architect's details for further details)
- Natural light and cross flow ventilation maximized where possible
- Appropriate overhang depths and recessed balconies provide shade in summer and promote thermal heat gain during winter months
- Energy efficient appliances and fixtures provided
- Low maintenance, long lifecycle and reusable materials proposed
- Communal recycling and waste management facilities provided
- On-site rainwater detention and re-use for landscape irrigation purposes.

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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.

- All apartments house generous balconies positioned to flow from primary living spaces and take advantage of orientation and outlook.
- With a general focus on low maintenance, the proposal incorporates selective planting of various heights and density with an overall desire to blend into the characteristic landscaping of the area.
- The open skylight in the residential lobby space allows for a spill over of landscaping bringing the garden into the lobby space. It also provides access to natural lighting at ground level.
- Level 1 planters provide a landscaped buffer along the perimeter of the building to respect the surrounding context.
- An open central courtyard space at level 1 provides a landscaped area that will serve to improve the amenity for the future occupants, allowing the majority of dwellings the possibility to look over a garden space.
- 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 "Black Beetle" issued as part of this DA submission.



09 – Larger planters to level 1 create a buffer between terraces and the street

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10 – View of internal courtyard – planting is indicative – Refer to landscape architects drawings for detailed information on planting and species

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

The future residents of the development will benefit from a high degree of amenity assisted with provisions made for the following:

- Generous apartment sizes and general configuration consistent with current market demands.
- Appropriate connections and subtle separation of spaces within the apartments to capture northern light
- The building layout allows ventilation to all bedrooms and habitable spaces, with 27/33 apartments (81%) achieving cross ventilation and 24 units (72%) solar access.
- Adequate day lighting and solar access for all rooms within the apartments.
- Carefully considered privacy and acoustic measures such as deep balconies with landscaping along the edges and bedroom windows with privacy screens where required.
- Seven Silver level units are proposed promoting all age groups and ageing of future occupants consistent with DCP and ADG requirements.
- Lift access is provided to all lobbies. The ground floor lobby features a central open skylight which serves to naturally ventilate and provides a source of natural lighting.

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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.

Safety and security will be provided for both future occupants and the public domain through the following design measures:

- Clearly identifiable main building entrances and generous open entry area allowing for adequate surveillance. The entrance will be clearly visible from the street with a security gate installed, a security camera and intercom to identify visitors to the building complex.
- All apartments are provided with a keyed system incorporating a high level of occupant security.
- Residential apartments have been designed in such a way as to have the main living areas and balconies facing the street/ public areas to promote passive surveillance
- Secure basement car parking provided with keyed and remote-control access. Clear circulation paths in the basement allow safe pedestrian movement, in particular when waiting at the lift and access to individual parking space.
- 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.
- All the dwellings are provided with large balconies accessed directly from main living areas that will serve as a space for social interaction.
- As set out in the DCP, minimum of 20% of the units is designed to be Silver Level.
- The development has provided generous width of lobbies 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 and common areas.

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- The site is located within close proximity to necessary facilities including public transport, supermarkets, educational and leisure facilities as well as schools.

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.

The contemporary architectural style coupled with the orientation and configuration of the site enables a highly articulated aesthetic broken down in the following elements:

- Massing and façade details are designed to respond to both desired character of the area and the existing context.
- Considering the materiality of the existing neighbourhood and new developments the proposal features a restrained palette of white brick, black metal framing elements, and rendered walls, as well as timber look soffits on balconies for a natural and elegant finish.
- The elevations are varied in expression and designed primarily to respond to sun, views, setbacks and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.
- 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.