AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 1 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.

northern beaches council

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 1 June 2022

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 23 May 2022

3.0 CATEGORY 3 APPLICATIONS

4.0 PUBLIC MEETING ITEMS 5

4.1 DA2021/1508 - 882A Pittwater Road, Dee Why - Demolition works and construction of a mixed-use development, including a boarding house development, food and drink premises and office premises 5

4.2 DA2021/2054 - 243 Pittwater Road, Manly - Alterations and additions to an existing building including use as a shop, take away food and drink premises (Harris Farm), carpark, signage, landscaping and changed hours of operation..... 88

4.3 DA2021/2065 - Market Lane, Manly - Use of premises (part Road Reserve and Lot 2849) as a Food and Drink Premises (for a 'Small Bar'). 185

4.4 DA2021/1502 - 1622 Pittwater Road, Mona Vale - Demolition works and the construction of a residential flat building..... 248

4.5 DA2021/1426 - 51 Kalang Road, Elanora Heights - Demolition works and construction of a shop top housing development. 325

5.0 NON PUBLIC MEETING ITEMS 454

A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.

5.1 DA2021/2435 - 40 Hillcrest Avenue, Mona Vale - Alterations and additions to a dwelling house including a spa..... 454

5.2 Mod2021/0771 - 68 A Queenscliff Road, Queenscliff - Modification of Development Consent DA2015/1079 granted for alterations and additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009..... 528

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 18 MAY 2022

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 18 May 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	**DA2021/1508 - 882A PITTWATER ROAD, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A MIXED-USE DEVELOPMENT, INCLUDING A BOARDING HOUSE DEVELOPMENT, FOOD AND DRINK PREMISES AND OFFICE PREMISES**
AUTHORISING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/309562**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans & Elevations
	3 ⇩Clause 4.6 - Motorcycle Parking
	4 ⇩Design & Sustainability Advisory Panel Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection 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 SEPP ARH Clause 30(1) (h) development standard pursuant to clause 4.6 of the WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1508 for Demolition works and construction of a mixed-use development, including a boarding house development, food and drink premises and office premises on land at Lot B DP 389449, 882 A Pittwater Road, DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1508

Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot B DP 389449, 882 A Pittwater Road DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a mixed-use development, including a boarding house development, food and drink premises and office premises
Zoning:	Warringah LEP2011 - Land zoned 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:	Australian Building & Development Pty Ltd
Applicant:	Hamptons Property Services Pty Ltd

Application Lodged:	15/09/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	24/09/2021 to 08/10/2021
Advertised:	24/09/2021
Submissions Received:	29
Clause 4.6 Variation:	SEPP ARH Clause 30(1) (h)
Recommendation:	Approval

Estimated Cost of Works:	$ 4,324,512.00

EXECUTIVE SUMMARY

The Development Application (DA) subject of this report relates to the construction of a mixed-use development comprising of a retail shop, three commercial tenancies and a boarding house comprising 19 boarding rooms.

The DA is reported to the Northern Beaches Local Planning Panel as:

- There is a breach of a development standard by more than 10%; and
- The application has attracted more than 10 submissions.

During the public exhibition of the DA, 29 submissions objecting to the proposal were received. The submissions raise concerns over construction impacts and the general constructability of the proposal, the lack of car parking, amenity impacts and they objected to the use of a part of the site for the purpose of a boarding house.

The location of the site on a Classified Road and adjacent to the B-Line bus stop, combined with the unusual proportions of the lot, will inherently result in a difficult construction methodology and plan, however that difficulty does not warrant the refusal of the DA, rather a detailed analysis of the logistics and difficulties associated with demolition and construction. General impacts of construction can be appropriately mitigated through conditions and good site management.

The site is not physically capable of providing vehicular access from Pittwater Road and is unable to connect to any existing adjoining basements to provide such access. The site has been isolated by all of the developments around it, which is prejudicial to its ability to be developed in a conventional manner (i.e. with basement car parking). On the basis that the site is heavily and unduly constrained, and noting the provision of cycle parking and excellent public transport connectivity, a car-free development is supported in this instance.

Concerns have been raised regarding overlooking, overshadowing, view loss and an intrusion of acoustic privacy. These matters are addressed in detail in this report and the assessment has found the proposal to have an acceptable impact, considering the context which is that of a dense town centre environment, subject to conditions to address amenity issues, and thus do not warrant the refusal of the application.

The use of the building as a boarding house is permitted with consent under the WLEP 2011 and it would be ultra vires for Council to refuse the DA on the basis of the land use alone.

The development breaches one development standard pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009 in that the site provides no motorcycle parking (for the reasons explained above).

The variation to the motorcycle parking space is substantiated by the lack of vehicular access to the site and is therefore supported.

The variations to the development standard and the matters raised in public submissions do not warrant the refusal of the application.

The proposal has been reviewed at pre-lodgement stage and during the course of this application by Council's Design and Sustainability Advisory Panel who support the development application. Recommendations were made by that Panel which have been, in part, addressed by receipt of revised plans which form the basis for this assessment.

On that basis, this report concludes with a recommendation that the NBLPP as the consent authority grant conditional **APPROVAL** to the application.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the construction of a nine (9) storey mixed-use development comprising of a boarding house, retail and commercial suites with ancillary facilities.

The application includes the following:

- One ground floor retail suite.
- Three commercial suites at ground, first and second floor.
- 19 boarding rooms, including three accessible rooms.
- One managers room/office.
- One communal roof and terrace.

The proposal has a stepped design reflective of adjacent buildings and is finished in glazing, coloured pre-cast concrete panels and a green roof.

AMENDED PLANS
Amended plans were received during the course of this application which deleted one boarding room, added a green roof to the building, modified the stormwater design and made revisions to the internal layout of the development. Additional revised plans were received after a further assessment which modified the internal layout of room 5.01.

These changes are consistent with recommendations made by Council staff during the assessment. The magnitude of changes made are considered to be of a lesser environmental impact than that of the original scheme and were therefore not renotified to neighbours.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C8 Demolition and Construction
Warringah Development Control Plan - D11 Roofs
Warringah Development Control Plan - 3 Desired Character for the Dee Why Town Centre
Warringah Development Control Plan - 4 Streetscape and Public Domain
Warringah Development Control Plan - 5 Design and Architectural Diversity
Warringah Development Control Plan - 6 Site amalgamation
Warringah Development Control Plan - 8 Car Share

Warringah Development Control Plan - 9 Sustainability
Warringah Development Control Plan - 11 Landscaping

SITE DESCRIPTION

Property Description:	Lot B DP 389449 , 882 A Pittwater Road DEE WHY NSW 2099
Detailed Site Description:	The subject site is legally described as Lot B in Deposited Plan 389449 and is known as 882A Pittwater Road, Dee Why. The site is zoned B4 Mixed Use and falls within the Dee Why Town Centre pursuant to the Warringah Local Environmental Plan 2011. The site is an anomaly within the Pittwater Road streetscape both by virtue of the size of the land and by the buildings proportions commensurate to the adjoining properties. The site has one frontage to the southeastern side of Pittwater Road measuring 8.44m in width and a rear boundary of 6.4m resulting in site depths of 33.765m and 39.27m. Overall the site has a surveyed area of 233.7m^2. Presently the site accommodates a single storey brick building which takes up the entirety of the site and presently operates as a display suite for a nearby construction site. The site has no landscaping and is completely flat with natural ground levels being incalculable given the extent of surrounding development. To the north of the site is the Meriton Lighthouse development comprising of two towers and wrap-around podium buildings. Adjoining the northern boundary of the subject site is a nine-storey mixed-use podium with a parapet height of Reduced Level (RL) 46.97 - for reference, the footpath to the front of these properties is approximately at RL18.4. South of the site is seven storey mixed-use building that progressively steps back from the street from RL25.7 to RL34.8 to a ridge of RL41.17. The wider Dee Why Town Centre is midway through a transitional period whereby older and under-utilised developments are gradually being replaced with larger more contemporary buildings. The site sits immediately behind the B-Line bus stop.

Map:

SITE HISTORY

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

- **Prelodgement Meeting: PLM2020/0271**
  A meeting was held between the applicant and Council on 14 January 2021 to discuss a proposal for the construction of a nine storey mixed-use development accommodating a boarding house and commercial premises. Specifically, the proposal included 20 boarding rooms, three commercial premises, one retail premises (coffee shop) and ancillary spaces.

  The notes of that meeting conclude with the proposal of a boarding house on this site having merit as, given the inability to provide car parking, is preferable over general market housing.

  The proposal, as submitted under this development application, is reflective of the PLM2020/0271 proposal and corresponding comments.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation

Section 4.15 Matters for Consideration'	**Comments**
environmental planning instrument	on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains a commercial use of the site and adds a residential component, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. In response to Council's preliminary assessment and the DSAP comments found elsewhere in this report, Council requested that the proposal be revised to provide better internal amenity, better sustainability credentials and a better and more landscaped street presence. The applicant responded to this request with amended plans which form the basis of this report. 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 of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider 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 Warringah Development Control Plan section in this report. In summary the site currently has no landscaping and the natural ground levels are indeterminable given the extent of development in the immediate area. The proposal introduces landscaped areas throughout the building and at different levels which pose a greater environmental benefit commensurate to the existing building. Of particular note is the fact that the building as a whole is topped with an inaccessible green sedum roof. The presence of a green roof within the Dee Why Town Centre is unprecedented, and will be valuable in its contribution to local wildlife habitat and pollination.

Section 4.15 Matters for Consideration'	Comments
	The proposal is therefore deemed to have a positive environmental impact. (ii) **Social Impact** Historically boarding house development applications have generated a significant volume of community opposition, generally (but not always) misaligning the proposed use to a more traditional form of social or community housing. That is not what is proposed. The boarding house is privately owned and operated and the potential tenants can be anyone. Increasingly in NSW housing is becoming more and more unaffordable and the prospective tenure is widening, with the fastest growing demographic in need of affordable or diverse forms of housing being older single women. A boarding house does not provide 'affordable' housing by regulation (such as community housing) but rather it is anticipated that a smaller room size generally corresponds to a lower rent than a traditional market apartment, thus making it an affordable option. There are already over 44,000 approved applicants waiting for affordable housing, with wait times expected to exceed 10 years (Department of Community and Justice 2022) and the provision of affordable housing is therefore a social justice issue. In the absence of any unreasonable amenity impacts caused to neighbours (as demonstrated elsewhere in this report), the overall quality of the architecture and its contribution to the town centre, and the demonstrable need for affordable and diverse housing in Australia but Sydney in particular, this report concludes that the proposal is of a positive social impact. (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 an isolated and severely constrained allotment within the centre of the busiest town centre on the Northern Beaches and fronting the main arterial road through the LGA. The site has no capacity for vehicular access and, consequent of its small size and narrow width, is not considered appropriate for traditional market apartments. In this proposal the applicant has included a range of town-centre appropriate land uses including a small coffee shop at the primary bus stop, three small office tenancies and 19 managed boarding rooms. The diversity of land uses and the quality of the design are suitable for the location. The project architect has preliminary described how the building could be built with minimal impacts to the amenity of neighbouring properties. Whilst such detailed is normally reserved for Construction Certificate, the assessment of this proposal found it warranted to ensure what was being proposed could actually be built. Whilst those details do not form a part of this report or any subsequent consent, it has been satisfactorily detailed that, with the appropriate approvals from the transport authority, the building could be constructed. On that basis the proposed land use and proportionality of the building are

Section 4.15 Matters for Consideration'	Comments
	suitable for the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The public notification of this development application has attracted a number of submissions objecting to the proposal for a vast range of matters, with the most recurring theme being the proposed use of a part of the site as a Boarding House. Historically on the Northern Beaches (other elsewhere) boarding house development applications attract public interest and scrutiny generally pertaining to the potential clientele of the building. Notwithstanding these concerns, the land use is permissible on the site. This is discussed in greater detail elsewhere in this report. 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 24/09/2021 to 08/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 29 submission/s from:

Name:	Address:
Mr Biao Han	7A Knox Place NORMANHURST NSW 2076
Miss Kathryn Renee Young	8 / 10 Oaks Avenue DEE WHY NSW 2099
Mr Benjamin Michael Furness	29 / 880 Pittwater Road DEE WHY NSW 2099
Mohamed El Beshlawi	453 / 28 Oaks Avenue DEE WHY NSW 2099
Liam Stephen Garratt	27 / 10 Oaks Avenue DEE WHY NSW 2099
Miss Hayley Anne Gordon	18 / 880 Pittwater Road DEE WHY NSW 2099
Michael Roulston Brown	9 / 880 Pittwater Road DEE WHY NSW 2099
Michael Grouse Milston	Po Box 1392 ORANGE NSW 2800
Dr Annette Patricia Sammut	33 Burne Avenue DEE WHY NSW 2099
George Carl Crowley Mrs Carole Ann Crowley	51 Parkland Road MONA VALE NSW 2103
Mrs Anna Zofia Roustoby	601 / 890 Pittwater Road DEE WHY NSW 2099

Name:	Address:
Ms Dana Boudaghian	38 / 880 Pittwater Road DEE WHY NSW 2099
Ms Kerrie Maria Allen	10 Amourin Street NORTH MANLY NSW 2100
Mrs Robin Margaret Louisa Maryska	26 Redman Road DEE WHY NSW 2099
Mrs Dubravka Lakic	25 / 10 Oaks Avenue DEE WHY NSW 2099
Gengxi Xu	21 / 10 Oaks Avenue DEE WHY NSW 2099
Wyndham Fitzgerald Cramer	257 / 28 Oaks Avenue DEE WHY NSW 2099
Mr Yago Lopez Sanchez	12 A Burne Avenue DEE WHY NSW 2099
Ms Rachel Emma Boschen	76 A Elanora Road ELANORA HEIGHTS NSW 2101
Dr Devasha Gwenfrewi Scott	30 Ramsay Street COLLAROY NSW 2097
Alexander George Skotnicki	76 A Elanora Road ELANORA HEIGHTS NSW 2101
Ms Shirley Hedy Taylor	259 / 28 Oaks Avenue DEE WHY NSW 2099
Miss Elinor Grace Cobbin	13 / 10 Oaks Avenue DEE WHY NSW 2099
Mr Alexander Patrik Aeberli	10 / 880 Pittwater Road DEE WHY NSW 2099
Lisa Shaw	27 Betty Hendry Parade NORTH RYDE NSW 2113
Mr Greg Barrell	39 Redman Road DEE WHY NSW 2099
Zeynep Turesin Soylu	563 / 28 Oaks Avenue DEE WHY NSW 2099
Mrs Helga Helm	14 / 10 Oaks Avenue DEE WHY NSW 2099
Mr Paul Apostolou	31 / 10 Oaks Avenue DEE WHY NSW 2099

During the public exhibition of the development application, a number of unique and pro-forma submissions were received, all objecting to the proposal. The submissions raised a number of issues with the proposal that are (where relevant) discussed in greater detail later in this report. The issues are broadly categorised as follows:

- Development of the site
- Use of the site as a boarding house
- Constructability of the proposal
- Cumulative impacts of numerous construction projects
- Amenity impacts arising from the proposal
- Traffic and parking

The above issues are addressed as follows:

- **Development of the site**

  The submissions raised concerns that the development of the site, in any capacity, would be tantamount to an overdevelopment of Dee Why.

  <u>Comment</u>

  The subject site is entitled to be developed to a capacity as envisioned by the prevailing planning controls. The fact that this is the last site on the street block to be developed does not form a planning reason to prevent the site from being developed.

- **Use of the site a a boarding house**

  The submissions raised concern with the partial use of the building as a boarding house, including amenity concerns (detailed below) but also concerns about potential occupants of the boarding house.

  Comment

  A boarding house is a permitted land use within the B4 Mixed Use zone.

  There is no epistemological foundation to assertions that the use of the site for the purpose of a boarding house would result in an increase in crime in the locality and therefore these concerns hold no weight in the determination of the application. The provision of a boarding house in a town centre location provides an alternative form of accommodation (commensurate to traditional market apartments) which ensures that a broader segment of the community can continue to live in Dee Why.

  It should be noted that the proposed boarding house requires a live-in-manager to be present on the site who will be (in part) responsible for enforcing the operational management plan. This plan provides a basis to limit noise, number of occupants and the general operation of a boarding. Conversely, a standard market apartment is not subject to an operational management plan and therefore the density and noise generated from an apartment could likely be greater than that of a managed facility.

- **Constructability of the proposal**

  The submissions raised concerns that the construction of the building would necessitate impacts on the footpath, bus stops and flow of Pittwater Road.

  Comment

  The constructability of a proposal is not primarily a matter necessitating resolution at the development application stage, as this usually occurs prior to the issue of any construction certificate. However, in this instance it is acknowledged that given the nature of the site, construction is and will be the defining factor as to whether the building ever gets constructed.

  The applicant has reached agreement in principle with both Transport for NSW and the bus operating company that future negotiations can occur to address potential works zones or road closures. These factors are not pertinent to the determination of the DA and will be resolved post consent if issued.

- **Cumulative impacts of numerous construction projects**

  The submissions raised concerns that nearby residents have been subjected to the on-going impacts of construction over an extended period of time, including noise, dust and construction traffic. Submissions request a delay in the construction starting to provide them with a period of respite.

  Comment

  The request is ultra vires to the legislative powers of Council. It is acknowledged that the transition of the area has generated a large volume of construction and associated impacts, however such is the nature of living centrally within the main town centre of an area. Conditions

are recommended to be imposed regarding hours of construction, noise and dust minimisation and traffic management plans which will all contribute to ameliorating the severity of any impacts.

- **Amenity impacts arising from the proposal**

  The submissions raised concerns that the development may give rise to impacts including: solar access, visual and acoustic privacy, wind and view corridors.

  Comment

  These amenity concerns are all addressed within their respective clauses of this assessment report. In summary the proposal is not found to result in any unreasonable solar or privacy impacts through the architecture of the design.

  Concerns were raised that the development of this site would essentially infill the street block and therefore obstruct existing view corridors. Views across the site are considered to be extremely limited given its width and the scale/orientation of adjoining developments. Concerns relating to view loss are not found to necessitate the refusal of the application.

- **Traffic and parking**

  The submissions raised concerns that the development has no car parking and will therefore increase the demand for on-street car parking and general traffic congestion.

  Comment

  The subject site is physically not capable of providing an access driveway or car/motorcycle parking. All land uses require car parking and therefore if no dispensation to this requirement was considered the site would be prejudiced by past planning decisions and adjoining developments, resulting in it being stagnated of development potential. Fundamentally on this basis a car-free development is accepted.

  The land-uses of the development proposed are considered less-likely to require car parking than traditional market apartments.

  Further discussion on this matter occurs later in this report, however in summary the absence of car and motorcycle parking is supported.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	The application was first presented to the Design and Sustainability Advisory Panel (DSAP) during the pre-lodgement process and then again on 07 October 2021 post the lodgement of the DA. The DSAP concluded: *The Panel believes the majority of the comments from the first presentation to the panel have been addressed and the proposal is substantially improved. The use is appropriate to the location and restrictions of the site.*

Internal Referral Body	Comments
	The Panel supports the development.
Building Assessment - Fire and Disability upgrades	***Supported, with conditions*** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	***Supported, with conditions*** Environmental Health have no objections to the proposal based on the information provided. With regard to amenity, we have considered noise as the predominant source of potential impacts. An acoustic report has provided recommendations to mitigate noise impacts of mechanical exhaust and operations, those recommendations will form the foundation for conditions of consent.
Environmental Health (Food Premises, Skin Pen.)	***Supported, with conditions*** The proposal includes retail spaces on the lower floor/s to be used as commercial kitchens. Based on the limited details of kitchen fit-out and mechanical exhaust system in the plans, Environmental Health is satisfied with the location of the mechanical exhaust output, standard conditions recommended regarding plans and certification.
Landscape Officer	***Supported, with conditions*** The development application is for demolition of existing buildings and structures and the erection of a nine storey building which will contain one ground floor retail premise; three commercial offices; and twenty affordable rental dwellings, and an on-site manager's office/residence. Ancillary elements include on-site storage and bicycle parking facilities, as well as communal open space areas. Council's Landscape Referral section have assessed the application against the following: • 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. • Warringah LEP and DCP. It is noted that SEPP ARH clause 29 (b) requires landscape treatment of the front setback area to compatible with the streetscape in which

Internal Referral Body	Comments
	the building is located and to this effect there is no landscape treatment to the Pittwater Road streetscape apart from public domain elements. Landscape Plans are submitted indicating landscape treatment to the ground floor, level 6, and level 8 communal area. Existing public domain works upon the road reserve are to be protected. Landscape Referral raise no concerns with the landscape proposal.
NECC (Development Engineering)	***Supported, with conditions*** Updated Comments: Amended drainage plans have been received and the applicant has addressed the previous council concerns , no objections to the development subject to conditions. Superseded Comments: The stormwater plans detailing the provision of OSD were reviewed and the following further information is required: 1) The DRAINS model with design assumptions is to be submitted to Council for review. 2) A longsection through the footpath area in Pittwater Road to to be provided detailing service location clearances relative to the stormwater outlet line. 3) A Hydraulic grade line analysis of the stormwater outlet pipe is to be provided to demonstrate the OSD outlet is not submerged.
NECC (Stormwater and Floodplain Engineering – Flood risk)	***Supported, with conditions*** No loss of storage is proposed. The floor level of the retail areas and entry staircases will be located above the FPL. Shelter in place is proposed. 1% AEP mainstream flood levels along Pittwater Road is RL 18.35m AHD. The ground floor is 18.90m AHD (550mm freeboard above the 1% AEP level). All habitable floor levels are located above the FPL and PMF. Some access ramps are located below the FPL however are constructed as watertight up to the FPL. Water tight bundings and landings above the required level are proposed before the ramp descends. No carpark or driveway is proposed.
NECC (Water Management)	***Supported, with conditions*** The application meets the requirements of the relevant Environmental Planning Instruments and policies.
Road Reserve	***Supported, without Conditions*** There is limited impact on existing road infrastructure assets. The development shall maintain an awning over the public footway area.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral This application has been referred as it is within the vicinity of ***Item I48 - Commonwealth Bank, 691 Pittwater Road, Dee Why.*** The subject site is located on the other side of a main road, being Pittwater Road and at least 50 metres away.

Internal Referral Body	Comments
	Details of heritage items affected Details of the heritage item in the vicinity, as contained within the Warringah Heritage Inventory, are: <u>Statement of Significance</u> A representative example of a suburban bank in the inter-war art deco style. Historically provides evidence of the development of business infrastructure during this period to serve growth of the area. Displays good integrity, retaining much original fabric. **Other relevant heritage listings** Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 — No — Comment if applicable Australian Heritage Register — No NSW State Heritage Register — No National Trust of Aust (NSW) Register — No RAIA Register of 20th Century Buildings of Significance — No Other — No **Consideration of Application** This application is for the demolition of the existing building and the construction of a new 9 storey mixed use development with retail/commercial uses and boarding house accommodation. The proposal is wedged between two existing developments. As the heritage item in the vicinity is across the 6 lane wide Pittwater Road and 50 metres away, there will be no impact upon the heritage significance of the heritage item at 691 Pittwater Road. **Therefore no objections are raised to this application on heritage grounds, and no conditions required.** Consider against the provisions of CL5.10 of WLEP 2011 Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A **Further Comments** COMPLETED BY: Janine Formica, Heritage Planner DATE: 16 September 2021
Strategic and Place Planning (Development Contributions)	***Supported, with conditions*** The application proposes demolition works and the construction of a nine storey mixed-use building consisting of:

Internal Referral Body	Comments
	• 19sqm of retail floorspace; • 166.5sqm of commercial floorspace; • 20-bed boarding house (19 beds plus 1-bed manager's room) The Dee Why Town Centre Contributions Plan 2019 applies to this development. The Contributions Plan identifies that the contribution amount is attributable to the net increase in infrastructure demand. Clause 4.3 of the Contributions Plan identifies that there must be an allowance for existing development. The assessment officer has advised that the existing development comprises 233.7sqm of non-residential floorspace. Proposed non-residential floorspace totals 185.5sqm. There is no net increase in non-residential floorspace therefore no contribution has been imposed for non-residential development. Clause 4.3 of the Contributions Plan does not permit the balance, 48.2sqm of non-residential floorspace to be applied as a credit against the proposed residential accommodation or vice versa. The development involves the construction of new residential accommodation in the form of a boarding house comprising a total of 20 rooms/beds (19 boarding house rooms and 1-bed permanent manager's room). The manager's room is considered a form of residential accommodation that is levied by the Contributions Plan. This development will increase the demand for local infrastructure levied under the Contributions Plan. A contribution rate of $6,716.09 per bed has been applied to the 20 rooms/beds resulting in a total monetary contribution of $134,321.86. Clause 6.3.1 of the Contributions Plan stipulates that the contribution rates in the plan will be adjusted to reflect quarterly movements in the Consumer Price Index (CPI) as published by the Australian Bureau of Statistics. The next CPI adjustment will be published on 27 July 2022. If the development application is not determined before this date, the contribution calculation will need to be updated to reflect the amended contribution rates. Accordingly, If determined before 27/07/2022 (date of the next CPI adjustment), the following condition should be applied to the development: A monetary contribution of $134,321.86 (subject to (a) below) is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning & Assessment Act 1979 and the Dee Why Town Centre Contributions Plan 2019. The monetary contribution is based on: • the residential contribution rate of $6,716.09 per bed (applicable to a boarding house) and • the approved 20 beds only (inclusive of the permanent 1-bed manager's room).

Internal Referral Body	Comments
	a) Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to the issue of the construction certificate. If the monetary contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution or part thereof) will increase on a quarterly basis in accordance with the applicable Consumer Price Index. b) The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land in lieu of the cash contribution above (or any portion of that cash contribution) or the deferral of payments through a Material Public Benefits Agreement between Council and the Applicant in accordance with the Contribution Plan. The Material Public Benefits Agreement between the Applicant and Northern Beaches Council must be finalised, formally signed and in place prior to the payment of the monetary contribution. The Dee Why Town Centre Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why or on Council's website at Northern Beaches Council - Development Contributions. Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of public infrastructure and services commensurate with the increased demand resulting from development in the Dee Why Town Centre.
Traffic Engineer	***Supported, with conditions*** Updated Comments - 7/4/2022 Further liaison with TfNSW and the bus service provider Keolis Downer has revealed that a Works Zone applying during off-peak periods may be permissible within part of the B-Line bus stop on the sites property frontage. Details will need to be confirmed in a revised construction traffic management plan prior to the issue of a construction certificate Further investigation of parking provisions in adjacent buildings has also confirmed that it is infeasible to construct below ground parking to serve this development site. Given the inability to feasibly construct any parking on such a narrow site and noting the site's excellent access to high frequency public transport to a range of destinations, close proximity to shops and services and close proximity to Go Get car share pods located within Council's Library carpark, the approval of the development without parking is acceptable. A revised Green Travel Plan is also considered necessary to outline measures to promote incentivise and/or encourage travel by active transport, public transport and car share. Subject to conditions there are now no traffic engineering issues

Internal Referral Body	Comments
	preventing approval of the development Superseded Comments - 6/12/2021 The development proposal is for demolition of existing structures on the site and construction of a nine storey mixed use development comprises of 20 boarding rooms, 3 x commercial premises (total 167sqm GFA) and a retail premises (coffee shop) of 23sqm in size. The site is a remnant site with a street frontage to Pittwater Road of only 8.4m in width. The Dee Why B-Line Bus Stop is located immediately in front of the site. **Parking:** The Warringah DCP does not set a rate for boarding house development instead requiring that parking rates be determined by comparison with similar developments. The parking rate for the commercial component is 1 space per 40sqm (office or business premises) while in the Dee Why Town Centre retail uses are required to provide 1 space per 23.8 sqm. Most boarding house developments provide parking in accordance with SEPP (Affordable Housing) requirements i.e 0.5 spaces per bed and 1 space for an on site manager. In addition the SEPP also has a mandatory provision that both bicycle and motorcycle parking be provided at a rate of 1 space for each five boarding rooms. Utilising the above rates the development would be require 16 spaces (5 for commercial/retail, 10 resident spaces and 1 managers spaces). 4 bicycle spaces and 4 motorcycle parking are also required. The developer proposes no offstreet car or motor cycle parking but does propose to provide space for 17 wall mounted bicycles. The bicycle parking requirement is exceeded however the lack of any motorcycle parking which, under the SEPP is a mandatory requirement has not been satisfactorily addressed. The narrow frontage of the site and the lack of alternate rear lane or side access makes it impractical to construct a vehicle crossing to the site. In addition the fact that it fronts a State Road with the frontage being sited within the B-Line Bus Zone, makes it unlikely that Transport for NSW would approve a new driveway in this location. Finally, the proximity of the site to services and shops in the Dee Why Town Centre and to the B-Line Bus stop make this location appropriate for a reduced level of parking provision below SEPP and DCP requirements. At the PLM meeting the applicant was requested to explore options for basement parking to be accessed via the basements serving the adjacent sites and to provide evidence that reasonable attempts to explore this option had been made. No documentation to establish

Internal Referral Body	Comments
	that such liaison has taken place and confirming that such an option is unable to be achieved has been provided. The applicant was also requested to provide a green travel plan which has been provided and is discussed further below **Traffic Generation** Boarding houses generally generate low levels of traffic as will the small retail and commercial development proposed for this site which will be served primarily by traffic on foot. The absence of parking on the site and proximity to high frequency public will also tend to result in lower levels of traffic generation. The proposed development is not opposed in terms of its traffic generation impacts. **Green Travel Plan** The green travel plan provides information on available public transport, bicycle route and car share facilities within the area but other than encouraging participation in Walk to Work and Ride to Work Days and providing secure bicycle parking, there are no incentives to encourage travel by these means. Options such as reduced tenancy fees for tenants owning a bicycle, provision of a pool of E-Bikes, corporate Go-Get membership available to tenants and commercial clients, Opal cards for tenant use etc would all encourage greater use of these transport modes and genuinely offset the absence of any car or motorcycle parking on the site. **Loading/Deliveries** There is no provision for Loading or Deliveries to the development to be accommodated offstreet and no ability for deliveries or loading to be accommodated on-street in front of the site given the presence of the highly utilised B-Line bus stop and No Stopping restrictions covering all nearby kerb space within close proximity to the site. It is however impractical to provide on-site loading facilities given the constrained nature of the site however it is unclear if any attempt has been made to explore alternate loading/delivery options via the basement parking in adjoining developments. **Disabled Parking** The development provides no disabled parking and no disabled parking options are available on-street within close proximity to the site. The nearest publicly accessible disabled parking is located in Council's Library carpark approx. 135m away and requiring the

Internal Referral Body	Comments
	crossing of two roads under traffic signal control. Given the above the site is not well served in terms of its access for persons with mobility issues or a disability. **Constructability** The referral comments from TfNSW advise that a construction zone (Works Zone) will not be permitted on Pittwater Road. The construction traffic management plan (CTMP) which accompanies the DA outlines that a Works Zone will be required on the Pittwater Road frontage of the site. This is contrary to the TfNSW advice. The developer needs to resolve this matter with TfNSW and provide written confirmation from TfNSW that they will permit a Works Zone and/or Standing of construction vehicles on the sites Pittwater Road frontage. If this is not possible it is unclear how the development can be completed and revision of the CTMP to outline alternatives would be required. **Summary** There is insufficient information providing addressing a number of areas of concern relating to shortfall in parking, lack of provision for loading/servicing. Lack of provision for disabled parking, and absence of motorcycle parking. The adequacy of the green travel plan which outlines little incentive to utilise sustainable transport alternatives is also queried. There is also conflicting information between TfNSW and CTMP advice regarding the potential for standing of construction vehicles on the sites Pittwater Road frontage. Additional information addressing these matters is required prior to further consideration of this DA
Waste Officer	***Supported, with conditions*** Due to the constrained nature of this site (physical size, limited access) Waste Management has deemed the application to be "acceptable" despite several inconsistencies with the Waste Management Design Guidelines. Special ongoing conditions of consent have been applied with respect to these inconsistencies to ensure appropriate ongoing management of waste within the building.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	***Supported, with conditions*** *The proposal was referred to Ausgrid who raised no objections to the proposed development, subject to conditions as recommended.*
Concurrence – NSW Roads	***Supported, with Conditions***

External Referral Body	Comments
and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	*TfNSW has reviewed the submission and provides concurrence to the proposed civil works on Pittwater Road under section 138 of the Roads Act 1993, subject to conditions.*

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

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

Division 3: Boarding Houses

<u>Clause 25: Definition</u>

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

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

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

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

Clause 26: Land to which this Division Applies

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

Clause 27: Development to which this Division Applies

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

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

Clause 28: Development may be Carried out with Consent

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

Clause 29: Standards that Cannot be used to Refuse Consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale *A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:*	(a) *the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*	The site is subject to an FSR control of 4.0:1.	Not Compliant
	(b) *if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or*	N/A Residential accommodation is permitted in the B4 Mixed Use zone.	Not Applicable.
	(c) *if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:* *(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or* *(ii) 20% of the existing maximum floor space ratio, if the existing*	Residential flat buildings are permitted within the B4 Mixed Use zone and the site does not contain a heritage item nor is it subject to an Interim Heritage Order. The existing maximum FSR is 4.0:1 and is therefore greater than 2.5:1 and thus qualifies for the additional 20% uplift pursuant to to cl.29 (1)(c)(ii). The proposal includes an FSR of 4.51:1 (1,054.7m^2)which is less than the permitted maximum of 4.8:1 (1,123m^2) and therefore complies with the prevailing FSR requirements.	Compliant

	maximum floor space ratio is greater than 2.5:1.		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	*if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,*	The maximum permitted building height is 27m under the WLEP 2011. The development complies with this standard.	Compliant
(b) landscaped area	*if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,*	The front setback of the subject and adjoining sites to Pittwater Road is nil. The proposal includes street-facing landscaping at Level 5, Level 6 and on the roof. This is generally consistent and compatible with front setback landscaping along Pittwater Road within the B4 zone.	Compliant
(c) solar access	*where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,*	The communal room and roof terrace on Level 8 of the development does not receive the required 3 hours of direct sunlight between 9am and 3pm in mid-winter. The proportions and positioning of other adjacent buildings make achieving compliance, whilst staying under the building height and protecting the solar access of adjoining properties, near impossible. For that reason, and given the central location of the site close to services and the	Not Compliant - acceptable on merit.

		beach, a variation to this 'do not refuse' provision is allowed.	
(d) private open space	*if at least the following private open space areas are provided (other than the front setback area):* *(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,* *(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,*	Level 8 of the development provides communal open space to the rear of the building measuring approximately 21m2 internally and 30m2 externally, with minimum dimensions of 3m. The Manager's Room includes a private 9.5m^2 balcony at the front of the building (not within the front setback area as no front setback control applies).	Compliant
(e) parking	if: *(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and* *(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and* *(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are*	The development provides no car parking and therefore pursuant to this clause, the development could be refused on this basis. However, in the circumstance of the application providing car parking on the site is found to be inappropriate and therefore nil car parking is accepted. This matter is discussed elsewhere in this report.	Not Compliant - acceptable on merit.

	provided for each boarding room, and *(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,*		
(f) accommodation size	*if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:* *(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or* *(ii) 16 square metres in any other case.*	All boarding rooms provide private kitchen and bathroom facilities and exceed the prescribed areas.	Compliant
	(3) *A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.*	All boarding rooms provide private kitchen and bathroom facilities.	Compliant

Clause 30: Standards for Boarding Houses

Standard requirement	Proposed	Compliant/Comment
(1) *A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:*		
(a) *if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,*	The proposal has more than five boarding rooms and provides one communal room and one communal outdoor area.	Compliant
(b) *no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m²,*	At the request of Council the applicant deleted Room L5.02 as it was too small, and merged that with Room L5.01.Through a series of revised plans an acceptable solution was found	Compliant

	which provided compliant room sizes for all boarding rooms.	
(c) *no boarding room will be occupied by more than 2 adult lodgers,*	No boarding rooms will be occupied by more than two adult lodgers.	Compliant
(d) *adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,*	Each boarding room has private bathroom and kitchen facilities.	Compliant
(e) *if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,*	The boarding room has the capacity to accommodates more than 20 lodgers and therefore an on-site 'dwelling' is provided for the boarding house manager.	Compliant
(g) *if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,*	The site is zoned B4 Mixed Use and does not have any residential floor space on the ground floor.	Compliant
(h) *at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*	No motorcycle parking is provided on site. 17 bicycle parking spaces are provided. Discussed under Clause 4.6 of this report.	Non Compliant - acceptable on merit
(2) *Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.*	N/A	N/A

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

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

Comment
Not applicable. The subject site is zoned B4 Mixed Use.

Clause 30A: Character of the Local Area

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

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

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

Comment
The development site is located on the main arterial road of the Northern Beaches in the central town centre area. The site is bound by existing development on all sides, including the tallest building in the Northern Beaches to the north. The development, by virtue of the site proportions, is significantly lesser in scale than neighbouring developments. The proposal is compliant with building height and the general architectural typology along Pittwater Road.

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

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

Comment
Consequent of the width of the land commensurate to that of surrounding sites, the size of the proposed development is limited and thus its visual bulk and presentation to the street is lesser than that of neighbouring buildings. Notwithstanding that, the building is broken up by a step and an interesting palette of materials with facade landscaping.

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

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

Comment
It is not considered that there are any noteworthy features of the existing site, nor any elements that could be retained to assist in reducing the visual bulk or dominance of any new structure.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

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

Comment
The development is sought to be constructed in materials of an appropriate durability for the location, and in style and sympathy with the architecture of neighbouring buildings. The design incorporates elements of colour which are considered to be appropriate for the town centre location, particularly the large pane of yellow cladding which is to be reflective of the yellow double decker B-Line buses which stop at the front of the building.

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

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

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

Comment
The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise. The impact of the proposal on adjoining sites are considered to be acceptable.

Constraints on the Development Potential of Surrounding Sites

Quite opposite to the intent of this control, the subject sites development potential is severely constrained by the existing development of neighbouring land which has left this site in isolation. The development of this small site does not further prejudice the development potential of any land.

Privacy
The eastern portion of the building incorporates both private balconies and a communal roof terrace which, in the submissions received, have been noted as potentially causing a privacy issue. Conversely, the existing balconies of neighbouring properties overlook this subject site already.

The design of the building incorporates blade walls on the flank facades to minimise overlooking and provides a setback of 4.5m to 6m from the rear boundary.

On balance it is acknowledged that the proposal does create some overlooking of neighbouring properties. This balance takes into consideration the inherent knowledge that one must have when buying into a town centre area that the expectation of complete privacy is unrealistic and unreasonable. On balance of all factors, the provision of visual privacy provided is acceptable.

Overshadowing
As detailed on the shadow diagrams provided by the project architect, the proposal will not contribute to any significant additional extent of overshadowing on adjoining land or windows commensurate to the existing situation.

Noise
The proposal is not anticipated to generate any unreasonable levels of noise that could harm the amenity of adjacent land. A boarding house is subject to a strict management plan and includes an on-site manager to deal with any noise complaints - this is the polar opposite to a standard residential market dwelling which has no restrictions on it. Therefore, despite being denser than a traditional apartment building, the noise is better managed.

Conclusion to Character Assessment
The above character assessment has found that, in the context of the Land and Environment Court

Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

This matter warrants the approval of the Development Application.

Conclusion
On balance of all factors the development is found to succeed when measured against the controls and underlying principles of the SEPP ARH, notwithstanding several numerical variations as discussed. On this basis the proposal is supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1174985M dated 13 July 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006236475 dated 13 July 2021).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	25	30

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.

Transport for NSW

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	27m	27m	Yes
Floor Space Ratio:	4.0:1	4.51:1 (1,054.7m^2)	**No - relevant provision is under SEPP ARH cl.29(1)(c)(ii)**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Clause	Compliance with Requirements
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.6 Height of buildings	N/A
7.10 Allowance for external ancillary plant and roof access	Yes
7.12 Provisions promoting retail activity	Yes
7.13 Mobility, traffic management and parking	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.6 Variation: SEPP (ARH) Clause 30(1)(h) - ***At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.***

Description of Non-compliance

Development Standard:	Motorcycle parking
Requirement:	One motorcycle parking space per five boarding rooms
Proposed:	Nil
Percentage Variation to Requirement:	-

Clause 30(1)(h) of the SEPP ARH reads:

> ***30 Standards for boarding houses***
>
> *(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—*
>
> *(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

The proposal includes 19 boarding rooms and should therefore provide four motorcycle and bicycle parking spaces.
In the absence of vehicular access to the site for the reasons explained by Council's Traffic Engineer earlier in this report, a variation to the motorcycle parking standards is required. The proposal provide a compliant provision of bicycle parking (four spaces required, 17 provided).

Assessment of request to vary a development standard

The following assessment of the variation to Clause 30(1)(h) Motorcyle Parking development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards

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

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

Comment

Clause 30(1)(h) Motorcycle Parking 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 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 Request

The applicants written request argues, in part:

- The proposal satisfies the objectives of the B4 zone.
- The shortage of motor cycle spaces is significantly offset by the provision of bicycle spaces (17), which well exceeds the requirements set out in the SEPP (being 4 spaces).
- The physical constraints of the site make it impossible to provide parking below ground level, which is a desired outcome under the DCP controls. The limited width of the site precludes this arrangement on a standalone basis.
- The nature of transport methods encouraged as a result of non-provision of motor cycle parking

is entirely consistent with the controls contained in the LEP and DCP which seek to encourage the use of public transport, walking and cycling.
- The reduction of private transport usage will result in a lesser degree of environmental impact, particularly as it relates to air pollution.
- The site's proximity to public transport, in conjunction with its immediate access to facilities and services, results in a lesser dependency for reliance on private transport due to the availability of these elements in such close proximity to the site.

The applicant's justification is concurred with for the principal reason that vehicular access to the site is impossible from Pittwater Road (as confirmed by TfNSW) and from neighbouring sites.

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

<u>Comment</u>

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Motorcycle Parking development standard and the objectives of the B4 Mixed Use zone. An assessment against these objectives is provided below.

Objectives of Development Standard

There are no underlying objectives of the development standard in this instance.

Zone Objectives

The underlying objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*

  <u>Comment</u>

  The development provides a range of compatible uses on the site itself, and those uses are widely compatible with the town centre as a whole.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

  Comment

  The development provides business/office, residential and retail in an accessible location directly adjoining the B-Line bus stop. The site is in an accessible location and thus encourages walking, cycling and public transport patronage.

- *To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.*

  Comment

  The proposed land uses reinforces Dee Why as the major town centre of the area.

- *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*

  Comment

  The development provides an active street frontage and offers a retail opportunity at a major bus stop which doesn't currently exist (i.e., coffee shop) which would contribute to the liveliness of the street, amenity of pedestrians and increase the desirability of public transport usage.

- *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*

  Comment

  Achieved through design.

- *To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.*

  Comment

  Not possible given existing adjoining developments.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning &

Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Motorcycle Parking Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls
The Built Form Controls pursuant to Part B of the WDCP 2011 do not apply to the Dee Why Town Centre.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
3 Desired Character for the Dee Why Town Centre	Yes	Yes
4 Streetscape and Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5 Design and Architectural Diversity	No	Yes
6 Site amalgamation	Yes	Yes
7 Traffic and Parking	Yes	Yes
8 Car Share	N/A	Yes
9 Sustainability	N/A	N/A
10 Water Sensitive Urban Design (WSUD)	Yes	Yes
11 Landscaping	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

As demonstrated elsewhere in this report the development has no opportunities to provide vehicular access to the site or car parking, and therefore in the absence of those features is deemed achieve the objectives of Clause C2.

C3 Parking Facilities

The parking requirements under the SEPP ARH prevail over those stipulated in Appendix 1 of the WDCP and on that basis the site should provide 16 car parking spaces (10 for the boarding house, five commercial/retail spaces and one manager space). The proposal does not provide any car parking.

As the site is not physically capable of obtaining vehicular access, nor would car parking fit on the land, a variation to the car parking requirement is supported.

C8 Demolition and Construction

Given the sites location on a main road and proximity to a major bus stop it is likely that the construction of the development will cause a level of disruption. Whilst these matters are generally to be resolved at Construction Certificate phase, it is recommended that a condition be imposed requiring a comprehensive Construction Traffic Management Plan to be created and approved prior to the issuance of any such certificate.

D11 Roofs

During the course of the application revised plans were received which converted the proposed concrete roof to a green sedum rooftop garden (inaccessible to occupants). No planting schedules or details of this substantial roof garden were provided, and it is therefore recommended that a condition of consent be imposed which requires details to be submitted back to Council for approval prior to the issuance of a Construction Certificate.

The modification to the roof is supported, as the addition of a green roof within the dense town centre area will provide visual privacy, thermal insulation for occupants, and an alternate form of habitat for local biodiversity.

3 Desired Character for the Dee Why Town Centre

The vision for Dee Why Town Centre identified in the 2013 Masterplan is as follows:

> *"Dee Why will be home to a thriving cosmopolitan community who cherish their past, celebrate its unique and engaging vibe and embrace its bold commitment to urban sustainability. It will be a place of both energy and refuge, a city at the beach, with a distinctive modern urban identity."*

The North District Plan 2018 identifies Dee Why Town Centre as a mixed-use area that offers a vibrant local night-time economy. It outlines actions that are interpreted as objectives within this section of the DCP.

The provision of a boarding house development centrally located within the Town Centre will provide increased housing opportunities for a more diverse segment of the community which, in turn, contributes to a wider sense of community.

The architecture of the proposal is simple but effective given the narrow width of the site and the juxtaposition of neighbouring built forms. Rather than repeating the façade typology of its neighbours, the creation of a new and colourful façade on the street is deemed to be visually interesting and characterful for the Centre and is therefore supported.

On balance the proposal is considered to be consistent and compatible with the Masterplan.

The proposal was also assessed by Council's Design and Sustainability Advisory Panel (DSAP) with regards to the architecture of the building and its compatibility with the town centre. In their review of the application the Panel concluded with the following comments:

The Panel supports the development *provided the applicant can address a few more minor amendments to the layout of the building:*

1. *Reduce the number of bins to redesign the ground floor*
2. *Reconfigure the cycle storage area.*
3. *Introduce low cost, low maintenance planting to the façade*
4. *Resolve acoustic privacy to the bedrooms which open to the lightwell*
5. *Reconsider the layout of apartment 5.01*
6. *Address sustainability issues – electrification of the building, increased PV array*

The applicant sought to address these issues as follows.

1. The number of bins is a requirement and Council did not support the reduction of this recommendation, therefore no changes were made.
2. The cycle storage area has been reconfigured to be open to the ground floor void below, to increase the amenity from both the room, but from the lobby and cafe as well.
3. Plantings introduced at various levels on the front facade, including the addition of a green roof.
4. Detailing of window vents provided on plans to minimise acoustic intrusion between rooms.
5. Apartment 5.01 redesigned entirely.
6. Increase PV array provided to the roof, above the green roof which enhances the efficiency of the cells.

4 Streetscape and Public Domain

The clause seeks to achieve the following streetscape and public domain improvements:

- Prioritise pedestrian, cycling and public transport users.
- Improve access for people of all ages and abilities.
- Ensure high levels of amenity addressing landscape and street tree planting, weather protection, circulation and seating.
- Provide spaces for people to meet, walk and feel safe.
- Integrate the management of stormwater and floodwater.
- Maximise opportunities for landscaping.
- Encourage public art.
- Activate the public domain and create lively, attractive public spaces.
- Create a system of new and improved connected public spaces.

A number of these objectives are not relevant to this application as no vehicular access is provided.

The proposal provides residential accommodation in an accessible location which resultantly provides improved access for people of all ages and abilities.

The street frontage of the development is welcoming and human scale whilst working as a retail space and a functional entrance for occupants and employees of the office spaces. The site is in a practical meeting location adjacent to the primary B-Line bus stop.

The developments provides landscaping at various street-facing levels which, in conjunction with the built form, will work to mitigate the proportions of the building. The development is proposed to be coloured (in part) in bright yellow concrete - this is itself is considered to contribute to public art, as it is reflective of the yellow B-Line buses.

Within the constraints of what the site can contribute to the public domain given its minimal size and street presence, it is considered that the proposal is appropriate, visually interesting and complementary to the broader Dee Why Town Centre.

5 Design and Architectural Diversity

This Clause requires that development should maintain a minimum *tower* setback from the kerb of 9m.

Whilst the proposal doesn't strictly conform with the 'podium and tower' design style, the upper floors are increasingly stepped back from the street edge and achieve setbacks of 6m to 8.97m.

The intent of this requirement is as follows:

- To achieve architectural diversity and interest in the architectural character of the neighbourhood.
- To ensure that each building contributes to the design quality of Dee Why Town Centre through innovative architecture and landscaping.
- To provide solar access to the ground level and reduce the appearance of building bulk from the public domain.
- To provide a mix of dwellings to cater for the needs of the resident population and to encourage a diverse population.
- To allow dwelling adaptation that that meets the changing needs of people.

For the reasons described throughout this report, the development achieves these objectives and is therefore acceptable. It is further noted that the setbacks of the upper building levels are generally consistent with the adjacent Meriton building.

6 Site amalgamation

The primary objective of this clause is:

- *To avoid the isolation of small sites which may result in poor built form outcomes and inability for such sites to be developed to their potential.*

The site is isolated and bound by existing contemporary developments on all sides. The site has no ability to amalgamate with these existing developments.

Notwithstanding that, the development does demonstrate that a high quality built form outcome can still be achieved on this challenging site that will contribute to the quality and livelihood of the Town Centre in longevity.

8 Car Share

The development does not provide car parking and is not of a scale that necessitates a contribution towards car sharing facilities. Notwithstanding that, the site is proximate to a number of publicly available car sharing spaces (such as those within the Dee Why Library carpark) which are located 135m walking distance from the front door of the development. The provision of publicly available car sharing facilities ensure that occupants can have access to a vehicle from time-to-time when required.

9 Sustainability

Clause 9 of the Dee Why Town Centre controls only applies to developments with a cost of works equal to or greater than $5 million. The proposed cost of works $4.32m does not trigger the application of this clause.

Notwithstanding that, the architect has demonstrated the following sustainability credentials relevant to the design:

- No basement excavation - reduced environmental and construction impacts.
- No car parking - promotes public and alternative transport.
- Excellent access to public transport.
- Insultated roof - sedum layer beneath solar panels. Solar panels operate more efficiently when elevated above a green (sedum) roof.
- Smaller footprints of boarding rooms require less heating and cooling than traditional apartments.
- Minimal length facades exposed to heat.
- Longer length (flank) facades substantially insulated by adjacent buildings.
- Ventilation slot provided for full height of building.
- 5-star energy efficient fittings, fitments and appliances.
- Double glazing.

11 Landscaping

Clause 11 of the Dee Why Town Centre controls require that:

1. Where possible, existing trees should be retained, particularly where they are adjacent to the public domain.
2. A minimum of 20% of the site area is to be provided as landscaped area, which may be located on balconies, ground, podium and roof top levels or green walls of buildings.
3. Facades at the street level may incorporate planting on structures to enhance views from the public domain.
4. Where green walls are provided, they must be via a cladding structure with growing medium to facilitate extensive plant growth.

The development is not removing any vegetation from the site as the site is wholly covered by existing buildings.

The development is providing a small rear garden to act as a buffer between buildings. Overall this rear garden area and planting on balconies is equivalent fo 18.39% of the total site area. In the revised plans received throughout the course of this application a green (sedum) roof was added to the development which increase this ratio to be 48.65% thereby exceeding the control requirements.

POLICY CONTROLS

Dee Why Town Centre Contributions Plan 2019

The Dee Why Town Centre Contributions Plan 2019 applies to this development.

The Contributions Plan identifies that the contribution amount is attributable to the net increase in infrastructure demand. Clause 4.3 of the Contributions Plan identifies that there must be an allowance for existing development. The assessment officer has advised that the existing development comprises 233.7sqm of non-residential floorspace. Proposed non-residential floorspace totals 185.5sqm. There is no net increase in non-residential floorspace therefore no contribution has been imposed for non-residential development. Clause 4.3 of the Contributions Plan does not permit the balance, 48.2sqm of non-residential floorspace to be applied as a credit against the proposed residential accommodation or vice versa.

The development involves the construction of new residential accommodation in the form of a boarding house comprising a total of 20 rooms/beds (19 boarding house rooms and 1-bed permanent manager's room). The manager's room is considered a form of residential accommodation that is levied by the Contributions Plan. This development will increase the demand for local infrastructure levied under the Contributions Plan. A contribution rate of $6,716.09 per bed has been applied to the 20 rooms/beds resulting in a total monetary contribution of $134,321.86.

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.

CONCLUSION

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

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

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

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

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

This assessment demonstrates that the development of the site for a mixed use building including a boarding house is a suitable and appropriate outcome for the site and the town centre.

Notwithstanding the fact that the proposal seeks to vary one development standard and that a large number of submissions against the application have been received, the proposal represents a generally compliant built form with an amenity outcome consistent with what could generally be expected from a highly constrained site in the middle of the Dee Why Town Centre and with a unique set of historical, size and access limited circumstances.

This report acknowledges the extreme physical constraints on the site and based on its highly favourable public transport accessibility, supports the development of the site notwithstanding the zero provision of parking, both car and motorcycle.

The overall quality of design and built form is appropriate for the context and is supported by Council's Design and Sustainability Advisory Panel.

On the balance of all factors, the proposal is considered worthy of conditional support, and it is therefore recommended that the NBLPP **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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1508 for Demolition works and construction of a mixed-use development, including a boarding house development, food and drink premises and office premises on land at Lot B DP 389449, 882 A Pittwater Road, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A010 Issue C - Demolition Plan	06 July 2021	Crawford Architects
A100 Issue R - Ground Floor	06 July 2021	Crawford Architects
A101 Issue S - Level 1 Floor Plan	25 January 2022	Crawford Architects
A102 Issue S - Level 2 Floor Plan	25 January 2022	Crawford Architects
A103 Issue S - Level 3 Floor Plan	25 January 2022	Crawford Architects
A104 Issue S - Level 4 Floor Plan	25 January 2022	Crawford Architects
A105 Issue U - Level 5 Floor Plan	20 April 2022	Crawford Architects
A106 Issue T - Level 6 Floor Plan	25 January 2022	Crawford Architects
A107 Issue S - Level 7 Floor Plan	25 January 2022	Crawford Architects
A108 Issue P - Level 8 Floor Plan	25 January 2022	Crawford Architects
A109 Issue P - Roof Plan	25 January 2022	Crawford Architects
A300 Issue T - Elevations Sheet 01	25 January 2022	Crawford Architects
A302 Issue G - Elevations Sheet 03	06 July 2021	Crawford Architects
A303 Issue C - Elevations Sheet 04	06 July 2021	Crawford Architects
A350 Issue R - Section AA	06 July 2021	Crawford Architects
A351 Issue S - Section BB	06 July 2021	Crawford Architects
A352 Issue K - Section CC & DD	06 July 2021	Crawford Architects
A450 Issue G - Elevation Materials and Finishes	06 July 2021	Crawford Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Access Report (ref:21/0084)	28 July 2021	East Coast Accessibility Pty Ltd
Acoustic Report - DA Stage	23 July 2021	Koikas Acoustics Pty Ltd

BASIX Certificate No. 1174985M	13 July 2021	Damian O'Toole Town Planning Pty Ltd
BCA Assessment Amendment 1	08 July 2021	East Coast Approvals Group Pty Ltd
Flood Risk Management Report	09 June 2021	Demlakian
Preliminary Geotechnical Assessment (ref:6325-G1)	23 December 2020	Asset Geotechnical Engineering Pty Ltd
NatHERS Certificate No. 0006236475-01	13 July 2021	Damian O'Toole Town Planning Pty Ltd
Traffic and Parking Impact Assessment (ref:20317) Issue D	July 2021	Transport and Traffic Planning Associates

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
000 Issue C - Landscape Coversheet	10 March 2021	Site Image Landscape Architects
102 Issue C - Landscape Plans	10 March 2021	Site Image Landscape Architects
101 Issue C - Landscape Plans	10 March 2021	Site Image Landscape Architects
501 Issue B - Landscape Details	09 February 2021	Site Image Landscape Architects

Waste Management Plan		
Report Title	**Dated**	**Prepared By**
Waste Management Plan Issue 01	Undated	Crawford Architects

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	Undated
Transport for NSW	TfNSW Referral Response (SYD21/01251)	01 November 2021

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

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

3. **No Approval for any Signage**
No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy (Industry and Employment) 2021). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

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

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

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

the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **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.

7. **Dee Why 7.11 contributions (COW less than $10 million)**
Before the issue of a construction certificate, the applicant must pay a monetary contribution to Council of $134,321.86. This contribution is calculated at the date of this consent, in accordance with the Dee Why Town Centre Contributions Plan 2019 and comprises:

- a residential contribution of $134,321.86 based on the approved 20 beds (inclusive of the permanent 1-bed manager's room)

The total amount payable may be adjusted at the time of payment in accordance with the provisions of the Dee Why Town Centre Contributions Plan 2019.

The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Dee Why Town Centre Contributions Plan (as amended). The agreement for Material Public Benefit between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

A copy of the development contributions plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Dee Why Town Centre.

8. **Construction, Excavation and Associated Works (Security Bond)**
A bond of $20,000 as security against damage to Council's footpath area fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

Reason: Protection of Council's infrastructure.

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

9. **On Slab Landscape Works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed: 600mm minimum soil depth.
Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

10. **Flooding**
In order to protect property and occupants from flood risk the following is required:

<u>Flood Effects Caused by Development – A2</u>
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 18.35m 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 FPL or Probable Maximum Flood (whichever is higher), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1
New floor levels within the development shall be set at or above the Flood Planning Level of 18.90m AHD or be protected up to the FPL.

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.

Recommendations

The development must comply with the recommendations outlined in the Flood Risk Management Report prepared by Demlakian Consulting Engineers dated 9 June 2021.

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.

11. **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.

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

Due to heavy traffic congestion throughout the Dee Why town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:
- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council and/or Transport for NSW prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Confirm that Transport for NSW has agreed to the provision of a Works Zone on the sites Pittwater Road frontage and that adjustments to adjacent Bus Zones to facilitate introduction of the Works Zone have been finalised
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of

the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

13. **Demolition Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-
- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the

combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

14. **On-Street Work Zone**
The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone will first require approval from the Transport for NSW Transport Management Centre (TMC) and their consent must be obtained by way of a Road Occupancy Licence prior to submission of the Works Zone application to Council. Application forms for work zones are available on Council's website or at the Customer Service section at Council's administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

An application must be lodged with Council for consideration and approval for a work zone for the frontage of the site.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

15. **Green Roof**
Prior to the issuance of any Construction Certificate additional details on the approved sedum roof are required including (but not limited to):

- Soil depths
- Maintenance regime
- Landscape Plan and Planting Schedule

Details are to be submitted for written approval to Council's Manager Development Assessment.

Reason: To ensure appropriate plantings are installed.

16. **Building Code of Australia Audit Report**
The Building Code of Australia works and fire safety measures as detailed and recommended in the Building Code of Australia Audit Report prepared by East Coast Approvals Group Pty Ltd, dated 8/7/2021, Job No. 21/0084 are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

17. **Access and Facilities for Disabled**
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 consideration is to be given to the Access Report prepared by East Coast Accessibility Pty Ltd, Ref. 21/0084, Rev. 3, dated 28/7/2021. Details are to be taken into consideration as part of the assessment of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

18. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy for Development, and generally in accordance with the concept drainage plans prepared by Demlakian Consulting Engineers, drawing number 220218 SW01 P3 , SW02 P2, dated Feb 2021. Detailed drainage plans are to be prepared by a practicing Civil Engineer, who is registered with the professional engineer registration scheme as administered by the Department of Trading .

The drainage plans must address the following:
i. The UPVC 150mm outlet pipe outlet pipe is to be replaced with a 200x100mm galvinised steel hollow section.
ii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

19. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to, and approved by, the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the food premises complies with the design construction and fit-out requirements.

20. **Mechanical Ventilation Plans**

Detailed plans of mechanical ventilation that demonstrate compliance with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in

buildings", must be submitted to and approved by the Certifying Authority. Any external exhaust discharge must also be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

21. **Noise assessment**

Prior to the issue of a Construction Certificate, the design, specifications and location of noise generating mechanical plant are to be provided to the Principal Certifying Authority.

An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments to control noise in accordance with Sections 6, 7 and 8 within the Acoustic Report by Koikas Acoustics Pty Ltd dated 23 July 2021 (Reference 4617R20210319mfc882APittwaterRdDeeWhy_DAv2.docx).

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

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

Reason: To maintain amenity of the surrounding area.

22. **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.

23. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

24. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

25. **Waste and Recycling Requirements**
Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

26. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Road Occupancy Licence shall be obtained for work on State Roads.

Reason: To ensure Work zones and associated permits are monitored, installed and approved correctly.

27. **Road Occupancy Licence**
Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

28. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

29. **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.

30. **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.

31. **Implementation of Demolition Traffic Management Plan**
All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

32. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

33. **Ongoing Management**
The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

34. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

35. **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.

36. **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.

37. **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.

38. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the

submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

39. **Waste/Recycling Requirements (Materials)**
During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

40. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plans.

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

Reason: Environmental amenity.

41. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a civil engineer who is registered by the NSW professional engineer registration scheme. 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.

42. **Footpath Construction**
The footpath, in accordance to Council's standard specifications, shall be reconstructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property.

43. **Boarding House Plan of Management**
An Boarding House Plan of Management (BHPM) is to be prepared detailing the operation of the development. The BHPM shall include, but not be limited to the following:

- Complaints management.
- Noise management.
- Contact details.
- Occupancy requirements/limitations.
- Responsibilities of on-site manager.
- Common area hours of access.
- Waste management and cleaning.

The BHPM shall be provided to the satisfaction of the Private Certifying Authority prior to the

issuance of any Occupation Certificate, and shall be provided to Council for record keeping purposes.

Reason: To maintain neighbourhood amenity.

44. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

45. **Registration of Food Business**
The food business must notify the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

46. **Kitchen Design, Construction and Fit-out of Food Premises Certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the kitchen complies with Australian Standard design requirements.

47. **Mechanical Ventilation certification**

Mechanical ventilation must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" prior to any Occupation Certificate (OC) being issued.

Certification is to be provided to the Principal Certifying Authority by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

48. **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with Sections 6, 7 and 8 within the Acoustic Report by Koikas Acoustics Pty Ltd dated 23 July 2021 (Reference 4617R20210319mfc882APittwaterRdDeeWhy_DAv2.docx).

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate, in order to achieve compliance with noted conditions of this consent. The updated acoustic assessment is to be submitted to the PCA for certification.

Reason: To protect the acoustic amenity of neighbouring properties.

49. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

50. **Garbage and Recycling Facilities**
All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

51. **House / Building Number**
The building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

52. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**
The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

53. **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.

54. **Green Travel Plan**
Prior to the issuance of any Occupation Certificate, a revised Green Travel Plan shall be submitted to and approved in writing by Council's Manager Traffic Engineering outlining measures to encourage, incentivise and promote travel by walk, cycling, public transport, ride share and car share to and from the development.

Reason: To minimise reliance on travel by private motor vehicles.

55. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

56. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

57. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council’s requirements, (Appendix E of the Waste Management Guidelines), at the applicant’s expense and endorsed

by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

58. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

59. **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 Plans and any conditions of consent.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

60. **Compliance with the Boarding House Plan of Management and occupation rates**
The requirements of the Boarding House Plan of Management required by this consent is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate. The Boarding House Plan of Management is to be reviewed annually and any proposed amendment is to be submitted to Council for its written agreement 28 days prior to being implemented.

Implementation of the revision is not to be postponed if Council do not reply within the 28 days.

The building is to contain a maximum of 19 rooms (excluding the Boarding House Manager unit), being no more than 1 persons per designated single bedroom or 2 persons per designated double bedroom. In order to maintain this occupancy rate, a sign is to be erected immediately adjacent to the doorway accessing the building detailing the maximum sleeping capacity of each room.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

61. **Proposed Outdoor Dining Condition**
No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with SEPP Exempt and Complying. Any outdoor dining that is consistent with SEPP Exempt and Complying shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

62. **Residential Bin Storage Room Procedures for Boarding House Manager**
The Boarding House Manager must:
- ensure residents have unimpeded access to dispose of their waste by rotating full bins for empty bins where bins are stored double banked
- ensure that bins with the same coloured lid are grouped together for ease of servicing by collection staff.
- ensure that bulky goods remain within the caged area and do not spill out into the bin storage area.
- ensure that waste from the commercial units is not placed in the residential bins.
- ensure that access doors to the residential bin storage room remain unlocked and open on the scheduled day of collection between the times nominated by Council.

Reason: To ensure ongoing access to waste and recycling bins for residents and collection staff.

63. **Hours of Operation of Retail premises**
The hours of operation of the ground floor retail premises are to be restricted to:

- Monday to Friday - 6:00am - 8:00pm
- Saturday – 7:00am - 8:00pm
- Sunday and Public Holidays – 8:00am - 6:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

64. **Commercial Waste and Recycling Storage**
Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

65. **No Approval for Signage**
No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

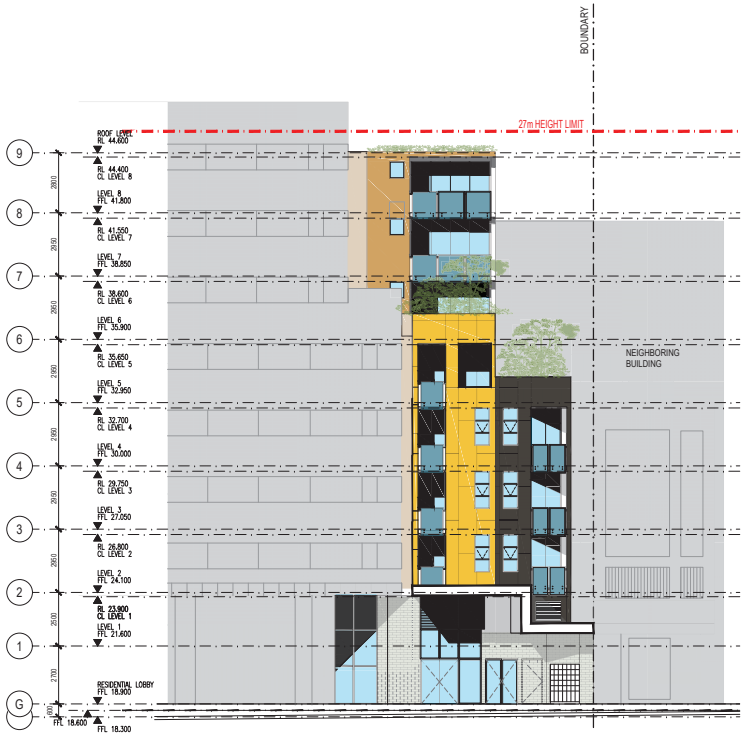
66. **Commercial Waste Collection**

Waste and recyclable material generated by the commercial premises on site must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

67. **Future use of Commercial Premises**
A separate Development Application for any future use for the commercial premises must be submitted to Council unless the use is permitted under the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: To ensure compliance with legislation.



DEVELOPMENT INCLUDES:

- 1 GROUND FLOOR RETAIL
- 3 COMMERCIAL SUITES
- 1 COMMUNAL LIVING RM
- 1 MANAGERS ROOM/OFFICE
- 19 BOARDING ROOMS including three accessible rooms

SUSTAINABILITY CREDENTIALS

- No basement excavation - reduced environmental impact
- No basement excavation - reduced construction noise
- No basement excavation - reduced construction traffic
- No basement excavation - reduced construction timeframes
- No car parking provided on site - promotes living without motor vehicles
- No car parking provided on site - promotes use of Public transport
- No car parking provided on site - promotes healthier alternative forms of transport - such as cycling
- Good access to public transport - opposite B-LINE bus stop - travelling in both directions
- Considerable on-site bicycling parking provisions
- Insulated roof - Sedum layer beneath solar panels
- Solar panels on roof
- Solar panels operate more efficiently, as they are cooler, when elevated above a green roof (sedum) in lieu of concrete
- Smaller footprint (GFA) units require less energy to heat or cool
- Smaller footprint encourages reduced carbon footprint with respect to purchases for fitout, furnishings, and daycore.
- Minimal length facades exposed to heat loads
- Longer length facades substantially insulated by adjacent buildings.
- Ventilation slot provided full length of building.
- Good proportion of commercial opportunity provides live/work ability within the same building
- Substantial roof-top communal areas (noting short walk to the beach)
- 5 star energy efficient fitting, fitments and appliances.
- Double glazing

SITE DATA

- 6.4m Wide Site
- 9 Storeys
- No Basement
- No Parking
- On the B-line
- Outside bus stop
- Stones throw to retailing
- Stroll to the beach
- Sandwiched between the stark unarticulated flat Meriton development to the north, and the quirky Steven Holl inspired Pensacola Seaside folly to the south

INFILL, TRANSITIONAL, TRANSITIONAL, ARBITRATIONAL ARCHITECTURE

- Materials
- Setbacks
- Awnings
- Heights

- Respects Podium heights
- Arbitrates materials
- Follows setbacks
- Marrys building heights
- Blends and transitions awnings

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ISSUE	DATE	AMENDMENTS
J	21.01.20	REVISED DA ISSUE
H	21.07.20	ISSUED TO COUNCIL
G	21.07.08	ISSUED TO COUNCIL

CLIENT: DEVELOPMENT LINK
PROJECT: ARH DEE WHY
882A PITTWATER ROAD, DEE WHY NSW 2099
TITLE: COVER
SCALE: 1:100 @ A1
APPROVED
DRAWN: MT
CHECKED: PG
DATE: NOV 2020
STATUS: DA
PROJECT NUMBER: 20036
DRAWING NUMBER: A002
ISSUE: J
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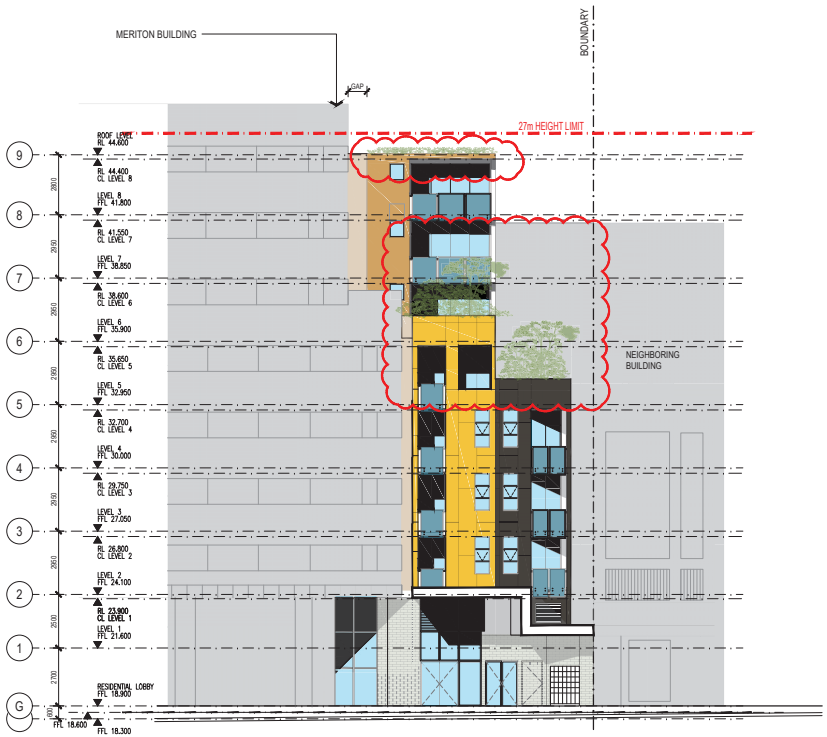
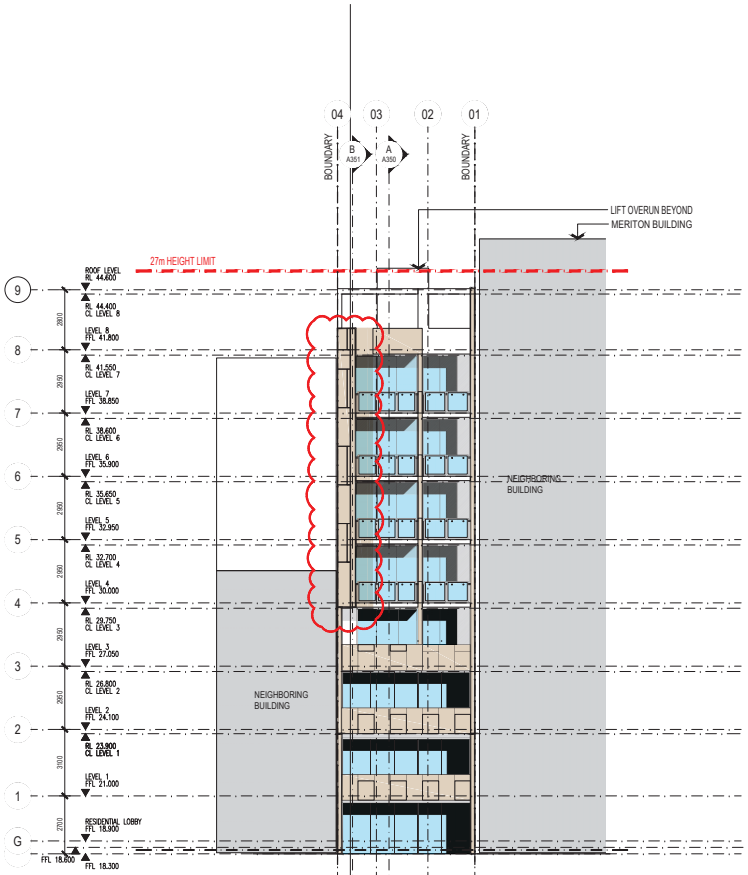


01 EAST ELEVATION - PITTWATER ROAD



02 WEST ELEVATION

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ISSUE	DATE	AMENDMENTS
T	22.01.20	REVISED DA ISSUE
S	21.07.08	ISSUED TO COUNCIL

CLIENT: DEVELOPMENT LINK

PROJECT: ARH DEE WHY
882A PITTWATER ROAD, DEE WHY NSW 2099

TITLE: ELEVATIONS - SHEET 01

SCALE: 1:100 @ A1
APPROVED
DRAWN: MT
CHECKED: PG
DATE: NOV 2020
STATUS: DA

PROJECT NUMBER: 20036
DRAWING NUMBER: A300
ISSUE: T

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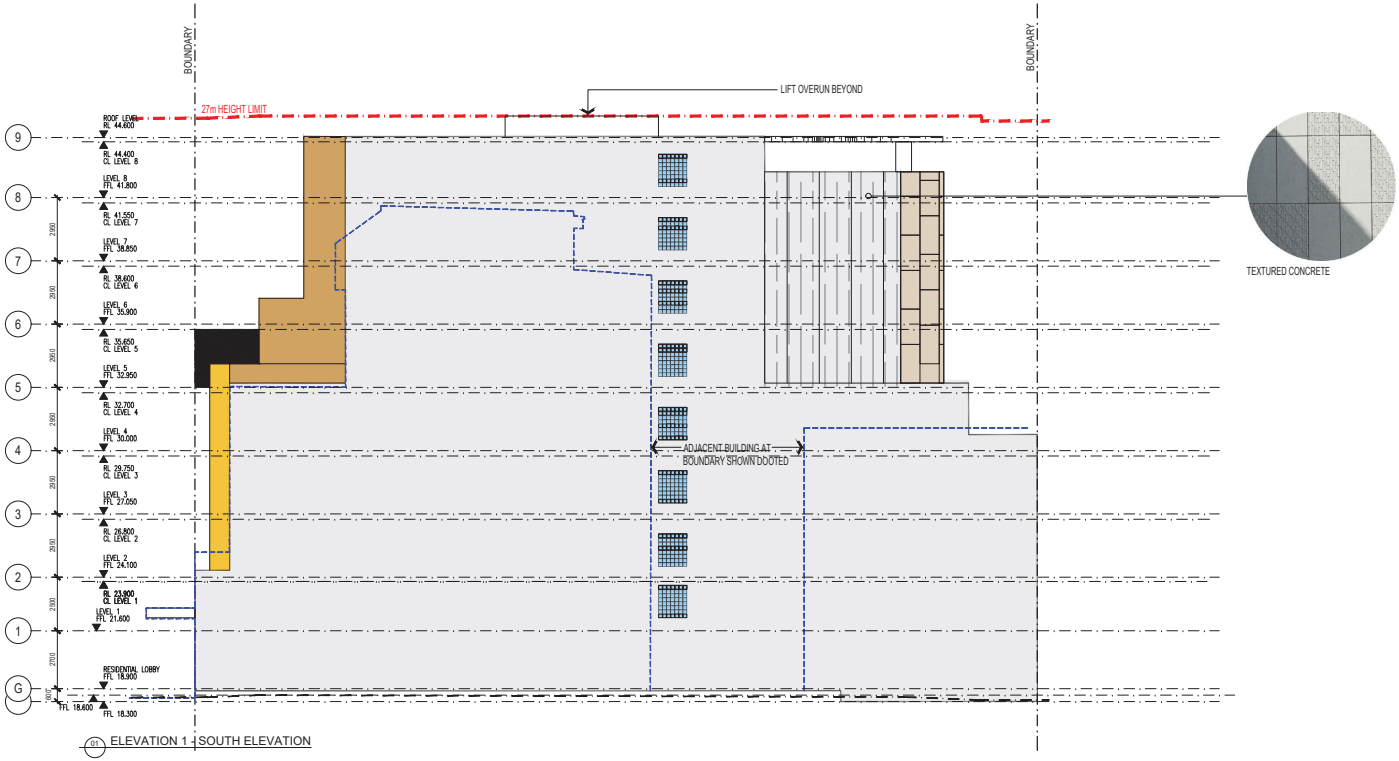

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ISSUE	DATE	AMENDMENTS
G	21.07.06	ISSUED TO COUNCIL
F	21.06.24	ISSUED TO CONSULTANT
E	21.06.10	ISSUED TO COUNCIL
D	21.05.10	ISSUED TO CONSULTANT
C	21.03.24	ISSUED TO CONSULTANT
B	21.03.08	ISSUED TO CONSULTANT
A	21.03.03	ISSUED TO CONSULTANT

CLIENT: DEVELOPMENT LINK
PROJECT: ARH DEE WHY
882A PITTWATER ROAD, DEE WHY NSW 2099
TITLE: ELEVATIONS - SHEET 03
SCALE: 1:100 @ A1
APPROVED
DRAWN: MT
CHECKED: PG
DATE: NOV 2020
STATUS: DA
PROJECT NUMBER: 20036
DRAWING NUMBER: A302
ISSUE: G

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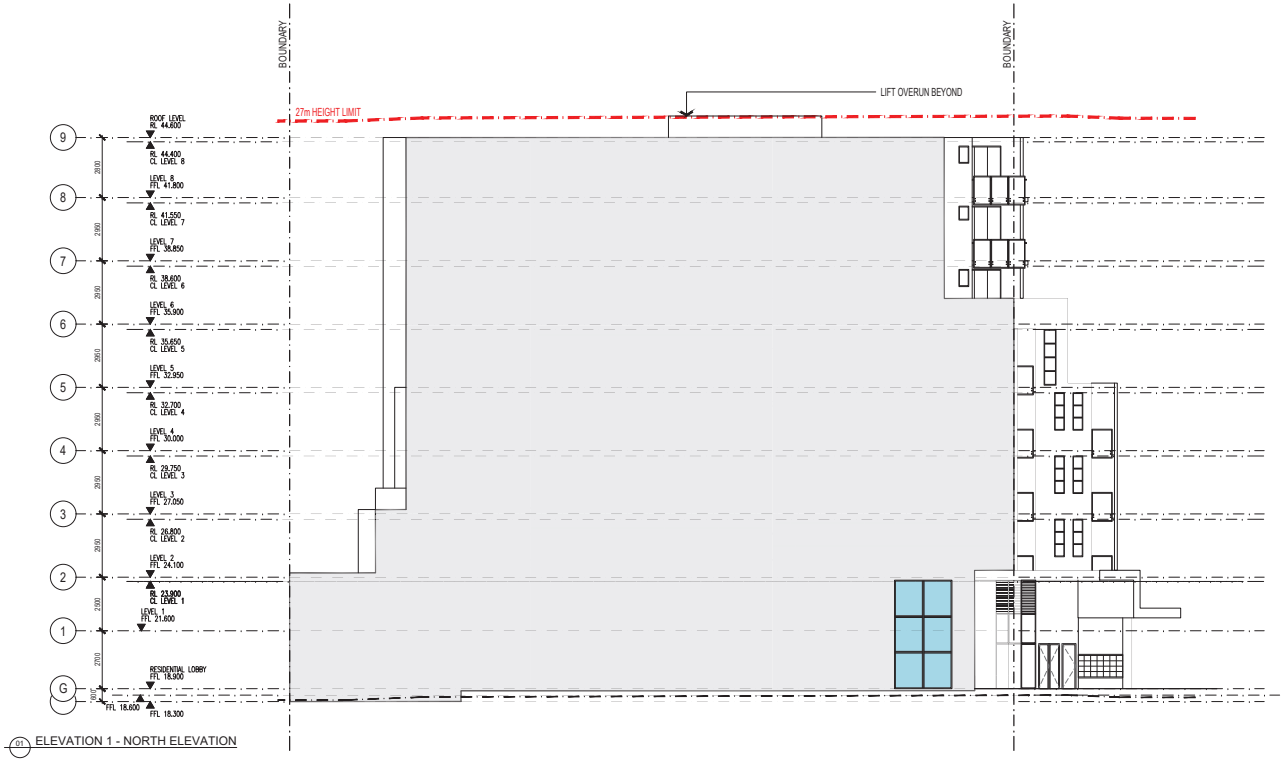

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ISSUE	DATE	AMENDMENTS
C	21.07.06	ISSUED TO COUNCIL
B	21.06.24	ISSUED TO CONSULTANT
A	21.06.16	ISSUED TO COUNCIL

CLIENT: DEVELOPMENT LINK
PROJECT: ARH DEE WHY
882A PITTWATER ROAD, DEE WHY NSW 2099
TITLE: ELEVATIONS - SHEET 04
SCALE: 1:100 @ A1
APPROVED: MT
DRAWN: MT
CHECKED: PG
DATE: NOV 2020
STATUS: DA
PROJECT NUMBER: 20036
DRAWING NUMBER: A303
ISSUE: C

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hamptons property services

State Environmental Planning Policy (Affordable Rental Housing) 2009

Clause 4.6: Exception to Development Standards

882A Pittwater Road, Dee Why

The Development Application

1. This report relates to a development application that seeks consent for consent for demolition of existing buildings and structures and the erection of a nine-storey building which will contain one (1) retail premises (food and drink premises); three (3) commercial offices; and twenty (20) affordable rental dwellings (boarding house), and a manager's office/residence. Ancillary elements will include on-site storage and bicycle parking facilities, as well as communal open space areas.
2. The site is located at 882A Pittwater Road, Dee Why (the ***site***) and legally described as Lot B in Deposited Plan 389449.
3. The Environmental Planning Instrument to which this variation relates is State Environmental Planning Policy (Affordable Rental Housing 2009 (SEPP ARH).
4. The site is located in the B4 Mixed Use Zone, pursuant to Clause 2.2 of the Warringah Local Environmental Plan 2011 (LEP) and the proposed use of the site is permissible with development consent.
5. The purpose of this report is to seek a variation to the development standard at cl. 30(h) of the SEPP ARH, relating to the provision of motor cycle parking and is to be read in conjunction with the Statement of Environmental Effects (SEE) accompanying the development application.

The Variation Sought

The Development Standard for Motorcycle Parking

6. Clause 30 of the SEPP provides Standards for boarding houses and states as follows:

> *(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—*
>
> *(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

7. The proposal provides seventeen bicycle spaces to services the affordable housing component of the development, which exceeds the minimum required number of spaces, being 3.2.
8. The proposal does not provide any motorcycle spaces, resulting in a shortfall of 3.2 spaces.

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Non-Compliance with Motor Cycle Parking

9. Provision has not been made for motor cycle parking within the development due to the constrained layout of the site.
10. The site has a total area 233.7m^2, with an angled frontage of 8.44m to the property boundary. Perpendicular to the boundary, the site only has an actual width of 6.4m.
11. Neither on-site car parking, nor motorcycle parking, is proposed as there is no reasonable or feasible opportunity to provide vehicular access to the site.
12. Even if vehicular access was permitted to a classified road (which would not be supported by TfNSW, as advised by the Council in the pre-DA minutes, PLM 2020/0271, Page 11), even at the narrowest opening to any basement parking provision, this would erode the character of the streetscape along Pittwater Road and significantly compromise pedestrian safety.
13. Further, the cost of building a basement car park for the benefit of three motor cycle spaces is cost prohibitive once factors of vehicular ramps and sufficient head heights were provided. This is a cost that would otherwise be passed on through the development, thus compromising the ability to provide affordable rental housing, which forms the predominant basis of this application. It is a cost that is otherwise passed on to the end user.
14. Given the site constraints, the alternative opportunity to significantly increase bicycle parking is more cost effective, having regard to the site constraints and practicalities with a provision that is four times what is otherwise required in accordance with the SEPP ARH. Coupled with the proximity of the site to the B-Line bus route, which provides regional bus services, as well as more immediate services within the locality, the proximity and frequency of these services means that the strategic location of the site provides significant opportunity for residents of the development to rely upon public transport, without needing to rely upon private means.
15. A Green Travel Plan accompanies the application to promote alternative transport means to and from the site.

The Context and Future Character

What is the character of the locality?

16. Character is what makes a neighbourhood distinctive and represents the identity of a place. To this end, Section G.1 of the Warringah Development Control Plan 2011 (the DCP) provides the following character statement:

> *The Dee Why Town Centre will be characterised by community, retail, commercial and residential uses. The vision for Dee Why Town Centre identified in the 2013 Masterplan is as follows: "Dee Why will be home to a thriving cosmopolitan community who cherish their past, celebrate its unique and engaging vibe and embrace its bold commitment to urban*

sustainability. It will be a place of both energy and refuge, a city at the beach, with a distinctive modern urban identity."

The North District Plan 2018 identifies Dee Why Town Centre as a mixed-use area that offers a vibrant local night-time economy. It outlines actions that are interpreted as objectives within this section of the DCP.

The desired character for the Dee Why Town Centre is further defined by objectives within this Development Control Plan.

17. As it relates to compliance with the character of the Dee Why Town Centre, pertaining to the matter of motor cycle parking, the key relevant objectives and associated provisions are as follows:

Streetscape & Public Domain Objectives

- Prioritise pedestrian, cycling and public transport users.
- Improve access for people of all ages and abilities
- Activate the public domain and create lively, attractive public spaces.

Pedestrian Connections – Requirements
2. Pedestrian connections must be designed to:
a. Be accessible and safe
b. Reduce conflicts between pedestrians and other transport modes
c. Improve safety for pedestrians in high-risk zones (e.g. vehicle crossovers, public car parks).

Requirements - Retail Activation
1. Active uses must be provided adjacent to the public domain, including streets, open space, pedestrian accessways and laneways.
2. Active frontages are to contribute to the liveliness and vitality of the area by maximising entries or display windows to shops and/or food and drink premises or other uses, customer service areas and activities which provide pedestrian interest and interaction and casual surveillance of the public domain.

Traffic & Parking Objectives
- To encourage walking, cycling, public transport and car sharing.
- To encourage integrated basement car parking areas with shared access in suitable locations.
- To reduce overall building bulk and scale (particularly within podiums) by locating parking underground.
- To ensure the security of residential parking

18. Of the aforementioned provisions, the key aspects are as follows:

- promote alternative transport forms other than motorised private vehicles
- ensure an activated public domain that is pedestrian friendly and enhances the exposure of openings to the street frontage to maximise pedestrian permeability;
- ensure that car parking is not visible.

19. These aspects combine to derive the character of the Town Centre and seek to ensure that reliance on public transport, cycling and walking is encouraged which, in this case, goes hand in glove with

the provision of an activated retail ground floor that encourages and enhances pedestrian activity on the doorstep of regular bus services. The provision of a vehicular entry point would compromise these outcomes.

Is the proposal consistent/compatible with the objectives of locality /character of the Dee Why Town Centre?

20. The proposed outcome, without the provision of motorcycle parking, which could only be provided if the streetscape was intercepted with a vehicular crossing, provides a compatible response with the desired future character of the Dee Why Town Centre.
21. The ground floor plane provides safe pedestrian entry on a constrained site and enables an extensive degree of activation despite this narrow frontage, with a shared building lobby and café offering.
22. To disturb this opportunity by providing a vehicular access point for the purpose of accessing motor cycling parking, regardless of where it may be provided in the building, would erode the desired future character for this section of the Dee Why Town Centre.
23. Further, the implementation of such access and parking would potentially reduce opportunities for reliance on alternative transport forms, which is a key focus of the objectives that seek to prioritise pedestrian, cycling and public transport users. The introduction of a vehicular access point would also compromise pedestrian safety in close proximity to bus stops which would also potentially affect the ability for all user groups to utilise these due to a potential conflict with pedestrian movements around entry to public transport and a vehicular access point.

Does the proposed development make for a good design?

24. From an architectural and urban design perspective, the proposed development will achieve a good design outcome as it accords with the desired future character and its associated objectives regarding activation, pedestrian safety and vitality, to provide pedestrian interest to street frontages.
25. This is further reinforced by the site's location proximate to bus services and associated stops, which will provide an activated frontage, as opposed to one dominated by vehicular access points for the sake of three motorcycle spaces.

Variation to a Development Standard

26. A development standard is 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)

27. Being a provision of the SEPP in relation to the carrying out of development, under which a requirement is fixed in respect to the provision of motorcycle parking, clause 30(h) is a development standard.

28. 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.

29. In order for the consent authority to grant a variation to the development standard, there is no express provisions contained in the SEPP ARH, similar to the LEP, that provide the means for which a development standard may be varied. To that end, the principles of clause 4.6 of the LEP are relied on and require that the consent authority must be satisfied that:

- compliance with the development standard is unnecessary or unreasonable in the circumstances of the case and
- there are sufficient environmental planning grounds to justify contravening the development standard
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and zone; and
- the concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Whether request adequately addresses requirements

30. This request is comprehensive in its discussion of whether compliance with the zone is unreasonable or unnecessary because the development will comply with the zone objectives and whether there are sufficient environment planning grounds for varying the standard. Both issues are discussed below.

31. There are no express objectives pertaining to motor cycle provision.

Clause 4.6(3)(a) Unnecessary or unreasonable

32. 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 [20176] NSWLEC 7 and, most recently, Initial Action, have confirmed that adopting the Wehbe principles remains an appropriate approach.

33. The first option and the applicable in this case, 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.

34. Set out below is an extract from the judgement in Wehbe that explains the rationale for adopting this approach in the context of clause 4.6.

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

Assessment of the Proposed Variation

Consistency with objectives of the standard (clause 4.6.4(a)(ii))

35. There is no objective for the development standard for motorcycle parking provision.

Consistency with Zone Objectives – clause 4.6(4)(a)(ii)

36. In relation to whether a proposal is consistent with the objectives of a zone, the test for consistency is set out in *Coffs Harbour Environment Centre v Coffs Harbour City Council (1991) 74 LGRA 185* (the Coffs Harbour case). The principles for determining what is meant by consistent are as follows:

- a development that is consistent with zone objectives does not need to promote the objective concerned strictly, but also encompasses development which may be complementary or ancillary to development and promotes the objective concerned; and
- a development is not consistent with zone objectives if it is antipathetic development to those objectives, irrespective of whether efforts have been made to minimise the extent to which it is antipathetic

37. Thus, development will be consistent with zone objectives if it is not antipathetic to them. It is not necessary to show that the development promotes, or is ancillary to, those objectives, nor even show it is compatible, *Schaffer Corporation v Hawkesbury City Council* (19s92) 77 LGRA 21.

38. The proposed development is consistent with the zone objectives, despite not being provided with motorcycle parking as set out below.

39. The Objectives of the B4 Zone are reproduced below.

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.*
- *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*
- *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*
- *To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.*

40. The proposed development is consistent with the relevant objectives, as it relates to the provision of motorcycle parking, for the following reasons:

- The highly constrained width of the Site means that car parking cannot be accommodated within the building. At only 8.4m wide, and 6.4m wide at the point where this would be incorporated into the building design, there is insufficient width to accommodate a driveway that would access parking (either at, or below, ground). Given this constraint, a key priority for redevelopment of this Site has been to focus on the provision of space for on-site bicycle parking with a detailed system of wall racks proposed on the first floor and providing seventeen spaces.
- The Site is located on the B-Line bus service, with a bus service heading south-west along Pittwater Road, less than 50m from the Site, and a service heading north-east along Pittwater Road, on the opposing side of the street, less than 100m walk. Localised bus service stops are also located directly in front of the Site. Therefore, the range of uses that are proposed on the Site make this highly accessible in terms of alternative transport modes, such as cycling, while also being highly accessible in terms of public transport services. The range of services is set out in the Traffic and Parking Report and identifies that there are more than twenty (20) bus services per hour connecting Dee Why to the CBD, such that *The site is assessed to benefit from excellent*

access to a ready public transport network. Therefore, the site is deemed suitable for the incorporation of non-private vehicle-based travel planning strategy.

- The scale and intensity of development on this Site is commensurate to its immediate context, particularly having regard to its limited geometry, thus ensuring that the scale and intensity of development thereon, is consistent with that achieved on adjoining properties, to create a consistent and compatible urban form with the streetscape, without compromising public space or civic activity.
- The design of the building, despite its narrow frontage and constraints for building services (e.g., fire hydrant, ramp for waste and a hydrant and booster pump room), all of which require direct street front access, provides along its remaining available frontage, an entry space to a shared lobby, which is also serviced by a food and drink premises, to enhance the degree of activation to Pittwater Road, which is a primary and classified road servicing the locality and further afield. The composition of this frontage, with a double door opening, creates a human scale to this section of Pittwater Road and, given its proximity to the B-Line bus stop, provides an appropriate location for a food and drink premises to service this section of the roadway and enhance localised activation at street level. This is a far superior response than were the frontage compromised by a vehicle crossover to access motorcycle parking.

  The degree of activation is heightened by the void space provided to the building opening that enables a sense of light to this space such that it is inviting when viewed from the street and not seen as a small enclosure, despite the limited size of the available opening. The sense of space that is created by this void will also create a degree of safety due to the sense of openness and light that is created, again which could not otherwise be achieved in the event that a vehicular driveway was proposed for the purpose of motorcycle parking that would otherwise erode the space at the ground level interface.

41. The proposed development will therefore be consistent with the zone objectives, despite an inability to provide on-site motorcycle parking.

42. Given the circumstances of the case, the provision of strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the zone.

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

43. The second element of clause 4.6(3) on which the Court 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).

44. 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."*

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

- The proposal satisfies the objectives of the B4 zone.
- The shortage of motor cycle spaces is significantly offset by the provision of bicycle spaces, which well exceeds the requirements set out in the SEPP.
- The physical constraints of the site make it impossible to provide parking below ground level, which is a desired outcome under the DCP controls. The limited width of the site precludes this arrangement on a standalone basis.
- Even if access were achievable from adjoining sites, the extent of excavation required to accommodate such parking would be an unnecessary cost impost which would result in this cost being passed on to the occupants of the building, thus eroding the opportunity to maintain the residential component of this development for affordable housing purposes.
- The nature of transport methods encouraged as a result of non-provision of motor cycle parking is entirely consistent with the controls contained in the LEP and DCP which seek to encourage the use of public transport, walking and cycling.
- The reduction of private transport usage will result in a lesser degree of environmental impact, particularly as it relates to air pollution.
- The site's proximity to public transport, in conjunction with its immediate access to facilities and services, results in a lesser dependency for reliance on private transport due to the availability of these elements in such close proximity to the site.

46. Private transport ownership is generally less of an importance to persons seeking accommodation within affordable housing developments due to their economic circumstances and the availability of this otherwise results in an unnecessary price increase to accommodation that reduces its affordability.

Matters of state or regional significance (cl. 4.6(5)(a))

47. There is no prejudice to planning matters of Regional significance resulting from varying the development standard as proposed by this application. The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The variation sought is responding to the nature of a control applied across an area that supports viable use of the site while being sympathetic to the character of the locality and surrounding uses.

Is *the proposed variation in the public interest?*

Clause 4.6(a)(ii) – Public Interest

48. The fourth element that the Council 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. Preston CJ in Initial Action (para 27) described the relevant test for this requirement as follows:

> *"The matter in cl 4.6(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 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 purpose of clause 4.6(4)(a)(ii)."*

49. As demonstrated in this Request, the proposed development will comprehensively achieve the objectives of the B4 zone.

50. The focus of the development on alternative transport means is consistent with the expectations of the community, that are embedded in the planning instruments, which focus on the use of alternative transport forms, which result in improved environmental outcomes.

51. The provision of affordable accommodation within a Town Centre location is well within the public interest, in a location that is highly accessible to transport, facilities and services, meeting a demand generated in a location where there is a higher proportion of the population in industries where accessibility to employment is often limited on a convenient and affordable basis.

52. Accordingly, the Council can be satisfied that it is in the public interest to vary the standard for the purpose of this development application.

Design + Sustainability Advisory Panel Meeting Report – Date 07 October 2021

4. DA2021 1508 - 882A Pittwater Road DEE WHY

PANEL COMMENT AND RECOMMENDATIONS

General

The proposal is for a nine storey mixed-use development to accommodate a boarding house and commercial premises.

The proposal (as presented at the meeting) consists of the following:

- 20 x boarding rooms;
- 3 x Commercial Premises;
- 1 x Retail Premises (Coffee Shop);
- Managers Office.
- Storage for 17 bicycles; and
- Communal open space (Level 8).

An earlier version of the design was presented to the Panel on 26th November 2020. The Panel did not support the proposals and made a wide range of recommendations, many of which have been incorporated in the revised design.

Strategic context, urban context: surrounding area character

The building use as affordable housing in this location, in a small infill building and the inclusion of affordable commercial space is appropriate, particularly as it is located adjacent to the B-line bus stop.

The panel supports the building use generally.

Scale, built form and articulation

Comments from the previous DSAP meeting included:

> *1. Building built-to lines on Pittwater Road: 5m to kerb for the first 3 storeys have not been complied with (9m for the above storeys has been complied with). The awning on the Pittwater Road facade should provide some street amenity/ shelter. New awnings to be setback minimum 1000mm from the face of the kerb to accommodate utility poles and traffic /parking in the kerbside lane. Where street trees are required, the minimum awning to setback is 1500mm.*
>
> *2. Rear boundary setbacks to tower and podium section. Consider making the 6m setback to the first 4 storey and 9m from 5 to 9 storey as per recommendations from Apartment Design Guidelines (ADG). The appropriate building separation is necessary as there might be future residential towers proposed around the site and appropriate amenity should be maintained between the towers.*
>
> *3. Building Height: The 27m building height requirement can be supported if the tower facades facing Pittwater Road and the rear courtyard can be made into slim tower elements sitting on top of the 3/4 storey building podium respectively. Façade treatment/ articulation should be considered for the south-west common boundary elevation to provide some relief from the blank wall proposed currently.*

The design has been revised to incorporate many of these changes

Access, parking and services

The Panel supports no car parking provision on the site.

The bin room can be reduced in size as the number of bins appears excessive. This will enable the switch room to be moved from level 1 and provide façade area on level 1 for use for another purpose. The bike space on Level 1 can also be reconsidered, removing the wall to open the space, or increasing the void space and making the bikes visible in the void.

The bicycle storage area of the upper floor also suffers the long ramp and contorted circulation. This could be considered a simple rectangular space as an elevated mezzanine above the cafe (low height Ceiling below). Likewise, the switch room is poorly located in taking up valuable street frontage. An alternative position would be desirable.

The Panel questions the need for accessibility clearances within the cycle storage area.

Recommendations.

1. Reduce the number of bins to allow redesign and improvement of the ground floor layout.
2. The entry area could be reconsidered to provide a better address from the street and potentially create greater connectivity between the public domain, and the ground level up to the cycle storage area
3. Location of fire hydrant booster, firehose real cupboard and letterboxes could be reconsidered.

Landscape

No comment on planting selections

Introduction of landscape on the façade and the terrace is recommended. Something which is low cost and maintenance

Roof top community space is commended

Recommendations.

4. Introduce low cost, low maintenance planting to the façade to tie into the level 6 terrace planting

Amenity

Previous Panel comment:

> *Solar Access: The light well proposed will receive limited sunlight so living unit proposed should not have windows just opening into the light well. Issues of noise nuisance and visual/ acoustic privacy should be addressed. A solar analysis should be provided to maintain adequate sunlight into the boarding room units.*
>
> *a. Consider single aspect living unit facing Pittwater Road all the way up, only double units (subject to good layout/ amenities to units) facing the rear boundary (First 4 storey - 6m rear setback) and single aspect units (above 4 storey -9m rear setback).*
>
> *b. Lift lobby security issues with sharing of living units with commercial spaces.*

Balconies are now bigger to respond to comments from the last meeting. The light well has privacy screens. No living rooms require the light well for light or ventilation purposes.

Quality of the living environment is a concern with regards to the acoustic privacy through the lightwell/ventilation well.

Amenity of room 5.01 is questionable, it is complicated and contrived.

The planning of the upper floors may benefit from east and west wing walls being straight and not splayed perpendicular to the front boundary and rear. This will provide additional usable space.

Recommendations.

5. Resolve acoustic privacy to the bedrooms which open to the lightwell
6. Reconsider the layout of apartment 5.01

Façade treatment/Aesthetics

The narrow facade building "slither" in the streetscape could be used to create visual interest. A more articulated building facade with durable materials expressing themselves as reinforced concrete, glazing, balustrading and light weight panel may provide further opportunities to enhance streetscape. Also, solar louvring to the west may also be useful to shade summer afternoon sun and create a more "kinetic" facade. The Panel supports the use of strong colour in parts.

Recommendation.

7. Give further consideration to the material palette on Pittwater Road.

Sustainability

Shared laundries could be provided to save space and provide social opportunities as well as save materials.

PV is noted on the roof but only a relatively small array. The roof could be filled with PV and it would offset the energy use of the apartments.

NatHERS assessment has been done, but some of these apartments are too small to adequately model using NatHERS software. NatHERS software does not accurately model dwellings under 25m² in size. Although the BCA consultant has classified it as Class 2, it seems Class 3 may be a more appropriate classification, based on it being a boarding house. As Class 3, it should be assessed under Section J.

Recommendations

8. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.
9. The Panel recommends increasing the size of the PV array as there is roof space for it and it will offset the dwelling energy consumption
10. Confirm the building class because a Section J assessment should be done instead of NatHERS
11. Communal laundries can provide more space and better social amenity for residents.

PANEL CONCLUSION

The Panel believes the majority of the comments from the first presentation to the panel have been addressed and the proposal is substantially improved. The use is appropriate to the location and restrictions of the site.

The Panel supports the development provided the applicant can address a few more minor amendments to the layout of the building:

1. Reduce the number of bins to redesign the ground floor
2. Reconfigure the cycle storage area.
3. Introduce low cost, low maintenance planting to the façade
4. Resolve acoustic privacy to the bedrooms which open to the lightwell
5. Reconsider the layout of apartment 5.01
6. Address sustainability issues – electrification of the building, increased PV array

ITEM 4.2	**DA2021/2054 - 243 PITTWATER ROAD, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING BUILDING INCLUDING USE AS A SHOP, TAKE AWAY FOOD AND DRINK PREMISES (HARRIS FARM), CARPARK, SIGNAGE, LANDSCAPING AND CHANGED HOURS OF OPERATION.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/310377**
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 the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2054 for Alterations and additions to an existing building including use as a shop (Harris Farm), signage and landscaping on land at Lot 1 DP 923368, 243 Pittwater Road, MANLY, Lot 1 DP 924434, 243 Pittwater Road, MANLY, Lot 1 DP 923887, 243 Pittwater Road, MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2054

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 923368, 243 Pittwater Road MANLY NSW 2095 Lot 1 DP 924434, 243 Pittwater Road MANLY NSW 2095 Lot 1 DP 923887, 243 Pittwater Road MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing building including use as a shop (Harris Farm), signage and landscaping
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Long Reef Group Pty Ltd
Applicant:	Harris Farm Markets

Application Lodged:	04/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	04/04/2022 to 18/04/2022
Advertised:	04/04/2022
Submissions Received:	27
Clause 4.6 Variation:	4.3 Height of buildings: 18.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 6,102,551.00

EXECTUTIVE SUMMARY

The application seeks consent for alterations and additions to the existing building, maintaining the use as a shop (Harris Farm), additional ancillary uses and changes to the existing hours of operation. The application was amended by the applicant to reduce the scope of the proposal and further amendments were made in response to concerns raised by Council during the assessment process

The existing building is 11.6m in height. The proposal includes new skylights and solar panels to the existing roof at a maximum height of 10.1m, resulting in a technical variation of 18.8% to the 8.5m control. The Applicant's Clause 4.6 written request has adequately demonstrated that the proposal achieves the objectives of the height of buildings development standard, and that there are sufficient

environmental planning ground to justify the extent of the proposed variation sought.

The key planning issues considered within the assessment relate to heritage, traffic and parking, amenity impacts to surrounding residential properties and the proposed building height development standard breach.

27 submissions were received in response to the notification of the application, including a six additional submissions in response to the re-notification of the amended proposal. The primary concerns raised in the submissions objecting to the development include:

- Traffic and pedestrian safety impacts, car and bicycle parking
- Amenity impacts to surrounding residential properties, including glare / light spill, noise and ventilation, waste management and construction impacts
- Proposed hours of operation

The concerns raised in the submissions are addressed within the assessment. The amendments made to the proposal and the recommended conditions of consent are considered to satisfactorily address all concerns raised in the submissions.

As the proposal attracted more than 10 submissions and includes a variation to the Height of Buildings development standard of greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing building, maintaining the use as a shop (Harris Farm), additional ancillary uses and changes to the existing hours of operation.

The proposed alterations and additions are as follows:

- Internal demolition works and new fit out, including partial demolition and reconstruction of mezzanine level
- Upgrade of external facades and openings, including reinstatement of eastern windows
- New awning
- New brick wall and outdoor seating
- Refurbish loading bay and plant deck
- New waste storage area in the northwestern corner of the site
- New wall to loading bay / waste area
- New lifts
- New solar panels to and skylights to roof
- New signage and removal of existing flag poles

The proposed works result in an overall reduction in gross floor area (GFA) of 63.5m². This reduction is largely the result of the proposed reconstruction of the mezzanine level and the reconfiguration/enlargement of loading dock and plant areas, which are excluded from the calculation of GFA. Despite the reduction in GFA, the proposal includes an increase in 'front of house' floor area of 277.1m².

Land Use

The proposal maintains the existing approved use of the site as a retail premises (shop).

In addition to the primary retail premises (shop) use as Harris Farm Markets, the proposal includes additional ancillary uses including a butcher, bakery, cafe, fish and chip shop and fresh food bar.

The proposed ancillary uses are defined by the Manly LEP as follows:

- Butcher - *retail premises (shop)*
- Bakery - *retail premises (shop)*
- Cafe - *food and drink premises (cafe)*
- Fish and chip shop, fresh food bar - *food and drink premises (take away food and drink premises)*

Each of these proposed ancillary components are permissible uses within the B1 zone. However, they are not proposed or approved as standalone uses and are permitted to operate only in conjunction with, and within the approved trading hours of, the primary retail shop use.

Hours of operation
The proposed hours of operation are from 6am to 9pm 7 days a week.

Car parking
The amended proposal does not include any changes to the existing access arrangements, car parking layout or number of parking spaces provided.

Signage
The proposal includes a total of seven business identifications signs, including 2 painted wall signs, 1 neon under awning sign and 4 timber under awning signs.

Amendments to proposal
Following lodgement of the application, amendments were made to the proposal as follows:

- Deletion of water tower
- Deletion of proposed car park, driveway and landscaping works
- Revised solar panel locations
- Amendment of northern and western facade designs in accordance with Council advice
- Retention of traffic office building, which was previously proposed to be demolished

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Local Environmental Plan 2013 - 5.21 Flood planning
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)
Manly Development Control Plan - 3.6 Accessibility
Manly Development Control Plan - 3.8 Waste Management
Manly Development Control Plan - 3.9 Mechanical Plant Equipment
Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)
Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.8.2 Setbacks
Manly Development Control Plan - 4.2.8.3 Landscaping
Manly Development Control Plan - 4.2.8.5 Carparking, Vehicular Access and Loading Controls
Manly Development Control Plan - 4.2.8.6 Hours of Operation
Manly Development Control Plan - 4.2.8.9 Signage
Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 DP 923368 , 243 Pittwater Road MANLY NSW 2095 Lot 1 DP 924434 , 243 Pittwater Road MANLY NSW 2095 Lot 1 DP 923887 , 243 Pittwater Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of three allotments located on the southeastern corner of Pittwater Road and Balgowlah Road. The site is regular in shape with a frontage of 168.795m along Pittwater Road and a secondary frontage of 30.51m along Balgowlah Road. The site has a surveyed area of 5149m². The site is located within the B1 Neighbourhood Centre zone and accommodates an existing retail premises (Harris Farm Markets). The site contains Heritage Item I214 - Former tram depot complex and associated buildings. The remaining buildings on the site are the tram shed currently occupied by Harris Farm Markets and the office block, which

	was most recently occupied by a mechanic. The site is generally flat. The site contains seven significant trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development to the south and north. A childcare centre adjoins the site to the east and Manly Golf Club and Keirle Park are located across Balgowlah Road to the west.

Map:

SITE HISTORY

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

DA347/2002 - New Building Change of Use/New Use - Refused 24/04/2003

DA325/2004 - Alterations and Additions to the Existing Building and Change of Use to a Fruit Market - Refused 6/12/2004

DA76/2005 - Change of Use to Fruit Market with 42 carparking spaces - Approved 21/06/2005

DA76/2005 - Section 96 to modify Change of Use to Fruit Market with 42 carparking spaces - Approved 3/07/2006

DA95/2006 - Change of Use to Shop & Alterations & Additions to existing premises - Approved 3/07/2006

DA137/2009 - Alterations and additions to existing building (Harris Farm Markets) including mezzanine level and signage - Approved 20/05/2010

DA137/2009 - Part 2 Section 96 to modify approved Alterations and additions to existing building (Harris Farm Markets) including mezzanine level and signage - Approved 01/03/2011

DA305/2011 - Construction of an extension to the existing Harris Farm Markets, establishment of use as a cafe (refreshment room) and associated signage - Refused 16/02/2012

DA102/2012 - Alterations and additions to an existing commercial premises including new bi-fold doors, kiosk area and cool room extension - Harris Farm - Approved 13/09/2012

DA76/2005 - Part 3 - Section 96 to modify approved Change of use to Fruit Market with 42 Car Parking Spaces - involving extension of operating hours to 6:00 am to 9:00 pm Monday to Sunday with staff onsite between 5:00 am to 11:00 pm - Approved 19/09/2013

The existing hours of operation were approved by this consent as follows:
<u>Hours of trading:</u>
Monday to Wednesday and Friday to Sunday - 7:00am to 8:00pm
Thursday - 7:00am to 9:00pm

<u>Hours for access to site by staff:</u>
Monday to Wednesday and Friday to Sunday - 6:00am to 9:00pm
Thursday - 6:00am to 10:00pm

<u>Deliveries, waste collection and use of heavy machinery (ie. forklift):</u>
Weekdays - 7:00am to 8:00pm
Saturday, Sunday and Public Holidays - 8:00am to 8:00pm

DA59/2014 - Alterations and additions to the existing building (Harris Farm Markets) including a wash down area with a roof - Approved 20/11/2014

DA285/2015 - Installation of signage and solar panels - Harris Farm Markets - Approved 11/05/2016

DA282/2015 - Demolition of an existing outbuilding and carport - Harris Farm Markets - Approved 09/03/2016

DA283/2015 - Extension of an existing awning - Harris Farm Markets - Approved 01/03/2016

DA59/2014 - Part 2 - Section 96 to modify approved Alterations and additions to the existing building (Harris Farm Markets) including a wash down area with a roof – Approved 05/04/2017

DA2020/1473 - Alterations and additions to an existing retail building (Harris Farm), including food and drink premises, carpark, signage, landscaping and changed hours of operation - Withdrawn 16/03/2021.

On 16 February 2021, Council requested the amendment or withdrawal of the application due to concerns raised generally in relation to:

- Traffic and parking impacts
- Heritage and Urban Design impacts
- Potential contamination
- Impacts to amenity of nearby residential properties

The application was withdrawn by the applicant on 16 March 2021 in response to the concerns raised.

DA2021/2054 (Subject Application) - Alterations and additions to an existing building including use as a shop, take away food and drink premises (Harris Farm), carpark, signage, landscaping and changed hours of operation - Under assessment.

On 21 February 2022, Council requested the amendment or withdrawal of the application due to concerns raised generally in relation to:

- Traffic, parking and pedestrian safety impacts
- Landscape design
- Glare / light spill impacts to surrounding residential properties
- Heritage impacts
- Lack of adequate information relating to acid sulfate soils, site contamination and acoustic impacts
- Water management design

On 28 March 2022, the Applicant submitted amended and additional documentation seeking address the concerns raised by Council. The proposal was also amended to reduce the scope of the development as described under Proposed Development in Detail.

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 previously used for industrial and commercial purposes. A Phase 2 Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested to address concerns raised by Council's Planning and internal referral teams. 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 of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via conditions of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA	See discussion on “Notification & Submissions Received” in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/04/2022 to 18/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 27 submission/s from:

Name:	Address:
Mr Timothy Nigel Sparkes	7 / 262 Pittwater Road MANLY NSW 2095
Amanda Delores Whiteman	8 / 262 Pittwater Road MANLY NSW 2095
Rodney Fredericks	2 / 262 Pittwater Road MANLY NSW 2095
Mr Russell David Lewis	10 / 262 Pittwater Road MANLY NSW 2095
Ms Beverley Ann Hadgraft	3 Lakeside Crescent NORTH MANLY NSW 2100
Mrs Jodie Ellen Obst	15 Pine Street MANLY NSW 2095
Mrs Vicki Chrystine Thurlow	28 Golf Parade MANLY NSW 2095
Ms Diane Jayne Dromgold	221 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Peter Clive Barr	41 Alexander Street MANLY NSW 2095
Mr Terence Michael Young	39 Golf Parade MANLY NSW 2095
Mrs Alison Rose Walker	43 Golf Parade MANLY NSW 2095
Mr Raymond Henry Moran Mrs Pamela Anne Moran	70 Alexander Street MANLY NSW 2095
Mr John Thomas Hoffman	17 Golf Parade MANLY NSW 2095
Mrs Anne Catherine Allsopp	22 Golf Parade MANLY NSW 2095
Ms Priscilla Anne Longley	20 Golf Parade MANLY NSW 2095
Mr Kenneth Colin Swanson	32 Golf Parade MANLY NSW 2095
Miss Caroline New	38 Golf Parade MANLY NSW 2095
Families For Manly	Address Unknown
Mr Mark Toni Leabeater	3 / 71 Golf Parade MANLY NSW 2095
Mr Anna Marie Stackpool	18 Golf Parade MANLY NSW 2095
Mr Dimas Perez	2 / 25 Cohen Street FAIRLIGHT NSW 2094
Ms Sarah Gale Bickford	3 Rosedale Avenue FAIRLIGHT NSW 2094

Name:	Address:
Mrs Linda Jane Van Der Velde	48 Golf Parade MANLY NSW 2095
Nadim Daban	32 A Golf Parade MANLY NSW 2095
Mr Dylan Bradford King	5 / 254 Pittwater Road MANLY NSW 2095
Ms Michele Terese Kaye	16 Addison Road MANLY NSW 2095
Mrs Lee Una Allan Mr Brent Allan	40 Golf Parade MANLY NSW 2095

The issues raised in the submissions are addressed as follows:

- **Traffic and pedestrian safety impacts, car and bicycle parking**

  The submissions raised concerns that the proposal will exacerbate existing traffic and pedestrian safety issues and does not provide adequate car or bicycle parking.

  Comment:

  The amended proposal does not include any changes to the existing site access or car parking layout. The application was referred to Council's Traffic Engineer and TfNSW to consider the traffic and parking impacts of the proposed development. No objections were raised in relation to the proposal subject to the imposition of the recommended conditions, which include the provision of new traffic and pedestrian safety measures.

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

- **Signage and glare / light spill impacts**

  The submissions raised concerns that the proposal includes excessive signage and will result in adverse glare/light spill impacts to surrounding residential properties.

  Comment:

  Conditions are recommended requiring the deletion of the proposed pylon signage and a reduction in the size of the wall sign to the northern elevation of the building. The proposed signage is assessed in this report against SEPP 64 Advertising and Signage and the signage provisions of the Manly DCP, and is found to be acceptable. No objection was raised by Council's Heritage Officer in relation to signage, subject to the recommended conditions. The proposed car park lighting has been deleted from the proposal and condition is recommended to limit the illumination of signage and lighting to the operating hours of the premises.

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

- **Hours of operation, deliveries and servicing**

  The submissions raised concerns that the proposed hours of operation are incompatible with the surrounding area and will disrupt the amenity of residential properties.

  Comment:

A full assessment of the proposed hours of operation is completed in this report under Clause 4.2.8.6 of the Manly DCP. The proximity of the site to sensitive residential receivers is noted. The additional trading hours permitted by the recommended conditions are limited to 8:00pm to 9:00pm on Friday and Saturday, with access to the site by staff permitted until 10:00pm on these days. Changes to the permitted hours for deliveries, waste collection and use of heavy machinery are also recommended, and are reduced overall in comparison to the existing approved hours. The hours of operation, as conditioned, are not considered to unreasonably impact the amenity of surrounding properties.

Council's assessment of the application cannot assume future non-compliance with conditions of approval, however, claims of non-compliance are investigated by Council's Building Control team.

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

- **Noise and ventilation impacts**

  The submissions raised concerns that the operation of the premises will result in adverse noise and ventilation impacts that will disrupt the amenity of surrounding residential properties.

  Comment:

  Based on the amended acoustic assessment provided, Council is satisfied that the operation of the premises and associated mechanical plant equipment will not unreasonably impact the amenity of surrounding properties. Various conditions are recommended to ensure compliance with the submitted acoustic assessment and to minimise disturbance of residential amenity.

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

- **Waste and odour management**

  The submissions raised concerns that storage of waste on the site will result in pollution and odour that will disrupt the amenity of surrounding residential properties.

  Comment:

  Conditions are recommended requiring the preparation of and compliance with a waste management plan in accordance with Council's Waste Management Guidelines. An amended Plan of Management is also required to address waste management, vermin control and loading dock cleaning procedures.

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

- **Plan of management**

  The submissions raised concerns that the submitted Plan of Management does not address waste management, vermin control or complaints handling procedures.

  Comment:

  Waste management, vermin control and complaints handling procedures are required to be addressed in the Plan of Management to the satisfaction of Council.

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

- **Tree removal**

  The submissions raised concerns in relation to the removal of existing trees adjacent to the southern boundary of the site.

  Comment:

  The amended proposal does not includes the removal of any trees from the site. Any exempt tree species that are removed in future are required to be replaced with a locally native species.

  This matter is not considered to warrant refusal of the application.
- **Traffic Office building**

  The submissions raised concerns in relation to the demolition of the existing Traffic Office building at the eastern end of the site. Concerns were also raised in relation to the condition of the Traffic Office building

  Comment:

  The amended proposal does not seek consent for the removal of the Traffic Office building. Council's Heritage Officer has recommended a condition requiring the preparation of a maintenance plan for the site, including the Traffic Office building.

  This matter is not considered to warrant refusal of the application.
- **Condition of existing sewer lines**

  The submissions raised concerns that the existing sewer lines are in poor condition and require remediation.

  Comment:

  Sewer lines are owned and managed by Sydney Water. Council has no authority to require that the applicant undertake remedial works to Sydney Water assets.

  This matter is not considered to warrant refusal of the application.
- **Construction impacts**

  The submissions raised concerns that the application does not include details in relation to waste and construction traffic management during works on the site.

  Comment:

  Conditions are recommended requiring the preparation of and compliance with waste and demolition/construction traffic management plans during works.

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

- **Staff facilities**

  The submissions raised concerns that the proposal does not include adequate parking or facilities for staff.

  Comment:

The proposal includes a new staff room at the mezzanine level and provides car parking in excess of Council's requirements. The submitted Plan of Management addressed staff car parking.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**Supported with conditions.** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Acid Sulphate)	**Supported with conditions.** **General Comments** The applicant has informed council that an acid sulfate soil assessment is available in Appendic C of the Detailed Site Investigation. Council is satisfied with the statement that Acid Sulfate Soils are unlikely to be disturbed below one metre due to the minor excavation that will occur to 0.7 m below ground level, and therefore no management plan is required according to the *NSW Acid Sulfate Soil Manual 1998*.
Environmental Health (Contaminated Lands)	**Supported with conditions.** Applicant has amended plans, significantly reducing the scope of development. Including redaction of excavation works in the carpark, therefore nullifying the potential for exposing underground storage tanks identified in Stage I and II reports. There remains a minor potential for exposure of subsurface contaminants, limited to excavations for lift installation in the loading dock / north-western section adjacent the main building. Subsurface analysis in this area (BH11/MW4) revealed: hard stand to 0.2 m below ground level (bgl); above, fill / silty sand to 0.7 m bgl; above, sand to 2.1 m bgl; as well as a “strong hydrocarbon odour”; and standing water level at 0.9 m bgl. The proposed ‘excavations to 0.7 m bgl present a low likelihood of incursion through groundwater and hydrocarbon liquids. Thus, the detailed site investigation

Internal Referral Body	Comments
	recommends: · Appropriate personal protective equipment (PPE) should be utilised during excavation of soil materials below 0.7 m BGL within the north-western portion of the site surrounding BH10/MW3 and BH11/MW4; · An Environmental Management Plan (EMP) should be developed for the purpose of outlining the management requirements of the identified groundwater contamination within the site; and · The client has a duty to report the identified groundwater contamination within the site to the EPA. Upon review of the site investigation report/s, the NSW EPA have suggested that remediation is not required, further detailing that waste materials be discarded lawfully. Environmental Health suggest that: · PPE is the responsibility of the construction organisation under the jurisdiction of WH&S NSW authority and does not need to form part of a consent document. · The EMP should be prepared prior to CC; and · The site owner needs to consider notification of contaminated land to EPA prior to CC. Please see below conditions.
Environmental Health (Industrial)	**Supported with conditions.** **General Comments** Applicant has provided an amendment (section 5.3) of the acoustic report to account for externally located mechanical plant / air conditioners. The recommendation is that mechanical plant can comply with the noise amenity criteria identified in section 3 of the report, in line with *Noise Policy for Industry 2017* targets, a compliance assessment is to be conducted prior to OC being released to ensure targets are met. Council is satisfied with the comments regarding mechanical plant noise, and offer the below conditions.
Environmental Health (Food Premises, Skin Pen.)	**Supported with conditions.**

Internal Referral Body	Comments
	General Comments Application is for alterations and additions to Harris Farm Manly. Environmental Health have no major concerns other than the following: • Given the age/layout of the premises with the exposed beam ceiling that a condition be imposed that a condition be imposed that any open, unwrapped food shall only be prepared or displayed in areas where a suitable ceiling is installed that will protect food from contamination; and • Environmental Health has received a number of complaints over the years about uncontained waste at the premises. Environmental Health recommends that the Plan of Management be updated to ensure waste is adequately contained on the premises and measures to monitor any rubbish.
Landscape Officer	**Supported with conditions.** *updated comments:* An updated proposal is submitted including reports and plans. The updated proposal primarily relates to internal alterations and additions to the main building, along with some external works to the building façade, and the revised development description is: 'Alterations and additions to the existing Harris Farm Manly store'. The landscape works previously included in the development application is now removed from the scope of the updated proposal, and the following scope is noted: • the existing car park layout and driveway design is to be retained, • the existing site landscaping and boundary trees are to be retained, • no new landscape works are proposed. Landscape Referral raise no concerns. *previous comments:* The development application is for alterations and additions to an existing building, including the following works related to the landscape outcome: reconfiguration of the car parking area resulting in an increase of 12 vehicular spaces and 8 bicycle spaces; removal of thirteen perimeter trees along the southern and eastern boundaries; and replacement landscaping works throughout the site. Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping; and 4.2.8.3 Landscaping.

Internal Referral Body	Comments
	The existing trees within the property proposed for removal as indicated on the Landscape Plan are Exempt Species (by species type and by height) and as such do not require Council consent for management or removal. All existing trees within the road reserve and adjoining properties shall be retained. The Landscape Plan provides for replacement tree planting along the site boundaries to compensate for existing tree loss and additionally understorey planting is also provided, and the landscape outcome satisfies the relevant DCP landscape controls. The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation within the road verge and within adjoining properties, and the completion of landscape works as proposed on the Landscape Plans.
NECC (Coast and Catchments)	**Supported without conditions.** The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Manly LEP 2013 and Manly DCP. ***Coastal Management Act 2016*** The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. **State Environmental Planning Policy (Coastal Management) 2018** The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA. <u>Comment:</u> On internal assessment, the DA satisfies requirements under clauses 13 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Manly LEP 2013 and Manly DCP** No coastal related issues identified.

Internal Referral Body	Comments
	As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.
NECC (Development Engineering)	**Supported with conditions.** The amended plan indicated that the application proposed to modify the internal of the existing building and retained the outdoor parking areas. As the external works were deleted, Development Engineering raises no objection to the application. The suggested conditions of the on site stormwater aspect are placed. If any traffic or road reserve works are required in this consent, please refer it to Development Engineering section to put a s138 application condition to cover these works.
NECC (Stormwater and Floodplain Engineering – Flood risk)	**Supported with conditions.** The proposed development is for the demolition of a building, additional parking spaces and alterations to an existing commercial building. The development does not include any ground floor extensions. Subject to conditions, the development is compliant with Council's Flood Prone Land Development controls.
NECC (Water Management)	**Supported with conditions.** Updated comments - 29/03/2022 The revised project is not subject to water quality controls under the relevant legislation and policy relating to water quality management, waterways, riparian areas, and groundwater. The water management referral has no objections. ~~This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.~~ ~~The supplied documentation is not demonstrating compliance with the water policy requirements for water quality.~~ ~~The general water quality targets defined in the Water for Development Policy (table 5) are applicable.~~ ~~Stormwater quality measure are required to meet the Policy requirement. Council note in the proposal the use of gross pollutant trap system.~~ ~~A water quality model (MUSIC or equivalent) is to be submitted to Council for review (.sqz), refer Council WSUD & MUSIC Modelling Guidelines.~~
Road Reserve	**Supported without conditions.**

Internal Referral Body	Comments
	The proposed car parking changes and access driveways will need to be reconstructed to comply with Council's current standards removing the at grade crossings in preference to standard layback arrangement and providing priority to pedestrians with associated footpath adjustments. Development Engineering will need to review and provide conditions accordingly. No other impacts on existing road infrastructure. 29/03/2022 - Update to comments: There are no changes to the existing car park or entries. No impact on existing road infrastructure.
Strategic and Place Planning (Heritage Officer)	**Supported with conditions.** HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site is a local heritage item, being **Item I214 – Former tram depot complex and associated buildings** - Pittwater Road (corner of Pittwater Road and Balgowlah Road) and within the vicinity of **C1 - Pittwater Road Conservation Area**, listed in Schedule 5 of Manly Local Environmental Plan 2013. Details of heritage items affected Details of the heritage item, as contained within the Northern Beaches heritage Inventory are: **Item I214 – Former tram depot complex and associated buildings** <u>Statement of Significance:</u> Listed as a major significance due to its association with the development of trams/transport in Manly, the complex demonstrates the scale and facilities required in small tram depots. One of two sites remaining associated with trams. <u>Physical Description:</u> The remaining buildings on site are those constructed in 1911 as the office block and tram shed. The single storey brick office building on the east side of the depot has been substantially altered and partly re-roofed. The original roof with ridge tiles survives along the wing at the rear. The tram shed has been substantially altered - its northern and western walls and roof have been replaced, although the steel structure and other brick walls survive. All tram tracks appear to have been removed. **C1 - Pittwater Road Conservation Area** <u>Statement of Significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment,

Internal Referral Body	Comments
	although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. Physical Description: The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed seperately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.

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
The proposal seeks consent for alterations and additions to the existing commercial site at 243 Pittwater Road, Manly, which is an important surviving building of Manly's transportation history. The subject property is currently used by Harris Farm as a retail store. The scope of works as outlined in the Statement of Environmental Effects are; demolition of the existing heritage building (Former Traffic Office) located at the south-east corner of the site; reconfiguration of the internal food hall; modifications to the existing northern façade; signage; reconfiguration of the existing carpark; reconstruction of the water tower; tree removal and landscaping. Demolition The proposed demolition of the former office building had been discussed during the pre-lodgement meeting and the applicant had been advised that all possible options for adaptive reuse to be

Internal Referral Body	Comments
	investigated and, if the buildings need to be demolished, then a heritage interpretation plan with detailed strategies be developed and submitted for Council approval. Heritage notes that the details of the proposed interpretive plaque, located into perimeter of garden bed, have not been provided. The proposed inlaid bricks outlining the original building footprints and the engineering report prepared by Cardno, are not sufficient to justify the demolition of the heritage building. The proposal has received a number of submissions, objecting the proposed demolition of the heritage listed Old Traffic Office. It is believed that the original external walls and the existing roof of the former office building could be partly retained for interpretation purposes. <u>Internal food hall</u> The proposed reconfiguration of the internal food hall is generally considered acceptable, however the proposed changes, including the proposed replacement of the mezzanine level, are to be reversible with no change to the significant structural elements and non-invasive techniques are to be used where fixing of new elements to the existing structure is required. The extent of the required new elements along with the locations and details should be provided to ensure that the original building will be retained, readily identifiable and any of the modifications could be reversed in the future if required. <u>Northern façade</u> Proposed modifications to the existing northern façade are generally considered to be acceptable with the requirement of minor amendments: • The existing roof and gutter details along the northern façade should be read as existing, so that the new wall cladding on this façade does not change the original details. • The new awning structure along the northern façade should be recessed from the northern face of the prominent eastern wall to stand alone as a prominent feature, to be read free from the awning and to allow this wall to be read as it originally was. Refer to: Heritage Impact Statement - Page 14 - Figures 21 East elevation of the Tram Shed (undated) • The proposed modifications to the east elevations of the main building, outlined in the HIS by Russell C. Lee, do not reflect the current architectural drawings. • The proposed solar panels to the middle saw-tooth roof should be placed lower than the proposed height to prevent the visibility from the street level. • Reinstating the water tower to the north-west corner is supported. Both the western boundary brick fence and the screen (zinc metal finish) above the brick fence, should be recessed from the external face of the tower along the western boundary to allow the interpretive tower is readily

Internal Referral Body	Comments
	identifiable. Heritage also recommends a further reduction to the height of the zinc metal screen above the brick boundary fence. The open area at the north-west corner shown on the ground floor plan could be recessed and the metal screen could be removed at this section, as it is not an identified space and this will help to improve the visual impact on the streetscape. The metal screen should be limited to the loading area only. <u>Eastern façade</u> Removal of the existing panel from the existing windows with the retention and restoration of the existing timber windows on the eastern façade is supported and it would be appreciated if the symmetrical set of the original windows on the southern side of this façade are also reinstated and restored. Refer to: Heritage Impact Statement - Page 14 - Figures 21 East elevation of the Tram Shed (undated). <u>Western façade</u> Retention and restoration of the western brick façade is supported, however, details of the restoration work will need to be submitted. The proposed link between the interpretive tower and the main building should be designed to minimise the visual connection. It is understood that the proposed goods lift operates from the ground floor to the mezzanine level (AFFL 3.500), therefore the roof above the link between the tower and the main building does not need to be above the top of the existing garbage area wall (AFFL 6.560). A section though the tower and this link is required. <u>Signage</u> Manly Development Control Plan - Clause 4.4.3.1 (a) permits a maximum of 2 identification signs per frontage, therefore, it is considered that the proposed signage to the northern facade exceeds this allocation with 3 main signage (including the sign on the tower), 4 hanging timber signs, 2 pylon signs. The size of the proposed pylon signs should be reduced to become less intrusive and to respect the visual quality of the item. <u>Carparking</u> From a heritage point of view it is considered that no public parking be located in front of the building thereby eliminating the need for any car access in front of the building and incorporating more landscaping to improve the view of the heritage building from the public domain. If necessary, disabled spots could be located in this area, suitably landscaped. **Amended drawings - 29 March 2022** The scope of works have been changed with the amendments received on 29 March 2022. The changes include the retention of

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	the existing heritage building - Former Traffic Office and the existing carparking layout. It also includes the deletion of the proposed reconstruction of the water tower and changing the floor level of the mezzanine level. Existing corrugated sawtooth roof has been retained and the solar panels have been placed to maximum AFL 92000mm - not visible from the street level. The existing roof and gutter details will be retained and the new wall cladding is to be installed to allow clearance for existing detail. The retention of the former office building is supported by Heritage, however, Heritage recommends the removal of the later additions to allow the heritage building to be identifiable. A maintenance plan is required for the site of the heritage listed former traffic office building. No changes have been proposed for the internal layout, except the mezzanine floor level - RL have been increased for about 1m. The extent of the required new elements along with the locations and details should be provided to ensure that the original building with all significant structural elements will be retained, readily identifiable and any of the modifications could be reversed in the future if required. The proposed modifications to the northern façade have resolved most of the Heritage concerns with this façade and it is generally considered acceptable. The new awning structure on the northern façade has been receded to allow for the existing wall to be expressed. The previously proposed reinstatement of the water tower had been supported by Heritage. It is considered, that the new matching height of the metal screen wall wall in front of the brick structure should be reduced to be AFL 4.500 as previously proposed, to allow views to the heritage building at this corner. The proposed glazed enclosure for the lift shaft - in between the brick structure and the heritage building is acceptable. The retention and restoration of the existing timber windows and the reinstatement of the symmetrical set of the original windows on the southern side of the eastern façade is supported and appreciated. Retention and restoration of the western brick façade is supported, however, details of the restoration work will need to be submitted. "Response to Request for Information" by URBIS states that the pylon signs have been removed from the scope, however the submitted drawing DA.300 is still showing the details of the pylon signage. It is considered that the document by URBIS justifies the number of proposed signs to the northern facade and is acceptable. However, the size of the main signs is still a concern and consideration must be given to reducing the size of the signs. Therefore, no objections are raised on heritage grounds, subject to

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	conditions. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 21 February 2022, Revised 05 May 2022
Traffic Engineer	**Supported with conditions.** **Revised comments on amended plans - 11/5/22** The amended development plans now propose only internal alterations and additions with no changes to the parking or site access arrangements. The amended development application proposes to increase the ground floor retail floor area from 1028sqm to 1198sqm while decreasing ground floor “back of house” area from 468sqm to 175sqm and improving the functionality of the mezzanine level back of house areas. <u>Increased retail area:</u> Given the increase in retail area on the ground floor, although the Gross Floor Area will not be increasing to a significant extent, the impact of the changes will be to increase the useability of the ground floor areas for selling of goods which will attract high patronage levels. Although the changes do not require additional offstreet parking under the DCP there are concerns that the changes will attract more customers and that this may exacerbate existing safety issues on Pittwater Road particularly relating to right turn movements to and from the site and the safety of pedestrians seeking to cross Pittwater Road to access the premises. It is noted that crash data over the past 10 years reveals a history of east bound rear end, right turn as well as pedestrian crashes along the frontage of the Harris Farm site <u>Road Safety concerns:</u> It is noted that Transport for NSW have raised concern that the “proposed alterations and additions to the site will result in increased operational activities to the site and as such increasing the risk of pedestrians accessing the development via the classified road network.” These concerns are shared by Council’s Transport Network team.

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	Transport for NSW and Council are currently considering proposals for the introduction of a pedestrian refuge on Pittwater Road. Concept designs have been prepared for a number of pedestrian refuge options and a refuge sited to the east of the Harris Farm development is likely to be introduced in the coming year to provide a safer option for pedestrians to cross Pittwater Road to and from the Harris Farm site. Measures to discourage pedestrians from crossing other than at the pedestrian refuge and to redirect them towards the refuge are however required. Council is also concerned about the safety implications of vehicles turning right to and from the Harris Farm development. Right turn movements are considered undesirable as traffic making right turns must do so through heavy volumes of opposing traffic, within close proximity to a bend. Traffic waiting to make the right turn also creates delays for following traffic and a risk of rear end or lane change crashes. Right turn manoeuvres also increase the number of traffic movements pedestrians must watch for as they cross the road or use the footpath in front of Harris Farm. For the above reasons, to improve safety and improve traffic flows past and to/from the site it is considered that right turns to and from the site should be prevented. A condition of consent will therefore be required to introduce measures to TfNSW satisfaction to physically prevent right turns such as a narrow kerb median (potentially elsholz kerb) centrally located on Pittwater Road between the roundabout at Balgowlah Road and the proposed pedestrian refuge east of Harris Farm. In addition, Type 1 RMS pedestrian fencing on the median along the full frontage of the Harris Farm site will also be required to prevent pedestrians crossing and redirect pedestrians to the proposed pedestrian refuge. <u>Deliveries:</u> Truck movements to and from from the development site currently create delays and safety concerns for other traffic particularly when it is noted that these movements are occurring to and from the westernmost driveway within close proximity to a heavily used roundabout. To minimise congestion impacts and safety issues truck deliveries by vehicles other than small rigid vehicles are to occur before and after peak periods so as to minimise impacts on traffic and so as not to conflict with busy pedestrian traffic times or peak trading hours. i.e before 7:30am and after 6pm. The swept path plots provided with the traffic and parking impact report dated October 2020 demonstrate that delivery trucks up to the size of a 15.6m articulated vehicle can enter and exit the westernmost driveway via a left turn. A condition of consent will be imposed requiring that deliveries occur before 7:30am or after 6pm, only to and from the westernmost driveway and by vehicles under 15.6m in

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	length. <u>Vehicle Crossings:</u> As noted in the Roads and Assets Referral response, some existing vehicle crossings to the site will need to be removed and the existing "at grade" crossings reconstructed as standard layback crossings, giving priority to pedestrians on the footpath. The above work would require adjustments to footpaths on approach to the crossings. <u>Vehicular Access:</u> There are four driveways serving the site and these driveways are proposed to remain in use. As noted above right turn movements to and from these driveways are to be prevented. The traffic report prepared by Transport and Traffic Planning Associates outlines observed vehicle movements to and from each driveway. It is apparent from that data that the Eastern Driveway is primarily used as an egress driveway however, despite current No Entry signposting facing traffic entering from Pittwater Road, it is used as an entry point by some vehicles. Allowing left IN and left OUT movements at this driveway is supported. The Eastern Central driveway is used exclusively as an entry driveway and this use is supported with entry to be restricted to Left IN only. The Western Central driveway is used exclusively as an egress driveway and is the primary means of egress from the site. This use is supported with egress to be restricted to Left OUT only. The Western driveway which is sited nearest to the roundabout is used as an entry and egress point for truck movements and also as an egress point by some customers. This use is supported however use will be restricted to Left IN and OUT for trucks and LEFT out for customers. <u>Summary:</u> Although there are concerns relating to road safety as a result of traffic and pedestrian movements to and from the development site these can be appropriately addressed by conditions of consent. **Original comments - 25/1/22** **Proposal description:** Alterations and additions to an existing retail building (Harris Farm), including food and drink premises, carpark, signage, landscaping, and changed hours of operation. The Development Application DA2020/1473 for the alterations and additions to Harris Farm was lodged on 10 November 2020. It was subsequently withdrawn on 16 March 2021 to enable more time to review and respond to the matters raised by Council (Traffic Referral Responses dated 28/01/2021) and the TfNSW referral letter (ref: SYD20/01410/01) dated 19 December 2020. The Traffic team has reviewed the following documents:

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	- Plans (Master Set) – Revision O, Drawing No DA.001, designed by LUCHETTI KRELLE, dated 22/11/2019, - *Traffic and Parking Assessment* report (Issue B) prepared by TTPA dated October 2020, - *Proposed Upgrade Scheme* (last appendix in the Traffic and Parking Assessment report) prepared by TTPA dated 12 May 2021, - TfNSW referral letter (ref: SYD21/01344/01) dated 30 November 2021, - *Statement of Environmental Effects* prepared by Urbis dated 12 August 2021, - *Operational Management Plan (OMP)* prepared by Harris Farm Manly, and - *Families For Manly* (Incorporated Registration No. INC1700201), Submission Against DA2021/2054 dated 29 November 2021 • It is noted that the Project team met with TfNSW on 7 June 2021 to discuss the proposed driveways, and the proponent is continuing discussions with TfNSW to reach an agreed solution on the proposed driveways. • TfNSW, in their referral letter (ref: SYD21/01344/01) dated 30 November 2021, has opposed the development given that it incorporates three (3) vehicle access points to Pittwater Road (State Road), which carries a high volume of traffic. The letter states that the current practice (reflected in Section 6.2.1 of TfNSW publication of the Guide to Traffic Generating Developments) is to limit the number of vehicular conflict points along the arterial road network to maintain road safety and network efficiency. In addition, TfNSW would not grant concurrence to the proposed civil works on Pittwater Road under section 138 of the Roads Act, 1993. Further, to address the impacts of the surrounding transport network for all users, in particular Pittwater Road and Balgowlah Road intersection, TfNSW also has required the submission of the SIDRA modelling files for their review and verification. TfNSW will verify as to whether the modelling has been undertaken in accordance with the relevant practices and guidelines. • It is reported in the Proposed Upgrade Scheme prepared by TTPA dated 12 May 2021 that AS2890.1 and the Guide To Traffic Generating Developments specified that service/delivery vehicles should have separate access (to carpark vehicles) wherever possible. The concentration of vehicle access movements to one driveway would be entirely contrary to the stated aim of efficiency due to conflicts and delays being concentrated rather than spread. • Council supports a reduction to the number of driveways servicing the site and agrees with the above and, in our referral responses dated 28/01/2021, we mentioned that: - If the westernmost driveway is retained, it should, for safety reasons, only be for the delivery truck and low turnover staff parking with

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	customer access to be facilitated via a driveway further to the east. This would separate customer access and parking for service vehicle access and parking. - The westernmost driveway should only be accessible via a left in / left out arrangement. Right turns to or from this driveway are unsafe, particularly for large vehicles. It is reported in the Proposed Upgrade Scheme that the adjacent "splitter island" was proposed to be extended to prevent right-turn movements. While the location of the centre lines of the road and the splitter island on approach to the roundabout have been shown in the appendix of the Proposed Upgrade Scheme, they have not been included in the Architectural plans. The plans should be accompanied by the proposed extension to the splitter island. Additionally, appropriate signage and line marking for this should be included to prevent drivers turning right from/to Pittwater Road into/out of the westernmost driveway. • The shared use of westernmost driveway by disabled drivers, mothers with prams and service vehicles has remained unchanged from the previous plans. Although the turning paths show that the truck manoeuvre only extends to the two proposed 45° staff spaces, the proposed disabled and pram parking spaces in this area are considered unsafe due to the frequency of use of the loading/unloading area. Based on the Operational Management Plan (OMP) prepared by Harris Farm Manly, the proposed loading operation of the Harris Farm tenancy is as follows: **Produce Delivery** • HFM Produce is delivered twice daily during the week and once daily on the weekends • Dock hours are 6.30am to 5.00pm - Monday to Friday, the first delivery enters approximately 8.00am and exits approximately 8.45am. - Monday to Friday, the second delivery enters approximately 12.00pm and exits by 12.40pm. - Saturday and Sunday delivery enter at 8.00am, and exit at approximately 8.40am. - Perishables are delivered once daily on the All Day Services truck 8.00am delivery. **Unloading/ Loading Process** • Entry for all delivery vehicles is via Pittwater Road loading dock entry.

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	• Pre-9.00am, the delivery truck parks at 90 degrees to the back dock area. • Post 10.00am, the delivery truck uses zone 2 with other deliveries using the marked spaces in the back dock area. • At all times, vehicles must park under the direction of an HFM traffic controller. Further, banning the right turn into and out of the carpark for the westernmost access would result in disabled drivers and mothers with prams looping around via Balgowlah Road and Golf Parade to legally enter the site via a left turn from Pittwater Road or to exit the carpark and head towards Manly. This is an unideal outcome. Deleting any disabled and pram parking spaces from this area is required with those spaces redesignated only for staff parking. • Redesign of the access arrangements and associated redesign of the car parking area is required to address the above. • Liaison with TfNSW to ensure that the access arrangement is supportable is required prior to submitting any amendments to Council. • In terms of bicycle parking spaces, the DCP requirement is for 1 space for every 3 car spaces. The developer proposes only 8 bicycle parking spaces, 2 bicycle spaces less than the previous DA. Manly is a location with significant levels of bicycle use, including for grocery shopping, with many bikes fitted with large baskets or trailers. Based on Families For Manly Submission, Residents would like to use their bikes and a lack of suitable access and parking facilities for cyclists is likely to lead to their avoidance of the Harris Farm complex. The SEE also stated that the amended DA would increase bike parking. The bicycle parking spaces should therefore be increased and relocated to an appropriate area. • Based on the Table shown in the Architectural Plans (Master Set) – Revision D, Drawing No DA.003, designed by LUCHETTI KRELLE, dated 21/10/2020, the proposed development comprises 2044 sqm of GFA, a modest increase of 116sqm on the existing.The RMS traffic generating guidelines outline that the daily traffic generation of a retail development can be averaged at 121 vehicles per 100sqm of GLFA for developments under 10000 sqm in size or a peak hourly volume (on a Saturday) of approx 16.3 vehicles per 100 sqm of GLFA. The additional 116 sqm of floor space would therefore result in an additional daily volume of 140 vehicles and an additional Saturday peak volume of approximately 19 vehicles. This level of additional traffic onto Pittwater Road is considered to be of a low level of impact and is acceptable. However, TfNSW has required the submission of the SIDRA modelling files, in particular the Pittwater Road and Balgowlah

Internal Referral Body	Comments
	Road intersection, for their review and verification. In light of the concerns regarding the approved number of vehicle access points by TfNSW, the carpark layout and submission of Sidra modelling files to TfNSW, this proposal is not acceptable in its current form. The proposal is therefore unsupported.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**Supported with 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.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	**Supported with conditions.** Transport for NSW provided the following referral response: *"Reference is made to the above application and Transport for NSW (TfNSW) previous correspondence of 5 April 2022 requesting the proponent address pedestrian safety issues on Pittwater Road.* *It is noted that funding has recently been allocated by the Local Government to construct a pedestrian refuge on Pittwater Rd in proximity to the subject site.* *As a result, TfNSW raises no objection to the development application and provides the following requirements to be included in the development consent.* *1. A central median with pedestrian fencing is to extend from the proposed pedestrian refuge across Pittwater Road to the roundabout at Balgowlah Road in accordance with relevant Austroads and Australian Standards, at no cost to TfNSW.* *Detailed design plans of the proposed median fencing are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works.* *A plan checking fee and lodgment of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.* *The applicant is to submit all documentation at least six (6) weeks prior to the commencement of construction and is to meet the full cost of the assessment by TfNSW.* *Please send all documentation to develop.sydney@transport.nsw.gov.au.* *2. The impacts of the median on the road network are to be modelled, with the electronic file submitted to TfNSW for review and verification.*

External Referral Body	Comments
	3. A swept path analysis of the longest vehicle entering and exiting the subject site shall be in accordance with AUSTROADS and a plan is to be submitted to TfNSW's satisfaction. *4. A construction zone will not be permitted on Pittwater Road or Balgowlah Road. All construction vehicles are to be contained wholly within the site and vehicles must enter and exit in a forward direction."*

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.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Site Investigation dated 17 March 2021 prepared by ADE Consulting Group. In its conclusion, the investigation states:

"Based on the results of the desktop study and site walk-over investigation, ADE considers there is a moderate to high potential for contamination to have occurred on-site as a result of the past and present land uses. Considering the above information outlined in Section 9.1 and the potential future planning activities at the Site, a Stage II DSI with the inclusion of sampling for soil and groundwater should be conducted and reported in accordance with NSW EPA 2020 Guidelines for Consultants Reporting on Contaminated Sites.
It is likely that the Site can be determined or made suitable for future planning activities, pending a Stage II DSI and remediation (if required)"

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "*if the land is contaminated, it* [Council] *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*".

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. A Phase 2 Environmental Site Assessment has been

provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

Clause 7(1)(c) stipulates that "*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"*.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

SEPP 64 - Advertising and Signage

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

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

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

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed land use is permissible in the zone and the proposed signage is considered to be appropriate for the premises. As such, the proposal is considered to be compatible with the desired future character of the locality.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no particular theme of outdoor advertising in the area. However, the proposed signage is appropriate in the context of the site.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site contains a heritage item and is located within a heritage conservation area. Council's Heritage Officer raised no objection to the proposed signage design, subject to the recommended conditions of consent.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise any important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is located below the existing building height and will not dominate the skyline or reduce the quality of vistas.	YES

Does the proposal respect the viewing rights of other advertisers?	The proposal does not result impinge on the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage, as conditioned, is of a scale, proportion and form that is appropriate given the scale and frontages of the site/building.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage is of high quality design and contributes positively to visual the interest of the surrounding area.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The existing advertising does not require simplification and the proposal does not result in visual clutter.	YES
Does the proposal screen unsightliness?	The proposal includes substantial refurbishment and visual improvement of the facade of the premises.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal, as conditioned, is considered compatible with the scale, proportion and characteristics of the site and building.	YES
Does the proposal respect important features of the site or building, or both?	The proposal has suitable regard for the features of the building and site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage provides an appropriate response to the refurbished building.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Lighting devices are integrated into the signage.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The proposal will not result in any unacceptable impacts in relation to safety or amenity.	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination of signage is limited to the hours of operation of the premises. As such, adjustment of the illumination is not considered necessary.	YES
Is the illumination subject to a curfew?	The illumination of signage is limited to the hours of operation of the premises.	YES
8. Safety	The proposed signage is appropriately located to	YES

Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	avoid safety impacts to roads, pedestrians and bicyclists.	
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Transport for NSW (TfNSW)

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

(a) Due to the site layout it is not possible to provide practicable or safe vehicular access to the site other than by Pittwater Road where the existing access is located.

(b) No objections to the proposed development were raised by TfNSW or Council's Traffic Engineer, subject to the recommended conditions of consent, including the provision of new safety measures and the prohibition of right turns to and from the site.

(c) The existing/proposed retail use is not sensitive to traffic noise or vehicle emissions.

Clause 2.121 and Schedule 3 of the SEPP requires that the following development(s) are referred to TfNSW as Traffic Generating Development:

Purpose of Development	**Size or Capacity** (Site with access to any road)	**Size or Capacity** (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Shops and commercial premises	4,000m²	1,000m²

Note: Under Clause 104(2) of the SEPP, 'relevant size of capacity 'is defined as meaning:

"*(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."

Comment:

The proposed increase in the size of the premises is less than 1000m² and as such, the proposal is not traffic generating development. However, due to the presence of significant traffic and pedestrian safety hazards in the vicinity of the site, the contribution of the existing development to these hazards and the anticipated additional traffic generated by the refurbishment of the premises, the proposal was referred to TfNSW for consideration.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal

environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The proposed works are located within the existing developed footprint of the site and are not anticipated to cause adverse impacts in relation to the above matters. Council's Coast and Catchments team raised no objection to the proposal.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
The proposed development is appropriately designed, sited and can be managed to avoid adverse impacts referred to in subclause (1).

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

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:
The proposal is unlikely to result in increased risk of coastal hazards on the site or surrounding land.

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

Manly Local Environmental Plan 2013

Is the development permissible?	Yes

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Existing building: 11.6m Proposed works: 10.1m	18.8% (proposed works)	No
Floor Space Ratio	0.6:1 3089.4m²	0.43:1 2220.1m²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.1m
Percentage variation to requirement:	18.8%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

"There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- *The objectives of the height of building development standard are achieved, notwithstanding the non-compliance with the standard. The proposed solar panels are integrated into the roof form and will generally be concealed from public view and accordingly will not add to the bulk or scale of the existing building.*
- *The proposed solar panels are essential to the energy efficiency of the business."*

Comment:

The proposal includes new solar panels and skylights with a maximum height of 10.1m. The proposed non-compliant elements will improve the energy efficiency and internal amenity of the building. Further, the solar panels are skylights are located within the central section of the existing sawtooth roof below the existing roof ridge height and are not visible from the public domain or adjoining properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an ecologically sustainable development that is of good design and amenity, therefore satisfying cls 1.3 (b) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 proposal maintains the existing building height as the solar panels are skylights are located below the roof ridge.
>
> b) to control the bulk and scale of buildings,
>
> Comment:
>
> The proposed height breach will not result in any significant additional bulk or scale.
>
> c) to minimise disruption to the following:

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

Comment:

The proposal will not give rise to any adverse view impacts.

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 building height breach is located centrally within the existing roof and will not cause any additional overshadowing.

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

Comment:

N/A

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

  Comment:

  The proposal does not alter the existing retail use of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

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

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

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

5.10 Heritage conservation

A detailed assessment of the heritage impacts of the proposed development has been undertaken by Council's Heritage Officer. No objection was raised to the proposal, subject to the recommended conditions of consent.

5.21 Flood planning

Council's Flood Engineer raised no objection to the proposal, subject to the recommended conditions of consent.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 3, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 1.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 1.0 metre below the natural ground surface within a Class 3 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 0.7m below the natural ground level and Council's Environmental Health Officer is satisfied that no acid sulfate soils will be disturbed at this depth.

6.2 Earthworks

The amended proposal includes excavation to a depth of approximately 0.7m to accommodate the proposed lift well in the northwestern corner of the site. The proposed excavation works are limited in extent and will not adversely impact the natural environmental or the amenity of surrounding properties.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.2.8.2 Setbacks	Front (north): prevailing building line	Building: 13.2m	N/A	Yes
		Bin store: 0.5m	N/A	No
	Front (west): prevailing building line	Building: 0.4m	N/A	No (existing)
		Bin store: 0.5m	N/A	Yes
	Rear: GF 8m, FF 45 degree	0.2m	N/A	No

	envelope			(existing)
Schedule 3 Parking and Access	75 Spaces	85 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	N/A	N/A
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	No	Yes
4.2.8.3 Landscaping	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.9 Signage	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposal will not result in any material overshadowing of adjoining properties.

3.4.2 Privacy and Security

Compliance with control

3.4.2.3 Acoustical Privacy (Noise Nuisance)
a) Consideration must be given to the protection of acoustical privacy in the design and management of development.
b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.
c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.

Comment:

The proposed plant deck is located in the northwest corner of the site, which is considered to be the most suitable location in relation to nearby residential properties. The amended acoustic report indicates that mechanical plant equipment can comply with the specified noise criteria. Council's Environmental Health Officer raised no objection in relation to acoustic impacts subject to the recommended conditions of consent, including certification that the mechanical plant is installed and operates in compliance with the submitted acoustic report.

Based on the above, the proposal complies with this control.

3.4.4 Other Nuisance (Odour, Fumes etc.)

Council's Environmental Health Officer has recommended a condition requiring certification that the design, construction and installation of mechanical ventilation is compliant with the relevant Australian Standard. A condition is also recommended requiring that the Plan of Management address waste and pest control measures. As such, the operation of the premises is not anticipated to cause any unreasonable odour or fume nuisance.

3.6 Accessibility

The applicant has submitted an Accessibility Report indicating that the proposal is capable of complying with all relevant BCA and access standards. Conditions are recommended requiring compliance with these matters.

3.8 Waste Management

The proposed bin store area located in the northwestern corner of the site is separated from the adjacent residential properties. Conditions are recommended in relation to waste management during demolition/construction and the ongoing operation of the premises.

3.9 Mechanical Plant Equipment

The proposed plant deck is suitably located in the northwestern corner of the site, away from the adjacent residential properties. Council's Environmental Health Officer has reviewed the amended acoustic report and raised no objection to the proposal, subject to the recommended conditions of consent.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

Compliance with control

4.2.2.1 Exceptions to Height for Design Excellence

In determining whether to grant an exception to the LEP height standard, the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) may include consideration of the design principles at paragraph 3.1.3.1 Design Principles in this DCP.

Comment:

The environmental planning grounds relied upon to justify contravening the height of buildings development standard relate to amenity and sustainability. As such, the environmental planning grounds do not rely on the design principles contained in 3.1.3.1 of the Manly DCP.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

Setback requirements specific to the B1 Neighbourhood Centre zone are considered under 4.2.8.2 of the Manly DCP.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Compliance with control

Schedule 3 of the Manly DCP requires the provision of car parking as follows:

- Supermarket: 1 space per 25m² of gross floor area
- Restaurants or Cafes and Take Away Food and Drink Premises: 1 space per 40m² of gross floor area of serviced area

The proposed uses on the site include a supermarket GFA of 1807.2m² (73 spaces) and food and drink premises serviced GFA of 55.7m² (2 spaces), requiring a total of 75 spaces in accordance with Schedule 3 of the Manly DCP.

The amended proposal includes no change to the existing car parking provision of 85 spaces, and as such complies with the control.

4.2.8.2 Setbacks

Description of non-compliance

The proposed 0.5m northern front setback to the bin store is inconsistent with the prevailing building line to Pittwater Road.

The non-compliances in relation to the building rear and western side setbacks are existing and remain unchanged as a result of the proposal.

Merit consideration

There are no objectives included in this control. As such, the development is considered in the context of the existing development and is found to be acceptable based on the following:

- The proposal includes a planter box within the front setback to accommodate planting that will soften the visual appearance of the structure;
- Council's Heritage Officer has recommended a condition that the bin store walls be lowered by 1.55m, reducing the bulk and visual impact of the structure;
- Given the location and height of the existing boundary fencing at the northwestern corner of the site, the proposed bin store will not unreasonably impact traffic visibility at the intersection.

Having regard to the above assessment, it is concluded that the proposed bin store setback is appropriate in the context and supported in this particular circumstance.

4.2.8.3 Landscaping

Compliance with control

b) All side and rear setbacks to boundaries adjoining land zoned Residential in the LEP (excluding laneways) are to be developed for deep soil planting to allow for the retention/establishment of a mature tree landscape buffer.

Comment:

The amended proposal includes the retention of all trees on the subject site, including the existing landscape buffer to the residential properties to the south. Suitable conditions are recommended by Council's Landscape Officer in this regard.

4.2.8.5 Carparking, Vehicular Access and Loading Controls

The proposal complies with the requirements of this control, subject to the recommended conditions of consent.

4.2.8.6 Hours of Operation

Existing Approved Hours of Operation
The existing premises is subject to the following hours of operation in accordance with the conditions of consent No. DA76/2005 - Part 3, approved on 19 September 2013:

Hours of trading:
Monday to Wednesday and Friday to Sunday - 7:00am to 8:00pm
Thursday - 7:00am to 9:00pm

Hours for access to site by staff:
Monday to Wednesday and Friday to Sunday - 6:00am to 9:00pm
Thursday - 6:00am to 10:00pm

Deliveries, waste collection and use of heavy machinery (ie. forklift):

Weekdays - 7:00am to 8:00pm
Saturday, Sunday and Public Holidays - 8:00am to 8:00pm

Proposed Hours of Operation
The proposal seeks consent for the following hours of operation:

Hours of trading:
Monday to Sunday - 6:00am to 9:00pm

Dock hours:
Monday to Sunday - 6:30am to 5:00pm

Assessment
The subject site is zoned B1 Neighbourhood Centre but is adjoined to the north and south by residential properties. Given the sensitivity of these surrounding residential properties to noise generated by the activities of the commercial use, it is considered that the opening hours of the premises should be consistent with those of the adjoining childcare centre to the east of the site, which commences at 7:00am. The existing approved hours of the subject premises allow trading until 9pm on Thursday and it is found to be reasonable to allow trading until 9pm on Friday and Saturday. However, the proposed trading until 9pm Sunday to Wednesday are not supported. Access to the site by staff shall be permitted for 1 hour prior to the commencement of trading and 1 hour after closing. Deliveries, waste collection and the use of heavy machinery are restricted to the hours below in order to minimise the disturbance to nearby residential receivers.

Taking into consideration the findings of the Operational Noise Emission Assessment and the proximity to surrounding residential development, the hours of operation are conditioned as follows:

Hours of trading:
Sunday to Wednesday and Public Holidays - 7:00am to 8:00pm
Thursday to Saturday - 7:00am to 9:00pm

Hours for access to site by staff:
Sunday to Wednesday and Public Holidays - 6:00am to 9:00pm
Thursday to Saturday - 6:00am to 10:00pm

Deliveries, waste collection and use of heavy machinery (ie. forklift):
Monday to Saturday - 7:00am to 6:00pm
Sunday and Public Holidays - 8:00am to 6:00pm
Note: Deliveries by vehicles larger than small rigid vehicles are subject to further restrictions to minimise impacts to the surrounding road network.

4.2.8.9 Signage

See assessment under Clause 4.4.3 Signage.

4.4.3 Signage

Description of non-compliance

The proposal exceeds the maximum number of signs permitted (2 per frontage), with a total of seven business identification signs as follows:

- 1 x painted wall sign to the northern facade

- 1 x painted wall sign to the eastern facade
- 1 x neon under awning sign
- 4 x timber under awnings

Merit consideration

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

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.
Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.
Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.
Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.
Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.
Objective 6) To ensure all signage is of high standards of graphic and textural content.
Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Comment:

Given the length of the northern site frontage, the scale of the building and the separation of the proposed signage to the public domain, the number of signs proposed is not considered to be excessive or likely to cause adverse visual impacts. It is noted that four of the seven proposed signs are under-awning signs that will be minimally visible from the public domain by virtue of their location and limited dimensions. The proposed signage is of a high standard and will contribute to the visual appearance of the refurbished building. Council's Heritage Officer raised no objection to the proposed signage, subject to a reduction in the size of the painted wall sign at the northern elevation as conditioned. The proposed illuminated signage conditioned to be limited to the hours of trading of the premises.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. 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 $61,026 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $6,102,551.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

The application seeks consent for alterations and additions to the existing retail building, additional ancillary uses and changes to the existing hours of operation. The application was amended by the applicant to reduce the scope of the proposal and further amendments were made in response to concerns raised by Council during the assessment process.

The key planning issues considered within the assessment relate to heritage, traffic and parking, amenity impacts to surrounding residential properties and the proposed building height development standard breach.

27 submissions were received in response to Council's advertising of the application. The concerns raised in the submissions are addressed within the report.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and 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 DA2021/2054 for Alterations and additions to an existing building including use as a shop (Harris Farm), signage and landscaping on land at Lot 1 DP 923368, 243 Pittwater Road, MANLY, Lot 1 DP 924434, 243 Pittwater Road, MANLY, Lot 1 DP 923887, 243 Pittwater Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA.001 Site Plan - Existing and Proposed	Rev. S, 28 March 2022	Luchetti Krelle
DA.002 Site Analysis Plan	Rev. M, 28 March 2022	Luchetti Krelle
DA.010 Site Demolition Plan - Ground Floor and Mezzanine	Rev. M, 28 March 2022	Luchetti Krelle
DA.101 Ground Floor - Layout Plan	Rev. P, 28 March 2022	Luchetti Krelle
DA.102 Mezzanine - Layout Plan	Rev. O, 28 March 2022	Luchetti Krelle
DA.103 Roof Proposed Plan	Rev. F, 28 March 2022	Luchetti Krelle
DA.201 Proposed External Elevations	Rev. M, 28 March 2022	Luchetti Krelle
DA.202 Proposed External Elevations	Rev. M, 28 March 2022	Luchetti Krelle
DA.210 Internal Sections	Rev. L, 28 March 2022	Luchetti Krelle
DA.300 Signage Details	Rev. J, 4 August 2021	Luchetti Krelle

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BCA Report	Rev. 1, 29 October 2020	NW Building Certification
Accessibility Report	Rev. 1, 28 October 2020	NW Building Certification
Operational Noise Emission Assessment	Rev. 2, 23 March 2022	Acoustic Dynamics
Outdoor Lighting Study	Ver. 1, 10 August	Cardno

	2021	
Heritage Impact Statement	2 October 2020	Robert Lee Architects
Geotechnical Assessment Report	Ver. V1F, 16 March 2021	ADE Consulting Group
Stage II: Detailed Site Investigation	Ver. V1F, 3 August 2021	ADE Consulting Group
Waste Management Plan	11 October 2020	John Jan
WHS Traffic Management Plan - Manly Store	3 March 2021	Harris Farm Markets

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:

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	10 December 2021
Transport for NSW	TfNSW Referral Response - Updated	13 May 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. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a shop.

A ***shop*** is defined as:

> "***shop*** means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.
>
> Note—
>
> Shops are a type of retail premises—see the definition of that term in this Dictionary."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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

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

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars

of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's

footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation

area for any wastewater system and is separate from any onsite stormwater management system.

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

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

6. **Existing Bus Stop**
The existing bus stop on the Pittwater Road along frontage of the site must remain in its current location. Approval of Transport for NSW is required to relocate any Bus Stops.

Reason: To ensure certain services are not relocated at any stage during the project.

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $61,025.51 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 $6,102,551.00.

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.

8. **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

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 kerb inlet pit along Pittwater Road.

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. **Flooding**
In order to protect property and occupants from flood risk the following is required:

<u>Flood Effects Caused by Development – A2</u>
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 3.16m AHD.

<u>Building Components and Structural Soundness – B1</u>
All new development below the Flood Planning Level of 3.66m AHD 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).

<u>Building Components and Structural Soundness – B2</u>
All new development must be designed to ensure structural integrity up to the Flood Planning Level of 3.65m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

<u>Building Components and Structural Soundness – B3</u>
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level 3.66m AHD. All existing electrical equipment and power points located below the Flood

Planning Level must have residual current devices installed to cut electricity supply during flood events.

Car parking – D4
Vehicle barriers or restraints are to be installed so as to prevent vehicles leaving the site. Protection must be provided for all events up to the 1% AEP flood event.

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 of 3.16m AHD. 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 of 3.66m AHD 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.

11. **Photographic Archival Record**
A photographic archival record of the site is to made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the NSW Office of Environment & Heritage (OEH).

This record must be submitted and approved by the Certifiying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

12. **Height of metal screen**
The height of the metal screen wall wall in front of the brick structure at the north-western corner of the site, should be reduced to be AFL 4.500 as previously proposed, to allow views to the heritage building from the street level. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the streetscape.

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

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site adjacent to Stella Maris School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and

submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

14. **Submission of Engineering Plans**
The submission is to include Civil Engineering plans for the introduction of:

- RMS Type 1 pedestrian fencing along the Pittwater Road frontage of the site to prevent pedestrians crossing Pittwater Road and redirect them to the eastern boundary of the site.
- measures to physically prevent right turns to and from driveways serving the site such as a narrow median (potentially elsholz kerb) between the Balgowlah Road roundabout and the eastern boundary of the site
- reconstructed driveways at the eastern end of the site. The two easternmost driveways to be reconstructed as standard layback crossings rather than at grade kerb returns. Plans to be inclusive of details of any required footpath adjustments
- signposting and linemarking to restrict vehicle movements to and from each of the driveways to the following:
  - The Eastern Driveway is to be Left In and Left Out only.
  - The Eastern Central driveway is to be Left In only.
  - The Western Central driveway is to be Left Out only.
  - The Western driveway is to be Left In and Left Out Only. Left In to be restricted to trucks Only.

These plans are to be consistent with Council's specification and/or TfNSW specifications for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Council and Transport for NSW for concurrence prior to the issue of the Construction Certificate.

Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.

Reason: To improve traffic and pedestrian safety and ensure compliance with TfNSW and Council specifications for engineering works.

15. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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.

16. **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.

17. **Building Code of Australia Requirements**

The Building Code of Australia fire safety measures as detailed and recommended in the Building Code of Australia Report prepared by NW Building Certification, dated 29/10/2021, Report Ref No. NW20/5204, Rev 1, including the need for Performance Solutions 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.

18. **Building Code of Australia Access Requirements**

The Building Code of Australia works and access upgrading measures to upgrade the building as detailed and recommended in Accessibility Report prepared by NW Access Consulting dated 28/10/2021, Report Ref No 20/ACC/1768, Rev 1, 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 Access for building occupant safety.

19. **Signage**

The following amendments shall be made to the proposed signage:

- The pylon signs are not approved and shall be deleted from the proposal.
- The painted wall sign to the northern facade shall be reduced in size to 6.425m x 1.938m.

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

Reason: To preserve the significance of the heritage item.

20. **Details of new structural elements to mezzanine level**
Retention of the all significant structural elements is required and the new structural elements are to be reversible and non-invasive techniques are to be used where fixing of new elements to the existing structure is also required. The locations and details of the new structural elements should be provided to ensure that the original building with all significant structural elements will be retained, readily identifiable and any of the modifications could be reversed in the future if required. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To preserve the original fabric and the structural integrity of the heritage building.

21. **Maintenance Plan**
The retention of the former office building is supported by Heritage. A maintenance plan is required for the site of the heritage item including the former office building. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the heritage item.

22. **Waste Management Plan**
A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

23. **Environmental Management Plan**

An Environmental Management Plan (EMP) must be prepared by a suitably qualified person as recommended in the Detailed Site Investigation report STC-2248-19379 prepared by ADE Consultant Group, dated 3 August 2021.

The EMP must:

· be prepared in accordance with guidance issued by the EPA, including *Preparing environmental management plans for contaminated land - Practice note (NSW EPA, 2022);*

· provide methods of storing and disposing any contaminated material in accordance with

relevant NSW legislation and NSW EPA guidelines, including *Protection of the Environment Operations (Waste) Regulation 2014* and requirements of the *Protection of the Environment Operations Act 1997*: and

· be provided to the Principal Certifier.

Reason: Minimise risk of harm by effectively managing land contamination encountered during excavation works.

24. **Plans of Kitchen Design, construction and fit out**
Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

25. **Plans of Mechanical ventilation**
Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

26. **Plan of Management Update**
An updated Plan of Management is to be prepared to the satisfaction of Council's Environmental Health Team and the Principal Certifying Authority. Updates to the Plan of Management are to include:
   - Measures to ensure no uncontained waste is kept on the premises with waste to be wholly contained within appropriate waste receptacles;
   - Pest control measures; and
   - Details be included in the plan of management on how the premises including loading dock will be kept in a clean and healthy condition that prevents pest harbourage and potential land/water pollution from waste.
   - Details of complaints handling procedures, including a phone number for complaints that must be operational/answerable for at least 2 hours following closing times. A register must be kept of all complaints and actions, and proposed changes to the POM as a result, and must be available to Council upon request.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team.

Reason: To maintain amenity of the surrounding area and prevent land/water pollution.

27. **Notification of Contamination to EPA Contaminated Land Register**

Prior to Construction Certificate being issued, evidence must be provided to the Principal Certifier and Council that the site has been notified to the NSW Environment Protection Authority under Section 60 of the *Contaminated Land Management Act 1997* where required.

Reason: To consider if the site is to be classified as a "notified site" for ongoing management of contamination.

28. **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:
- “Tap in” details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

29. **Waste and Recycling Requirements**
Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

30. **Plan of Management - Hours of Operation**
The submitted Plan of Management shall be amended to reflect the hours of operation approved by this consent, including trading hours, access to the site by staff, deliveries, waste collection and the use of heavy machinery.

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

Reason: To ensure that the Plan of Management is consistent with the consent.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

31. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

32. **Road Occupancy Licence**
Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

33. **Demolition Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to Stella Maris School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

34. **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 by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum, the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length x 1.8m high fencing to the alignment as shown on the Landscape Plan, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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.

35. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, 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,
iv) any exempt species tree(s) removed as referred above in item i) shall be replaced at a ratio of 1:1 with a locally native tree species.

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.

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

37. **Implementation of Demolition Traffic Management Plan**
All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

38. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

39. **Ongoing Management**
The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

40. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

41. **Geotechnical Requirements**
All recommendations included in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

42. **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.

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

sufficiently stabilised with vegetation.

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

44. **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.

45. **Environmental Management Plan Implementation**

The Environmental Management Plan must be implemented during all construction and excavation works.

Reason: Prevent harm to environment and human health in accordance with NSW legislation and guidelines.

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

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

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

47. **Certification of Services (B3)**
Certification that new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the FPL and waterproofing of electrical equipment and installation of residual current devices below the Flood Planning Level (B3)

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events.

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.

48. **Signage and Linemarking – Implementation**
The applicant is to install all signage and linemarking, as per any Roads Act approval. These

works are to be completed prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with the Road Act.

49. **Loading Dock Management Plan**
A Loading Dock Management Plan shall be prepared by the applicant and submitted to and approved by the Principal Certifying Authority prior to the issue of any Occupation Certificate.

The Plan will need to demonstrate how the loading dock will be managed to ensure that there will be only one vehicle entering and exiting the loading dock access in any period and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. The plan is to stipulate that all delivery vehicles are to approach the site from the east and depart to the west using the State Road network rather than local roads. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure the loading dock is managed appropriately and that site management is aware of the conditions of use.

50. **Geotechnical Certification Prior to Occupation Certificate**
Certification from a suitably qualified and practicing Geotechnical Engineer that all recommendations included in the Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the development shall be provided to the Principal Certifying Authority prior to the issue of a Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

51. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

52. **Registration of Food Business**
Any food businesses operating within the premises must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

53. **Kitchen Design, construction and fit out of food premises certification**
Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises

Reason: To ensure that the kitchen complies with the design requirements.

54. **Mechanical Ventilation certification**
Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

55. **Acoustic Certification of Mechanical Plant**

A suitably qualified acoustic consultant must provide a compliance report, to the Principal Certifier's satisfaction, that mechanical plant have been installed and operate in compliance with the noise emission criteria of section 3 of the "Operational Noise Emission Assessment – Harris Farm Markets – 243 Pittwater Road, Manly, NSW" (2808.R008.JC.220321) by Acoustic Dynamics, dated 23 March 2022.

Reason: Protect acoustic amenity of surrounding residential receivers.

56. **Garbage and Recycling Facilities**
All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

57. **Fire Safety Matters**
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

58. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.
Reason: To ensure waste and recycling facilities are provided.

59. **Completion of works in Road Reserve**
That the following works be completed to Council and Transport for NSW satisfaction at no cost

to Council or Transport for NSW in accordance with the approved plans:

- measures to prevent right turns to and from each driveway serving the site
- pedestrian fencing along the frontage of the site
- reconstruction of the two easternmost driveways as standard layback vehicle crossings and necessary footpath adjustments
- signposting and linemarking works restricting permitted vehicle movements to and from each driveway

Certification of satisfactory completion to be provided to the certifying authority prior to release of occupation certificate.

Reason: <satisfactory completion of required works to address safety concerns>.

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

60. **Delivery Vehicles and delivery hours**
Deliveries by vehicles larger than small rigid vehicles are only permitted to access the site via the westernmost driveway and only between the following hours:

Monday to Friday - 9:30am to 3:00pm
Saturday, Sunday and Public Holidays - 8:00am to 10:00am & 4:00pm to 6:00pm

Deliveries are not to be undertaken by trucks longer than 15.6m articulated vehicles.

Reason: to reduce impacts on traffic, safety within the carpark and minimise noise

61. **Implementation of Loading Dock Management Plan**
All delivery vehicle ingress and/or egress activities are to be undertaken in accordance with the approved Loading Dock Management Plan. Vehicle queuing on public road(s) is not permitted.

Reason: To allow for safe and appropriate vehicular access.

62. **Landscaping adjoining vehicular access**
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

63. **Open food preparation/storage/display areas**
Open, unwrapped food shall only be prepared or displayed in areas where a suitable ceiling is installed that will protect food from contamination and not under open roof truss/beam or elevated walk way areas.

Reason: To ensure food is protected from contamination.

64. **Mechanical Plant Noise**
Mechanical plant must be operated in compliance with the noise emission criteria of section 3 of the “Operational Noise Emission Assessment – Harris Farm Markets – 243 Pittwater Road, Manly, NSW” (2808.R008.JC.220321) by Acoustic Dynamics, dated 23 March 2022.

Reason: Protect acoustic amenity of surrounding residential receivers.

65. **Hours of Operation**
The hours of operation are to be restricted to:

Hours of trading:
Sunday to Wednesday and Public Holidays - 7:00am to 8:00pm
Thursday to Saturday - 7:00am to 9:00pm

Hours for access to site by staff:
Sunday to Wednesday and Public Holidays - 6:00am to 9:00pm
Thursday to Saturday - 6:00am to 10:00pm

Deliveries, waste collection and use of heavy machinery (ie. forklift):
Monday to Saturday - 7:00am to 6:00pm
Sunday and Public Holidays - 8:00am to 6:00pm
Note: Deliveries by vehicles larger than small rigid vehicles are subject to further restrictions that take into account traffic impacts.

Upon expiration of the permitted hours, all service shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

66. **Lighting and Illuminated Signage**
All external lighting and illuminated signage shall be limited to the approved trading hours of the premises, and shall be suitably directed to minimise glare impacts to surrounding residential properties.

Reason: To maintain the amenity of surrounding properties.

67. **Signage**
No signage shall be permitted that is not affixed directly to the building.

Reason: To minimise visual impact associated with signage.

68. **Portable Refrigerators**
No portable refrigerators are permitted to be used on the site without prior consent from Council.

Reason: To maintain the amenity of surrounding properties.

69. **Ancillary Uses**
The ancillary uses on the site including the butcher, bakery, cafe, fish and chip shop and fresh food bar, shall not operate independently or outside of the approved trading hours of the primary retail shop use.

Reason: To ensure that the operation of the premises is consistent with the consent.

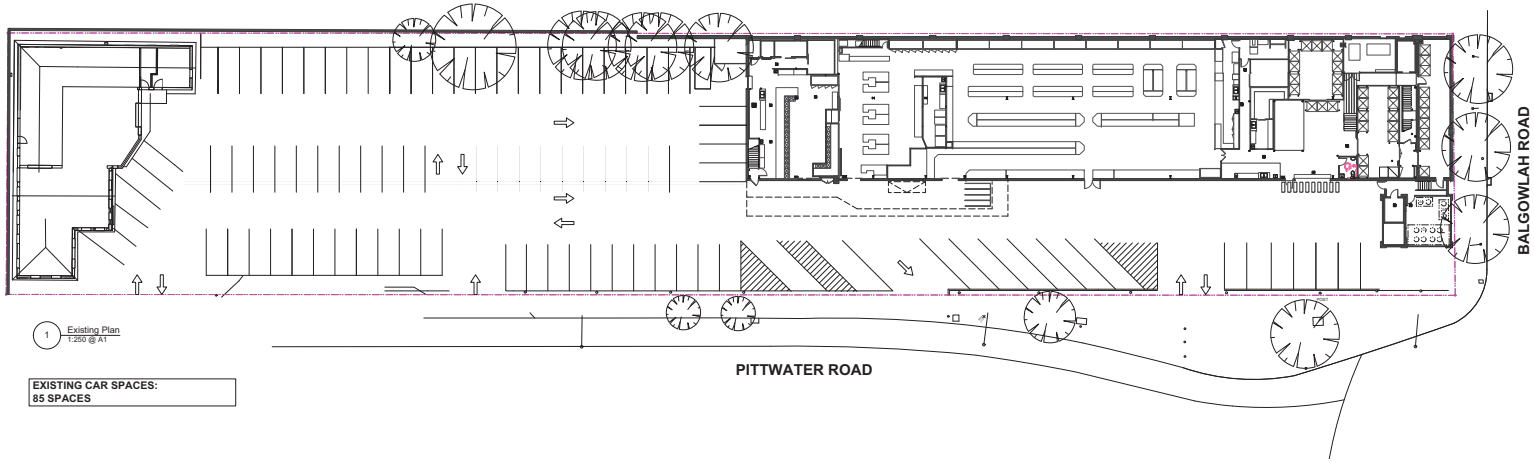
70. **Service Vehicle Area**
The delivery vehicle manoeuvring areas on the property near the westernmost driveway must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads

at any time.

Reason: To ensure compliance with Australian Standards and prevent obstructions to traffic flows.

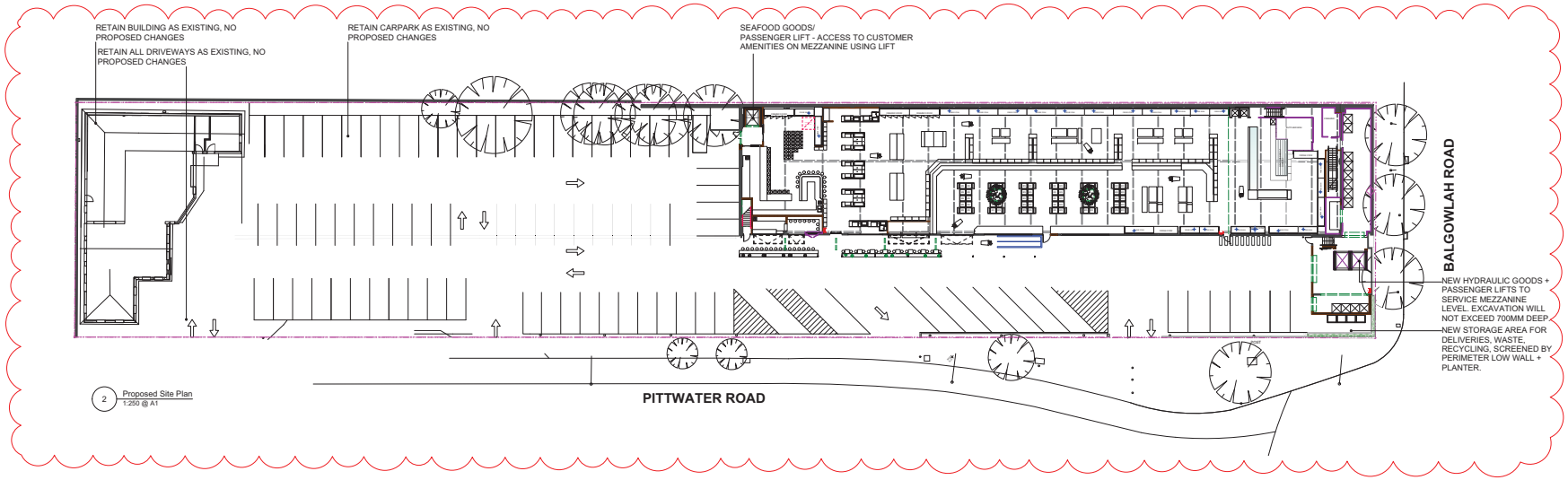
71. **Permitted movements to and from driveways**
- The Eastern Driveway is to be marked and signposted for Left In and Left Out vehicle movements only.
- The Eastern Central driveway is to be marked and signposted for Left in vehicle movements only.
- The Western Central driveway is to be marked and signposted for Left out vehicle movements only.
- The Western driveway is to be marked and signposted for Left in and Left Out movements only. Left in movements are to be restricted to trucks ONLY

Reason:to minimise impacts of development related traffic on the road network



1 Existing Plan
1:250 @ A1

EXISTING CAR SPACES:
85 SPACES



2 Proposed Site Plan
1:250 @ A1

FOR APPROVAL

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Rev	Description	Date
N	FOR APPROVAL	16/3/21
O	FOR APPROVAL	4/8/21
P	ISSUED FOR TRAFFIC REVIEW	13/11/21
Q	ISSUED FOR REVIEW	30/11/21
R	FOR DISCUSSION	23/3/22
S	FOR APPROVAL	28/3/22

Harris Farm Markets Manly
19043_07
243 Pittwater Road, Manly NSW 2095

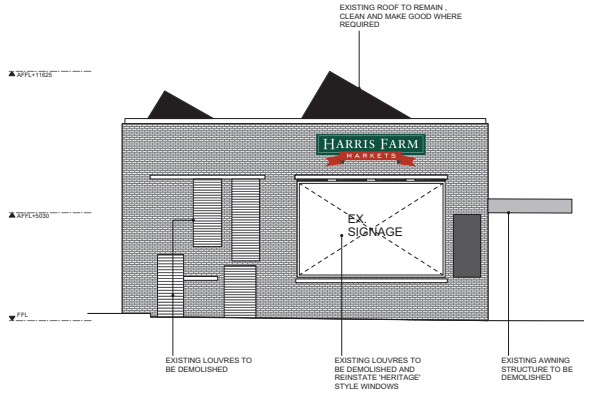
John Jan
Harris Farm Markets

Site Plan - Existing and Proposed

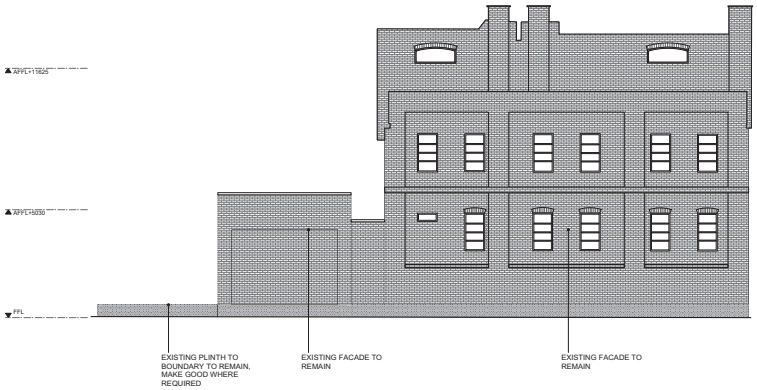
Date	Scale	Drawn:
22/11/19	1:250@A1	TL

DRAWING NO.
DA.001
REVISION
S

1 Existing External Elevation_Northern Facade
1:100 @ A1



2 Existing External Elevation_Eastern Facade
1:100 @ A1



3 Existing External Elevation_Western Facade
1:100 @ A1

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Rev	Description	Date
D	FOR COORDINATION	26/6/20
E	FOR COORDINATION	14/7/20
F	FOR COORDINATION	15/9/20
G	FOR COORDINATION	24/9/20
H	FOR APPROVAL	29/10/20
I	ISSUED FOR DRAFT REVIEW	12/3/21
J	FOR APPROVAL	16/3/21
K	FOR APPROVAL	4/8/21

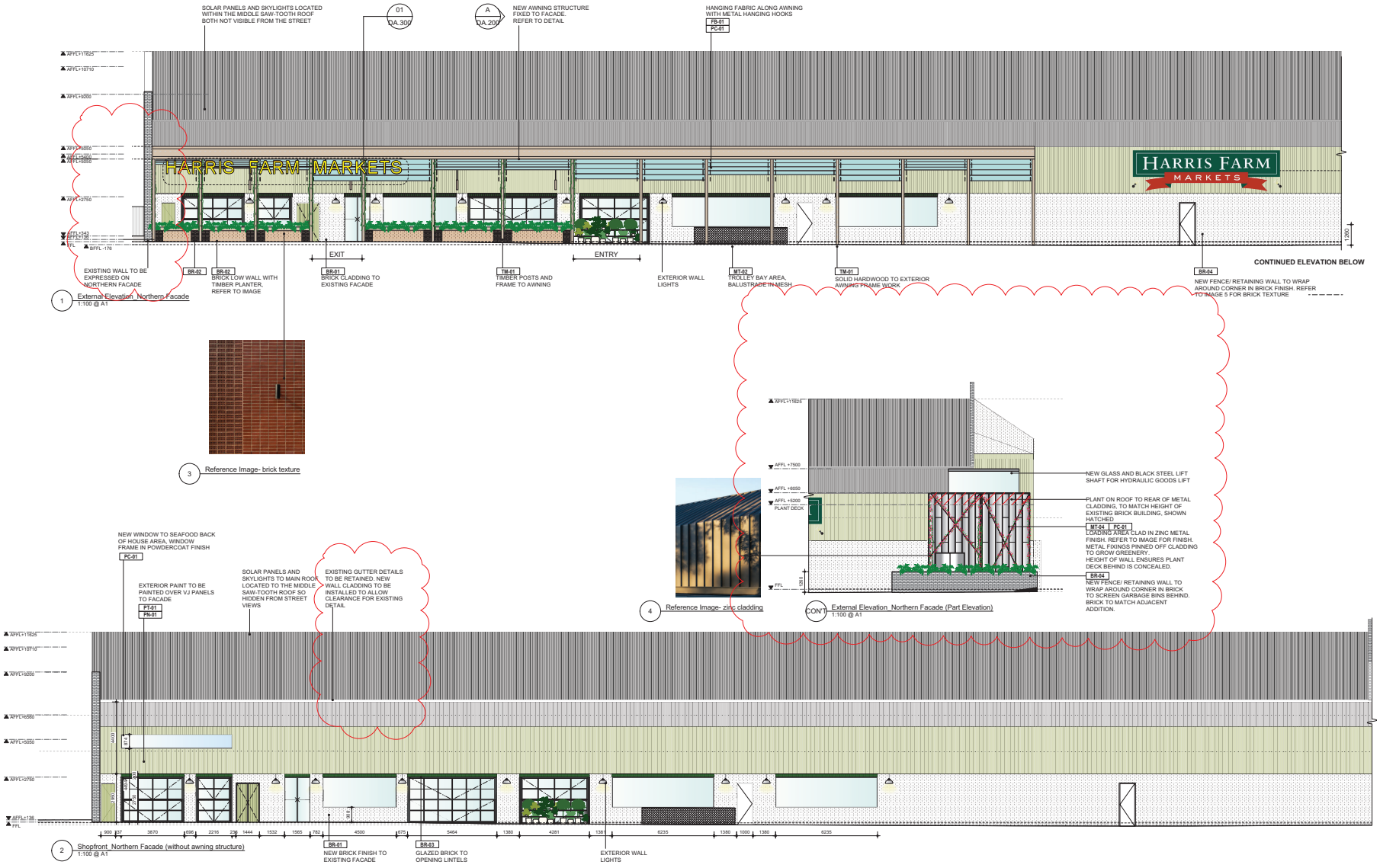
Harris Farm Markets Manly
19043_07
243 Pittwater Road, Manly NSW 2095
John Jan
Harris Farm Markets

Existing External Elevations

Date	Scale	Drawn:
11/22/19	1:100@A1	TL

0 2 5
Scale 1:100@A1 metres

DRAWING NO.
DA.200
REVISION
K



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Rev	Description	Date
F	FOR COORDINATION	15/9/20
G	FOR COORDINATION	24/9/20
H	FOR APPROVAL	26/10/20
I	ISSUED FOR DRAFT REVIEW	12/3/21
J	FOR APPROVAL	16/3/21
K	FOR APPROVAL	4/8/21
L	FOR DISCUSSION	23/3/22
M	FOR APPROVAL	28/3/22

Harris Farm Markets Manly

19043_07

243 Pittwater Road, Manly NSW 2095

John Jan
Harris Farm Markets

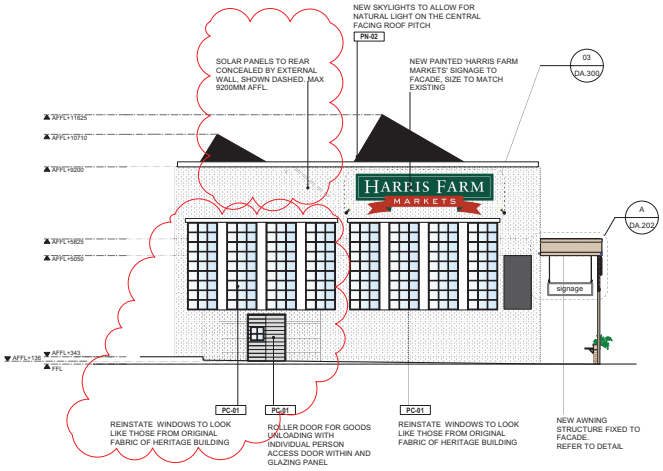
Proposed External Elevations

Date	Scale	Drawn:
11/22/19	1:100@A1	TL

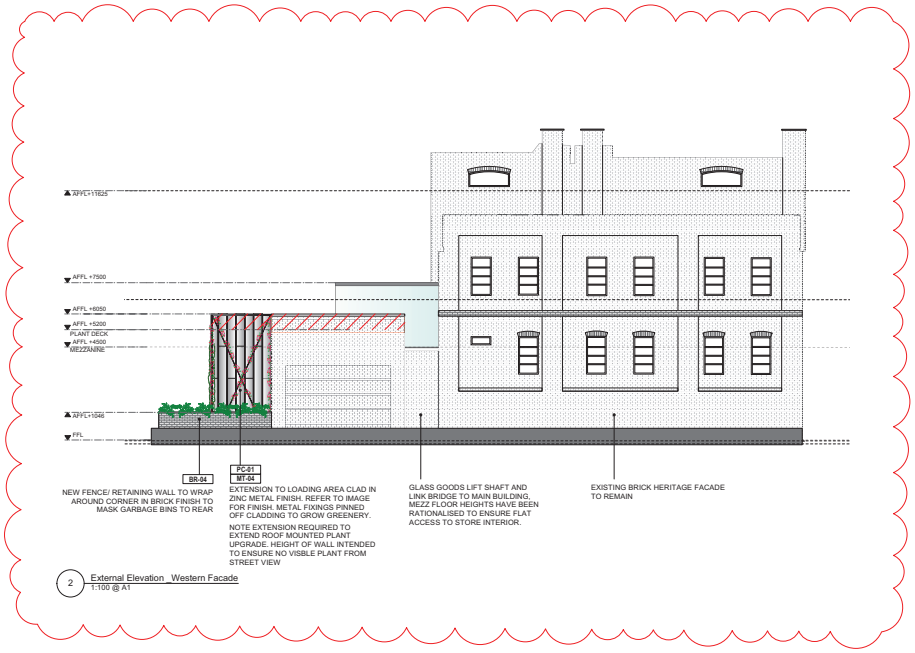
0 2 5
Scale 1:100@A1 metres

DRAWING NO.
DA.201

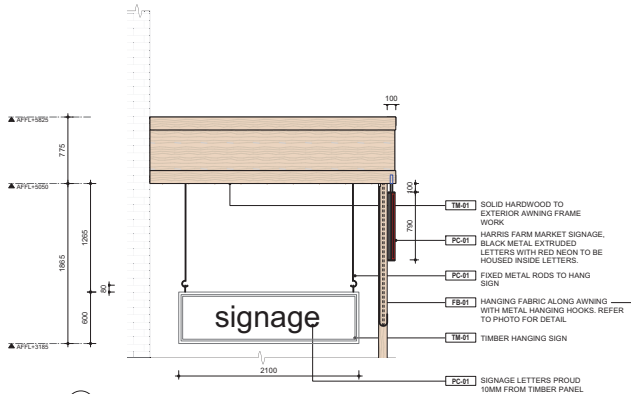
REVISION
M



1 External Elevation _Eastern Facade
1:100 @ A1



2 External Elevation _Western Facade
1:100 @ A1



A Detail_Awning structure
1:25 @ A1

B Photo_Hanging fabric awning
NTS

FOR APPROVAL

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Rev	Description	Date
F	FOR COORDINATION	15/9/20
G	FOR COORDINATION	24/9/20
H	FOR APPROVAL	26/10/20
I	ISSUED FOR DRAFT REVIEW	12/3/21
J	FOR APPROVAL	16/3/21
K	FOR APPROVAL	4/8/21
L	FOR DISCUSSION	23/3/22
M	FOR APPROVAL	28/3/22

Harris Farm Markets Manly
19043_07
243 Pittwater Road, Manly NSW 2095
John Jan
Harris Farm Markets

Proposed External Elevations

Date	Scale	Drawn:
11/22/19	1:100/25@A1	TL

0 2 5
Scale 1:100@A1 metres

DRAWING NO.
DA.202
REVISION
M

URBIS

HARRIS FARM MARKETS – MANLY

Clause 4.6 Request

Prepared for
HARRIS FARM MARKETS
29 March 2022

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Stephen White
Senior Consultant	Jessica Ford
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Project Code	P0014824
Report Number	Final

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1. INTRODUCTION

This Clause 4.6 Variation Request ('**the Request'**) has been prepared on behalf of Harris Farm Markets ('**the applicant'**) and accompanies a Development Application ('**DA**') for alterations and additions to Harris Farm Markets store at 243-259 Pittwater Road, Manly.

The Request seeks an exception from the height of buildings development standard prescribed for the site under clause 4.3 of the *Manly Local Environmental Plan 2013* (**MLEP 2013**). The variation is request is made pursuant to clause 4.6 of the MLEP 2013.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd dated August 2021 and as amended by the Response to Request for Information prepared by Urbis Pty Ltd dated March 2022.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the Statement of Environmental Effects (August 2021) and Response to Request for Information letter (March 2022).
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The key features of the site are summarised in the following table and illustrated in the following **Figure 1** and **Figure 2**.

Table 1 – Site Description

Feature	Description
Street Address	243-259 Pittwater Road, Manly
Legal Description	Lot 1 in DP 923368 Lot 1 in DP 923887 Lot 1 DP 924434.
Site Area	5,149m^2
Site Dimensions	Approx. 167m frontage to Pittwater Roader Road Approx. 28m frontage to Balgowlah Road
Site Topography	The site is generally flat and gently slopes to the north west.
Vegetation	Existing vegetation is clustered along the southern boundary adjacent to the car park and along Pittwater and Balgowlah Roads.

Figure 1 – Location Plan

Source: SIX Maps

2.2. EXISTING DEVELOPMENT

The site is occupied by Harris Farm Markets, an Australian grocery chain that specialises in fruit, vegetables, and delicatessen. The main building is a single storey factory structure located in the south west corner of the site. The existing main building consists of concrete floors, steel and timber framed walls sheeted externally with pre-finished sheet metal lining.

In the south east corner of the site is an unused single storey building previously used as an Auto Service Centre.

The site contains 85 car parking spaces and vehicular access is available via four existing access driveways off Pittwater Road. The loading area is located at-grade in the north west corner of the site.

Photographs of key features of the site are provided in **Figure 2**.

Figure 2 – Photographs of the Site

Picture 1 Eastern Elevation of Main Harris Farm Building fronting car park

Source: Urbis

Picture 2 Western Elevation of Main Harris Farm Building fronting Balgowlah Road

Source: Urbis

Picture 3 Auto Tune Building located in south eastern corner of the site

Source: Urbis

Picture 4 View of Main Harris Farm Building from Pittwater Road

Source: Urbis

2.3. LOCALITY CONTEXT

Manly is a beach-side suburb of northern Sydney, located 17 kilometres north-east of the Sydney central business district. In particular, the immediately surrounding character is described as follows:

- **North**: on the opposite side of Pittwater Road, Stella Maris College (Catholic girls' high school) and medium density residential buildings.
- **East**: adjoining the site to the east is an early leaning childcare centre and medium density residential buildings further beyond. Further east (600m) is Manly Beach.
- **South**: low to medium density residential development and Manly Andrew 'Boy' Charlton Swim Centre.
- **West**: on the opposite side of Balgowlah/ Pittwater Road is a significant open space corridor comprising Manly Golf Course; Keirle Park (soccer fields and tennis courts); Manly Croquet Club, Manly Rugby Union Club.

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for alterations and additions to the existing Harris Farm grocery store at 243- 259 Pittwater Road, Manly.

A detailed description of the amended development description is provided in the Response to Request for Information prepared by Urbis Pty Ltd and dated March 2022.

A summary of the key features of the proposed development is provided below:

- Demolition of existing fit out in Harris Farm Markets building including mezzanine levels and provision of new store fit-out including upgrades to the facade and openings.
- Provision of a new storage area for waste and recycling in north western corner and provision of new fencing to loading area comprising 1.2m high retaining wall to wrap around corner in brick finish and 3.3m high fence above clad in zinc metal finish and greenery to screen loading area behind.
- Installation of lift that connects to the mezzanine level in the loading dock area.
- Installation of solar panels to the middle section of the saw-tooth roof and provision of new skylight.
- Installation of the following signage throughout the site, including:
  - Harris Farm Markets painted signage on the northern façade. Dimensions 9m long and 2.5m high.
  - Harris Farm Markets painted signage on the eastern façade. Dimensions 6.4m long and 1.9m high.
  - Harris Farm Markets signage, black metal extruded letters with red neon on northern façade. Dimensions 14.4m wide and 0.8m high.
  - 4 x under awning signs. Dimensions 0.6m high and 2.1m wide.
- Removal of 6 x flag poles from along Pittwater Road frontage.
- Hours of operation between 6am to 9pm 7 days per week.

4. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. DEVELOPMENT STANDARD

Clause 4.3 of the MLEP 2013 sets a maximum height of building control of 8.5m for the site. The site is outlined 'in red' in the following **Figure 3** extract.

Figure 3 – Height of Building Map

Source: MLEP 2013

4.2. PROPOSED VARIATION

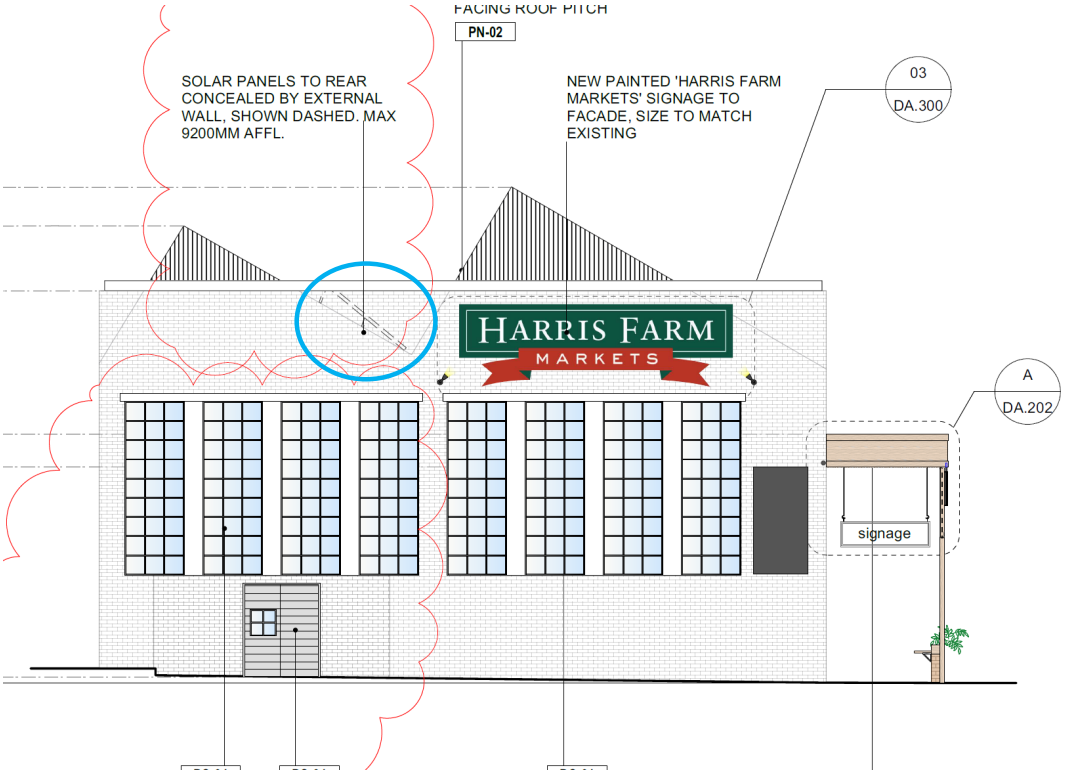
The existing building has a height of 11.63m and exceeds the height of building standard prescribed by MLEP 2013. Although no changes are proposed to the built form of the existing building, the proposed solar panels will have a maximum height of 9.2m and will exceed the height of buildings control.

It is noted that the existing built form exceeds the height of building standard, and the proposed works will be in keeping with this original built form.

The minor noncompliance of up to 0.7m is considered acceptable as the solar panels will be recessed behind the existing building roof walls and will not be visible from the street. The proposed minor noncompliance is also considered acceptable due to the environmental benefits of renewable energy.

The solar panels are illustrated in the **Figure 4** extract overleaf. It is noted the new painted 'Harris Farm' sign located along the eastern elevation is also partly located above the 8.5m height limit. However, it is replacing an existing painted sign of the same size and dimensions that already exists in this location and therefore has not been addressed in this clause 4.6.

Figure 4 – Proposed Solar Panels to Roof



Source: Luchetti Krelle

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the MLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of MLEP 2013 are:

(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.

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

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

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that 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 it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of building development standard prescribed for the site in clause 4.3 of MLEP 2013 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of building development standard be varied.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of building development standard in accordance with clause 4.3 of the MLEP 2013.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The 8.5m height of building control prescribed by clause 4.3 of the MLEP 2013 is a development standard capable of being varied under clause 4.6(2) of the MLEP 2013.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of the MLEP 2013.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in Wehbe v Pittwater Council [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [16]-[17]. Similarly, in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [34] the Chief Judge held that "*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*".

This Request addresses the first method outlined in Wehbe v Pittwater Council [2007] NSWLEC 827. This method alone is sufficient to satisfy the 'unreasonable and unnecessary' requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Initial Action at [19] and Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the 'unreasonable and unnecessary' requirement.

The Request also seeks to demonstrate the 'unreasonable and unnecessary' requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of building development standard as specified in clause 4.3 of the MLEP 2013 are detailed in **Table 2** overleaf. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 – Assessment of consistency with clause 4.3 objectives

Objectives	**Assessment**
(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,	The proposed solar panels are integrated into the saw tooth roof design and will generally not be visible from the public domain.
(b) to control the bulk and scale of buildings,	The proposed solar panels are integrated into the roof form and will generally be concealed from public view. The solar panels will not add to the bulk or scale of the existing building.
(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 views to nearby residential development from public spaces.
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),	The proposed development does not compromise views from nearby residential development to public spaces. There are no harbour or foreshore views that would be interrupted by the proposed development.
(iii) views between public spaces (including the harbour and foreshores),	The proposed development does not compromise views between public spaces. There are no harbour or foreshore views that would be interrupted by the proposed development.
(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,	The existing building has a height of 11.62m and exceeds the 8.5m height of building standard. The solar panels will be recessed behind the existing building roof walls and will not create additional overshadowing impacts.
(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.	The site is not located in a recreation or environmental protection zone.

The objectives of the height of building development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43] as applied in Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24])

The proposed solar panels are proposed as an environmental benefit for the site and exceed the height control by virtue of the non-compliant height of the existing building. The solar panels are in keeping with the existing built form and do not result in any additional overshadowing or visual bulk impacts.

- **The burden placed on the community (by requiring strict compliance with the height of building standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

The solar panels provide a wide range of environmental benefits and do not create overshadowing or visual bulk impacts. Compliance with the 8.5m height of building development standard would remove the opportunity to incorporate renewable energy sources into the proposal.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

> *"…in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
>
> *…there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development"*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The objectives of the height of building development standard are achieved, notwithstanding the non-compliance with the standard. The proposed solar panels are integrated into the roof form and will generally be concealed from public view and accordingly will not add to the bulk or scale of the existing building.
- The proposed solar panels are essential to the energy efficiency of the business.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of building non-compliance in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 2** above. The proposal is also consistent with the land use objective that applies to the site under the MLEP 2013. The site is located within the B1 Neighbourhood Centre zone. The proposed development is consistent with the relevant land use zone objective as outlined below.

The single objective of the B1 zone is:

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

The proposed solar panels will improve the energy efficiency on the site and are not visible from the street. The solar panels are critical to the success of the proposed refurbishment works that will provide an improved customer experience and amenity for the people who live, work and visit the site and broader area.

The proposed development will be in the public interest notwithstanding the proposed variation to the height of building development standard as it is consistent with the objectives of the particular standard and the objective for development within the zone in which the development is proposed to be carried out.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of building development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals due to the unique situation of the existing building exceeding the height control.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of building development standard and the land use zone objective despite the technical non-compliance.

The existing building has a height of 11.62m and exceeds the 8.5m standard. The proposed solar panels exceed the development standard by virtue of the existing building height, are in keeping with the existing built form and will not create additional overshadowing or visual bulk impacts.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of building development standard contained within clause 4.3 of the MLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of building development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposed development achieves the objectives of the height of building development standard and the land use zone objective despite the technical non-compliance.
- The existing building has a height of 11.62m and exceeds the 8.5m standard. The proposed solar panels are in keeping with the existing built form and do not create unreasonable additional overshadowing or visual bulk impacts.
- The proposed minor noncompliance is also considered acceptable due to the environmental benefits of renewable energy.
- There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of building development standard should be applied.

DISCLAIMER

This report is dated 29 March 2022 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd **(Urbis)** opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Harris Farm Markets **(Instructing Party)** for the purpose of Clause 4.6 Request **(Purpose)** and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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ITEM 4.3	**DA2021/2065 - MARKET LANE, MANLY - USE OF PREMISES (PART ROAD RESERVE AND LOT 2849) AS A FOOD AND DRINK PREMISES (FOR A 'SMALL BAR').**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/310504**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2065 for Use of premises (part Road Reserve and Lot 2849) as a Food and Drink Premises (for a 'Small Bar') on land at Lot 2849 DP 822227, 0 Market Lane, MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2065

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 2849 DP 822227, 0 Market Lane MANLY NSW 2095
Proposed Development:	Use of premises (part Road Reserve and Lot 2849) as a Food and Drink Premises (for a 'Small Bar')
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Robinson Urban Planning Pty Ltd

Application Lodged:	02/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	11/11/2021 to 25/11/2021
Advertised:	Not Advertised
Submissions Received:	18
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 24,340.00

Executive Summary

The proposed outdoor 'small-bar' is for a limited term use of a portion of space on public land (operational land and part road reserve) within Market Lane Manly and is referred to the *Northern Beaches Local Planning Panel* since the Development Application (DA) has received more than 10 objections and is located on Council owned property.

The small bar has been operating as a "pop-up style' small wine bar under an existing licence / lease arrangement for more than 12 months as part of local business initiatives to encourage 'street activation' / enliven the central business district (CBD) laneway areas / outdoor dining / pedestrian areas within Manly CBD. The CBD area is subject to an Alcohol Free Zone (AFZ) which is temporarily 'suspended' within the confines of the small bar area during its operating hours. The current operations also have a licence from *Liquor and Gaming NSW* which would be re-applied / revised pursuant to the

current development application being approved. Pursuant to the NSW *Liquor Regulation 2018* a 'small bar' can have a maximum capacity of 120 persons, which this development application proposes.

Principal assessment issues relate to hours of operation, noise (including live and recorded music), customer capacity, co-operation with adjacent businesses for food service, management of service considerations (deliveries, toilets, parking, laneway access, waste / recycling, pedestrian thoroughfare). The applicant has addressed these considerations by revising hours of operation, service parameters, operational management, site area, furniture /fencing / bar service position and reduced seating capacity. A Plan of Management, Acoustic report, Social Impact Statement, Access report and BCA report have been provided to address concerns related to these principal assessment issues.

Subject to conditions the proposal is supported by Council's Traffic, Waste, Engineering, Environmental Health, Property, Road assets and other 'internal referral' sections are satisfied the proposal can continue to operate in accordance with the revised smaller site area, which is a maximum of 148.1 square metres (sqm). The subject development application will assist to provide security of tenure / lease for the current operator "Market Lane Live". No objection has been raised by NSW Police or other Service providers with respect to the development application.

Issues raised by public submissions have been considered in detail and addressed either by conditions or whereby the applicant has adjusted operational components of the proposal to accommodate or respond appropriately to those concerns. Subject to conditions, including a '3 year time limit', the application for a "small bar" as a time limited operation with non-permanent structures is supported for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks development consent for the fit-out and use of an area of public space within "Market Lane", Manly for use as an outdoor small bar. A ***small bar*** means "the premises to which a small bar licence relates", pursuant to the *Liquor Act 2007*. A small bar license has limited authorisation and restrictions pursuant to Division 3A of the *Liquor Act 2007.* In summary, these licence matters relate to the authorisation to sell alcoholic drinks for consumption, trading hours, miscellaneous conditions including maximum capacity, public access, and food availability. Additional restrictions may be placed by specific matters administered via *Gaming and Racing NSW.*

The subject development application includes structures for the small bar are that are all re-locatable but setup in a defined garden setting, surrounded by low picket fencing sections as a perimeter / boundary.

The small bar area is located to the east of the Manly Library Building, the proposal is intended for day and night use within a triangular shaped section on public land within Market Lane.

The proposed operations (as amended) include:

- Monday to Thursday : 4:00 pm to 10.00 pm (except on Public Holidays that fall on Monday to Thursday when trading hours will be between 12 midday to 10:00pm)
- Friday : 4:00 pm to 10.30 pm. (except on Public Holidays that fall on a Friday then trading hours will be 12 midday to 10:30pm)
- Saturday : 12 midday to 10:30 pm
- Sunday : 12 midday to 10:00 pm
- No trading on Christmas Day.
- New Years Eve operations may extend to 1am (being 1st Jan) by prior written notice to Council.

- Employees: up to 4
- Live music and amplified music at selected times (after 5pm for 'background' recorded music, and later times for live* music)
- Capacity: up to 120 persons (proximity 100 seating with 20 persons at 'standing' tables)
- Food: No food preparation on site. Cooked food supplied by adjacent restaurants in the laneway.
- Beverages: Variety of alcoholic and non-alcoholic drinks.
- Serving: Face-to-face bar service and for customers of the small bar QR code service (by participating adjacent restaurants). Cups / utensils either reusable or disposable as appropriate to the food / drink product / supplier.
- Waste: Commercial self-contained bin service for daily operations.
- Toilets: Closest available are at adjacent library building (operator managed access pass for out-of-hours times)
- Parking & Access: Reliant on local public parking / taxi / public transport. Level pedestrian access through and around wine bar perimeter retained as appropriate to operating hours.
- Entry / Exit: Defined single point of entry during operating times while bar service is open.
- The applicant has not proposed that QR 'food service' from participating adjacent restaurants be limited to a portion / percentage of the available tables within the wine bar area.

*The proposed live music (acoustic or amplified) schedule (subject to seasonal gigs & subject to venue opening / weather / available musicians) is:

- Monday – Thursday: 6pm – 9pm (after 5pm for 'background' recorded music, except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm)
- Friday: 5pm – 10.00pm (‘background’ recorded music also on occasion)
- Saturday: 3pm 10.00pm (‘background’ recorded music also on occasion)
- Sunday: 3pm – 10pm (‘background’ recorded music also on occasion)
- (Note: Noise limiter device to be used to ensure amplifier / speaker volume is consistent with Acoustic Report recommendations)

(Note: Council's environmental Health Officer has recommended some adjustment to these times, by way of recommended conditions.)
A temporary ‘pop-up’ wine garden has been operating successfully in this location since January 2021, and Council, through an open tender, sought expressions of interest (on 12 May 2021) from local venue operators to enter into a longer-term arrangement to continue its operation. The site image below shows the general appearance and layout currently in operation. The wine bar has proven to be a popular venue during evenings / afternoons (weather permitting).

Image: Existing set-up of the small bar. The layout is to be adjusted as part of the current DA.

(Note: The capacity, layout and hours of operation has been revised / reduced from that in the *Statement of Environmental Effects* during the course of the DA assessment period in response to referral comments, submissions and operational considerations by the Applicant as part of the application process.)

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 - Zone B2 Local Centre
Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)
Manly Development Control Plan - 3.8 Waste Management
Manly Development Control Plan - 3.10 Safety and Security
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.5 Manly Town Centre and Surrounds
Manly Development Control Plan - 4.2.5.4 Car Parking and Access
Manly Development Control Plan - 4.2.5.6 Late Night Venues
Manly Development Control Plan - 5.1.1 General Character

SITE DESCRIPTION

Property Description:	Lot 2849 DP 822227 , 0 Market Lane MANLY NSW 2095
Detailed Site Description:	The subject site is a small triangular shaped section (248.1sqm) of public land, located within Market Lane, Manly (the site) which is to the east of the Manly Library Building. The site boundaries are defined by a perimeter low picket fence corresponding with the site plan below. The road reserve area does not have a registered Deposit Plan identifier. The site is partly also within Lot 2849 DP 822227 which also contains the Manly Library building. The area of the proposed wine bar is paved and level with some small street trees, minor street furniture structures and a metal framed fire stair structure (connected to Manly Library). The site is centrally located within the triangular shaped public space at the corner of Market Place and Market Lane and is bordered by commercial premises to the north and south-east. Vehicle access is available (subject to Council restrictions) along Market Lane between Whistler Street and Sydney Road

Map:

SITE HISTORY

A temporary 'pop-up' wine garden has been operating in this location since January 2021, and Council through an open tender sought expression of interest (on 12 May 2021) from local venue operators to enter into a longer-term arrangement to continue its operation there. The proposal is subject to meeting requirements under the Liquor Act and EP& A Act for development consent if the proposal is to remain.

The current owner and operator of the Market Lane Live pop-up bar was the successful tenderer as detailed in the SEE and DA documents. As part of the tender process, the operator is required to prepare and submit a DA to Council to continue this activity as a "small bar" in Market Lane, Manly.

This DA therefore seeks Council approval to install a temporary style outdoor wine bar for a fixed term within Market Lane, known as "Market Lane Live". The fixed term would be subject to review toward the end of the time period.

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 commercial / public land purposes for an extended period of time. The proposed development retains the outdoor use of the site in context of its

Section 4.15 Matters for Consideration	Comments
	urban setting of Market Lane precinct and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to Acoustic / noise information, waste handling, vehicle service access, internal layout, operational management, hours of operation, pedestrian access, food and beverage availability, day and night operations. The applicant has prepared additional information including a comprehensive response to public submissions, internal referral comments and reports. The additional information was received on 3 May 2022 and overall have resulted in a reduced intensity of use, reduced hours of operation and detailed management approach to noise, waste, access and overall operations. While these matters are generally able to be addressed or conditioned, opportunity was provided to allow the applicant to prepare and supply detailed information / response as requested. Overall the changes do not create any increased amenity impact, do not introduce any new elements (e.g. adverse trading hours) or matters that could not be addressed by conditions. The additional information does not require re-notification pursuant to Council's *Community Participation plan.* Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application in so far as the proposal does not seek to occupy a fixed building. (All new structures for the wine bar operation are relocatable) Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent including requirements for safe access and general safety / clearances, trip hazards and the like.

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. A Social Impact Statement has been provided to address this element of the Act. This acts as a basis for consideration of Community Impact consideration of the type of proposal (e.g. liquor licensed premises), its local urban surroundings, and local planning strategies to encourage 'activation' of the Manly CBD area. The nature of the proposal (being akin to a 'pop-up' wine bar) being retained in an outdoor garden setting, visibility / audibility of the proposal, and the like. (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, subject to condition, including Council's considerations for use of public space, operational services (waste, vehicle access, public accessibility, scale and intensity, day and usage, and land use urban strategies / plans / policies applicable to Manly CBD.
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, subject to conditions. The applicant has provided a detailed response to public submission issues and these are reviewed and concurred with as a considered response to address the issues. These matters are detailed within this report, with conditions applied as appropriate. The application is recommended to be limited to 3 years duration for reasons that it would allow Council to cease the use of the operation if needed, for the land (i.e re-development strategy / civil works etc), or issues arose that the use should not be appropriate to continue, in the public interest. The "sunset clause' condition does however allow for the applicant to request to apply to review / extend the 3 year limitation on an appropriate future time line.

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 11/11/2021 to 25/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 18 submission/s from:

Name:	Address:
Ms Susan Patricia Robertson	16 Thornton Street FAIRLIGHT NSW 2094
Mr Andrew Livingston Grant	10 / 48 A Queenscliff Road QUEENSCLIFF NSW 2096
Irene Daniels	Address Unknown
Vikrant Joshi	Address Unknown
Dolores Mottram	25 Surfers Parade FRESHWATER NSW 2096
Lauren Anne Waddell	5 / 30 Foam Street FRESHWATER NSW 2096
Stuart Laurence	Address Unknown
Lu Sierra	Address Unknown
Robinson Strata Management	PO BOX 280 FRESHWATER NSW 2096
Mr Matthew Donald Grant	41 Parkes Street MANLY VALE NSW 2093
Ms Barbara Ellen Maxfield	1 / 59 - 61 Lauderdale Avenue FAIRLIGHT NSW 2094
Clarke & Humel Property	17 Sydney Road MANLY NSW 2095
Mr Michael John Carr	1 / 59 - 61 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr John Mann	712 / 54 West Esplanade MANLY NSW 2095
Baxter & Jacobson Architects Pty Ltd	Level 2 37-39 The Corso MANLY NSW 2095
Constantine Nicola	C/- Suite 604, Level 6, 180 Ocean Street DARLING POINT NSW 2027
ASK Australians Pty Ltd	C/- Mr P Schweinsberg Villa 1 6 Tarragal Glen Avenue ERINA NSW 2250
Ms Ashleigh Wyn Hooker	6 / 10 Belgrave Street MANLY NSW 2095

The following issues were raised in the submissions are summarized below:

- Position, layout and capacity of the venue.
- Pedestrian access and crowd management.
- Noise, music and operating hours.
- Hygiene, rubbish, safety and toilets.
- Service of alcohol and food.
- Impact or imposition to adjacent businesses / offices.
- Hours of operation and out of hours use.
- Visual amenity and use of public land / facilities.

The above issues are addressed in detail as outline specifically in the submissions received as follows:

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- ***1. Concern that the proposal is not confined to the boundaries of the land that the operation relates.***

  Comment:

  The proposal is partly within the Lot boundary for Manly Library and partly within the space of un-numbered road reserve area for Market Lane and Market Place. The area is clearly defined by the DA and drawings provided and the application has required some minor adjustment to the proposed shape / area to meet / better respond to operational or referral or submission issues. The area is well defined in physical form by the surrounding picket fence to identify the "site" area. this issue has been suitably addressed by conditions and documentation provided and does not warrant refusal of the application. The library land and road reserve area is not identified as 'community' classified land and is permissible within the area of Manly zoned "B2 Local Centre" (noting that the AFZ is temporarily suspended during operations within the fenced area). Subject to conditions, the use of the site area (that also includes time limits) for the type of 'street activation' is not inconsistent with the 'Manly 2015 Masterplan'.

- ***2. Concern that the development partially blocks public roadways used for delivery access including garbage and pedestrian movements.***

  Comment:

  This issue has been addressed in detail by the applicant to ensure service vehicle access of up to 5.5m width along the main thoroughfare remains to have the normal pickup window up until 9am, until at which time Council bollards are already to limit access (but can be opened / lifted out for emergency). The applicant has provided suitable details regarding the layout noting also that the structures are temporary nature / removable placements. Outside the perimeter area minimum pedestrian safe clearances will be maintained. This is addressed by conditions whereby Council requires marginally wider space of 6.0m which can be achieved as the wine bar structures are all portable.

- ***3. Concern that the development interferes with the free flow of pedestrian traffic and would disallow the congregation of locals and tourists to the area.***

  Comment:
  The applicant has addressed this issue with a suitable response. This includes allowance that the venue perimeter will be open at selected points (fence partitions) to encourage persons to use the space and to pass though, casually sit or relax within the space during non-operating times, and therefore to ease any pedestrian movement congestion in the public space along the outer picket fence line.

- ***4. Concern that the proposal creates a visual obstruction for surrounding businesses in Market Place.***

  Comment:
  This issue relates to perimeter fence height and the applicant has addressed this issue by lowering the style of fence from 1.2m to 0.85m. The solution also involves removing selected sections during the day to retain a sense of openness adjacent other businesses. The bar container / serving container will be in a different position to the present (interim) location, to the side of, rather than directly in front of the north-eastern lane shopfronts. The new server will be an "Airstream" style 'retro' customized caravan shape.

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- ***5. Concern that planting of mature trees will block surrounding business advertising.***

  Comment:
  Previous street trees in the vicinity had shown poor health and the proposal includes selected replacement and new plants to create a 'garden laneway' atmosphere that is pleasant to be in by night and day with suitable trees, subtle lighting and a more attractive environment. Without the wine bar area the space is a relatively bare urban laneway for pedestrians walking by the adjacent businesses. Large potted plants may also be suitable as they can be moved / repositioned. The trees are not of a type with dense canopy / hedge style that block-out all visibility of the surroundings. This issue is subject to conditions and does not warrant refusal of the application.

- ***6. Concern that music volume and times of music playing affects surrounding businesses.***

  Comment:
  Music playing (live or recorded) within standard business trading hours during the work week (9am-5pm) is not proposed, including use of recorded 'background' music. On the weekend and public holidays, trading hours from midday may include live or recorded music, however this is only after midday. Live music currently does not commence before 6pm on weekdays or 3pm on weekends which is outside normal business hours and suitable for weekend activity. Live music currently concludes at 10pm with music systems / equipment turned off at that time. The use of live music is also subject to availability of artists / musicians and therefore is not necessarily daily or weekly all the time. An acoustic study / report has been prepared and the proposal will be subject to the recommendations within the report. Music volume is easily controlled by staff and adds to the ambiance of the surrounding casual dining experience and is intended to enhance the wine bar as a relaxing, pleasant venue. This issue has been addressed by the applicant as well as being subject to conditions and does not warrant refusal of the application.

- ***7. Concern that development prevents surrounding restaurants and cafes utilising their own outdoor dining and instead forces patrons to use the dining area inside of the venue.***

  Comment:
  The applicant intends that the proposal is situated so that it do not inhibit/restrict/interfere/overall space with any approved outdoor dining space belonging to any other business in Market Lane. All patrons of the surrounding businesses are invited to make use of the chairs/tables at any time by a co-operative business approach. This is proposed at zero cost to the surrounding businesses (i.e. they will not be charged any outdoor dining fees to have their patrons use the tables) enabled by means such as using QR codes on tables in the small bar for service communication to their adjacent business. This enables surrounding businesses to increase their service capacity. The applicant has suitably addressed this issue and as such this issue does not warrant refusal of the application.

- ***8. Concern that maintenance of the enclosure is not frequent, and rubbish is left behind by the public.***

  Comment:
  The applicant proposes having a day and night set of bins that we can rotate through the development space, so that the general public can have access to sufficient bins for rubbish from the local takeaway businesses right throughout the day. These would be managed by our closing and opening staff to ensure they are swapped prior to service and returned to the venue when closed. This could be in connection with council as a joint effort or adjusted to suit council operations and preferred waste management in the precinct. Waste is produced by all

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businesses and it is understood a wider strategy is being worked on that involves the whole of the laneway area whereby other items such as crates, pub kegs, delivery trays and the like at the rear of adjacent business are better managed / concealed to improve the amenity of the area. The small bar does not produce significant volumes of waste and has reusable items, recyclables and biodegradable waste that can be appropriately managed on a daily basis. Until Council's broader waste strategy for the laneway area is adopted (that requires input from various other businesses) the small bar has the capacity to safely and hygienically manage and separate its associated waste with minimal impact on the surrounding laneway. This issues is addressed by conditions, including current operational management, to suitably align with Council's broader waste strategy initiatives for Market lane when complete.

- ***9. Surrounding restaurants will need to retrieve their cutlery and crockery from the space.***

  Comment:
  The application is not dissimilar to any approved outdoor dining space for any business, in that they will need to routinely pickup their service tableware as part of normal customer service. Regular communication involves communication to ensure cutlery and crockery are retrieved regularly to maintain venue cleanliness and availability for customers. The use of reusable tableware is preferred to disposable waste. This issue is suitably addresses by operational management conditions and does not warrant refusal of the application.

- ***10. Concern that the makeshift fencing does not meet urban design or streetscape furniture standards and is an eyesore.***

  Comment:
  The development application proposes a different and more attractive style of portable picket fencing that will enhance the outdoor garden setting of street amenity. The fencing serves to provide an appropriate definition around the wine bar area for patrons since the application includes the service of alcohol. This issue is suitably addressed by the applicant and does not warrant refusal of the proposal.

- ***11. Concern that family diners that wish to dine out in the space are compelled to do so within an alcohol licensed zone.***

  Comment:
  The venue currently operates under a temporary site specific change to the existing alcohol free zone (AFZ). This is well defined by the perimeter picket fence and signage is displayed to that effect that the alcohol free zone is suspended during the following periods of Monday to Friday 4pm to 10pm / Saturday to Sunday 12pm to 10pm. Outside of these hours the site remains an AFZ. No one is compelled to dine within the space as it only a wine bar that permits outside customers to be eat within its premises if they wish too even though they are patrons of and adjacent restaurant.

- ***12. Concern that the proposal includes garbage bins adjacent or in replacement of bike racks and are too close to the dining area from smells and unsightliness.***

  Comment
  The proposed garbage area will be an enclosed storage unit that will not be identifiable as a bin storage area. The bins will be emptied on a daily schedule to prevent any sensory issues to surrounding diners, passers-by, or businesses. Visually, it was our intension to propose out of sight solutions for the bins that would aim to reduce the unpleasant views of overflowing

garbage bins. Both an enclosure within the development site as well as an outside enclosure for multiple bins which local businesses can utilise as well for casual waste. Part of the bin solution is flexible to Council waste requirements and overall strategy for the area which the proposal intends to be consistent with. The routine change over of bins by the operator (by private contractor) assist to ensure minimal odour issues and appropriate capacity at all times with the bins neatly stored in the nominated location. This issue is suitably addressed by operational management of the proposal (including overnight cleaning of the venue) and does not warrant refusal of the proposal.

- ***13. The proposal seeks to reduce existing public bike rack space in Market Lane for waste bin area.***

  Comment
  The proposal does not seek to reduce the number of bike spaces. Options for bike / bin locations have been considered as suitable solutions. The proponent recognizes that bike racks are used on a daily basis and the placement of bins will be out of the way of passing pedestrian and bike traffic / bike racks. This issue is addressed by conditions and does not warrant refusal of the application.

- ***14. The waste management plan proposes the use of throw away plates which adds to existing environmental issues.***

  Comment
  All takeaway containers that are ordered through the venue are biodegradable and aligned with Northern Beaches Councils waste management efforts & environmental requirements. Recyclable, biodegradable or reusable (tableware) containers are used. This issue is addressed and does not warrant refusal of the application.

- ***15. Concern that the development relies on the use of public toilets, funded by Council. These toilets are closed after hours therefore the proposal is not contributing to their management, cleaning and upkeep.***

  Comment:
  The library toilets are kept open until 10pm each service day. These toilets are regularly monitored by the proponent staff as it is realised they are convenient to the site use. Therefore, staff members will check on the cleanliness of the toilets throughout the venue's operational periods to assist in keeping them appropriately clean. Further cleaning schedules are managed through the Council's routine operations. All patrons require a swipe card (request from bar staff) to access the toilets to ensure they are only utilised by 'Market Lane Live' patrons and the toilets are secure between uses. The tables and chairs within the site are open to be used during the day by the public and the proponent will ensure this area is maintained, and in a clean state for the outdoor public environment. This issue is addressed by the applicant and subject to conditions. The issue does not warrant refusal of the application.

- ***16. The service container currently obstructs office views and foot traffic from shop fronts such as Clarke and Humel, Tahei Decor and Oakberry.***

  Comment
  The development application does not propose for the bar container to be in its present location. The proposed location does not obstruct any shop fronts toward the east corner will have the least impact on all surrounding businesses. The service caravan to replace the existing interim

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container is similar size custom design *Airstream* aimed to give an interesting "retro" look to the serving point. This issue is addressed by the proposed change and does not warrant refusal of the application.

- ***17. Concern that there are already existing open-air bars Manly including Donny's in Market Lane, is there should not be a need for another open-air bar.***

  Comment:
  Donny's Bar in Market Lane has a very limited outdoor seating capacity. Market Lane Live supports numerous surrounding businesses with its trade such as Momo Bar, Bare Naked Bowls and others. The applicant has purported that by using "Market Lane Live's" ordering system alone, some businesses have already noticeably benefited by increased food sales, not including what their customers purchase directly. Most other alfresco areas are 'attached' to a particular shop front / awning and in this location the wine bar is open on all sides and not covered by an awning / wall. The predominant dining spaces in Manly are indoors / semi-enclosed therefore having limited street activation appeal. This issue has been addressed by the applicant and does not warrant refusal of the application.

- ***18. Concern that street furniture is not maintained and has wear and tear from being outdoors.***

  Comment:
  The applicant has included with the development application images for the introduction of upgraded and more durable furniture designed to withstand the elements. Such furniture will display less wear & tear and be aesthetically suitable to the area. Therefore, this issue has been addressed by the applicant and does not warrant refusal of the proposal.

- ***19.Concern that Fencing has been moved closer to the Clarke & Humel tenancy making delivery access difficult.***

  Comment:
  The perimeter fencing always maintains minimum clearance distances under standard code requirements to ensure appropriate access and ease of thoroughfare. This is to be further adjusted to widen any 'pinch points' with extra width which is easily achieved for the portable surrounding fence. This issue is addressed by conditions and does not warrant refusal of the application.

- ***20. Concern that rubbish has been left at the back of Clarke & Humel by other tenancies because of the encroaching perimeter.***

  Comment:
  The applicant has advised that rubbish bins addressed in this comment are referring to the adjacent premises to *Clarke & Humel (Oakberry)* and not any bin use of the proposed business. The proposal seeks to ensure appropriate layout and access to bins and provide suitable response to align with the broader issue in the whole of market lane where bins / trays / pallets / kegs and the like need to be better accommodated / service managed. The proposal has addressed this issue as relevant to the wine bar operations and with suitable conditions this issue does not warrant refusal of the application.

- ***21. Concern that the service container leaves a small space for loitering of intoxicated patrons once the venue ceases trade in the evening.***

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Comment
The proposed DA does not have the service container in its existing location, and the new location will provide a better adjacent space with a more suitable "Airstream" van. However presently, all patrons have a 30minute grace period to leave the venue and its immediate surrounds upon closing. Staff ensure all persons have been moved on from the immediate vicinity. Donny's Bar which is less than 30 metres from the Market Lane precinct monitors the local amenity until 1am when its closes. Donny's Bar has direct vision of the space and to this date have received/recorded no incidents in relation the state issue being a problem or occurring. This issue has been addressed by the applicant and does not warrant refusal of the application.

- ***22. Concern that the addition of the more permanent structures does not encourage a family-friendly atmosphere and will detract from what crowds currently gather in the open space – families, mums & bubs, networkers etc. The site is losing its charm for a family friendly area and instead being used for more alcohol service.***

Comment
There are no proposed permanent structures forming part of this DA. No item proposed is fixed, and all designed as portable / removable. In the absence of the proposed wine bar the location is dominated by the steel library stair and is a relatively bare open space of hard paving. The wine bar is tables will be accessible during the day and persons able to walk through or stop and site outside the library when the service bar is closed. The proposal adds to the evening use and activation of the area as well as in the afternoon which is consistent with the intent of seeking ways of activating the Manly town centre and its laneways. This issue is addressed by the applicant and does not warrant refusal of the application.

- ***23. Concern that the repositioning of the new service caravan impedes on the Clarke & Humel tenancy & their rubbish.***
  collection.

Comment
The service caravan will be set on an angle in the corner of the venue boundaries, not directly in front of the rear of the *Clarke & Humel* tenancy. Clark & Humel's rear entrance will not be impeded and will have proper access for rear entry access and rubbish collection without interference. Sydney Road is used for rubbish collection vehicles to / from the area. This issue has been addressed by the applicant and does not warrant refusal of the application.

- ***24. Concern that proposed operating hours of 12pm – 10:30pm encourage excessive alcohol consumption as well as amplified noise in an area surrounded by businesses and residents. It would be reasonable to alter these opening hours from 5:30pm – 10:30pm with live music commencing from 6pm to allow for commercial and residential enjoyment of the area.***

Comment
Currently the venue only opens at 12 midday on weekends and from 4pm during the week, with live music not starting before 6pm on those days during the week. Having a standard set of operating times allows for trade on randomly placed public holidays which may fall on a weekday. The applicant has provided that operational hours, especially that of live music should remain outside of business hours. Thus, it is already proposed that live music will not occur during

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business hours. Any 'background music' will be kept to an appropriate volume and not commence before 5pm on business week days. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***25. Concern that the proposed capacity of 200 seems too high and takes away from the community feel of the space. The space should be smaller with a minimum 5m space between Clarke & Humel and 10m from the access route of Market Lane to Sydney Road to allow for delivery and garbage removal access.***

Comment
As part of the DA process the capacity has been reduced to 120 persons as per the Small Bar License in connection with the DA. With regard to pedestrian and vehicle access, these measures have been addressed in the DA and comply with the Code and standards of Council requirements for suitable clearance, access for delivery and access along the laneway surrounds subject to conditions. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***26. Concern that DA proposal of a 2m space between the fence line and Tahei Décor shopfront is too small. The current space is 3.7m which is already restricting pedestrian We have been in contact with Oakberry and Tahei regarding their concerns and have come to an agreement to ensure the fence line does not impede their shopfront visibility or create access issues. As MJC Group 2021 | Suit 5, 12 Sydney Road, Manly flow. The business would like 4m between any proposed fence line and their shopfront.***

Comment
The applicant is in agreement to ensure the fence line does not impede their shopfront visibility or create access issues the fence line sections in front will be removed during the day (non-operating hours) to open up the visibility and allow persons to walk through easily. At other times during trading will then be pulled closed and in the evenings, only once the venue is in operation to define the licensed boundaries. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***27. Concern that fence wine bar whole area was fully enclosed all around during the day and too high.***

Comment
The proposal has reduced the fencing height / style to 850mm across the boundary of the adjacent shop fronts, including near shops such as Oakberry's. This fence line sections will be retracted during the day to allow for casual pedestrian use and persons to easily walk, through or stop and sit at one of the tables. During trading hours and in the evenings the low fence panels will be positioned back into place to define the licensed boundaries. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***28. Concern that double glazed soundproof windows in the surrounding offices should be installed for office / business premises to further prevent noise interference with trade***

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from live music.

Comment
No live music is proposed during business hours and an acoustic report has been prepared to ensure appropriate levels of music (recorded or live) and appropriate times so that the wine bar has no unreasonable noise impact on surrounding premises. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***29. Concern that Local surrounding businesses do not have access to the pop-up bar to sell their menu.***

Comment
The applicant has addressed this concern by way of noting that all surrounding businesses were approached on multiple occasions prior to the opening of the pop-up in 2020, and still are invited to this day. All venues that expressed their interest were included in the popups launch and digital QR menu marketplace which is on every table. Some other venues, including Market Lane Café, were not interested in being involved, and these communications were documented by the applicant. If those businesses seek to, the applicant is willing to include them similar to other participating businesses. The applicant has addressed this issue and subject to conditions regarding 3rd party service does not warrant refusal of the application.

- ***30. Concern that an audit should be conducted for the surrounding businesses to determine the financial benefit to surrounding businesses***

Comment
The applicant has addressed this concern by way reviewing business operations being conducted to outline the benefit to local surrounding restaurants, suppliers, and musicians. This proving to be a highly financially beneficial activation for those businesses. Communications have been opened with members of the public to submit feedback/survey on the venue and received and overwhelmingly positive response encouraging operations to continue.

- ***31. Concern that surrounding businesses have not been provided with solutions to bin storage in the past. The venue needs to manage their own bins within their venue space.***

Comment
The applicant has sought to achieve an appropriate and well managed bin service for the wine bay that ensures garbage, recyclables and cardboard are accommodated without interfering with the laneway amenity or Council bin services. A broader strategy for the whole of market lane will take a lot longer to achieve and require numerous other stakeholders. For the purpose of the wine bar the waste requirements are small and easily managed on a day-to-day basis. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***32. Concern that the proposed DA does not outline proposed hours of operation.***

  Comment
  The hours of operation are proposed to be are detailed under the heading "description of the proposal' within this report. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***33. Concern that the application has not provided details on how the space will be utilised throughout the day.***

  Comment
  The applicant has addressed this issue by way of ensuring that space can be utilised as it currently is during the day by retracting various fence panel sections. All members of the public can use the space for casual outdoor seating, social meeting, relaxing, networking, mothers' groups etc. There are no restrictions as the space is not exclusive. The serving bar will be shut during the day when not trading. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***34. Concern that once the Wine Bar space opens, young adults (not 18+) are kicked out of the space when enjoying their lunch. The space should be accessible to everyone.***

  Comment
  Under the NSW *Liquor Act*, minors are required to be in the company of an adult guardian when in a licensed premises that is operating / serving liquor. However, it is proposed the applicant have a restricted area (similar to other licensed bars) being the closer surrounds of the bar service area appropriately identified, which restricts minors going to the bar area without the company of their guardian. However, the entire rest of the space is open and available to all public at any time when not in use. During set-up times there is reasonable time for staff to allow for casual users of the area to leave or stay according to the change over of the bar area operations. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***35. Concern that the space should be able to be booked by local community and arts groups. The rest of the time it should be utilised as a public space.***

  Comment
  The applicant has addressed this issue by being in agreement that others could arrange to utilize the space for community or art events as they have done so in the past hired out the space privately for similar / short event / meeting (since arrangements have to be made for bins, suitable table arrangements, access and the like. On the whole though space is freely open to the public throughout the day.

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- ***36. Concern that there has been a handover of this venue (public land) to a private company.***

  Comment
  The applicant has addressed this by way of provision that this is a fully transparent tendered use of the public space, and the intent is for activation of open space for the public to enjoy that is consistent with Council's adopted strategies for Manly to encourage various ways to maintain an active interesting CBD for the community. There is no restriction on access at any time, and the activation is not anti-competitive or against any surrounding business. It does not provide coffee and it does not provide food, even though the tables may be 'shared' with customers who are also customers of the wine bar when the bar is serving. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***37. Concern that the toilets available are inadequate for the number of patrons and may cause inappropriate use of other public spaces nearby along the laneway if toilets are not able to be used.***

  Comment
  The applicant has addressed this the venue capacities have reduced since initial development application. The capacity of the venue will not exceed 120 persons. The adjacent and most convenient toilets in the library provide far more than what would be required for the amount of people under the BCA. Use of these toilets is easily manage by use of a swipe card and routine checks by staff for basic cleaning / tidy during use. Other toilets are also close by at the Whistler Street carpark and reasonably close at Gilbert Park and Manly Beach 200m away (1 minute walk). The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

- ***39. Concern that There are inadequate fire extinguishers for the proposed capacity levels.***

  Comment
  The applicant addressed this issue by way of operational management plan to ensure that appropriate fire extinguishers are provided where necessary, and in line with fire regulation / safety compliance.

- ***40. Concern that the capacity of the venue may be exceeded and the capacity is unclear.***

  Comment
  The application has been adjusted to limit the maximum capacity to not exceed 120 persons, which is consistent with the Small Bar maximum of 120 patrons imposed via the Liquor Regulation 2018. The capacity of the premises are in full view and the operational management plan in place to ensure licensing and capacity limits remain compliant. The applicant has addressed this issue and subject to conditions does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**Supported without conditions.** The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Environmental Health (Industrial)	**Supported with conditions.** <u>General Assessment Comments</u> Applicant seeks approval for the fit out and use of a temporary wine bar in Market Lane. The SEE advises the following relevant information for this referral assessment *A temporary 'pop-up' wine garden has been operating successfully in this location since January 2021, and Council through an open tender sought expression of interest (on 12 May 2021) from local venue operators to enter into a longer-term arrangement to continue its operation.* *MNT Investments Pty Ltd (the owner and operator a number of other local venues comprising Donny's Bar, Insitu and Cumberland) were the successful tenderer. As part of the tender process, the operator is required to prepare and submit a DA to Council to continue this activity.* *2. Use as a temporary wine bar as follows:* *a) Capacity for up to 200 persons (both seated and standing)* *b) Operating hours open to the public are:* *(i) Sunday to Thursday: 10.00 am and 10.00 pm* *(ii) Friday and Saturday: 10.00 am and 10.30 pm* *c) Morning set-up to occur between 9.00 am and 10.00 am Monday to Sunday* *d) End of close pack-up to occur between 10.00 pm and 10.30 pm Sunday to Thursday* *and 10.30 pm and 11.00 pm Friday and Saturday* *e) Live music is to occur from 5.00 pm onwards Monday to Friday only* *f) One-year trial period with an option to extend for a further two-year period on* *completion of a successful trial period.* The SEE also advises the following regarding noise: *Noise impacts from the proposed temporary outdoor wine bar under a*

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Internal Referral Body	Comments
	one (1) year trial system will not cause a nuisance to the nearest residential accommodation as a result of its restricted hours of operation and patron capacities. A PoM has also been prepared to ensure the venue is managed responsibly. While the application will be under a one year trial system (with possible extensions) the noise would not be considered as temporary given the length of time, the number of days a week trading and that a similar setup has already been ongoing in the short term. There are a number of potential acoustic impacts from the development including noise from patrons and noise from music that need to be considered. Environmental Health recommends that an acoustic assessment be undertaken by a suitably qualified and experienced consultant in order to assess the acoustic impacts and if required propose acoustic controls to limit amenity impacts of the development. The acoustic assessment should include but not limited to an assessment of noise from patrons and music. The assessment and report is to be in accordance with the NSW EPA Noise Policy for Industry and other relevant guidelines. Given that there is currently a temporary approval for Market Lane that is similar to the proposed development it may be an opportune time to undertake the acoustic assessment while the event is occurring. <u>General review comments - 18 November 2021</u> Significant number of complaints received since May 2021. All regarding noise from patrons, live music and the event operating past 10pm in contravention of their temporary/trial permit issued by Open Space & Recreation Planning team. <u>Revised Comments May 2022</u> The proposed capacity of the venue has been reduced to 120 patrons. Applicant has also provided an Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A) that includes a number of recommendations. The applicant has also limited the live music to the following times: • Monday – Thursday: 6pm – 9pm (after 5pm for 'background' recorded music except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm) • Friday: 5pm – 10.00pm • Saturday: 3pm 10.00pm • Sunday: 3pm – 10pm Supported - Subject to Conditions
Environmental Health (Food	

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Internal Referral Body	Comments
Premises, Skin Pen.)	**Supported with conditions** <u>General Assessment Comments</u> Applicant seeks approval for the fit out and use of a temporary wine bar in Market Lane. The SEE advises: *A temporary 'pop-up' wine garden has been operating successfully in this location since January 2021, and Council through an open tender sought expression of interest (on 12 May 2021) from local venue operators to enter into a longer-term arrangement to continue its operation.* *MNT Investments Pty Ltd (the owner and operator a number of other local venues comprising Donny's Bar, Insitu and Cumberland) were the successful tenderer. As part of the tender process, the operator is required to prepare and submit a DA to Council to continue this activity.* The applicant has advised the following relevant information to this referral assessment in the SEE: • The existing temporary bar will be removed with a new temporary caravan used for drink service. • That there will be no food preparation on site with surrounding food premises to service the venue. • Waste and recycling from the venue will be stored within the dedicated waste area adjacent to the Manly Library Building. • That the patrons will have access to the sanitary facilities located within the Manly Library foyer. An access pass will be provided to management for out of hours access to these facilities. The applicant has provided a BCA report prepared by Philip Chun Building Code Consulting dated 21 October 2021 (Reference: 21-217486_BCA_R02) that has assessed the number of sanitary facilities required and has advised The nearby Library facilities are understood to contain this number of facilities and signage is needed directing patrons to these toilets. The client needs to confirm with Council that the sanitary facilities are available at all times the pop up bar is operational. As the temporary caravan is selling drinks this is classed as food for sale and therefore the caravan is subject to the requirements under the Food Act 2003. The caravan will also need to be adequately fitted out so that it can be easily and effectively cleaned and does not provide harbourage for pests. Typically mobile food would be subject to a Section 68 approval on Council land however, as this is more semi-permanent in nature and subject to a DA, Environmental Health recommends that the fit out of the caravan be conditioned to ensure it meets the relevant legislation and standards. A separate Section 68 Approval however may still need to be completed.

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Internal Referral Body	Comments
	A potential concern with the outdoor dining is the potential to increase pests/provide pest harbourage. Environmental Health recommends that the Plan of Management be updated with the following to prevent pest harbourage: • A contract be entered into with a licensed pest controller with regular inspections; and • Details be included in the plan of management on how the area will be kept in a clean and healthy condition that prevents pest harbourage.
NECC (Stormwater and Floodplain Engineering – Flood risk)	**Supported with conditions.** <u>General assessment comments:</u> The proposed development is for temporary use of a public area as a restricted entry bar area. The preparation of an emergency evacuation plan considering flood risk is recommended to be conditioned. Subject to conditions, the development is compliant with Council's flood prone land controls.
Property Management and Commercial	**Supported with conditions.** <u>General assessment comments:</u> Property has no objections to the proposal, subject to the imposition of the recommended conditions of consent.
Road Reserve	**Supported, without conditions.** <u>Previous general assessment comments:</u> 1. The Pop-up wine bar proposal and associated plans provide an scaled footprint of approximately 290 sqm. The "architectural" plans at 1:100 scale are not "survey accurate" and do not give an indication of the boundaries of adjacent properties, in particular the footprint would appear to encroach on the Manly Library Building lot (Lot 2849 DP 822227). 2. The footprint proposed is greater than existing. The northern side of Market Lane proposes a pedestrian thoroughfare of 2.0m (Clarke & Humel side) whereas the current fencing is approximately 2.4m from the building facade. Given the level of pedestrian circulation in this thoroughfare, 2.5m is considered the minimum requirement. 3. Similarly, on the western boundary (adjacent to the library) the picket fence is currently approximately 1.1m from the library colonnade columns/pylons. Existing bike parking restricts pedestrian access below the colonnade and the proposed bin hide (@9sqm) will require the removal and/or relocation of existing bike racks. The proposed perimeter fence is @1.6m (scaled off plans) from the colonnade pylons - this should be increase to 2.5m to ensure adequate two way pedestrian thoroughfare. 4. On the eastern boundary of the site, provision of a 5m wide

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Internal Referral Body	Comments
	zone for service and emergency vehicle access is available however with extended shop awnings and the location of the existing fence leaves a gap of approximately only 2m is available. This is insufficient. In the event of emergency access is required, restaurant owners would be required to move seating and retract awnings or obtain access via other means eg Sydney Road. Comments from Transport Network Team are sought in relation to this requirement and the minimum clear zone required for vehicle access. 5. There are no structural details of the proposed bin hide structure. The details of the proposed structure will need to be submitted to Council for review and approval prior to obtaining a Construction Certificate. 6. An appropriate lease, encompassing both the "operational" land of Manly Library and the public road reserve will need to be developed. 7. As such, it is recommended that amended plans for the proposal footprint are submitted for review and approval, to ensure the footprint accommodates pedestrian and service vehicle access. <u>Revised Road Reserve Comments as at 6 May 2022</u> The amended plans (Revision B dated 28/04/2022) address the above number issues: 2. Provision of 2.5m wide clear zone along the northern side of market lane (localised pinch point of 2.0m is accepted) 3. The clear distance of 2.75m - 3.00m from library colonnade to picket fencing is accepted. The bin hide has been removed from the plans. 4. Transport Network to comment on service and/or emergency vehicle access
Strategic and Place Planning (Heritage Officer)	**Supported without conditions.** HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site is within a conservation area **C2 Manly Town Centre Conservation Area** **Item 106 - Group of Commercial Buildings -** All numbers, The Corso Details of heritage items affected Details of the item as contained within the Manly inventory is as follows: **Manly Town Centre Conservation Area**

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Internal Referral Body	Comments
	Statement of Significance The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential building Physical Description The Manly TCCA has a mixed character and comprises three key zones. The triangular zone north-west of The Corso, bound by Belgrave Street and Sydney Road, including Market Square, generally comprises small scale commercial buildings. The street alignments, particularly the laneways around Market Square tend to be narrower, creating a more enclosed character, particularly when compared with the adjoining areas, such as The Corso, which has a much more open character, as well as the Belgrave Street streetscape, incorporating the larger civic buildings at the southern end (Manly Council Chambers, Manly Courthouse and Manly Police Station), and their orientation towards Gilbert Park and the Civic Square and proximity to Ivanhoe Park. **Group of Commercial Buildings** Statement of Significance The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort. Physical Description The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The architecture is generally of the early twentieth century with a number of late 19th century buildings remaining as evidence of the former streetscape. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements. Of particular importance is the spatial continuity of the streetscape - including horizontal and vertical planes and negative space - from pedestrian level.
	Other relevant heritage listings

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Internal Referral Body	Comments

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

The proposal seeks consent for use of space within Market Lane to continue a temporary pop up bar. The proposal includes some physical works such as new fencing, seating, trees, pergolas, stage and a caravan bar. Given the small scale nature of the physical works it is considered to not impact upon the heritage items or the conservation area or their significance. Heritage also raises no objections to the use of the space as a bar.

Therefore Heritage raises no objections and requires no conditions

Consider against the provisions of CL5.10 of MLEP.

Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No

Further Comments

COMPLETED BY: Brendan Gavin, Principal Planner

DATE: 2 November 2021

Strategic and Place Planning (Urban Design)	**Supported, without conditions**. A temporary 'pop-up' wine garden has been operating in the location since January 2021, and Council through an open tender sought expression of interest (on 12 May 2021) from local venue operators to enter a longer-term arrangement. The proposal seeks consent for a new temporary outdoor wine bar comprising: · New temporary perimeter fencing and entrance way

Internal Referral Body	Comments
	· Removal of existing temporary bar and replacement with a new temporary caravan for · drink service · New temporary external seating comprising a mixture of seating types such as barrel · tables, adult and children size picnic tables and custom-made bench seating · New potted plants and greenery, as well as family activities such as giant jenga and · connect four · New temporary stage platform and festoon lighting · Removal of three (3) bicycle racks to make way for temporary storage and a bin store · Signage The applicant has provided revised drawings in response to some concerns raised previously. The revised documentation has largely satisfied urban design issues.
Traffic Engineer	Comments on latest plans 11/5/22 The amended plans issue b dated 28/4/22 and the Response to Request for Additional Information dated 29/4/22 have been reviewed. Contrary to the statement in the Response to Request for Additional Information Market Place IS accessible by cars (and other motor vehicles). Access is required each day between 5am and 8am for delivery trucks and at other times as needed. While bollards are erected at 8am each day to prevent vehicular access, it is a frequent occurrence that these bollards are opened to provide vehicular access for necessary activities such as building maintenance, development works, works by council or utility authorities and, most importantly, access for emergency vehicles. While the predominant use of Market Lane is by pedestrians it is not merely a case of ensuring adequate space is available for pedestrian traffic. While the amended plans are an improvement and it is noted that there are no fixed items which could not be moved to enable vehicular access when necessary such access is still reliant upon fences, tables and chairs or other items being moved to enable a vehicle potentially an emergency services vehicle to pass. To maximise ease of vehicular access and minimise the need to relocate moveable structures the eastern perimeter fence should be sited no less than 6m off the eastern property boundary of Market Lane. The 2.5m offset from the northern boundary is acceptable. subject to a condition relating to the location of the eastern perimeter fence the amended plans are acceptable

Internal Referral Body	Comments
	Original comments 25/1/2022 <u>General assessment comments:</u> The development application is for fitout and temporary use of part of Market Lane, Manly as a "pop up" wine bar. The EIS advises that the bar will cater for up to 200 persons with proposed hours of operation being 10am to 10:00pm (Sunday to Thursday) and 10pm to 10:30pm (Friday and Saturday) with a one hour period (from 9am) for set up each morning and a half hour pack up period at the end of each day. The development application is for a one year trial period with an option to extend for a further two years following successful completion of the trial. It is noted that the revised information detailed in the MJC Group's response to submissions dated 20th December advises that the capacity has now been revised to cater for up to 120 persons with the hours of operation now proposed to be: Monday to Thursday (4pm-10pm), Friday (4pm-10:30pm), Saturday (12pm to 10:30pm) and Sunday (12pm-10pm). The reduced capacity and hours of operation are preferred to those submitted in the original DA and assist in reducing the level of impact of the proposal there are however further concerns which have not been adequately addressed in the provided material, these are detailed below: Although bollards are opened for access to Market Lane and Sydney Road each day between 5am and 8am there are still periods when access is required outside of those hours eg for development works, maintenance and emergency services. There is concern that the proposed width of Market Lane that will remain trafficable will be insufficient. It is known that numerous kerbside dining leases have been issued for other premises fronting Market Lane, it is unclear how these lease areas are impacted by the development application, which leases will remain active and what widths of lane will remain trafficable once existing leases and this proposed DA are operational. Further details showing the dimensions of existing approved footpath leases and the remaining trafficable width of Market Lane once this DA is operational are required. There is concern that the remaining width of Market Lane on the northern side of the pop up bar is insufficient to cater for vehicular access and will result in congested conditions for pedestrians. The clear width on the northern side should be increased to 3m to allow more space for pedestrian access, to allow for seating for premises not linked to the wine bar and to permit vehicular access if required. On the eastern side of the pop up bar the presence of existing kerside dining leases and extended shop awnings reduces the effective width of the lane for trucks and other large vehicles. It is noted that some shop awnings extend approx 2.5m beyond the property frontage. A clear width of 6m between the property frontages on the eastern side

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Internal Referral Body	Comments
	of Market Lane and the pop up bar's fencing is considered necessary to ensure that adequate width remains available for emergency or maintenance vehicle access when required. Market Lane has traditionally been a location where cyclists know that bicycle parking is available in high numbers. The pop up bar will remove access to a significant number of bicycle parking spaces that were previously sited under the library's external staircase. These will need to be relocated to an accessible location for cyclists which does not interfere with pedestrian or vehicular access to other parts of Market Lane. No information has been provided on where this bicycle parking will be re-sited. Amended plans and information addressing the above concerns should be provided to enable further consideration to be given to the proposal.
Waste Officer (Council Land)	**Supported with conditions.** <u>Revised Waste Management Assessment 17.5.2022</u> Recommendation - Acceptable, subject to conditions. Waste Services Officer Waste Management Assessment. <u>Original / previous comments from Councils' Waste Education Co-Ordinator</u> (in italics) SoEE clause 3.3 Food and beverage service No food preparation is to occur on site. The surrounding food premises are to service the venue, to better support local businesses in the area. Occasional food collaborations may take place throughout the year or on seasonality. *Applicant is to provide a list of food premises that will be engaged to provide the food service to the Market Lane Live venue.* *An explanation is required as to how food will be ordered and delivered to patrons of Market Lane Live.* *Market Lane Live, and all food premises providing food service to Market Lane Live, must comply with Council's "Waste Minimisation for Functions and Events Policy" and "Outdoor Dining and Footpath Merchandise Policy".* *An explanation is required as to how compliance with the above to two mentioned policies will be maintained and this must appear in the Plan of Management.* *An explanation is required as to how patrons arriving at Market Lane Live with pre-purchased food will be dealt with. Particularly in relation to food packaged in containers that do not meet the requirements of the above two mentioned policies.*

Internal Referral Body	Comments
	The primary drinks offering will be locally sourced beers, ciders, kombucha's and seltzers from breweries located within the Northern Beaches. A wide variety of cocktails, wine and non-alcoholic beverages will also be made available. As well as free water. Drinks service will take place from the new temporary caravan. *Clarification sought on glassware to be used for drink service – noting single use plastic cups are prohibited under Council's Waste Minimisation for Functions and Events Policy.* <u>SoEE clause 3.4 Waste management</u> All serving products will be either reusable or biodegradable materials including plates, cutlery, cups, straws, stirrers and napkins. *Response: Packaging types to be provided to waste education for assessment before comment can be made.* <u>Original Comments From Councils" Waste Services Officer (Operations)</u> • Bins from this venue are no longer to be stored in the Manly Library bin enclosure. The proposal to construct a new dedicated bin enclosure at the front of Manly Library is acceptable to Waste Services. • The proprietor of "Market Lane Live" must engage the services of a private waste collection contractor to remove waste from the venue on a daily basis. • Recyclable materials must be separated from the waste stream for separate collection and not sent to landfill. It is expected that waste will be separated into paper/cardboard recycling, container recycling (bottles, cans etc) and landfill. • Bins will remain secured in the enclosure at all times to prevent use by the public. • The bins are not to be placed out in any public area for collection. The contractor responsible for servicing the bins will retrieve the bins from the enclosure, empty them, return them to the enclosure and then lock the door on the enclosure. • No waste from the operation of "Market Lane Live" is to be placed in, or adjacent to, any of Councils' street litter bins. <u>Original Comments from Councils' Cleansing Services Manager</u> (in italics) SoEE clause 3.4 Management will keep the venue well presented at all times. Rubbish and empty bottles will not overflow from the supplied bins and Market Lane surface/pavers will be protected from any

Internal Referral Body	Comments
	spills/damage. *Applicant is to demonstrate to Council how the pavers will be protected from damage.* *The proprietor is to clean (mechanical scrubbing) the pavers on an annual basis.* *The proprietor is to 'litterpick' the leased area at the end of trading on a daily basis and during the course of trading as necessary.* *The proprietor is to remove any litter caused by the operation of Market Lane Live in the surrounding area outside of the leased area.*

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police – Licensing (Clubs, Hotels, Pubs)	The development application proposal was referred to NSW Police - Licensing. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended. Note: Separate to the development application, the premises is subject to *Liquor and Gaming NSW* licensing requirements that also involve consultation with NSW Police and may include specific requirements for the premises under that licence as appropriate.

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 as open space (within road reserve area) purposes for a significant period of time with no prior land uses other than as a paved and landscape road reserve laneway area including general pedestrian thoroughfare. 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 subject land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

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

Other Service Infrastructure Authorities

The application was not required to be referred to Transport for NSW (TfNSW) and no other Infrastructure Authority referral issues are raised pursuant to the SEPP. *Sydney Water* requirements are addressed under separate administrative processes directly managed by *Sydney Water* that may also be nominated by conditions if appropriate.

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:	15m	3m (Relocatable structures)	N/A	Yes
Gross Floor area (temporary occupancy)	3:1	148.1 sqm (Open space area)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.12 Essential services	Yes
6.14 Requirement for development control plans	Yes
6.15 Tourist and visitor accommodation	N/A
6.16 Gross floor area in Zone B2	Yes
6.19 Development in St Patrick's Estate	N/A
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone B2 Local Centre

Merit consideration of the Zone B2 Local Centre pursuant to Manly LEP seek to land use planning matters associated with business and the economy:

(i) to encourage, provide and consolidate business opportunities for a range of uses in appropriate locations that support local employment, community services and economic growth in business centres, and

Comment
The proposal has been operating under a temporary arrangement with Council for more than 12 months and provides employment and economic activity within the CBD area. The use of the site has been adjusted to work in co-operation with surrounding businesses / or accommodate concerns raised. The proposal is consistent with this objective of the zone.

(ii) to recognise that tourism is a major industry and employer in Manly and to encourage its growth and continuing viability while protecting the needs of the local community,

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

- The proposal seeks a longer-term arrangement by way of development consent to continue the use of the site for the purposes of a 'small bar' in an open space street setting, in the general appearance of 'pop-up' garden style wine bar. The proposal seeks to provide a form of 'street activation' in an outdoor setting for casual consumption of alcoholic and non-alcoholic beverages. Food is available in co-operation with adjacent restaurants and regular style bar

snacks.

- The venue will include music entertainment at limited times. Wine bar style operations create employment demand for staff, local musicians, delivery staff and patronage to surrounding businesses in attracting customers to the CBD.

- The location of the site has convenient access to public transport and is accessible to pedestrians and bicycle travel. No reduction to the adjacent bike racks is proposed.

- Operational management of the wine bar has been revised to address potential conflict issues with noise, visual amenity, delivery, waste management and day vs night use of the Market laneway area.

In summary, the proposal is consistent with the objectives of the B2 Local Centre zone.

6.21 Noise impacts—licensed premises

The applicant has provided a details Acoustic Report to address noise impacts pursuant to this clause of the Manly LEP. The report has been reviewed by Council's Environmental Health and Building team and subject to conditions the operation is considered to be satisfactory in terms of operational management, intensity of use, acoustic impacts and the surrounding urban environment (including nearby residential and business uses).

Responsible Service of Alcohol (RSA) training is mandatory by Law within NSW for all liquor licenses and staff who have liquor service responsibilities. A Liquor Administration Board (LAB) certificate will be obtained through accredited NSW Office of Liquor, Gaming and Racing training course. All staff involved in the sale and/or supply of liquor will have completed the appropriate RSA training as part of commencing work at the premises for the wine bar.

In merit consideration of this clause, the proposal is consistent with this part of the DCP.

Manly Development Control Plan

Built Form Controls
The built form controls are not applicable to the site as it is situated within a road reserve / thoroughfare zone and part open space within Lot 2849. There are no permanent structures or prescribed built form requirements (i.e landscaping, wall setback and the like). However, a summary of the "built form layout" proposed is provided below:

Built Form Controls - Site Area: 248.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height (triangular shaped site)	North: 12m	3m (relocatable "Airstream" van)	N/A	Yes
	South : 12m	3m (relocatable "Airstream" van)	N/A	Yes
	West: 12m	3m (relocatable	N/A	Yes

		"Airstream" van)		
4.1.2.2 Number of Storeys		1 ("Airstream" relocatable structure / servery van)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m (Curved shape to "airstream"	N/A	Yes
	Parapet Height: 0.6m	0.0m	N/A	Yes
	Pitch: maximum 35 degrees	<1 degree	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Minimum 2.5m to 3.0m clearance for access to adjacent walls	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	12m (based on wall height)	3m (relocatable "Airstream" van)	N/A	Yes
	Windows: 3m	No windows facing adjacent building	N/A	Yes
	Secondary street frontage	Consistent with prevailing setback along adjacent building line	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area	Council land / road reserve	N/A	Yes
	Native trees	Existing street trees in situ	N/A	Yes
Schedule 3 Parking and Access	Merit consideration	Adjacent public parking within CBD	N/A	Yes (See merit consideration)

Image: Site layout concept in context with surrounding built form.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	N/A	N/A
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.2.5.6 Late Night Venues	N/A	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The design of development to have regard to townscape principles i.e. how it will appear when viewed from and in conjunction with surrounding buildings, spaces and streets.

Many areas of the former Manly Council area have a particularly important townscape character with an essentially unified townscape, giving rise to a particular individual character which should be maintained. This townscape character is derived as a result of the general scale and interest of the buildings and surrounds. This scale and interest exists even in areas with a limited number of heritage listed buildings with individual importance.

The determination of the townscape of a locality should examine this sense of place and the sense of unity from a variety of perspectives identified in design principles.

Within Part 3.1 Streetscape and Townscapes (include sub-clauses) the following DCP objectives are considered in context of the proposal:

Streetscape

- *To minimise any negative visual impact of walls, fences and carparking on the street frontage*
  Comment:
  Subject to conditions the proposal will not create any unreasonable impact on the surrounding streetscape, vehicle access or urban surroundings of Market Lane.

- *To ensure development generally viewed from the street complements the identified streetscape.*
  Comment:
  The urban setting, furniture, servery "Airstream" structure and layout of the wine-bar area is

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suitable for the Market Lane surroundings, subject to conditions. The overall appearance, including night lighting is suitable for the Heritage Conservation Area of the existing streetscape with appropriate spacing between adjacent buildings / pathways.

- *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*
  Comment:
  The proposed low style portable picket fencing is suitable for the garden setting and to assist in managing safety and security within the wine bar during operating hours. The proposal is consistent with this objective.

Townscape

- *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
  Comment:
  The proposal does not include permanent structures and relies on passing pedestrian traffic / local parking and convenient public transport. The proposal does not obstruct parking access or occupy parking or require change to existing bicycle facilities. The proposal is consistent with this objective.

- *To assist in maintaining the character of the locality.*
  Comment:
  The proposal has included appropriate outdoor furniture, seating and structures to provide an attractive street venue. The use of low picket style fencing, a garden style setting, temporary structures that allow the through movement during the day and a defined area during operating hours is suitable for the existing urban location. The style of structures is suitable for the Heritage Conservation Area and consistent with other outdoor dining operations within Manly. The proposal is consistent with this objective.

- *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
  Comment:
  The proposal is consistent with Council's strategic planning to encourage revitalizing and continuation of small events across the Northern Beaches including delivering activation and events in public places. It also fulfils Council encouraging opportunities to support the local businesses, activate open spaces, encourage safe social interaction, drive a vibrant local economy and promote Manly as a destination. This is consistent with key desired elements within the *Manly 2015 Masterplan*. Appropriate operational management details have been provided and the proposal is consistent with this objective.

- *To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*
  Comment:
  The general layout has been adjusted to ensure no unreasonable negative visual impact / interference with adjacent business premises and road access for Council or emergency vehicles remains satisfactory along Market Lane. Subject to conditions, the proposal is consistent with this objective.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

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The proposal is considered in context of the objectives of this clause as follows:

- *To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- *To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

Comment:
a) The subject proposal will not create any unreasonable loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is addressed in term of the higher density area, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises. Suitable conditions are recommended for amenity considerations.

b) Development will not create any unreasonable scenic amenity impact on the area of Market Lane. In particular, the area, structures, bulk and design of the development should is considered acceptable to the surrounding public and private viewpoints.

c) The use of material and finishes is suitable for the urban amenity for neighbours in terms of reflectivity and styling. The proposal is consistent with Council's Administrative Guidelines regards DA materials and finishes in the context of the heritage conservation area.

In merit consideration of this clause, the proposal is consistent with this part of the DCP.

3.4.2 Privacy and Security

A Merit assessment of Privacy and Security, including acoustic impacts, considerations is provided as follows:

"The Manly LEP clause 6.21 provides for consideration of noise impacts from licensed premises being either new premises and places; or alterations and additions to existing premises. While 'licensed premises' are not defined in the LEP or DCP, the definition adopted from the Liquor Act refers to any premises (or places) that are licensed under the Liquor Act 2007. In this regard any DA where a licence is required for the sale of liquor must consider this clause.

The types of development that may be licensed include Restaurants, Cafes, Clubs, Hotels, Pubs, Entertainment Venues, and Community Facilities and the like. The types of licenses may be granted and held under the Liquor Act 2007 for such premises include hotel licenses, club licenses, small bar licenses, on-premises licenses and others. In relation to Licensed Premises the Liquor Act 2007 provides and regulates the liquor license approvals process administered by the Office of Liquor, Gaming and Racing. With particular reference to potential noise impacts from Licensed Premises, the the Standard Noise Criteria is applied by the Office of Liquor Gaming and Racing.

- *In relation to the assessment process applicants are encouraged to lodge the DA and liquor license application simultaneously. While the Office of Liquor, Gaming and Racing will not issue an approval for a liquor license until development consent has been granted by Council, effective consideration of matters such as noise impacts may be better resolved when dealt with concurrently.*

- *Noise Control reports are to be submitted with DAs for licensed premises for the management of*

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patron noise (including patrons exiting the premises) and other offensive noise (including amplified music and plant and equipment noise emissions) emitted over the life of the development. The Noise Control report is to demonstrate to the satisfaction of Council that the activities carried out and related to the operation of the premises will meet the following requirements:

i) The La10 noise level emitted from the licensed premises must not exceed the background of noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) by more than 5dB between 7am and 12 midnight at the boundary of any affected residence.*
ii) The La 10 noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) between 12 midnight and 7am at the boundary of any affected residence.*
iii) The noise level from the licensed premises must not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am or as otherwise required under conditions of development consent.
iv) Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily to minimise noise nuisance".

Comment:
The proposal has been submitted with a detailed *Acoustic Report* pursuant to the above requirements and a *Plan of Management.* Additional details of the proposal in addressing the provisions of *Clause 3.4.2 Privacy and Security* are including by way of revised hours of operation / site layout plans and community impact statement provided to address submission issues. The hours of operation and acoustic impacts have been reviewed by Council's Environmental Health team with appropriate conditions recommended to ensure the operations are consistent with Clause 6.21 of the WLEP and particular requirements of the DCP relating to licensed premises.

During the assessment period review and consideration was made of the proposal to adjust the seating capacity and reduce the overall intensity of use. Additional consideration was made with respect to the use of recorded music ('background music') and live music within the wine bar area while in operation. Outside of operating hours sections of the side fencing will be slid open to allow casual use of the space for the general public to sit, walk through, relax or temporarily work.

The premises will be staffed by trained personnel when the wine bar is serving and therefore will be aware of operating requirements / conditions and issues to be aware of with respect to surrounding residences, adjacent business operations, supervision / service of customers and use of the space.

In summary, the proposals is consistent with this clause, subject to conditions.

3.4.4 Other Nuisance (Odour, Fumes etc.)

The proposal does not require any grease trap or food cooking preparation facilities, as it is principally occupying a limited 'hard stand' open space with temporary / portable structures. Staff will 'litter sweep / cleanliness check' the wine-bar area surrounds to ensure hygiene / litter is appropriately disposed of prior to, and on completion of daily operating hours. The proposal will operate its own bins for beverages served and any food service managed / coordinated by adjacent restaurants (if wine bar customers wish to also have a meal at their table within the wine bar, then this is managed by their own wait staff and use of QR code options. Suitable lighting is proposed to ensure no unreasonable glare to nearby premises.

Requirements of this clause are considered to appropriately addressed and manageable as part of the Plan of Management and recommended conditions. The proposal is consistent with the requirement of this clause.

3.8 Waste Management

The development application has included a detailed waste management strategy to satisfy the objectives of this clause. In summary, the proposal involves use of sustainable food and beverage service, including reusable cups / glasses and plates. This includes food service provided to customers within the wine bar co-ordinated with adjacent restaurants. The wine bar does not provide a meal / dining service but use of the tables for wine bar customers is permitted for outdoor dining.

Recycling of bottles, cardboard, paper will be available with separate bin containers / sorting. Perishable items and food will be managed by commercial waste contractors.

Disposable food containers that are bio-degradable will be used. The waste strategy has been reviewed by Council's Waste Office and subject to conditions is supported. The operational management of the site includes regular hygiene checks of bin areas, litter collections, adjacent toilet facilities and handling of waste.

Subject to conditions the proposal is consistent with the objectives and requirements of this clause of the DCP.

3.10 Safety and Security

Merit assessment pursuant to *Part 3.10 Safety and Security* is addressed as follows:

- *To ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.*
  Comment:
  The site is situated within the AFZ zone established for Manly and therefore the AFZ is 'active' within the site while the wine bar is not operating (closed) and 'de-active' once the hours of operation commence as specified. Appropriate signage is available to ensure the general public are aware of the business hours and AFZ restrictions.

- *To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.*
  Comment:
  The site has suitable fencing for the 'garden style' outdoor setting and has good visibility though and within the defined area of the wine bar. The surrounding area of Market Lane has a range of businesses and level open access for pedestrians. The location of the proposal is close to the Manly Police station and as a public thoroughfare has a high level of passive supervision. Vehicle assess is limited near the site and Whistler street has low traffic speed with regard to considerations of pedestrian safety / youth or children and families walking through the Market lane precinct.

- *To contribute to the safety and security of the public domain.*
  Comment*:*
  The surrounding urban setting does not have any unreasonable safety risks (high ledges, steep uneaven ground, ongoing construction / excavation or the like in close proximity. The proposal will use a Plan of Management, have a well defined entry point during operating hours and the wine bar is supervised by trained staff (including RSA) to ensure safe and security of staff, customers and the public domain.

In merit consideration of this clause, the proposal is consistent with this part of the DCP.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

In addition to LEP clause 1.2(2)(d) and relevant LEP Zone Objectives in the Land Use Table include the following:

- *To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.*

Comment:
The proposal has been provisionally operating as a 'pop-up' style use, under an existing lease arrangement for over 12 months and during that time matters relating to vehicle access along Market Lane (Council service vehicles, delivery, emergency access and the like) have been maintained. The proposal has been adjusted to ensure adequate space is allocated for 24 hour access for service vehicles in accordance with Council requirements or will satisfy recommended conditions. As part of this, the proposed layout of the site has been adjusted to provide a more suitable long term layout. Notwithstanding this, all structures are portable / temporary and can be relocated if required. The availability of carparking in the surrounding area and hours of operation is co-ordinated with the *Plan of Management* and recommended conditions to ensure no unreasonable impact on normal weekly business hours / parking demand on weekdays.

On the weekends usage is limited to the afternoon / evening period and relies on the existing availability of public parking within the wider CBD area, local pedestrian traffic, tourist trade, access to transport / bicycle / taxi and the like. The central location of the proposal within the CBD will not create an unreasonable impact on carparking or loading, subject to conditions.

- *To minimise conflicts between pedestrian and vehicular movement systems within the business areas.*

Comment:
The proposal has been reviewed by Council's Traffic engineer, road assets and waste services and is considered satisfactory, subject to conditions to ensure minimal conflict between pedestrian and vehicular movement systems (including limited access times along Market Lane, clearance requirements should access be require for Council / emergency vehicles. The proposal will also enable through access by sliding open sections of the perimeter fence to allow free pedestrian movement during non-operating times. During operating time the access / entry point will be clearly defined to ensure control / supervision of the customer area with regard to RSA requirements.

In merit consideration of this clause, the proposal is consistent with this part of the DCP.

4.2.5 Manly Town Centre and Surrounds

- *To consolidate, promote and strengthen both retail activity in the Manly Town Centre as well as townscape in accordance with the townscape requirements of this plan*.

Comment:
The DCP residential controls permit the use of other businesses and activities within the business precinct. The proposal has been reviewed in context with the Manly 2015 Masterplan and is considered to be consistent with particular reference to the "Village Centre" and opportunities associated with

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"Laneways and Connections" as well as seeking "expanded commercial opportunities" (p43). While the large scale redevelopment of the "Village Centre" has not been commissioned the proposed wine bar would not create any obstruction to future consideration and review of the Manly CBD strategies as the proposal is recommended for a limited time line of 3 years, enabled by a "sunset" condition. This would also permit the use / consent time line to be renewed or extended by modification at an appropriate future date for a further term.

It is considered that the styling and variety of furniture and decorative items, including fencing and use of an "Airstream" style serving bar, as well as lighting and garden setting is suitable for the Market Lane space and does create any unreasonable access issue or detract from the streetscape surroundings. A depiction of the style of portable items / setup to be used is illustrated below.

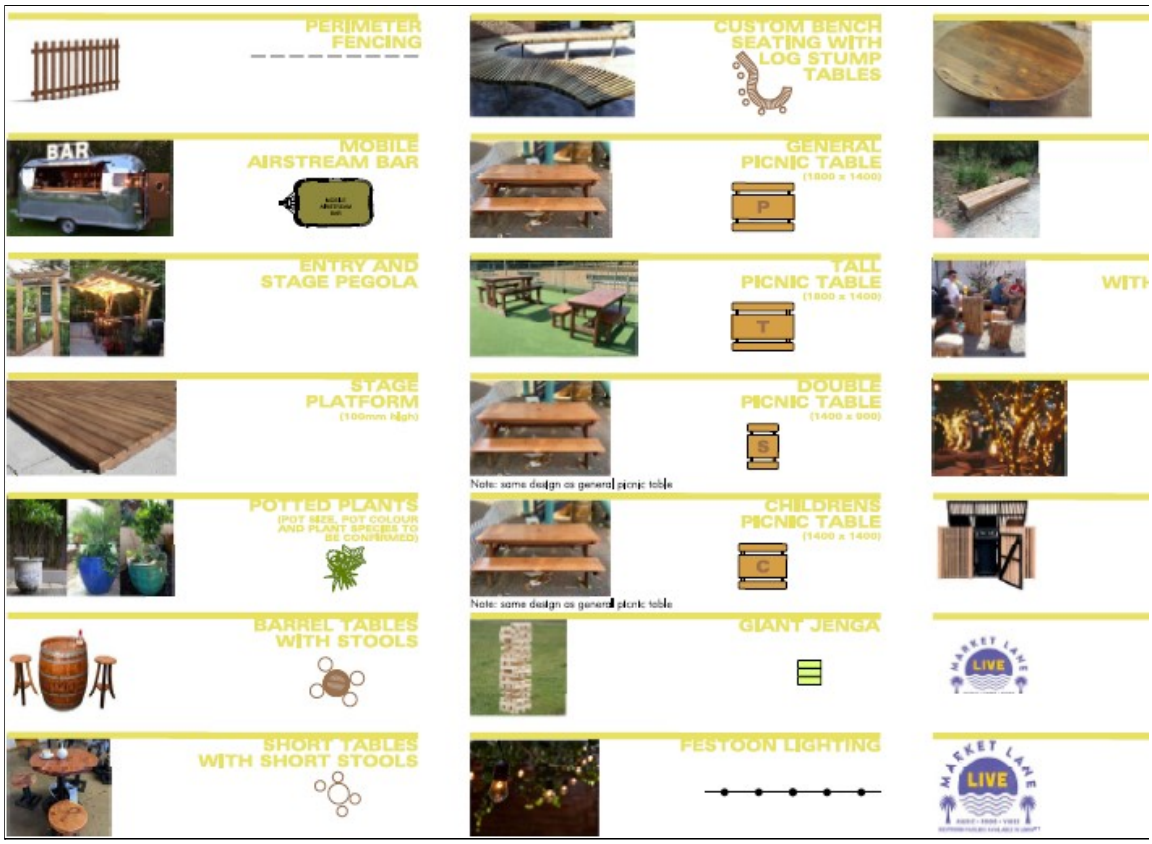

Image: Indication of the range of seating styles, lighting, and ancillary structures for the small bar.

In merit consideration of this clause, the proposal is consistent with this part of the DCP.

4.2.5.4 Car Parking and Access

The Manly DCP allows that:

in exceptional circumstances and having regard to the merits of the application, Council may be prepared to allow a reduction in the any parking rate/ requirements in Manly Town Centre (including residential and commercial) where the applicant has demonstrated that:

(i) in the case of all uses other than dwellings, the dimensions or topography of the site would physically

prevent the provision of some or all of the required spaces;
(ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or

(iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.

Comment:
The proposal has been subject to review by Council's Traffic Engineer and detailed consideration of the above requirements have been made. The applicant was required to respond to initial concerns and submission issues raised. Following further review of the proposal and adjustments made to the layout, setbacks, vehicle access requirements of Council, Market lane usage, pedestrian and bike facilities. Adjustments have been made to the proposal with being able to observe operations during site inspection and when the proposal is note operating during the day. Conditions recommended include a minor change to widen the vehicle laneway clearance by an additional 50cm which can be achieved and appropriate conditions to ensure Council / emergency service access will not be obstructed.

No change is proposed to the bicycle rack area and the site will been "opened' up to enable pedestrians to walk through, or sit and relax, during the day when the wine bar is closed. Subject to conditions, associated facilities of the bins, 'Airstream' and furniture items will be suitably located and spaces to avoid obstruction or interference with Council facilities, services or infrastructures.

While the proposal may continue to operate on a year to year basis it does not require permanent structures or the building work of and enclosed floor space. The carparking rate for a licensed floor area, pub (beer garden and the like) is 1 car space per 4sqm. In this case a licensed area of 248.1sqm attracts a car parking rate of 62 car spaces.
The proposal will provide no permanent car parking spaces or parking contribution.

Under the circumstances the following merit considerations are made with respect to a DCP variation:

- Assessment by Council's Traffic Engineering team support the proposal, subject to conditions.
- Temporary / portable nature of the proposal, including 'sunset condition' recommended for 3 years. (Noting that this may be extended / not extended on further application consideration.
- Proximity to central user-pay parking areas (operated by Council) available for use.
- Probability of use by customers that would park in other commercial carparks for shopping / restaurant / residential visit etc but may stay longer if they decide to also visit the wine bar as part of the same trip.
- Ease of accessibility for pedestrian traffic / "passer's by" that live locally.
- Ease of access from public transport / taxi / and bicycle users from the wider local area.
- Tourist trade.
- Generally being out of primary business trading times during the week for the CBD whereby car parking in Council's public parking is less frequented (evenings / weekend afternoons.
- Small scale of the 'wine bar' in relation to larger events held in Manly (food festivals / surf carnivals etc)
- The wine bar only permits dining by patrons that are customers of adjacent restaurant service (business co-operation).
- The provision of having to construct parking as part of the proposal would likely make the proposal in-operable / unviable
- The 'site' will be subject to a Council lease and therefore pays for use of the land which directly or indirectly financially assists with the provision and maintenance of council infrastructure in Manly CBD.

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- The nature of uses that seek to promote "street activation" as supported by the DCP and Manly 2015 Masterplan characteristically would not be attributed to providing built / permanent car parking specific to that function, if being temporary / limited term in nature.
- The proposal is considered to have suitably addresses Clause 4.2.4.1 which states that "*Council may be prepared to allow exceptions to the parking rate/requirements required in this DCP in the following circumstances:*
  (i) where it can be demonstrated that particular activities in mixed use developments have car parking demands which peak at different times;
  (ii) where visitors are likely to use more than one facility per trip;
  (iii) considering available car parking in the surrounding area, except in relation to Manly Town Centre where more particular exceptions are provided at paragraph 4.2.5.4 of this plan

  In summary it is considered that the proposal will not create an unreasonable impact on carparking availability or access within the Manly CBD, subject to conditions, the hours of operation, size and extent of the intended use.

4.2.5.6 Late Night Venues

The DCP objectives for Late Night Venues seek:

- *To achieve for Manly's entertainment precinct as a place of excellence in which all people can use and enjoy Manly's highly valued natural amenity qualities as a place:*

  i) for leisure and entertainment;
  ii) in which late night venues can safely entertain and provide for the enjoyment of social and recreational pursuits;
  iii) without disturbing the peace of the community in terms of safety and security.

  Comment
  The proposal will not trade as a 'Late Night Venue' since the operating hours generally finish by, or before 10:30pm (with isolated exception for New Years Eve). The applicant has provided a Plan of Management, Acoustic report and revised design layout to ensure consistency with creating a safe venue and social venue that is suitable for the surrounding urban environment. Conditions are included to ensure no unreasonable impact on surrounding land uses.

- *To regulate the activities and design of late night venues to minimize late night disturbances to the public and promote Manly as a safe place for all the community late at night such that:*

  i) frontages to public spaces must be designed to minimize conflict between customers within the establishments and public using the public spaces;
  ii) the applicant demonstrate (see lodgement requirements at Council's Administrative Guidelines) that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is acceptable for families; and
  iii) obligations of any current Accord are addressed in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.

  Comment
  The proposed small bar has been in operation under existing licence arrangements (begun

northern beaches council

as a "pop-up" style initiative) and seeks the operational security than can now be provided by a development consent for a "small bar". The applicant has addressed the concerns of Council in terms of the Internal Referral sections (Waste services, Environmental Health, Engineering, and the like) to ensure the proposal does not detract from the safety and security or amenity of the Manly Central Business District (CBD) / entertainment precinct. Conditions of consent including a Plan of Management and additional leasing requirements will ensure responsible service of alcohol (RSA), appropriate hours of operation and management systems are ongoing for the outdoor small bar. Overall the proposal does not seek to trade within the hours that are the domain of a 'Late Night Venue'.

5.1.1 General Character

Merit consideration of the key components of Part 5.1.1 General Character for Manly are addressed as follows:

- *Manly Town Centre has a cohesive character resulting from a generally low scale of development on its principle streets. Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces. These spaces range from the tight enclosure of the arcades through to the openness of the Ocean Beach promenade and the Esplanade. Developments which contradict these features have not been sufficient to remove this character*.

Comment:
The wine bar location is not readily visible from the immediate foreshore area along East Esplanade or Manly beach front and therefore no further detailed consideration of the foreshore scenic protection area is required.

- *The Town Centre Urban Design Guidelines provide more detailed analysis of Manly Town Centre from an urban design point of view and provides more detailed guidelines for certain precincts and areas within the Town Centre. These precincts include Whistler Street Triangle (Whistler Street (south) Market Lane).*

Comment:
The proposal has been considered in context of the Town Centre Guidelines and Manly 2015 Master Plan. Overall the position, seating space, setting and layout and visual styling of the proposal is suitable for the precinct. A garden setting with low fence style and 'retro' appearance including wooden tables assists to fit with the available space.

- *The physical elements of the Manly Town Centre Conservation Area reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.*

Comment
The proposal allows for casual movement and activation of the streetscape surroundings with appropriate portable structures and lighting to suit the outdoor setting.

In merit consideration of this clause, the proposal is consistent with this part of the DCP.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

OTHER MATTERS

Land Classification

- The subject site is operational land for the part within the Manly Library lot boundary. The remaining area (being most of the area to be used for the Wine Bar) is within undefined road reserve being Market Lane. The DA is not situated on council land identified as 'community land' classification pursuant to the Local Government Act. The identified area of the small bar that covers part of the Market Lane road reserve and part Manly library land is all zoned B2 Local Centre

Manly Precinct Management Plan

- The CBD area of Manly remains subject to the "Manly 2015 Masterplan" and the proposed development is situated within the relevant geographical boundaries of the Masterplan. The masterplan seeks to identify principal characteristics (social, economic, and urban environment) and offer strategic directions for the CBD area. The location of the proposed outdoor small bar is situated in the masterplan as a type of "Village Centre" and discusses the characterisation of the village centre as a place where "*village life takes place*" being the quieter spaces and the connecting active laneways and not necessarily the major thoroughfare of major pedestrian movement occurring along the Corso space. The present location of the wine bar proposal is within the location identified as the 'Whistler Street Triangle" in the master plan. While the master plan includes some major redevelopment / major urban revitalization projects the use of the space for a wine bar setting in the afternoon / evening (with restricted operating hours and usage) and a space where people can freely sit and still use (share) the seating area space at times during the day, while the bar is closed. Access is not prevented during operating hours but persons would be treated as patrons. As a commercial use presented as a alfresco / garden style wine bar' setting, the proposal is consistent with the master plan seeking to encourage activation of the pedestrian areas and laneway areas around the CBD, subject to conditions.

  In summary, the proposed small bar and short term use (limited by DA conditions 'sunset clause', including timespan of up to 3 years, extendable only by future application) is considered to be consistent with the Manly 2015 Masterplan.

Liquor Act 2007 / Liquor Regulations 2018

- ***'small bar'*** means the premises to which a small bar licence relates and within Division 3A of the *Liquor Act.* A small bar licence "*authorises the licensee to sell liquor by retail on the licensed premises for consumption on the premises, or house-made cocktails in sealed containers for consumption away from the premises*".

- Under the Liquor Act a small bar may have a capacity of 60 persons or a greater number as may be prescribed by the regulation. In this case, the regulations permits a maximum of 120 persons capacity for small bar.

  Comment:
  It is considered that all liquor sold within the premises of the wine bar should not be permitted to be taken outside the fenced area / perimeter ("take-away drinks") as this is currently the AFZ. Regardless of whether or not the AFZ remains for the wider CBD precinct it is recommended that the wine bar operator manages the "small bar" so that patrons do not seek to purchase alcohol to then go away from within the boundaries of the premises. This is addressed by condition and the applicant has not sought to allow 'take-away' purchases. There are sufficient other premises in the wider area (Liqourland, BWS, ALDI and the like) that provide appropriately regulated "purchase to take away" alcohol service.

  The application for the small bar proposes a maximum capacity of up to 120 patrons pursuant to Section 39 of the *Liquor Regulations 2018.* To maintain characterisation as a 'small bar', and not principally be transformed into a defacto restaurant / "satellite" floor space for other takeaway food premises in Manly, it is recommended the food service be limited to 50% of the available table facilities within the bar area.

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

In conclusion, the proposal for an outdoor wine bar within Market Lane has raised the following principal issues in the public interest:

- Operation seeking to continue from an existing 'temporary' lease arrangement in the AFZ.
- Interference with pedestrian crowd flow and the public nature of the precinct.
- Limiting the transfer of alcohol or food between the site and other locations.
- Obstruction of vehicular movement including garbage removal trucks.
- Non-aesthetic elements not aligned with Council urban design plans.
- Noise disturbance within the local area for businesses and residents.
- Intrusive on local businesses shopfronts and deters other customers
- Cleanliness concerns when not in operation and utilised publicly.

The above concerns have been addressed by the applicant with additional information, adjustment to operating hours and changes to reduce / adjust the site layout to accommodate better solutions to assessment considerations raised with the applicant. As a result, the Internal Referrals sections of Council support the revised proposal, subject to conditions. The site is situated entirely on Council owned land being open pedestrianized area that is part road reserve Market Lane and part of Lot 2849 (being Manly Library).

Market Lane is identified for its potential with regard to 'active street frontages' for enhancing the commercial area and pedestrian areas along the laneway thoroughfares of Manly, pursuant to the *Manly DCP* and Manly 2015 Masterplan. The use of the subject space for an outdoor 'small-bar' garden style wine bar is considered to be suitable as a temporary / time limited use within the precinct, subject to conditions as recommended.

The proposed hours of operation, management and licence / lease requirements will ensure no unreasonable impact on surrounding land. Additionally, all structures are temporary / portable in nature. It is recommended the proposal be limited to 3 years to enable the subject use of Council land to cease, if operationally required by Council in a reasonable future time frame, or alternatively the use permitted to continue at future date (subject to application) should that option be sought by the applicant at an appropriate time.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2065 for Use of premises (part Road Reserve and Lot 2849) as a Food and Drink Premises (for a 'Small Bar') on land at Lot 2849 DP 822227, 0 Market Lane, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA01 Proposed Plan - Market Lane Live - Wine Bar	28.4.2022	SARM Architects

Note: The construction certificate process is to be used to ensure the intended placement, design, physical layout of structures on the site will comply with applicable CC stage conditions and requirements of this consent as appropriate. All structures are to be of a portable nature / design in the 'construct' of the 'small bar' and its physical setting.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Acoustic Report PS131027-A	27.4.2022	WSP
Plan of Management V1-15.10.21*	Oct 2021	Market Lane Live / Matt Clifton
Access Report 3283	28.4.2022	Murrow Consulting
BCA Report 21-217486_BCA_R02	21.10.2021	Philip Chun

*Plan of management to be revised to accord with / inclusive to the conditions of this consent, as relevant.

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Plan of Management (section18 - Waste)	Oct 2021	Market Lane Live / Matt Clifton

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. **Time Limitation - Lapsing of Consent**
This consent is limited to three (3) years duration from the Date of Determination.

Should the applicant seek an additional time period / future use of the site to continue after 3 years, a new development application or modification of this consent may be applied for 6 months prior to the lapsing of consent.

Note: *Should determination of that request to further continue operation not be determined by Council within a 6 month period the operations are to cease until such time as a definitive determination is made. If a further time extension or new consent is not granted (upon completion of the new application determination) all structures fittings and fixtures are to be removed from the premises to the satisfaction of Council.*

Reason: To enable Council to review and manage use of Council land for commercial purposes.

3. **Prescribed Conditions**

(a) All building works / placement of structures must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) Where applicable, 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) Where applicable, 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) Where applicable, 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, as applicable. 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) Where applicable, 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.

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

5. **Location of Eastern Perimeter Fence**
The eastern perimeter fence of the 'small bar' is to be offset no less than 6.0 metres (m) from the eastern boundary alignment of Market Lane. No seating or tables associated with the bar are to be located outside of the perimeter fence.

Reason: To ensure adequate space is available at all times for vehicular access including emergency services vehicles when necessary

FEES / CHARGES / CONTRIBUTIONS

6. **Security Bond**

A bond (determined from cost of works) of $1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining

the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Flooding**
In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level 5.9m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Fencing – F1
Fencing 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 of 5.4m AHD.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

8. **Plans of Mobile Food design, construction and fit out**
Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance the Food Act 2003, Standard 3.2.3 of the Australian and New Zealand Food Standards Code and the NSW Food Authority Guideline for Mobile Food Vending Vehicles must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

9. **Plan of Management - Pest Control Requirements**
Updates to the Plan of Management are to include the following requirement specific to pest / vermin and hygiene controls:

- Pest control measures with a requirement that a contract be entered into with a licensed

pest controller with regular inspections; and
- Details be included in the plan of management on how the area will be kept in a clean and healthy condition that prevents pest harbourage.

The updated Plan of Management is to be submitted to Council for review by Council's Environmental Health Team prior to the issue of the Construction Certificate.

Reason: To maintain amenity of the surrounding area for premises on Council owned land.

10. **Acoustic Requirements and Restrictions to the Plan of Management**
The Plan of Management is to be updated / amended to include the following Acoustic and operations matters:

- Incorporating recommendations from Section 4 of Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A);
- Amplified music to be limited from one speaker as per modelling undertaken within the Acoustic Report;
- Amplified background music on Mondays to Fridays is to be limited to 5.00 pm onwards only (except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm);

- Live music to be limited to the following times

  - Monday – Thursday: 6pm – 9pm
  - Friday: 5pm – 10.00 pm
  - Saturdays & Sundays: 3pm –10:00 pm
- Capacity of venue limited to 120 patrons
- Speaker to be fitted with an electronic limiter that limits the output to the noise spectrum within Table 3.1 of the Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A). The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team prior to the issue of the Construction Certificate.

Reason: To maintain amenity of the surrounding area and usage of Council owned land.

11. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **License Agreement**
Prior to commencement of operation, the applicant shall enter into a License Agreement with Council under Division 1 of the Roads Act for Street Vending for the use of the space.

Reason: To ensure the requirements of the Roads Act 1993 as regards street vending are

complied with.

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

13. **Certification of Services (B3)**
Certification that new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the FPL and waterproofing of electrical equipment and installation of residual current devices below the Flood Planning Level (B3)

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events.

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.

14. **Registration of Food Businesses**
All food businesses must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

15. **Construction and fit out of mobile Food Premises certification**
Prior to the issuing of the occupation certificate, certification is to be provided to the Principal Certifying Authority by a suitably qualified person demonstrating that that the design, construction and fit out of the mobile food premises is compliant with the requirements of the Food Act 2003, Standard 3.2.3 of the Australian and New Zealand Food Standards Code and the NSW Food Authority Guideline for Mobile Food Vending Vehicles.

Reason: To ensure that the kitchen complies with the design requirements.

16. **Acoustic Report Certification**
Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with recommendations within the Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A) and compliance with any relevant acoustic conditions of the consent.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent

Reason: To protect the acoustic amenity of neighbouring properties. (DACHPFPOC6)

17. **Flood Management**
An *Emergency Evacuation Plan* that appropriately mitigates the flood risk must be prepared by a suitable qualified professional for the development. The plan must include clear and simple triggers and directions to evacuate the site prior to flooding. The emergency assembly point

must be a suitable sized location above the Probable Maximum Flood level. The triggers must consider the critical duration for flooding of the area and result in evacuation occurring before the site and evacuation route experiencing 150mm depth flooding.

Council's flood team and flood mapping are recommended to be consulted in preparing the plan.

Reason: To mitigate flood risk of the development.

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

18. **Flood Management**
Flood Emergency Response
The Emergency Evacuation Plan prepared by a suitable qualified professional must be adhered to at all times.

Reason: To mitigate the risks of flooding.

19. **Delivery Vehicles**
Delivery vehicles associated with the development are only permitted to drive, stand or park on Market Lane plaza area between the hours of 5am to 11am Mondays to Fridays. There is no access on weekends or Public Holidays, and subject to Council operations / maintenance services.

Reason: Compliance with Council's management / shared use for the pedestrianised area.

20. **Waste Storage Area**
The waste storage area adjacent to the Manly Library Building must be kept in a clean and healthy condition at all times. All waste is to be wholly contained within appropriate waste receptacles.

Reason: To protect amenity of the surrounding area and prevent pest harbourage.

21. **Operational commencement of the Plan of Management**
The requirements of the approved Plan of Management are to be fully implemented from the issue of the Occupation certificate.

Reason: To ensure the premises is maintained in an appropriate manner.

22. **Noise Ongoing**

The Premises shall comply with the following:

- Capacity of venue limited to 120 patrons.
- Amplified music to be limited from one speaker.
- Amplified background music on Mondays to Fridays is to be limited to 5.00 pm onwards only (except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm).
- Live music to be limited to the following times
  - Monday – Thursday: 6pm – 9pm
  - Friday: 5pm – 10.00 pm
  - Saturdays & Sundays: 3pm –10:00 pm
- Speaker to be fitted with an electronic limiter that limits the output to the noise spectrum within Table 3.1 of the Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022

(reference: PS131027-A). The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff.

- Notwithstanding compliance with the above, The LA10* noise level emitted from the premises shall not exceed the background noise level (as determined by an Authorised Council Officer) in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.

For the purpose of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises. This is a minimum standard.

Reason: To maintain acoustic amenity of the surrounding area. (DACHPGOG5)

23. **Compliance with Plan of Management**
The requirements of the *Plan of Management* are to be adhered too for all day-to-day operations (including matters that are managed outside trading hours).

Reason: To protect the amenity of the surrounding area. (DACHPGOG5)

24. **Hours of Operation**
The hours of operation are to be restricted to (with patron capacity limited to 120 persons):

- Monday to Thursday : 4:00 pm to 10.00 pm (except on Public Holidays that fall on Monday to Thursday then 12 midday to 10:00pm)
- Friday : 4:00 pm to 10.30 pm. (except on Public Holidays that fall on a Friday then 12 midday to 10:30pm)
- Saturday : 12 midday to 10:30 pm
- Sunday : 12 midday to 10:00 pm
- No trading on Christmas Day.
- New Years Eve operations may extend to 1am (being 1st Jan) by prior written notice to Council.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

(Note: see condition of consent "Noise Ongoing" regarding limitations on hours for live or amplified / recorded music)

Reason: Information to ensure that amenity of the surrounding locality is maintained.

25. **Consumption of Beverages**
The premises are to be managed to ensure patrons do not take drink purchases away (outside of) from the premises for consumption as 'take-away' drinks. This includes cups, cans, bottles or other containers for alcohol or non-alcoholic beverages.

Reason: Regulatory requirement and Waste handling.

26. **Storage of Waste Bins**
The 'Market Lane Live' proprietor must, at the proprietor's expense, construct a suitable bin

enclosure within the leased area to contain all garbage and recycling bins used for the operation of *Market Lane Live*. The bin enclosure must be secured at all times and screen the bins from view by the public.

Bins from the Market Lane Live venue are no longer to be stored in the Manly Library bin enclosure.

Reason: To ensure appropriate, secure and ongoing storage of waste bins.

27. **Requirements for Waste Collection**
The proprietor of "Market Lane Live" must engage the services of a private waste collection contractor to remove waste from the venue on a daily basis.
Recyclable materials must be separated from the waste stream for separate collection and not sent to landfill. It is expected that waste will be separated into paper/cardboard recycling, container recycling (bottles, cans etc) and landfill.

Bins will remain secured in the bin enclosure at all times to prevent use by the public. The bins are not to be placed out in any public area for collection. The contractor responsible for servicing the bins will retrieve the bins from the bin enclosure, empty them, return them to the bin enclosure and then lock the door on the enclosure.

Reason: To ensure public amenity of the area is maintained. To maximise recycling of waste materials generated by the operation of Market Lane Live.

28. **Food Service Requirements**
Market Lane Live, and all food premises providing food service to Market Lane Live, must comply with Council's "*Waste Minimisation for Functions and Events Policy*", *"Single Use Plastics Policy*" and "*Outdoor Dining and Footpath Merchandise Policy*". The sale or distribution of single use plastic or polystyrene items and plastic packaging, including bottled water is prohibited during the life of the lease.

- Prohibited single-use plastic includes "bio-plastic", "biodegradable plastic", "degradable plastic" or "compostable plastic" products; and
- Reusable items are best practice and should be implemented where possible.

Reason: To minimise waste and prevent pollution of the local environment.

29. **Cleaning of the Leased and Surrounding Area**
i) The *Market Lane Live* proprietor is to litter-pick the leased area at the end of trading on a daily basis and during the course of trading as necessary.
ii) The *Market Lane Live* proprietor is to remove any litter caused by the operation of Market Lane Live in the surrounding area outside of the leased area.
iii) The *Market Lane Live* proprietor is to clean (mechanical scrubbing) the pavers within the leased area on an annual basis.

Reason: To ensure ongoing cleanliness of the leased and surrounding area

30. **Hours of Operation**
- Monday to Thursday : 4:00 pm to 10.00 pm (except on Public Holidays that fall on Monday to Thursday then 12 midday to 10:00pm)
- Friday : 4:00 pm to 10.30 pm. (except on Public Holidays that fall on a Friday then 12 midday to 10:30pm)
- Saturday : 12 midday to 10:30 pm

- Sunday : 12 midday to 10:00 pm
- No trading on Christmas Day.
- New Year's Eve operations, may (at Council discretion) extend to 1am (being 1st Jan) only by prior written notice to Northern Beaches Council.

31. **Food Service to the Small Bar**
Food service for restaurant or take-away style full meals / dinner service or the like, by arrangement (i.e QR code or other) with participating outside restaurants / food premises is to be limited to 50% of the Small Bar table / seating facilities for patrons. Light snacks (available from within the premises or adjacent) are permitted for all patrons at all tables and subject to *Registration of Food Business* requirements. The cooking of food within the Small Bar area is not permitted.

Reason: Ensure principal land use remains consistent as a *small bar*.

32. **Set up hours**
The 'set-up' of tables and chairs or miscellaneous items shall not commence until after 9:00am on any day.

Reason: To ensure access and egress for delivery / routine Council vehicles to paved pedestrian mall / laneway areas is not prevented.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

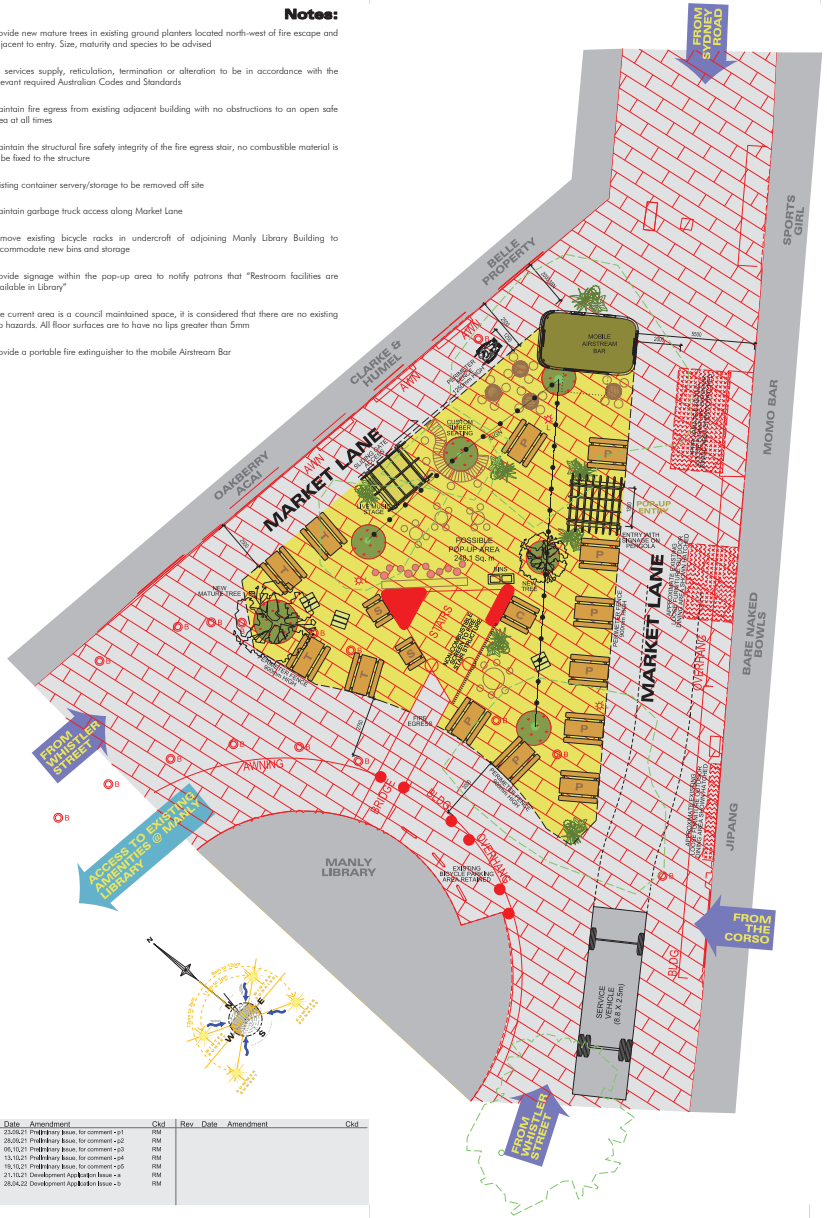
The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment

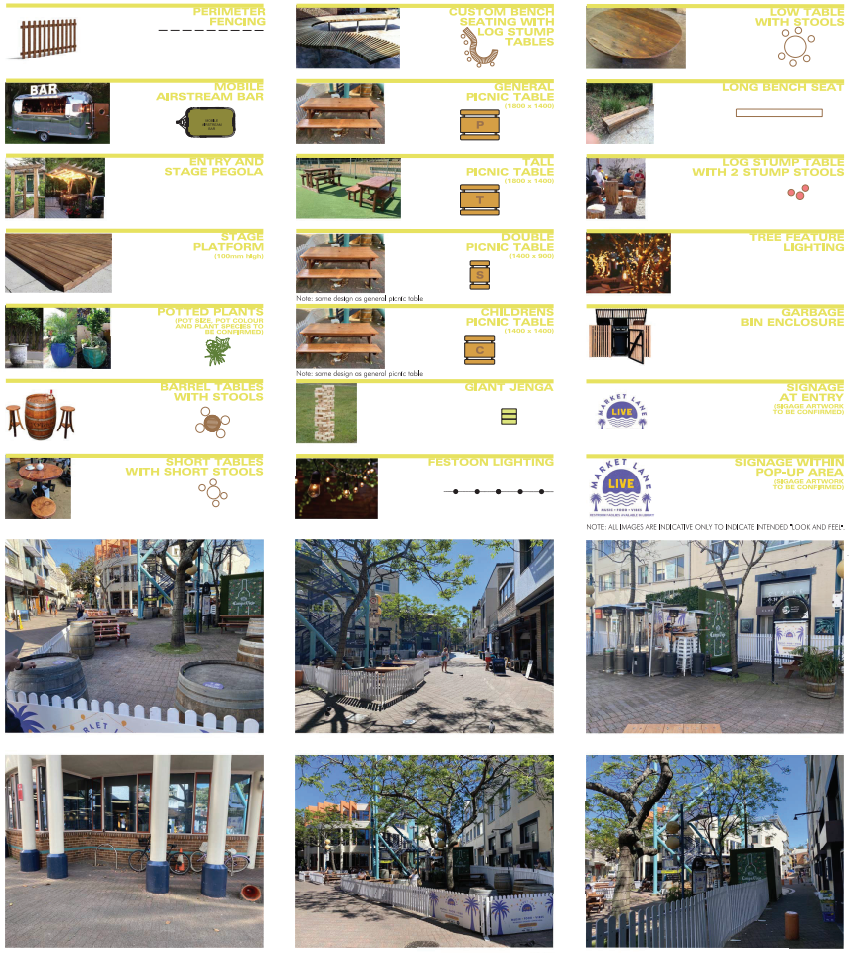
Notes:

- Provide new mature trees in existing ground planters located north-west of fire escape and adjacent to entry. Size, maturity and species to be advised
- All services supply, reticulation, termination or alteration to be in accordance with the relevant required Australian Codes and Standards
- Maintain fire egress from existing adjacent building with no obstructions to an open safe area at all times
- Maintain the structural fire safety integrity of the fire egress stair, no combustible material is to be fixed to the structure
- Existing container servery/storage to be removed off site
- Maintain garbage truck access along Market Lane
- Remove existing bicycle racks in undercroft of adjoining Manly Library Building to accommodate new bins and storage
- Provide signage within the pop-up area to notify patrons that "Restroom facilities are available in Library"
- The current area is a council maintained space, it is considered that there are no existing trip hazards. All floor surfaces are to have no lips greater than 5mm
- Provide a portable fire extinguisher to the mobile Airstream Bar



Rev	Date	Amendment	Ckd
p1	23.09.21	Preliminary Issue, for comment - p1	RM
p2	28.09.21	Preliminary Issue, for comment - p2	RM
p3	08.10.21	Preliminary Issue, for comment - p3	RM
p4	13.10.21	Preliminary Issue, for comment - p4	RM
p5	19.10.21	Preliminary Issue, for comment - p5	RM
a	21.10.21	Development Application Issue - a	RM
b	26.04.22	Development Application Issue - b	RM

Rev	Date	Amendment	Ckd



MARKET LANE LIVE
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live | learn | work | care

Job Name
MARKET LANE LIVE
Pop-up Wine Bar
Market Place, Manly NSW 2095

Sheet Title
PROPOSED PLAN

Date **Oct 2021**	Scale **1:100**
Drawn **KH**	Job No. **21012**
Checked **RM**	Drawing No. **DA01**
Authorised **RM**	Revision **b**

IMAGE 01

IMAGE 02

IMAGE 03

IMAGE 04

IMAGE 05

IMAGE 06

Rev	Date	Amendment	Ckd
p1	15.10.21	Preliminary Issue, for comment - p1	RM
p2	19.10.21	Preliminary Issue, for comment - p2	RM
a	21.10.21	Development Application Issue - a	RM

Rev	Date	Amendment	Ckd

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Job Name
MARKET LANE LIVE
Pop-up Wine Bar
Market Place, Manly NSW 2095

Sheet Title
IMAGES

Date	Scale
Oct 2021	
Drawn KH	Job No. 21012
Checked RM	Drawing No. DA02
Authorised RM	Revision a

ITEM 4.4	**DA2021/1502 - 1622 PITTWATER ROAD, MONA VALE - DEMOLITION WORKS AND THE CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING.**
AUTHORISING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/310798**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans & Elevations** **3 ⇩Clause 4.6 - Density** **4 ⇩Design & Sustainability Advisory Panel Report**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the 4.5A Density controls for certain residential accommodation development standard pursuant to clause 4.6 of the PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/1502 for Demolition works and the construction of a residential flat building on land at Lot CP SP 44234, 1622 Pittwater Road, MONA VALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1502

Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot CP SP 44234, 1622 Pittwater Road MONA VALE NSW 2103
Proposed Development:	Demolition works and the construction of a residential flat building
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 44234
Applicant:	Trio Industries Pty Ltd

Application Lodged:	25/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	03/09/2021 to 17/09/2021
Advertised:	03/09/2021
Submissions Received:	13
Clause 4.6 Variation:	4.5A Density controls for certain residential accommodation
Recommendation:	Approval

Estimated Cost of Works:	$ 4,884,800.00

EXECUTIVE SUMMARY

The development application relates to the demolition of all structures, tree removal, excavation works and the construction of a two-storey, seven unit residential flat building atop of a single level of basement car parking.

The proposal is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the proposal is deemed contentious by way of having ten or more unique submissions. The provisions of SEPP 65 and the Apartment Design Guide are not triggered by this proposal, however it is considered that the proposal would succeed when tested against the underlying principles of that guide.

The proposal has attracted twelve submissions from both surrounding properties and properties from

further afield. The submissions raise concern about the overdevelopment of Mona Vale, traffic implications and impacts to the adjoining heritage listed church. Other objections have been received from the adjoining flat building at 1620 Pittwater Road who have raised concern about (but not limited to) building bulk and scale, overshadowing, loss of privacy and vegetation impacts.

The assessment of this application has found that the proposal is appropriate in its context and does not cause any unreasonable amenity impacts on neighbours. The tree loss is supported by Council's Landscape Officer and is significantly offset by a comprehensive planting schedule. The design quality is supported by Council's Design and Sustainability Advisory Panel who were complimentary of the architecture.

The proposal does exceed the provisions of Clause 4.5A Density Controls for Certain Residential Accommodation pursuant to the Pittwater Local Environmental Plan 2014. That control requires one dwelling per 200m^2 of site area, whereby the proposal only achieves one dwelling per 197.85m^2 thus equating to a 1.2% variation. The extent of this variation is imperceptible and supported.

On balance of all factors the proposal is considered to be an appropriately proportioned and designed building for the site and the wider Mona Vale context. On that basis this report concludes with the recommendation that the NBLPP as the consent authority **APPROVE** the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works, tree removal and ground works to facilitate the construction of a two-storey residential flat building over a single level of basement car parking.

Specifically the proposal entails:

- Demolition of all existing improvements on the land.
- Removal of seven (7) prescribed trees and twelve (12) exempt species (not requiring Council's consent to remove).
- Excavation up to a depth (varying) of 2m.
- Construction of a basement accommodation seven (2) x double garages (one per unit) and three (3) visitor spaces, storage rooms, bulky waste room and bicycle parking.
- Construction of a two-storey building accommodation seven (7) x three (3) bedroom apartments.
- Associated landscape works including 21 local canopy trees, 17 non-endemic canopy trees, 395 new shrubs and hundreds of new ground cover plants.

Generally the architecture of the proposal is recessive from the sides and modulated from the front and rear with opposing gables. The building is to be finished in concrete, face brick, metal and stone cladding, v-board and timber decking. The entire length of the two flank elevations are bound by 900mm deep on-structure planter boxes at both ground and first floor level.

AMENDED PLANS
During the course of the application amended plans were received in response to the Design and Sustainability Advisory Panel (DSAP), Council and communiy's comments. The changes made included revisions to the driveway, deletion of all decking, terraces and stairs to the sides of the building, enlargement of on-structure planter boxes, installation of fixed louvered privacy screens to the southeastern elevation and the relocation of the garbage room.

The changes did not necessitate the renotification of the application, and this assessment herein is made on the basis of these amended plans.

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 - 7.2 Earthworks
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - D9.3 Building colours and materials
Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot CP SP 44234 , 1622 Pittwater Road MONA VALE NSW 2103
Detailed Site Description:	The subject site is legally identified as Lots 1, 2 and CP in Strata Plan 44234 and is commonly known as 1622 Pittwater Road, Mona Vale. The site falls within the R3 Medium Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014. The site is trapezoidal in shape with a southwestern frontage to Pittwater Road of 28.87m, depths of 48.39m and 62.47m and an overall surveyed area of 1,385sqm. The site presently accommodates a detached pair of brick semi-detached dwelling houses with a swimming pool in the

	rear garden. The site is flood affected and slopes away from the street, experiencing a 2m fall. The site has mature trees and vegetation throughout. Surrounding properties consist of a church to the north, a row of townhouses to the southeast, factories to the north and a Woolworths supermarket to the south, across the street.

Map:

SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of

Section 4.15 Matters for Consideration	Comments
instrument	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 21Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested during the course of this assessment. 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 of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely	(i) **Environmental Impact**

Section 4.15 Matters for Consideration	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/09/2021 to 17/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Ms Joulia McLaren	8 / 20 Barrenjoey Road MONA VALE NSW 2103
Ms Roslyn Faye Tebble	39 Grandview Parade MONA VALE NSW 2103
Proprietors of Strata Plan 72369	1620 Pittwater Road MONA VALE NSW 2103
Mrs Deirdre Anne Calvesbert	2183 Pittwater Road CHURCH POINT NSW 2105
Mrs Lynette Rosemary Gregory	8 Cliff Road COLLAROY NSW 2097
Mr Neil Martin Gregory	8 Cliff Road COLLAROY NSW 2097
Marcelle Balt	27 Cynthea Road PALM BEACH NSW 2108
Tina Smith	1 Utingu Place BAYVIEW NSW 2104

Name:	Address:
Mr Michael Alexander Orchard	16 Jendi Avenue BAYVIEW NSW 2104
Ms Angela Louise Leary	26 Bertana Crescent WARRIEWOOD NSW 2102
Mr David Michael Grabham	20 A Wearden Road BELROSE NSW 2085
Mr Gunter Swoboda	10 / 17 Surfview Road MONA VALE NSW 2103
Mrs Nicole Holmes	Address Unknown

The following issues were raised in the submissions:

- Overdevelopment
- Built Form: Height, Envelope, Setbacks, Landscaped Area
- Impacts on Heritage Items
- Impacts on Neighbours: privacy, solar access, noise
- Traffic and Access
- Flooding Impacts

The above issues are addressed as follows:

- **Overdevelopment**

  The submissions raised concerns that the proposal is an 'overdevelopment' of the site and will set an undesirable precedent within Mona Vale and necessitates the removal of nearly all trees on site.

  Comment:

  The development of the site for the purposes of a residential flat building is permitted with consent in the R3 Medium Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014.

  The development is generally in accordance with the built form envisaged by the Pittwater 21 Development Control Plan and the Apartment Design Guideline (which does not strictly apply to this proposal).

  The overall proportions of the building are consistent with what could reasonably be expected to be developed on the site. The Applicant is entitled to peruse the development of the site in accordance with the permitted land uses.

  It is noted that the development exceeds the density standards prescribed by Clause 4.5A of the PLEP 2014 by 1.2%, however the extent of that variation is not considered tantamount to an overdevelopment and is discussed in detail under Clause 4.6 of this report.

  Council's Landscape Officer has conditionally approved the proposed tree removal, subject to conditions and an extensive landscaping plan to soften the impact of tree loss. The landscape plan details that 21 new locally native canopy trees, plus 17 non-endemic trees will be planted on the site. In addition to that the plans include 395 new shrubs and hundreds of new groundcover plants.

This matter does not warrant the refusal of the application.

- **Built Form: Height, Envelope, Setbacks, Landscaped Area**

  The submissions raised concerns that the proposal is non-compliant with a number of built form controls which, in turn, creates an impact on neighbours. A submission received on behalf of the body corporate of the neighbouring 1620 Pittwater Road details these variations extensively.

  Comment:

  Upon receipt of the initial application some concerns raised by the community were considered substantial enough to warrant amendments to the proposal, and these include the addition of fixed privacy screening in the most sensitive locations of the first floor southeast-facing windows, and deletion of all decking, terraces and stairways along the outer edges of the site, instead replacing these with landscaping (where permitted by flooding constraints). The Applicant provided revised plans to this extent and also enlarged the dimensions of first floor planter boxes to allow for larger landscaped species to be planted.

  The site is subject to flooding which permits a variation to the building height standard. Other built form non-compliances have been discussed under the relevant portions of this report, and in summary the amended plans and recommended conditions negate any unreasonable impact consequent of built form non-compliances. It should be noted that contrary to the submissions received, this assessment finds no breach of the side building envelope has occurred.

- **Impacts on Heritage Items**

  The submissions raised concerns that the development may give rise to adverse impacts on adjoining heritage items, including the church which directly adjoins the site.

  Comment:

  Council engaged an independent heritage consultant to assess the impacts of the proposal and it was concluded that the development would have no unreasonable impacts on the heritage items.

- **Impacts on Neighbours: privacy, solar access, noise**

  The submissions raised concerns that the development could have an unacceptable impact on neighbouring properties including 1620 Pittwater Road to the southeast, and the adjoining church to the northwest.

  Comment:

  Concern was raised from some members of the church that the use of the site for a flat building would acoustically impact on the operation of church services. The use of the site for residential purposes is consistent with the zoning of the land and is not envisaged to generate any unreasonable impacts on the church.

  Concerns from 1620 Pittwater Road include noise, visual privacy and overshadowing.

  The assessment of this proposal has concluded that no unreasonable extent of overshadowing will occur, and that the overall amenity of the building would not be compromised by this proposal. Concerns relating to visual privacy have largely been addressed through the sensitive

placement of first floor privacy louvers.

The space between the proposed building and the southeastern boundary is to be entirely landscaped with (predominately) native species which will provide a visual privacy buffer, but also an improved outlook from neighbouring properties.

Concern has also been raised by neighbours that the proposal will impact on their trees. No approval is implied or granted under the recommendation of this report for the removal of any neighbouring vegetation. Council's Landscape Officer has advised that the development is able to proceed without impacting on neighbouring trees, and therefore a condition to that extent has been imposed.

If consent is granted and further exploration works are undertaken as a part of the Construction Certificate which conclude that there will be an impact, then agreement from neighbouring property owners would be required.

- **Traffic and Access**

The submissions raised concerns that the construction of the proposal, along with its on-going usage may impede on traffic access and safety and contribute to an increased level of congestion within the locale.

Comment:

The proposal provides a compliant provision of car parking for the number of flats proposed and this matter does not necessitate the refusal of the application.

The proposed driveway location (which is only slightly different to the existing) has been reviewed by Transport for NSW and Council's Traffic Engineer who raise no objection to its location. It should be noted that during the assessment the driveway was slightly relocated at the request of Council to provide a safer entry point.

In the absence of any conflicting technical reports, and given the concurrence of the roads authority, the proposed driveway and provision of car parking is deemed to be acceptable.

- **Flooding Impacts**

The submissions raised concerns that the development has not been designed to minimise flooding impacts on adjoining properties.

Comment:

The development has been reviewed by Council's Development Engineers and Flooding Engineers who raise no objections to the development, subject to conditions as recommended.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	***Supported*** The proposal was presented to Council's Design and Sustainability Advisory Panel (DSAP) on 07 October 2021. The Panel was overall supportive of the proposed development and their report concluded with:

Internal Referral Body	Comments
	The Panel supports the proposal in its current form, but notes that the design may be further improved in accordance with the recommendations. A response to these recommendations can be found elsewhere in this report.
Environmental Health (Acid Sulphate)	***Supported, with conditions*** Investigation of soils (to 2.0m below ground level) was demonstrated via the Geotechnical report. No actual or potential acid sulfate soils were found in the area of proposed excavations which will be shallower than the investigation levels. Environmental Health is satisfied that the information provided is an adequate representation of the subsurface soil profile and have no objections to the proposal.
Landscape Officer	***Supported, with conditions*** *Updated comments, 22/12/21* Amended Architectural and Landscape Plans are submitted in response to the landscape outcome issues raised by Landscape Referral, and the amended plans increase landscape areas available for planting to reduce the built form, through the following measures: reduced basement footprint, deletion of the floating deck structures and which have been replaced with landscaping, increased planter boxes on Level 01, maximise tree retention, and maximise tree planting and landscaping upon the site .through the increase landscape area. The amended Landscape Plans provide an acceptable landscape outcome in consideration of the LEP objectives and the DCP landscape controls and the proposed landscape works are supported subject to conditions. The recommendations of the Arboricultural Impact Assessment note that one existing tree identified as tree number 2 (Paperbark) will be retained within the property, seven prescribed trees requiring Council consent are required for removal within the property without a design alternative for preservation, twelve Exempt Species will be removed, and existing trees within adjoining properties in close proximity will require tree protection measures. *Original comments, 03/09/21* The proposal seeks approval for the demolition of the existing structures and construction of a residential flat building and associated works. Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan for land zoned R3 - Medium Density Residential, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation

Internal Referral Body	Comments
	• C1.1 Landscaping • C1.5 Privacy • C1.24 Public Road Reserve - Landscaping and Infrastructure • D9 Mona Vale Locality Concerns are raised that the capability of the landscape area to meet the requirements of the LEP and DCP are diminished by insufficient useable landscape area that is occupied by structures that reduce planting opportunities, including the existing stormwater easement and the provision of the detention basin over which suspended decking is proposed. Small landscape strips are left at the ground level to accommodate planting and the result is that inadequate planting is provided to reduce the built form and provide privacy to adjoining properties. The landscaped area as defined in the LEP "means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area". The proposed development layout and structures result in limitations to the capability of the Landscape Plan to achieve a suitable landscape outcome and Landscape Referral are unable to support the application as the proposal is unable to meet the relevant LEP and DCP controls, whereby: • the landscape area is occupied by decking structure that prohibits the use of the landscape area for its intend, ie. growing plants, grasses and trees, • the side boundary landscape strips of limited width, estimated at 450-500mm wide, restricted by the decking structure and by retaining walls, provides inadequate soil area to accommodate planting of a suitable height to provide privacy to adjoining neighbours as well as soften the built form to satisfy control C1.1, • the height of the decking within the side boundaries is above natural ground levels and without adequate screen planting creates overlooking into adjoining properties, contrary to C1.5 Privacy, • the rear setback provides no opportunity for planting to reduce the built form with trees and shrubs, and relies on one single small planter to provide an ineffective landscape treatment to the rear of the property, • the front setback is disrupted by elements such as paths, walling, and lawn that reduces the opportunity to provide a development that satisfies the control requirement that 50% of the front of development to screen the development from the street to satisfy control C1.1, • it is noted that waste storage requirement within the front setback will increase the elements that reduce available landscape area capable of satisfying the above requirement, • the Landscape Plan includes tree planting in close proximity to the proposed buildings that are considered unsustainable and additionally proposed species are listed on Council's Exempt Species list, • no street tree planting is provided as required by control C1.24. To achieve an acceptable landscape outcome the landscape area proposed for the development site is required to support planting of

Internal Referral Body	Comments
	trees and shrubs that are able to achieve a design intent to reduce the built form, provide streetscape amenity, and provide privacy to adjoining neighbours. An Arboricultural Impact Assessment is provided, and based on the development proposal, seven (7) prescribed trees (ie. protected by the DCP) are recommended for removal without a design alternative and these are identified as tree numbers 4 and 5 - Lilly Pilly; 8 - Lemon Scented Tea Tree; 9 and 10 - Prickly Leaved Paperbark; 11 - Paperbark; and 19 - Xylosma. A total of twelve (12) Exempt Species are recommended for removal, impacted by development, and these can be removed without Council consent. Any approved development works shall contain tree replacement with locally native trees located in landscape areas of adequate soil volume to support long term establishment. Based on the concerns regarding the landscape area and resultant inadequate landscape outcome, Landscape Referral are unable to support the application.
NECC (Development Engineering)	***Supported, with conditions*** *Updated comments, 12/05/22* The submitted stormwater plan is satisfactory, subject to conditions. No objections to approval. *Original comments, 19/10/21* The proposal for construction of a residential flat building with basement level carpark. *Stormwater* The stormwater management plan proposes to discharge via a connection to the easement at the rear of the site. As it is a private easement it is unclear if the site benefits from the easement. The applicant shall demonstrate that the subject site is benefited by the easement. Additionally, the existing pit at the end of the easement is not shown on the survey. The levels of the existing pit shall be confirmed via survey. *Access* The proposal involves a access driveway to a basement level parking facility. To accommodate the footpath at the frontage of the site the driveway crossing shall be in accordance with Council's standard normal profile up to the boundary. The flood report recommends a crest at the boundary and floodwalls along the driveway. These proposed flood mitigation measures are to be shown on the plan. The Applicant shall provide a long-section at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890. It is noted that the Flood team have requested that the flood mitigation

Internal Referral Body	Comments
	measures, as recommended in the flood report, be reflected on the architectural and stormwater plans. Additionally the recommended flood planning level is to be clearly indicated. *Review comments, 18/02/22* Amended plans for the driveway including longsections have been submitted. However it is noted that Council Traffic team have requested additional information to assess the viability of the driveway location. As such Development engineering cannot finalise comments until the traffic concerns are addressed.
NECC (Stormwater and Floodplain Engineering – Flood risk)	***Supported, with conditions*** The application for the demolition of an existing dwelling and construction of a residential flat building is accompanied by a Flood Impact Study prepared by Capital Engineering Consultants. This Study appropriately defines the pre and post developed flood scenarios for the 1% and PMF event. The impact of Climate change on flood levels has been considered in the design of the basement carpark and ground floor. Subject to conditions, the proposal is compliant with Council's flood prone land development controls.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral This proposal has been referred for Heritage comment as the subject property is situated adjacent to a heritage item, and thus is within its vicinity. Other heritage items are nearby. **St John's Anglican Church and gravestones** - 1624 Pittwater Road, Mona Vale **"Glenroy" (house)** - 1789 Pittwater Road, Mona Vale **"Dungarvon" (house)** - 28 Park Street, Mona Vale Details of heritage items affected Details of the item as contained within the Pittwater inventory is as follows: **St Johns Anglican Church and gravestones** <u>Statement of Significance</u> St John's Anglican Church is historically significant as one of the earliest churches of Pittwater. It was built in 1871 and relocated to Bayview in 1888. It was demolished and rebuilt in 1907. Group of three relocated headstones typical of the late nineteenth century design, removed from lost grave sites on Mona Vale Headland. The group includes a memorial to a worker killed during the erection of Barrenjoey Lighthouse. <u>Physical Description</u> St Johns Anglican Church is a sandstone one-storey church located on Pittwater Road with a later modern addition. It is built in a simple style featuring Victorian Rustic Gothic characteristics,

Internal Referral Body	Comments
	including: a steep-pitch roof, prominent gable with wide bargeboard, two-centred pointed arched opening. On the western elevation there are three sandstone gravestones. **Glenroy** Statement of Significance Glenroy at 1789 Pittwater Road in Mona Vale has historic and aesthetic significance as a good example of a Federation House associated with the early inhabitants of Pittwater, the Johnson family. It is one of the earliest surviving houses in the locality Physical Description Glenroy features simplified elements of the Federation House, including the use of weatherboard, a shady veranda, corrugated iron roof and plain or sparingly decorated timber posts. **Dungarvon** Statement of Significance Dungarvon house at 28 Park St, Mona Vale is of local significance as one of the earliest surviving houses in the locality, associated with local identities. It is also aesthetically and architecturally significant due to its highly individual character in the context of Pittwater and the Northern Beaches. Physical Description Stone house in Federation picturesque style, with corrugated iron roof built in 1904. Eclectic blend of Queen Anne (ornamental cast iron brackets, bay windows), Federation (square tower room with window on each aspect) and Arts and Crafts (hip and gable roof and tall chimneys). Single storey dwelling with attic rooms and a central observation tower. Constructed of ashlar sandstone blocks with a rusticated finish. The façade features two symmetrically placed projecting bays. Notable for its interesting combination of roof forms and decorative external timber detailing. The dwelling is located within landscaped grounds and is well screened

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	

Internal Referral Body	Comments
	Other | N/A | Consideration of Application Adjoining the subject property, at No. 1624 Pittwater Road, is St. John's Anglican Church and associated Gravestones, listed as Heritage item No. 2270168 in Pittwater LEP 2014. Across Pittwater Road at No. 1789 is the house "Glenroy", also heritage listed (Item No. 2270021) and now used as commercial premises. Two doors away from the subject site, at 28 Park Street, is the house "Dungarvan" also listed and scheduled in the LEP as Item No. 2270006. Of these properties, it is the Church which must entertain most consideration. The comparative distance of the other properties from the site means that no adverse heritage impact could be said to arise. The demolition of the existing townhouses on the site is not considered to raise any concerns of a heritage nature, as the buildings have not been identified or considered as significant in heritage terms, and do not enjoy or promote any special relationship with the Church. The proposal is for a new two storey residential apartment building, set upon a parking basement accessed from the property frontage. Having regard to the slope of the site away from the street, the scale of the building does not appear to be problematic, and the setbacks from boundaries, most particularly the northern side (to the Church), appear adequate to dispel any discomfort about the new building's proximity to the heritage item. Adequate landscaping measures are also suggested by the drawings. The restrained appearance of the building using expressed gable or coupled roof forms and a limited palette of materials, does not promise any inappropriate assertiveness relative to the Church building. Similarly, no affront appears likely to the other heritage items more remote from the site than the Church. Considering the provisions of CL5.10 of the LEP, it is possible to conclude that no diminishment of the significance of the heritage item adjacent to the site would ensure from the development proposed. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes Further Comments COMPLETED BY: Robert Moore DATE: 3 September 2021

Internal Referral Body	Comments
Traffic Engineer	***Supported, with conditions*** *Updated comments, 10/5/22* Council has requested further information regarding the proposed design and impacts to the road network during construction. An amended Traffic and Parking Assessment has been prepared in response to the issues raised. *Access, Driveway and Waste Collection / Deliveries* The location of the access driveway has been retained, however the garbage bin room has been relocated to the northern end of the site, between the driveway and the property boundary with No.1624 Pittwater Road. The change in layout will ensure that waste collection vehicles park further away from the right turn bay into Park Street when servicing the development. It has been suggested that waste collection is likely to be undertaken outside of peak periods which reduces the possibility of traffic congestion and impact on the right turn lane. Larger delivery vehicles are infrequent and will park on-street to service the development. Smaller delivery vehicles such as couriers and maintenance services are able to use the visitor parking spaces in the basement car park. *Construction Traffic Management* It should be noted that TfNSW did not raise any objections regarding the location of the driveway, however requires that all demolition and construction vehicles are to be contained wholly within the site and that a construction zone will not be permitted on Pittwater Road. The Applicant has proposed an on-site loading area during construction which is situated within the front yard of the site. To facilitate vehicle access into and out of the loading area, a temporary egress driveway is to be constructed at the southern end of the site. The existing northern driveway is to be used as the entry driveway, enabling vehicles to enter and exit the site in a forward direction. A detailed Construction Traffic Management Plan (CTMP) is to be submitted prior to the Construction Certificate. *Accessible Parking* The provision of parking for people with disabilities must be provided at a rate of 3% of the required parking spaces. The development has been modified to provide one accessible visitor parking space in accordance with the Pittwater 21 DCP. The additional information provided and amended proposal satisfactorily addresses the concerns and/or reduces the impacts

Internal Referral Body	Comments
	raised regarding the development. The proposal is considered acceptable, subject to the recommended conditions in conjunction with any additional requirements and approvals from TfNSW. ***Superseded comments, 23/12/21*** The proposal is not acceptable in its current form due to the issues previously raised. It is noted that the traffic and parking comments were not provided before the request for further information was sent to the Applicant on 3/11/21, and therefore it is understood that the Applicant was unable to address the specific concerns raised. Nevertheless, I have reviewed the amended plans and there has been some changes made to the parking with the provision of one accessible parking space which meets the DCP requirements. There are still concerns detailed below regarding the location of the driveway and impact of waste collection and larger delivery vehicles servicing the development affecting traffic flow, as well as how demolition and construction works can be undertaken wholly within the site without impacting the road network. It is therefore requested that further information be provided to address these issues. ***Superseded comments, 02/12/21*** The proposal is not acceptable in its current form due to a number of issues which affect the road network both during demolition/construction works as well as future servicing of the residential flat building. The driveway to the site has been widened to 5.5m and moved closer to the intersection with Park Street, however it appears to be just outside the prohibited location for access driveways specified in AS2890.1-2004 and shown in Figure 3.1 of the Standard. The Traffic Assessment report indicates that the proposed development with seven dwellings, is expected to generate in the order of 5 vehicle trips per peak hour during the busiest period, which is an increase of 4 vehicles compared to the existing situation. In normal circumstances this may be considered insignificant but the location of the driveway in close proximity to the intersection with Park St exacerbates the existing congestion issues in the area. It is also noted that Waste Collection is to occur from the roadside. This would require the waste collection vehicle to stand in the existing 'No Parking' area downstream from the northern property boundary for a considerable

Internal Referral Body	Comments
	period of time while bins are transported from the waste room to the truck and back. This will not only block the driveway access but also reduce the capacity of the right turn bay increasing the likelihood of queuing and affecting through traffic in the southbound direction. The right turn into Park Street is a difficult manoeuvre most of the day where vehicles must wait for a safe gap, due to the steady stream of traffic along Pittwater Road and several vehicles can queue as a suitable gap is awaited. This is particularly evident during the morning and afternoon peak periods. Siting the driveway at the northern property boundary would be a better outcome in terms of reducing impacts on through traffic and congestion at the intersection. The basement car park provides the required 14 residential car parking spaces and 3 visitor spaces in accordance with the DCP, however no provision has been made for accessible spaces. The Pittwater21 DCP specifies that the provision of parking for people with disabilities must be provided at a rate of 3% of the required residential parking spaces excluding the parking required for adaptable housing. Therefore a minimum of one accessible parking space is required for the development. There are no provisions or designated onsite parking for larger deliveries other than the possibility of using the visitor parking spaces. Vehicle access to the basement provides the minimum headroom clearance of 2.2m. Although there are no specific requirements in the DCP for this, consideration should be made to provide additional facilities on the private property to accommodate larger delivery vehicles due to access issues from the location and the existing No Parking restrictions on the site's Pittwater Road frontage. TfNSW has reviewed the application and has provided concurrence subject to conditions, however Condition 6 of the referral response requires the following. ‘6. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pittwater Road.’ The entire frontage of the proposed development is signposted as ‘No Parking’. Further information would be required to demonstrate how the application for demolition works and the construction of a residential flat building can be undertaken wholly within the site without impacting the road network. Council and TfNSW would be

Internal Referral Body	Comments
	unlikely to approve Stand Plant applications for the the standing of trucks on the frontage of the site. While not normally required at DA stage, a construction traffic management plan should be provided with the DA to demonstrate how the development will be completed to minimise construction traffic management impacts
Waste Officer	***Supported, with conditions***

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	***Supported, no conditions*** The proposal was referred to Ausgrid who raised no objections to the development application.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	***Supported, with conditions*** Transport for NSW has reviewed the development application and provides their concurrence, subject to conditions which can be found in the recommendations of this report.

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. 1115355M_03 dated 10 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	45	46

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.

Transport for NSW

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment

The proposal was referred to TfNSW who raised no objections, subject to conditions as recommended.

DESIGN AND SUSTAINABILITY ADVISORY PANEL

Council's DSAP reviewed the application on 07 October 2021 and concluded that they support the proposal, but noted that there are several modifications that could be made to the application to improve it further. These include:

Landscaping
The Panel requested additional compensatory plantings be included in the proposal to mitigate tree loss, and that trees should be retained wherever possible. The Panel questioned why vegetation was unable to be placed in the rear of the site and did not believe that flooding was an adequate reason.

In response, the applicant amended the landscape plans to provide a significantly greater volume of planting, including plantings in the rear setback area of the site.

Waste
The Panel stated that the bin room in the garage is non-compliant and that the structure should be integrated within the landscaped treatment to the front of the site. The revised plans moved the bin room, clad it in stone and hide it behind landscaping.

Facade
The Panel suggested the addition of windows to the first floor front facade to reduce bulk. The applicant has provided more windows on the facade.

Conclusion
On balance it is considered that the applicant has appropriately responded to the DSAP recommendations.

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 (Clause 3.2(2a))	8.0m above FPL* (RL 16.4) Note: if building height exceeds subclause (2A) limited then the requirement reverts to 8.5m from existing ground level	<8.0 above FPL (max. RL 16.38)	-	Yes
Density controls for certain residential	1 dwelling per 200sqm of site area	1 dwelling per 197.85sqm	1.2%	No

accommodation				

*FPL = Flood Planning Level at RL 8.4.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accomodation	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Clause 4.5A Density Controls for Certain Residential Accommodation
Requirement:	1 dwelling per 200sqm of site area
Proposed:	1 dwelling per 197.85sqm of site area
Percentage variation to requirement:	1.2%

Assessment of Request to vary a Development Standard:

The following assessment of the variation to Clause 4.5A Density Controls for Certain Residential Accommodation 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 4.5A Density Controls for Certain Residential Accommodation 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 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 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 Request

The applicants written request argues, in part:

- *It is considered that a contravention of the development standard is justified on environmental planning grounds given the very minor nature of the departure noting that the proposal provides for a total of 7 dwellings upon a site having an area of 1,385m^2 and which equates to a density of 1 dwelling per 197.85m^2 and which represents a variation of 1.2% to the control.*
- *It is my opinion that the proposal is consistent with the objective of the Act in relation to providing the orderly and economic development of land.*
- *It is also considered that the rounding up of the number of dwellings from 6.925 dwellings to 7 dwellings is consistent with adopted principles.*
- *It is also considered that the proposed variation would not be discernible to a lay person viewing the site.*

It is therefore my opinion that in the absence of any unreasonable impacts that there are sufficient environmental planning grounds to support the proposed variation.

<u>Comment:</u>

It is concurred that the extent of variation proposed is best described as minor and that the variation is non-discernible / imperceptible and does not generate any adverse impacts upon neighbours, the environment of the wider Mona Vale planning controls. The variation permits an additional dwelling to be built adjacent to the town centre, and the design demonstrates that the site can comfortably accommodate the additional density (being an additional 0.075 dwellings) in a generously proportioned building.

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 Density controls for certain residential accommodation development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.5A – 'Density controls for certain residential accommodation' of the PLEP 2014 are:

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

a) to achieve planned residential density in certain zones,

Comment:

The planned residential density of the R3 zone is 1 dwelling per 200sqm. This development proposes a density of 1 dwelling per 197.85sqm. Numerically if the site was 15sqm larger (equivalent to an average sized bedroom) then compliance would be achieved.

The proposal provides for a well designed and generously proportions flat building with seven apartments. Requiring strict compliance with the control would limit the density of the building to be six units.

The site is well located immediately adjacent to the Mona Vale Town Centre, and is within walking distance to schools, shops, employment, public transport, supermarkets and recreational areas.

The well situated site, the quality of the design and the minimality of the variation sought (1.2%) result in the considered position that the development, whilst non-compliant, still achieves an appropriate residential density.

In their Clause 4.6 Variation Request the applicant relevantly notes: *The proposal provides for 7 dwellings in a situation whereby strict compliance with the control would permit 6.925 dwellings to be erected upon the site... it is considered given the minor variation proposed in this instance whereby the permitted density of 6.925 dwellings is rounded up to 7 dwellings is consistent with the normal approach adopted for such matters and that the density proposed is consistent with the planned residential density for the zone.*

b) to ensure building density is consistent with the desired character of the locality,

Comment:

The development is for a two storey flat building over one level of basement, surrounded by landscaping both at grade, and around the perimeter of the ground and first floors. The building is finished in high quality and contextually appropriate materials which, in combination with the landscaping, should present as an attractive building. Therefore, the appearance of the building is consistent with the desired character of the locality.

The variation to Clause 4.5A is non-discernible from the public or private domain as overall it only equates to a 15sqm shortfall of site area.

Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

  Comment:

  The development shall increase the housing yield of the site from two to seven dwellings thus providing new housing opportunities to meet a growing demand. The building maintains a medium density residential environment.

- *To provide a variety of housing types within a medium density residential environment.*

  Comment:

  The proposal provides for generously proportioned apartments within a town centre location. Generally other homes in this locale are either detached dwellings, or smaller apartments, and therefore the development contributes to a variety of housing types.

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

  Comment:

The proposal only provides for a residential land use and this is appropriate for the zone.

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

  Comment:

  The site is appropriately landscaped at natural ground level, and on-structure at ground and first floor. The building is appropriately described as being within a landscaped setting.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

  Comment:

  Council's Design and Sustainability Advisory Panel have advised that the proposal is of a high quality design that is appropriate for the street.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, 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 Clause 4.5A Density Controls for Certain Residential Accommodation Development Standard is assumed by the Local Planning Panel.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

(g) the proximity to, and potential for adverse impacts on, any 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	Requirement	Proposed	% Variation*	Complies

Control				
Front building line	10.0m or established building line, whichever is greater	Building: 10.0m Bin room: 2.2m	- 78%	Yes **No**
Rear building line	4.46m	7.13m	-	Yes
Side building line	Ground, 3.5m First, 4.3m (north-west)	3.37m 4.4m	Approx. 4% -	**No** Yes
	Ground, 3.5m First, 4.3m (south-east)	3.44m 4.53m	1.8% -	**No** Yes
Building envelope	3.5m	Within envelope	-	Yes
	3.5m	Within envelope	-	Yes
Landscaped area	50% (692.50sqm)	48.8% (676sqm)	2.4% (16.5sqm)	**No**

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
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	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
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.20 Undergrounding of Utility Services	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
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	No	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	Yes	Yes
D9.10 Landscaped Area - General	No	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.4 Solar Access

The neighbours in the adjoining 1620 Pittwater Road, Mona Vale contend that the development will create an adverse level of overshadowing to their properties. The controls require inter alia that the private open space of each dwelling (in the proposal and neighbouring sites) should receive a minimum of 3 hours of sunlight between 9am and 3pm on the winter solstice, and that 50% of the glazed area of windows to principal living areas should also receive 3 hours of sunlight.

The design of the adjoining neighbour is self-shading in some parts and is unusually orientated directly towards the subject development sites. Units in that complex have a courtyard to both edges of the building (one northwest and the other southeast) and a first floor north-westerly facing balcony.

The front (south-eastern) courtyards receive morning sun from 9am, however the building itself completely shades these from around 10:30am.

The rear (north-western) courtyards receive solar access for the majority of the space at 9am, with that extent slowly being reduced as the day continues. As evidenced from both the shadow diagrams, and dated aerial imagery it is evident that these courtyards are already partially overshadowed by the existing building on site, which sits much closer to the boundary, and by existing landscaping.

Notwithstanding that, a compliant degree of solar access to private open space is considered to be achieved.

Similar to that, the elevational shadow diagrams demonstrate that windows of the neighbouring development will receive appropriate solar access in mid-winter (albeit it is noted that the windows highlighted on that plan are on the upper floor, and the principal living areas are on the ground floor).

From the information submitted Council is satisfied that the proposal achieves an acceptable and compliant solar outcome.

C1.5 Visual Privacy

The outer edge of the subject development when measured against the outer edge of 1620 Pittwater Road provides a compliant 9m spatial separation.

In addition to that, the first floor south-eastern elevation incorporates the following privacy fixtures:

- Fixed vertical privacy louvers in sensitive locations for the full length of the facade to minimise overlooking.
- Retractable venetian blinds for the full length of the facade, both for solar shading but also assisting in privacy.
- 1300mm high solid balustrade for the full length of the facade.
- 900mm wide x 900/1000mm deep planter boxes for the entire length of the facade, with some species capable of reaching 1.2m in height.
- Design to have primary living spaces and kitchens orientated to the front and rear boundary, not side.

These elements are all considered to create an acceptable degree of privacy both to occupants and neighbours. It is particularly noted that, given the depth of first floor planter boxes, even if all the planting fails, there would be an extremely limited opportunity for downward views into neighbouring private open space from a medium person's eye height.

At ground level the perimeter gardens are densely landscaped which, in conjunction with a boundary fence and the existing landscaping on neighbouring sites, limits overlooking.

On balance the provision of privacy afforded to neighbours and future occupants is acceptable.

C1.6 Acoustic Privacy

The application does not seek consent for any form of mechanical ventilation or air-conditioning units on the roof of the building and no consent is granted for such.

D9.3 Building colours and materials

Clause D9.3 requires that buildings be finished in dark colours, generally to obscure their proportions within a landscaped setting.

The proposal includes lighter coloured elements, including greyed face brick and off-white timber cladding to portions. In this instance no objections are raised to the variation to finish materials as they result in an attractive building with high quality materials screened by landscaping.

The colour palette of materials is not incongruent with the streetscape.

D9.6 Front building line

Description of Non-Compliance
Clause D9.6 Front Building Line of the P21DCP requires that structures be set back 10m from the front boundary.

Whilst the proposed building is compliant, the bin room encroaches this setback by 78% with a setback of 2.2m, thereby varying the requirements of this control.

It should be noted that the bin room is required to be within 6.5m of the front boundary for waste collection.

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

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

  Comment:

  The bin room is clad in stone and screened with landscaping, and is therefore expected to achieve the desired future character of the locality.

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

  Comment:

  The bin room is not anticipated to generate any unreasonable view impacts from public or private spaces.

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

  Comment:

  The bin room does not compromise the amenity of occupants, rather is provides slightly more visual and acoustic screening to enhance the amenity of occupants.

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

  Comment:

  The bin room does not necessitate the removal of vegetation over and above that required for the rest of the building.

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

  Comment:

  Achieved in basement.

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

  Comment:

  The bin room does not compromise a rural or bushland character. The character of the area is a medium density suburban town centre periphery which the proposal maintains.

- *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 in totality in considered to be enhancing to the streetscape and wider locale and is deemed to be of an appropriate scale and density.

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

  Comment:

  The building is considered to have an attractive frontage, and the bin room does not detract from this. The proposal does not compromise pedestrian amenity and should improve it.

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

  Comment:

  The proportions of the development are considered to appropriately respond to the spatial characteristics of the existing locale.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D9.7 Side and rear building line

Description of Non-Compliance

The development is subject to an algorithmic side and rear setback requirement of which portions of the setback on both side elevations are non-compliant.

The rear setback is compliant with the control.

The Applicant has provided a detailed analysis of the setback requirements which Council concurs is correct, and is copied below:

Elevation	Section Drawing	Measurement	Wall Height	Required Setback above 3m in height	Proposed setback above 3m in height
Eastern Side Elevation	CC	External wall of ground floor building proper	3.989m	3.498m	3.444m
		External wall of first floor	7.370m	4.343m	4.534m
	DD	External wall of ground floor building proper	3.800m	3.450m	3.450m
		External wall of first floor	7.225m	4.306m	4.534m
Western Side Elevation	CC	External wall of ground floor building proper	3.994m	3.499m	3.371m
		External wall of first floor	7.414	4.354m	4.471m
	DD	External face of balcony/planter	3.858m	3.465m	3.371m
		External wall of first floor	7.732m	4.433m	4.436m
Northern Rear Elevation	AA	External wall of ground floor building proper	3.973m	3.493m	4.002m
		External wall of first floor	8.686m	4.672m	8.471m
	BB	External wall of ground floor building proper	4.015m	3.504m	3.996m
		External wall of first floor	8.627m	4.657m	7.138m

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

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

  Comment:

  The variations sought to elements of the side boundary are generally minor and, in the context of the overall building which is well modulated, do not compromise the proposals ability to achieve the desired future character of the locality.

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

Comment:

The development proposes increasing setbacks from ground to first floor with perimeter first floor planter boxes for the majority of the length of the facade. The proportions of the building, combined with materiality and articulation results in an appropriately scaled development for the locale.

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

  Comment:

  The variations sought to the side boundary setbacks do not compromise view sharing from public or private places.

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

  Comment:

  As above.

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

  Comment:

  The encroachments into the side boundary setback areas are not considered tantamount to unreasonable amenity impacts on adjoining land. These particular elements of the proposal, as raised in submissions received, are addressed earlier in this report.

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

  Comment:

  The development provides a satisfactory landscaped outcome.

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

  Comment:

  The footprint of the building is in an acceptable location. Flooding constraints on the land necessitate the building to be raised which in turn has created the subject non-compliances. In this instance, the constraint is deemed adequate to warrant flexibility in the siting of the building.

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

  Comment:

  This matter is discussed in detail by Council's Landscape Officer earlier in this report.

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

  Comment:

The rear of the site faces a tall, blank brick wall that is the rear of an industrial unit. There is no need for a landscaped buffer in this location.

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

D9.10 Landscaped Area - General

Description of Non-Compliance

Clause D9.10 of the PDCP requires that 50% of the site be landscaped area and permits impervious areas less than 1m (i.e. pathways) and on-structure planter boxes with soil depths greater than 800mm to be included in this 50% calculation.

The site is therefore required to provide a landscaped area of 692.5m^2 but fails to achieve this, instead proposing 48.8% or 676m^2.

The application therefore requests a 2.4% variation to the control requirement.

Merit Consideration

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

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

  Comment:

  The overall quality of the architecture is considered to be appropriate for the R3 Medium Density Residential zone and provides a dense landscaped buffer around the entire site, and on-structure planters at ground and first floor for almost the entire perimeter of the building. In effect the building will be surrounded by plantings, which will overtime be complementary to the material palette.

  The proposal is deemed to achieve the desired future character of the locality.

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

  Comment:

  The 2.4% variation to the proposal is considered to result in a negligible difference commensurate to a compliant provision of landscaped area. Given the extensive plantings and on-structure planter boxes (that have a depth of 950mm) and the modulation of the building result in an appropriate bulk and scale.

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

  Comment:

The shortfall of calculation landscaped area does not detract from a reasonable level of amenity and solar access to neighbouring properties.

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

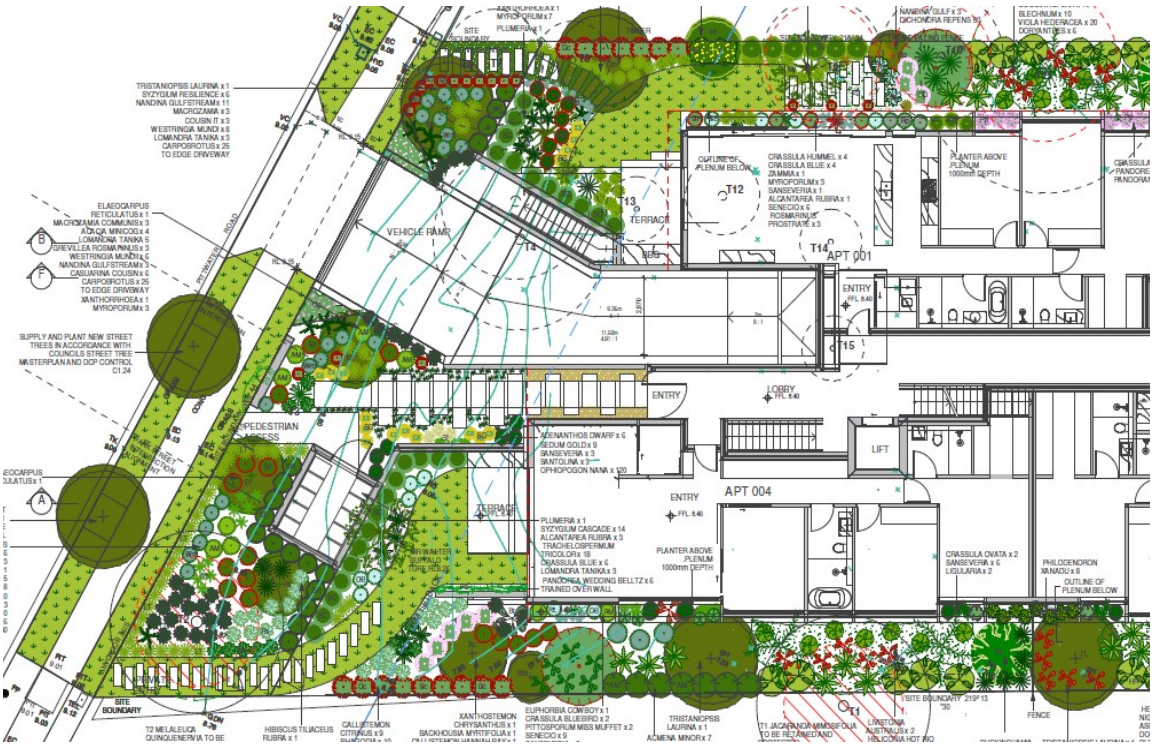
  Comment:

  The proposal does necessitate tree removal on the property. Specifically seven prescribed trees and 12 exempt species trees. Exempt species can be removed at any time without any consent and these therefore do not form part of the application.

  The prescribed trees to be removed are are required to accommodate development, and in order to mitigate their loss it is proposed to plant 21 new locally native canopy trees, plus 17 non-endemic trees on the site in combination with 395 new shrubs and hundreds of groundcover plants.

  Therefore whilst the loss of some mature native trees is unfortunate, the loss is outweighed by an extensive new planting regime which will visually reduce the built form immediately, and more so in longevity.

  An extract of the landscape plan showing new plantings is copied below:



- *Conservation of natural vegetation and biodiversity.*

  Comment:

  Refer to comments above, and comments by Council's Landscape Officer earlier in this report.

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

  Comment:

  Stormwater runoff has been assessed as compliant by Council's Development Engineer.

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

  Comment:

  The design of the building and new planting scheme are considered enhance to the character of the area. The character is not one of bushland or ruralness, but rather medium-density suburbia which this development reinforces.

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

  Comment:

  Water management has been assessed as compliant by Council's Development and Flood Engineers.

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

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 $48,848 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,884,800.

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

This Assessment Report demonstrates that the proposed residential flat building is an appropriate residential typology for the land and that the proposal as a whole is free of any significant detrimental impacts.

The architecture of the proposal is well resolved and will enhance to the wider streetscape.

The impact of the proposal on the amenity of neighbouring properties is acceptable and is not incongruous with what could be readily expected to be developed on the land.

The development exceeds the density standard restricting the density of the site by a minor amount (1.2%) equivalent to an area of one bedroom. This variation is imperceptible and free of impact and enables the orderly and economic development of the land.

Community concerns raised during the exhibition period of the application are duly noted, and the design has been redesigned in attempt to address some of these concerns including the deletion of all perimeter decks, terraces and stairs, installation of fixed privacy screens, and the establishment of a comprehensive landscaped strategy both at natural ground level, and around the perimeter of the first and second floor.

On balance this report finds that the proposal is worthy of support and thereby concludes with the recommendation that the NBLPP **APPROVES** the development application.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/1502 for Demolition works and the construction of a residential flat building on land at Lot CP SP 44234, 1622 Pittwater Road, MONA VALE, 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**
Demolition Plan - 0568-DA101 Rev. 02	08 December 2021	PopovBass
Site Plan - 0568-DA103 Rev. 02	08 December 2021	PopovBass
Basement Plan - 0568-DA105 Rev. 03	13 April 2022	PopovBass
Ground Floor Plan - 0568-DA106 Rev. 03	13 April 2022	PopovBass
Level 01 Plan - 0568-DA107 Rev. 03	13 April 2022	PopovBass
Roof Plan - 0568-DA108 Rev. 02	08 December 2021	PopovBass
Elevation North / South - 0568-DA109 Rev. 02	08 December 2021	PopovBass
Elevation West / East - 0568-DA110 Rev. 02	08 December 2021	PopovBass
Section AA / BB - 0568-DA111 Rev. 02	08 December 2021	PopovBass
Section CC / DD / EE - 0568-DA112 Rev. 02	08 December 2021	PopovBass
Finishes Schedule - 0568-DA117 Rev. 02	08 December 2021	PopovBass
Sections Driveway FF / GG - 0568-DA118 Rev. 02	08 December 2021	PopovBass

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Accessibility Review Report (ref:20171_ADR_DA_v1.1)	13 May 2021	ABE Consulting
Preliminary Traffic Noise Assessment (ref:20210906.2/1208A/R0/AS)	12 August 2021	Acoustic Logic
Arboricultural Impact Assessment Report (ref:7621)	22 May 2021	Rain Tree Consulting
BASIX Certificate no. 1115355M_03	10 December 2021	Sustainable Thermal Solutions

Building Code of Australia Compliance Statement (ref:P210160)	09 June 2021	Anthony Protas Consulting
Flood Impact Study (SW20054)	15 February 2022	Capital Engineering Consultants
Heritage Impact Statement	May 2021	John Oultram Heritage & Design
Geotechnical Investigation (Ref:2020-114)	05 July 2021	Crozier Geotechnical Consultants
Traffic Impact Assessment (20180)	07 April 2021	The Transport Planning Partnership
Traffic - Response to Council RFI	20 April 2022	The Transport Planning Partnership

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**
Ground Floor Landscape Plan and Plant Schedule - DAL01 Rev. F	09 December 2021	Jane Britt Design
Ground Floor Tree Plan - DAL02 Rev. F	09 December 2021	Jane Britt Design
First Floor Landscape Plan and Plant Schedule - DAL03 Rev. C	09 December 2021	Jane Britt Design
Specifications and Details - DAL04 Rev. C	09 December 2021	Jane Britt Design

Waste Management Plan		
Report Title	**Dated**	**Prepared By**
Waste Management Plan	31 May 2021	Trio Industries Pty Ltd

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

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

2. **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**
Transport for NSW	TfNSW Referral Response	18 September 2021

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved

waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $48,848.00 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 $4,884,800.00.

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.

7. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $1 000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

8. **On Slab Landscape Works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Planter soil depths shall be as indicated in the approved Landscape Plans.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

9. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 5/7/2021 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.

10. **Flooding**
Refer to the Flood Impact Study by Capital Engineering Consultants dated 15 February 2022 for the relevant flood levels.

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. Refer to Figure A3.14 Rev. D of the Flood Impact Study by Capital Engineering Consultants dated 15 February 2022 for the required cut and fill areas and levels.

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level 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 Flood Planning Level, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1
New floor levels within the development shall be set at or above the Flood Planning Level.

Car parking – D6
All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning 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.

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.

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

Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A Work Zone will not be permitted on Pittwater Road.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Due to the proximity of the site adjacent to Sacred Heart Catholic Primary School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an

appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

12. **Vehicle Access & Parking**
All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

13. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

14. **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.

15. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Capital Engineering Consultants, project number SW20054, drawing number SW0001, SW010, SW020, SW021, dated 9/12/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. The width of the overflow Pit P1 shall be same width as the overflow weir.
Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

16. **Vehicle Driveway Gradients**
The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

18. **Sub-Soil Seepage**
The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged

via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being Council pipeline adjacent to the northern boundary and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

19. **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.

20. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the Council pipeline which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1.

The submission must include:
1. The pre-Construction Dilapidation Report must be provided to confirm the condition of the existing Council pipe where the proposed discharge from the subject site will be connected.
2. The detailed design of the connection.
3. The information on the beneficiaries of the private easement must be provided if the proposed OSD basin is discharging to the private easement. A capacity check of the exiting 300mm diameter pipeline must be provided to support the proposed discharge.

The form can be found on Council's website.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

21. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction/demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The pre-construction/demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

22. **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.

23. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

24. **Waste and Recycling Requirements**
Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management

Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

25. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):
i) tree numbers 4 and 5 - Lilly Pilly; 8 - Lemon Scented Tea Tree; 9 and 10 - Prickly Leaved Paperbark; 11 - Paperbark; and 19 - Xylosma.
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal. The existing Exempt Species within the property include tree numbers: 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 20 and 21, and a 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.

26. **Road Occupancy Licence**
Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows.

Reason: Requirement of TMC for any works that impact on traffic flow.

27. **Demolition Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The DTMP must:-
- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A Work Zone will not be permitted on Pittwater Road.
- Due to the proximity of the site adjacent to Sacred Heart Catholic Primary School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)

- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

28. **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:

- 1620 Pittwater Road, Mona Vale
- 1624 Pittwater Road, Mona Vale
- 103 Darley Street, Mona Vale

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 rising from the works.

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

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

29. **TfNSW Concurrence**
Transport for NSW (TfNSW) concurrence is required for works on Pittwater Road. Approval is subject to any additional conditions and requirements specified by TfNSW.

Reason: Driveway access and associated civil works for the development is on Pittwater Road. Pittwater Road is a Regional Road and requires concurrence from TfNSW.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

30. **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, including in the following sections:
i) section 2.2 Recommended tree management & protection principles
ii) section 2.3 General tree protection requirements

The Certifying Authority must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint 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.

31. **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.

32. **Implementation of Demolition Traffic Management Plan**
All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

33. **Traffic Management**
Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Consent Authority.

Reason: To ensure pedestrian safety and continued efficient network operation.

34. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

35. **Ongoing Management**
The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

36. **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.

37. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

38. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

39. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 68 are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

40. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with the concept design by TTPP Transport Planning, drawing number 20180, dated 9/12/2021, Northern Beaches Council specifications 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.

41. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: protection of the environment.

42. **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.

43. **Staff and Contractor Parking**
The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

44. **Waste/Recycling Requirements (Materials)**
During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

45. **Street Tree Planting**
Street trees shall be planted in accordance with the Landscape Plan and the following requirements:
i) species shall be Callistemon 'Hannah Ray', be a minimum planting size of 200 litres and pre-ordered for delivery, with a 50mm minimum caliper, 1.8 metre clear trunk, at least 2.5 metres in overall height, and shall meet the requirements of Natspec - Specifying Trees,
ii) street 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 including a four post and top and mid rail timber tree guard and watered until established and shall be located at least 2 metres from any structures including driveways, and shall generally be centralised within the road verge,
iii) street trees shall be located following consideration of existing underground utilities and street lighting. The street trees must be maintained for a period of 12 months following the issue of an occupation certificate. Any failure due to lack of maintenance will require replacement,
iv) the road verge shall be turfed with Couch species, unless otherwise advised, and even grade to a maximum 4% grade.

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

Reason: To maintain environmental amenity.

46. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3 metres from buildings,

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 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.

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.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
https://5milliontrees.nsw.gov.au/

47. **Certification of Services (B3)**
A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events. Refer to Figure A3.14 Rev. D of the Flood Impact Study by Capital Engineering Consultants dated 15 February 2022 for the relevant Flood Planning Level.

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.

48. **Basement Car Parking (D6)**
A registered surveyor is to certify that all access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park have been constructed at or above the Flood Planning Level. Refer to the Flood Impact Study by Capital Engineering Consultants dated 15 February 2022 for the relevant Flood Planning Level.

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

49. **Allocation of parking spaces (strata title)**
All carparking spaces are to be assigned to individual units. All residential units must be assigned a minimum of one parking space. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability for residents.

50. **Accessible Parking Spaces**
Where Accessible Parking spaces are provided they must be in accordance with

AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

51. **Shared Zone Bollard**
A bollard is to be provided at the shared zone between Accessible Parking spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

52. **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.

53. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

54. **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.

55. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved

drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

56. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

57. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

58. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

59. **Garbage and Recycling Facilities**
All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

60. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

61. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**
The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

62. **Undergrounding of Telecommunications Services**
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.

63. **Removal of All Temporary Structures, Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

64. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

65. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

66. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

67. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

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

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

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

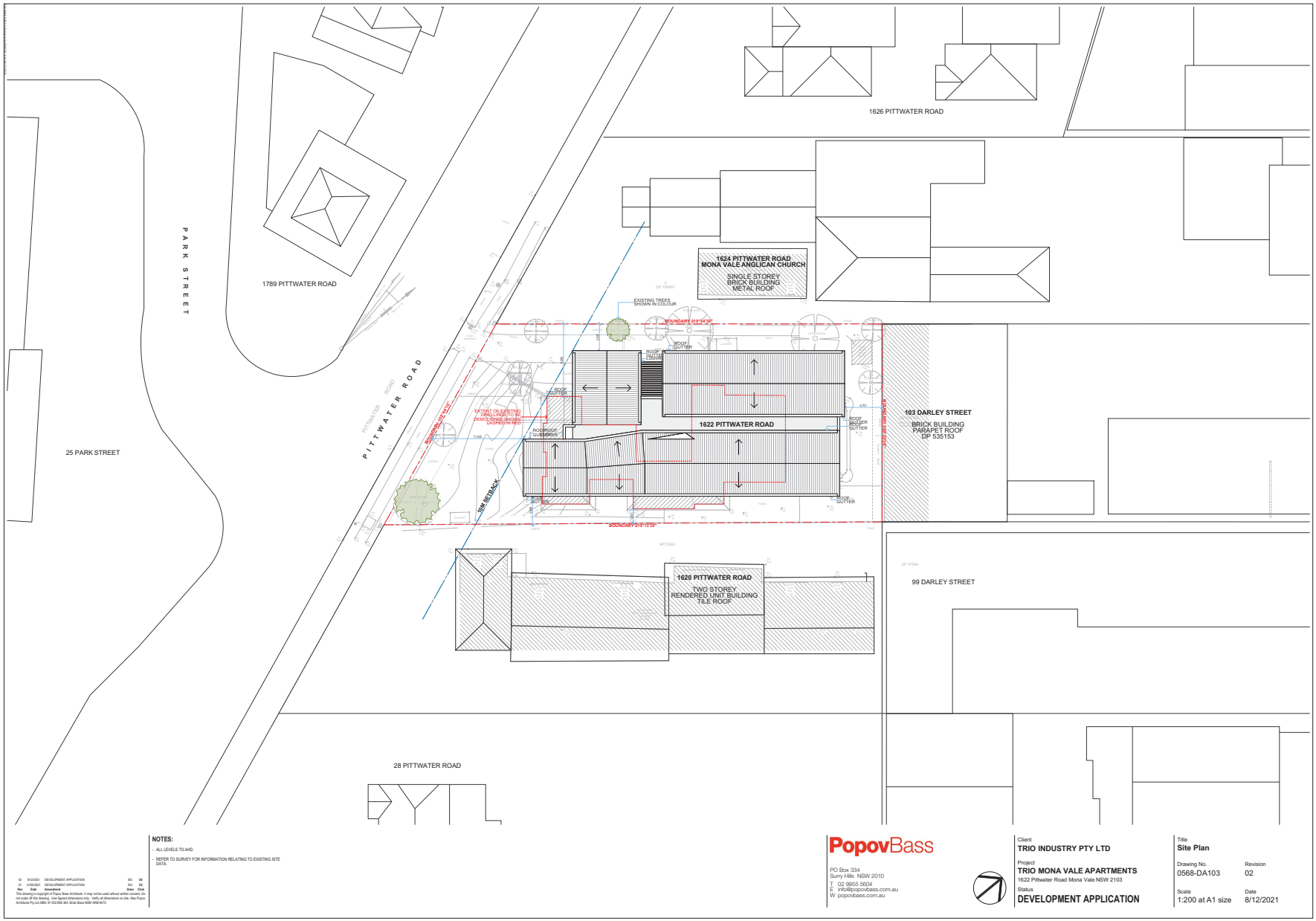
69. **Landscaping adjoining vehicular access**
The applicant must ensure that the planting chosen for any land immediately adjacent to the

driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

70. **Sight lines within carparks**
The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.



NOTES:

- ALL LEVELS TO AHD.
- REFER TO SURVEY FOR INFORMATION RELATING TO EXISTING SITE DATA.

Rev	Date	Amendment	Drwn	Chck
02	8/12/2021	DEVELOPMENT APPLICATION	BG	BB
01	31/05/2021	DEVELOPMENT APPLICATION	BG	BB

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Client
TRIO INDUSTRY PTY LTD

Project
TRIO MONA VALE APARTMENTS
1622 Pittwater Road Mona Vale NSW 2103

Status
DEVELOPMENT APPLICATION

Title
Site Plan

Drawing No. 0568-DA103
Revision 02
Scale 1:200 at A1 size
Date 8/12/2021

ELEVATIONS LEGEND

BAL-1:	GLASS BALUSTRADE
FB:	FACE BRICK
EG1:	EAVES GUTTER
CD-1:	METAL CLADDING
CONC:	OFF FORM CONCRETE
PF-1:	PAINT FINISH WHITE
G:	GLASS
GDR:	GARAGE DOOR
MS:	METAL SCREEN
VB:	V-BOARD
MR:	METAL ROOF
ST-1:	STONE
FL:	FIXED LOUVRES
B:	VENETIAN BLINDS

NOTES:

- ALL LEVELS TO AHD.
- REFER TO SURVEY FOR INFORMATION RELATING TO EXISTING SITE DATA.

Rev	Date	Amendment	Dwn	Chk
02	8/12/2021	DEVELOPMENT APPLICATION	BG	BB
01	31/05/2021	DEVELOPMENT APPLICATION	BG	BB

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LEGEND:

CO	CONCRETE	GB	GLASS BALUSTRADE
BR	BRICKWORK	SKY	GLAZED SKYLIGHT
BL	BLOCKWORK	OP	OCOMPIPE
FB	FACE BRICKWORK/MASONRY	DR	DOORS
TL	TILES	MDR	METAL DECK ROOF
ST	STONE CLADDING	MS	METAL SCREEN
CD	METAL CLADDING	EG	EAVES GUTTER
MC	METAL CLADDING	TF	TIMBER FINIALS

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Project
TRIO MONA VALE APARTMENTS
1622 Pittwater Road Mona Vale NSW 2103

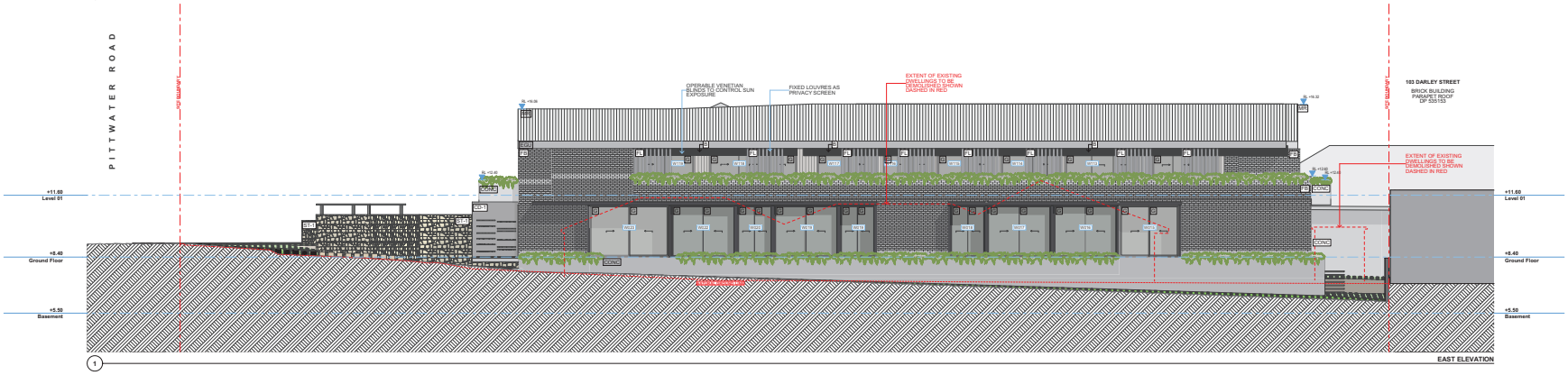
Status
DEVELOPMENT APPLICATION

Title
Elevation North / South

Drawing No. 0568-DA109
Revision 02
Scale 1:100 at A1 size
Date 8/12/2021

ELEVATIONS LEGEND

BAL-1:	GLASS BALUSTRADE
FB:	FACE BRICK
EGU:	EAVES GUTTER
CD-1:	METAL CLADDING
CONC:	OFF FORM CONCRETE
PF-1:	PAINT FINISH WHITE
G:	GLASS
GDR:	GARAGE DOOR
MS:	METAL SCREEN
VB:	V-BOARD
MR:	METAL ROOF
ST-1:	STONE
FL:	FIXED LOUVRES
B:	VENETIAN BLINDS



NOTES:

- ALL LEVELS TO AHD.
- REFER TO SURVEY FOR INFORMATION RELATING TO EXISTING SITE DATA.

Rev	Date	Amendment	Dwn	Chk
02	8/12/2021	DEVELOPMENT APPLICATION	BG	BB
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Client
TRIO INDUSTRY PTY LTD

Project
TRIO MONA VALE APARTMENTS
1622 Pittwater Road Mona Vale NSW 2103

Status
DEVELOPMENT APPLICATION

Title
Elevations West / East

Drawing No. 0568-DA110
Revision 02
Scale 1:100 at A1 size
Date 8/12/2021

Minto Planning Services
Town Planning Consultants

PROPOSED RESIDENTIAL FLAT BUILDING
1622 PITTWATER ROAD, MONA VALE

Clause 4.6 – Exceptions to development Standards
Variation to Clause 4.5A – Density controls for certain residential accommodation

Clause 4.5A of the Pittwater LEP 2014 requires that for a residential flat building erected upon land zoned R3 – Medium Density Residential that a maximum of 1 dwelling be provided per 200sqm of site area.

The proposal provides for a minor variation to the above requirement in that it provides for a total of 7 dwellings upon a site having an area of 1,385m^2 and which equates to a density of 1 dwelling per 197.85m^2 and which represents a variation of 1.2% to the control.

Given that the proposal does not comply with the maximum density control as required by Clause 4.5A of the Pittwater LEP 2014 and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. **What are the objectives of Clause 4.6 and is the proposal consistent with them.**

The objectives of Clause 4.6 of the LEP 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.

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this Clause having regard to the very minor nature of the variation.

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abn 68 091 465 271

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.5A is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.5A does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.5A is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

It is my opinion that the first reason is relevant in this instance in that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following assessment against the objectives of Clause 4.5A is provided:

(a) to achieve planned residential density in certain zones,

The proposal provides for 7 dwellings in a situation whereby strict compliance with the control would permit 6.925 dwellings to be erected upon the site.

It is considered given the minor variation proposed in this instance whereby the permitted density of 6.925 dwellings is rounded up to 7 dwellings is consistent with the normal approach adopted for such matters and that the density proposed is consistent with the planned residential density for the zone.

It is not considered that there will be any detrimental impacts arising from this minor departure.

(b) to ensure building density is consistent with the desired character of the locality.

It is my opinion that notwithstanding the non-compliance that the proposal does provide for an outcome whereby the proposed built form is consistent with the desired future character of the locality.

This is demonstrated by the proposal's compliance with all other applicable development standards and the absence of any unreasonable impacts upon adjoining properties and the streetscape.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified on environmental planning grounds given the very minor nature of the departure noting that the proposal provides for a total of 7 dwellings upon a site having an area of 1,385m^2 and which equates to a density of 1 dwelling per 197.85m^2 and which represents a variation of 1.2% to the control.

It is my opinion that the proposal is consistent with the objective of the Act in relation to providing the orderly and economic development of land.

It is also considered that the rounding up of the number of dwellings from 6.925 dwellings to 7 dwellings is consistent with adopted principles.

It is also considered that the proposed variation would not be discernible to a lay person viewing the site.

It is therefore my opinion that in the absence of any unreasonable impacts that there are sufficient environmental planning grounds to support the proposed variation.

5. Is the proposed development 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.

The proposed development is in my opinion in the public interest because it is associated with the provision of a high quality residential flat building upon the site and which will make a positive contribution to the built form character of the locality in a manner which is otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

Importantly the proposal will provide for the orderly and economic development of land in a manner which is generally consistent with the density controls anticipated by the Council.

In this regard, it is submitted that in relation to the objectives for the R3 – Medium Density Residential zone that:

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

The proposal seeks to provide for seven dwellings upon the site as part of a residential flat building which otherwise complies with the requirements of the Council.

It is considered that such a development will assist in meeting the needs of the community within a medium density residential environment.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development includes apartments having differing levels of accommodation, sizes and ancillary features and which it is considered will contribute in a positive manner to the variety of houses provided within this locality.

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

Not applicable.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Not applicable.

The proposal is also considered to be consistent with the objectives of Clause 4.5A of the LEP as detailed in response to Question 3 of this variation.

The proposal is therefore considered to be in the public interest.

6. **Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.**

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. **What is the public benefit of maintaining the development standard.**

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the high quality of the proposal and the absence of any unreasonable detrimental impacts and the minor nature of the departure.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation to the maximum density control requirements of Clause 4.5A of the Pittwater LEP 2014 is appropriate in this instance and is worthy of the support of the Council.

Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
17th May 2022

Design + Sustainability Advisory Panel Meeting Report – Date 07 October 2021

3. DA2021/1502 - 1622 Pittwater Road MONA VALE

PANEL COMMENT AND RECOMMENDATIONS

General

The proposal the demolition of two bungalows and the construction of a two storey residential flat building comprising seven spacious apartments atop of a 17 car basement.

Context and neighbourhood character (analysis)

The proposal relates well to its context, adjacent built form and scale. The proposal has been thoughtfully considered in terms of its relationship to the adjacent gabled church as well as its impact and presentation to the street and the industrial building to the east.

Pittwater Road is a busy thoroughfare, and a series of walls and landscape elements are proposed as a visual buffer to the street and to provide acoustic separation and privacy. There is also an intention to reflect the gable roof typology in the proposed new built form, particularly of the north western roof to establish connectivity with the church forecourt. The brick wall of the industrial buildings on the eastern boundary is utilised as a textured backdrop to the outdoor living spaces.

Landscape

The landscaped planter tubs on the upper floors are good but the ground floor south landscaping may be too narrow to achieve any reasonable width for planting.

Recommendations.

1. Retain as many existing trees as possible. This might be facilitated by realignment of walls and land new landscaping to soften the edge.
2. Discuss the potential additional planting at the rear of the site with flooding and overland flow requirements. It was not clear to the Panel why there should be any restrictions on planting given that the issue is capacity not velocity in this areas and the reduced volume due to vegetation would be negligible.

Access, vehicular movement and car parking, services

The car park is well planned although the waste room should be relocated at ground level near the street in accordance with Council's DCP and a revised landscape plan. The alignment of the driveway may be considered in consideration of retention of existing trees and a revised landscape design for the front of the site.

Waste storage is located in the basement rather than on the ground which does not comply with the council code. While this may be managed by residents, the front forecourt may require further work to accommodate the retention of existing trees, reduce the solidity of the front walls and landscaping. The retention of trees here may be beneficial and suggest realignment of the basement driveway and courtyard walls.

Recommendation.

3. The waste room may need to be integrated with this new landscape treatment as its current location in the garage is not compliant.

Amenity

The units are well planned with appropriately dimensioned external courtyards for Apartments 1 and 2 to the north but somewhat shallow terraces to the south.

Stormwater and flooding

The response to the stormwater issues are well handled however the easement to the rear of the property against the industrial brick building should be further discussed with local council to enhance usable space including landscape decking and built form. The proponent referred to these requirements constraining the design. The Panel had some difficulty understanding the precise issues and required levels and flow paths.

Recommendation

4. Clarify precise requirements for flooding and flow paths with the aim of further improving the amenity and landscape in the design.

Façade treatment/Aesthetics

The range of façade compositions, materiality and colours is supported although the west façade of apartment 101 should be reviewed as previously noted.

The view of the street could be in enhanced by eroding the solidity of the front walls in particular the western wall of apartment one to reveal a roof and wall has two separate elements more akin to the church building. The response to the church courtyard is commended by the gabled roof addressing it. Should provide adequate privacy.

Recommendations

5. The west facing living room wall of Apartment 101 could be softened/eroded with the introduction of windows or a roof overhang or terrace avoiding the blank solid appearance.
6. The articulation of wall and roof would be more sympathetic to the neighbouring church typology where the roof and eaves are separate to wall envelope below.
7. The north facing gabled roof over Apartment 101 and its relationship to the church is supported and reasonable given its visibility from both the courtyard and the street.

Sustainability

Noted that the terrace of App 001 is facing the church however the alternative is to face south is not ideal for passive design. So the orientation of that apartment is supported from a sustainability viewpoint

Recommendations:

The sustainability performance of the development could be enhanced:

8. Consider a ventilated sky light to the lobbies to avoid mechanical ventilation
9. Changing solar gas boost to heat pump hot water and PV on the roof where there's significant space for PV. This will achieve better efficiencies and output than solar hot water and, when combined with heat pump will be a better sustainability outcome. It may also prove a better financial outcome.
10. 6kW pv installation is noted on the BASIX certificate however this should be increased. The common areas will not demand 6kW. Increase the PV array from 6kW, and potentially connect some direct to some of the apartments
11. Introduction of induction cooktops along with the hot water system will enable removal of gas from the development which is desirable

PANEL CONCLUSION

The Panel supports the proposal in its current form but notes that the design may be further improved in accordance with the recommendations. There are a few non-compliances that in the Panel's view are not significant and easily addressed.

ITEM 4.5	**DA2021/1426 - 51 KALANG ROAD, ELANORA HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT.**
AUTHORISING MANAGER	**Steve Findlay**
TRIM FILE REF	**2022/310944**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans & Elevations
	3 ⇩Clause 4.6
	4 ⇩Design & Sustainability Advisory Panel Report
	5 ⇩SEPP 65

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, it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies 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 PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Consent detailed within Section 95 of the EP&A Regulation 2000 to DA2021/1426 for Demolition works and construction of a shop top housing development on land at Lot 2 DP 528120,51 Kalang Road, ELANORA HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1426

Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 2 DP 528120, 51 Kalang Road ELANORA HEIGHTS NSW 2101
Proposed Development:	Demolition works and construction of a shop top housing development
Zoning:	B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Lightning Property Developments Pty Ltd
Applicant:	Lightning Property Developments Pty Ltd

Application Lodged:	02/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	14/02/2022 to 28/02/2022
Advertised:	14/02/2022
Submissions Received:	12
Clause 4.6 Variation:	4.3 Height of buildings: 35.2%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 2,650,000.00

EXECUTIVE SUMMARY

Development Consent is sought under this application for demolition works and the construction of a three-storey shop top housing development over one level of partial-basement parking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the building is up to four-storeys and is subject to the provisions of SEPP 65 and the Apartment Design Guide, and because the exhibition of the application has attracted more than ten submissions. The proposal is also referred to the NBLPP as the proposal breaches the building height development standard by more than 10%.

The development of the site provides a transition between the established Elanora Village Town Centre

to the north and the R2 Low Density Residential zone to the south. Buffering the site and the R2 zone is a Council car park and community centre which is used as a childcare centre.

The majority of submissions received are from or on behalf of the childcare centre, and raise concerns that the development of the site, in any capacity, will harm the operation of the centre and could give rise to adverse safety risks both during construction and operation. Concerns from other neighbours pertain to a loss of visual privacy and a loss of trees.

Council's Design and Sustainability Advisory Panel (DSAP) reviewed the proposal and advised that the unusually shaped site was unduly constrained by the DCP controls which in turn resulted in an undesirable built form. The DSAP recommended the proposal be redesigned with flexibility being applied to the DCP controls.

In response to these factors, the Applicant redesigned the proposal to have a better street presence and internal layout to improve constructability and sustainability. An improved landscaped outcome was achieved through removing a secondary vehicular access point into the site.

The site is subject to two separate height controls pursuant to Clause 4.3 of the Pittwater Local Environmental Plan 2014 and it breaches those requirements. However, the breaches are not found to be significant, nor detrimental to the amenity of neighbours. The assessment revealed that there are sufficient environmental planning grounds to warrant the variation requested.

Stormwater drainage from the development site must be via an inter-allotment drainage easement through the adjoining Council owned land, used as a car park. At this time, no approach to acquire the right to an easement has been made by the Applicant/Owner, therefore such a request must be made and approved by Council prior to the activation of this consent.

On the balance of all factors, this report finds that the proposal is appropriate for the site and concludes with a recommendation that the NBLPP, as the consent authority, grants **DEFERRED COMMENCEMENT APPROVAL** to the development application.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works, excavation and construction of a shop top housing development.

Specifically, the proposal involves the following:

- Excavation of a basement to provide parking for 13 spaces.
- Construction of a three-storey building atop of the basement, comprising of two retail tenancies at ground level totalling 154.3m^2 and five residential units above, comprising two x one bedroom, two x two-bedroom, and one x three bedroom apartment.
- Associated finishing and landscape works.

AMENDED PLANS

During the course of the assessment of the application, several sets of revised plans were received. The most notable changes were recommended by Council's Design and Sustainability Advisory Panel, which resulted in a redesign of the building facade and a simplification of the internal layout. These plans were re-notified to neighbouring properties.

Several rounds of additional information and plans for access and waste management were received, which did not necessitate the renotification of the development application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - A4.5 Elanora Heights Locality
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C2.21 Food Premises Design Standards
Pittwater 21 Development Control Plan - D5.15 Amalgamation - Elanora Heights Village Centre
Pittwater 21 Development Control Plan - D5.17 Front Building Line - Elanora Heights Village Centre
Pittwater 21 Development Control Plan - D5.19 Setbacks to Upper Levels - Elanora Heights Village Centre
Pittwater 21 Development Control Plan - D5.23 Design Excellence - Elanora Heights Village Centre
Pittwater 21 Development Control Plan - D5.30 Signage - Elanora Heights Village Centre
Pittwater 21 Development Control Plan - D5.31 Awnings and Colonnades - Elanora Heights Village Centre
Pittwater 21 Development Control Plan - D5.38 View Sharing - Elanora Heights Village Centre

SITE DESCRIPTION

Property Description:	Lot 2 DP 528120 , 51 Kalang Road ELANORA HEIGHTS NSW 2101
Detailed Site Description:	The subject site is legally identified as Lot 2 in Deposited Plan 528120 and is known as 51 Kalang Avenue, Elanora Heights. The site falls within the B2 Local Centre zone pursuant to the Pittwater Local Environmental Plan 2014 and is identified as the being the southernmost site of the Elanora Heights Village Centre.

	The site is triangular in shape with a splayed front boundary to Kalang Road of 32.52m and depths of 45.72m to the north and 38.5m to the southeast. Overall the site has a surveyed area of 661.7m^2. Presently the site accommodates a two storey building in a landscaped setting with six large (>10m tall) trees in the front garden. A sewer line runs through the property. Topographically the site falls from north to south by 2m and west to east by 3m. **Surrounding Development** Northwards of the site is a three storey brick development accommodating six business premises. The building is built hard up to the southern boundary adjoining the site and has at-grade car parking to the rear (east). Further northwards is the remainder of the village centre. Directly south of the site is a Council car park, bound by a community centre and public reserve to the east. This land is zoned for SP2 Infrastructure. The community centre is predominantly occupied as a childcare centre. Beyond this and to the west is land zoned for dwelling houses.

Map:

SITE HISTORY

Prior to the submission of the development application, the applicant elected to attend a prelodgement meeting with Council to discuss the proposal.

PLM2020/0124 (25 June 2020)

The PLM scheme was not dissimilar to that originally submitted as a part of the development application. That PLM did not have the benefit of Councils newly formed Design and Sustainability Advisory Panel.

The minutes of the meeting raised four primary concerns being the building height, front setback, carparking and impacts on vegetation.

These items have been assessed as an element of this development application and, subject to the revised plans received, are satisfactorily addressed.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to DSAP and referral comments. 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 of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the

Section 4.15 Matters for Consideration	Comments
	consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report, and within the Referral Response table. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The proposal will contribute to the vitality of the Elanora Heights Village Centre and will provide new opportunities for housing, business and leisure within the precinct, as envisaged by the planning controls. It is acknowledged that concern has been raised by community members with regards to the development of the site, however the impacts associated with the development both during construction and in longevity are considered to be acceptable, and consistent with what could reasonably be expected to be from developing the land. (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	No matters have arisen in this assessment that would justify the

Section 4.15 Matters for Consideration	Comments
interest	refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/02/2022 to 28/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr John Perrott	49 Kalang Road ELANORA HEIGHTS NSW 2101
Heidi Patrick	Address Unknown
Elisabeth Flett	26 Bolwarra Road NORTH NARRABEEN NSW 2101
Ms Joanne Therese Adams	29 Maralinga Avenue ELANORA HEIGHTS NSW 2101
Mr Glen Michael Connell	42 Kalang Road ELANORA HEIGHTS NSW 2101
Mrs Margaret Anne O'Shea	58 Koorangi Avenue ELANORA HEIGHTS NSW 2101
Dick Clarke	Address Unknown
Mrs Alison Joy Catt	4 Wesley Street ELANORA HEIGHTS NSW 2101
Elanora Heights Residents Association	19 Foxall Street ELANORA HEIGHTS NSW 2101
Ms Carolyn Maree Scott	44 A Kalang Road ELANORA HEIGHTS NSW 2101
Martin Milroy	69 Elanora Road ELANORA HEIGHTS NSW 2101
Elanora Heights Community Preschool	49 A Kalang Road ELANORA HEIGHTS NSW 2101

During the course of assessment, the development application was notified twice, once from 8 September to 27 September 2021, and the second time from 9 February to 28 February 2022. The first exhibition attracted eleven (11) submissions in objection to the DA. Of those, six (6) were from neighbours (one (1) being anonymous and another being a duplicate), one (1) from the operators of the adjoining childcare centre, and four (4) from parents of the childcare centre.

The second exhibition attracted two (2) submissions from previous objectors.

The following issues were raised in the submissions:

- Traffic and access safety implications
- Impacts on childcare centre
- Built form compliance
- Amenity impacts - noise, privacy, overshadowing, view loss
- Construction impacts
- Prospective future land uses

The above issues are addressed as follows:

- **Traffic and access safety implications**

  The submissions raised concerns that the development is situated on a blind corner and, in conjunction with the stated 40+ cars that use the adjoining Council car park during pick-up and drop-off times for the childcare centre, would result in an increased risk to pedestrians in the immediate area, particularly young children from the childcare centre.

  Comment:

  It is acknowledged that the site is situated on a reasonably blind corner. This matter is not relevant to the application, as it cannot be altered by the applicant. The building has been set back from the street edge to maintain a wide field of vision for users of the driveway and motorists in general on Kalang Road.

  The proposal is not anticipated to generate a significant volume of traffic, particularly when compared to the stated volume of cars that use the adjoining Council car park when accessing the childcare centre. It would be prejudicial to burden the development potential of the subject site because of the high-volume usage of an adjoining property.

  The proposal is accompanied by a traffic and parking report that addresses these matters and is deemed acceptable, subject to conditions, by Council's Traffic Engineers.

  The concerns raised by users of the childcare centre are duly noted (including the unsafe corner and speeding drivers), however this development application is not the correct avenue to address those concerns. It is recommended that concerned residents contact the Northern Beaches Council Local Traffic Committee to discuss opportunities to install traffic management measures along this section of Kalang Road to address their concerns.

- **Impacts on childcare centre**

  The submissions raised concerns that the proposed development could impact on the on-going success of the existing childcare centre both through using the adjoining car park and an increased opportunity for noise complaints.

  Comment:

  The car park adjoining the subject site is a public car park, and a sign is displayed stating that it is for use by users of the community centre and public reserve. The car park is not a private facility only for use by the childcare centre. Notwithstanding that, the site has a compliant provision of carparking to adequately serve the development as detailed elsewhere in this report.

  A concern is also raised that future occupants of the development may complain to Council about noise generated from the childcare centre. There is no factual basis to this concern and it does not warrant the refusal of the application, however it is noted that potential purchasers of any unit in the development should (reasonably) be aware that the development adjoins a childcare centre.

- **Built form compliance**

The submissions raised concerns that the building breaches several built form controls, and also notes that the controls are very prescriptive and restrictive given the shape of the site.

Comment:

Council's DSAP concurs with the observations in the submission, to the extent that the controls lead to an undesirable built form and that some flexibility in the application of the controls is needed facilitate a good development of the site. Where a built form non-compliance arises, it has been assessed in this report.

Notwithstanding the numerical compliance of the building, it is found that the density and overall proportion of the building is acceptable for the location.

- **Amenity impacts - noise, privacy, overshadowing, view loss**

Submissions from neighbouring properties raised concern that the proposal may impact on their amenity by way of increase noise and overshadowing and a loss of views and visual privacy.

Comment:

The assessment of the proposal has found that the scheme is not likely to cause any unreasonable view loss from neighbouring properties or the public domain, and that the extent of overshadowing caused by the building is compliant and satisfactory.

On-going noise from the commercial component of the development will be subject of assessment and applicable conditions to protect amenity as part of future applications, and this matter is secured by way of condition.

Concerns have been raised from the house at No. 49 Kalang Road that the top floor balcony may impede on the degree of privacy they have in their rear garden. Whilst it is noted that this privacy is somewhat compromised by the surrounding car park, the presence of an apartment building next door (albeit some 23m away) could give rise to an adverse impact.

This report therefore discusses and includes a condition requiring the balustrading of the top floor balcony facing the site to be raised to a height of 1.5m above finished floor level, and to be finished in opaque glazing. Whilst this height would not stop direct views from someone on the very edge of the balcony, it would restrict downwards views from inside the apartment. This condition is considered to appropriately address the concern.

- **Construction impacts**

The submissions raised concerns that demolition and construction of the building would generate unacceptable impacts on neighbours by way of traffic, noise, dust, vibration etc.

Comment:

It is not possible to entirely avoid any inconvenience or short-term impacts during the excavation and construction phase of the development. Neighbours must reasonably expect that there will be a greater level of noise and other impacts compared to the existing situation. This report includes conditions requiring a Demolition Traffic Management Plan and Construction Traffic Management Plan to be approved prior to the commencement of works on site. Further, the conditions require compliance with all relevant Australian Standards which go towards dust and vibration management and mitigation.

These concerns are appropriately addressed by way of condition.

- **Prospective future land-uses**

  The submissions raised concerns that the commercial premises in the development may be incompatible with surrounding uses and suggests that the two commercial units may be used as "*tattoo parlours, mortuary, backpackers or highrise units*".

  Comment:

  No approval is implied or granted under this report (if approved) for the land-use of the two ground floor retail premises. The plans indicate that the front unit will be a food and drink premises, and the rear will be an office and these uses would be the subject of a future development application, which will assess suitability and impacts of any first use. The Pittwater Local Environmental Plan 2014 details what land uses are permitted on the site, and Council raises no in-principle objection to the establishment of a food and drink or office premises, consistent with the rest of the village centre location.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	The proposal was submitted to Council's Design and Sustainability Advisory Panel (DSAP) on 28 October 2021 who concluded (summary): *The Panel does not support the proposal in its current form.* *The Panel strongly recommends that the design be revised to improve internal amenity, room sizes, efficiency of layout and to ensure the retention of one or more trees.* *To facilitate this, some breaches of the precise setback controls and car parking to be accommodated on site may be considered.* Following that meeting the applicant redesigned the facade of the building to introduce a large curved element rather than progressive stepping, along with internal changes to units and a revision of the site's landscaping. Council is satisfied that the revised scheme satisfactorily addresses the requirements of the DSAP. A detailed response to the matters raised by DSAP can be found elsewhere in this report.
Building Assessment - Fire and Disability upgrades	***Supported, with conditions*** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of

Internal Referral Body	Comments
	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, with conditions*** Details on the exact location and type of mechanical plant to be provided to this development limits the assessment of noise in relation to mechanical equipment. Therefore a condition prior to construction certificate should be considered so a more thorough assessment can be undertaken.
Environmental Health (Food Premises, Skin Pen.)	***Supported, without conditions*** Environmental Health has reviewed relevant documents submitted as part of this proposed development which details the intent to have commercial units below residential units. There has been no proposal provided on the occupancy of the commercial units for food and/or skin pen operations therefore no food/skin pen conditions required at this time. A separate consent is required if the commercial units are to be occupied for food preparation or skin penetration activities. We have no objections to the proposal in its current format.
Landscape Officer	***Supported, with conditions*** The development application is for demolition of the existing dwelling and the construction of a shop top housing development with basement, associated works and landscape works. Council's Landscape Referral section have assessed the application against the following relevant controls and policies: • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under clause 28(2)(b) against the design quality principles within schedule 1 • The Apartment Design Guide under SEPP 65 clause 28(2)(c) • Pittwater 21 Development Control Plan including B4.22 Preservation of Trees and Bushland Vegetation, C1.1 Landscaping, and D5 Elanora Heights Locality including D5.28 Active Frontages - Elanora Heights Village Centre, and D5.34 Public Domain - Elanora Heights Village Centre. Landscape Plans in accordance with Council's DA Lodgement requirements and a Arboricultural Impact Assessment are provided with the development application. The landscape proposal generally provides adequate landscape treatment to satisfy Schedule 1 Design quality principles of SEPP65, including: Principle 5: Landscape - positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood; and optimises useability, privacy and opportunities for social interaction, equitable access. Additionally, the objectives of the Apartment Design Guide are able to

Internal Referral Body	Comments
	be satisfied, including: 3E Deep Soil Zone, 4O Landscape Design, and 4P Planting on Structures. Pittwater 21 DCP control C1.1 Landscaping as applied to shop top housing is able to be satisfied with a minimum landscaped area of 20% provided at the front and rear of the development into natural ground. To be acceptable to Landscape Referral the development and associated Landscape Plan shall be the subject of imposed conditions for amended landscape plans to ensure adequate landscape outcomes are achieved including: removal of the carspace part within Council's road verge; existing footpaths fronting the site to be widened to 1500mm and paved as granite surface to match Kalang Rd B2 Local Centre existing pavements; and additional street tree planting within the road verge. The Arboricultural Impact Assessment provides recommendations for tree protection measures for the existing Angophora street tree and conditions shall be imposed, including the preparation of a tree protection plan to identify the locations of fencing and ground protection (and other measures) to ensure the impacts to the tree are minimised. It is noted that the site contains 3 existing Gums and 1 existing Deciduous tree within the frontage and 1 existing Gum at the rear corner of the property that are not referenced in the Arboricultural Impact Assessment as required by Council's DA Lodgement requirements. The four trees within the existing front setback are unable to be retained as they are impacted by the proposed development without a design alternative for retention, being located wholly within the development footprint. The existing Gum at the rear corner is not impacted by the proposed development and shall be retained and protected. Landscape Referral are able to support the application subject to amended landscape plans and provision of a tree protection plan and tree protection measures.
NECC (Development Engineering)	***Supported, with conditions*** *Current comments 16/05/22* No objections to the proposed apartment building with basement carparking subject to development engineering conditions. The proposal also requires the provision of an interallotment drainage easement through the adjoining public reserve, this process requires an application to councils property section . **Planner Comment:** The applicant is required to acquire the rights to an interallotment drainage easement through Council's adjoining car park / public reserve. Such an action cannot be granted under development consent. The applicant has not yet acquired an easement and this is done via a separate approval mechanism. The recommendations of this report therefore require that this

Internal Referral Body	Comments
	easement be created to the satisfaction of Council prior to the activated of the development consent. *Superseded comments on amended plans 22/2/22* The previous comments still apply however additionally the applicant is to provide a driveway long section that demonstrates compliance with Councils standard vehicle crossing Normal Low and the maximum allowable grades specified in the Australian standard AS2890 -Off street Carparking . *Original superseded comments* The on site stormwater detention(OSD)/site drainage has been reviewed and whilst the OSD design is satisfactory , the application cannot be supported for the following reasons: 1) An inter allotment drainage easement will be required within the adjoining council reserve/carpark for the outlet pipe connection to Councils existing 750mm RCP line. 2) The drainage engineer is also to provide a drainage long section through the carpark/reserve detailing the HGL and also clearances to any utility services. Cover is to be detailed appropriate for the above vehicle loadings.
NECC (Water Management)	***Supported, with conditions*** The proposal is for a shop-top housing development with basement carpark. Subject to conditions, the development is compliant with Council's water management controls.
Road Reserve	***Supported, with conditions*** Removal of parking space on road reserve is noted, although still shown on landscape plans. Landscape plans and photomontage suggest filling of road reserve to level with kerb potentially representing 1-1.5m of fill. Engineering details to be summited as part of a Road Act application for civil works (to be conditioned by Development Engineering) including adjustment of any utilities. Filling over underground power cables require consent from the energy authority. Given the intensification of the site use and extension of the current retail streetscape reconstruction and widening of the existing footpath to 1.5m minimum or as determined by Council's Public Space Design Guidelines. Details to be included the Road Act Application for Civil Works.
Traffic Engineer	***Supported, with conditions*** *Amended comments - 09 March 2022* <u>Parking</u> The amended plans and supplementary traffic report have been

Internal Referral Body	Comments
	reviewed. It is noted that the 14th parking space accessed via second point of vehicle access and on a bend has been removed from the plans as requested. With regard to the information in the supplementary traffic report it is accepted that a pit style car stacker which allows for each car to be accessed independently is not as restrictive in terms of access to vehicles as a stacked parking arrangement. The use of three car stacker pairs each operating in a pit style arrangement is therefore not opposed. It is also noted that each stacker pair has been allocated to the same unit which will assist the users of those spaces who will use them regularly, to become familiar with their use and operation. <u>Loading</u> It is also accepted that there will not be a high number of deliveries to the site and that these could be completed to a large extent by small vans which could be accommodated in the visitor parking space or on-street parking. The requirement for a Loading Bay is no longer pressed. Given the above the parking and loading arrangements are considered acceptable. <u>Property Access</u> The access ramp into the basement carpark is compliant with Australian Standard grade requirements. There is a section at 5% for the 6m into the carpark which is consistent with the requirements of AS2890.1 clause 3.3(a) the ramp then steepens to a maximum of 1 in 4.3 (23.3%) which does not exceed the 25% maximum specified in AS2890.1 clause 2.5.3 (b)(ii) and the sage grade at the bottom of the ramp is at 15% compliant with Clause 2.5.3 (d) (ii). There are no objections to the internal carpark ramp profile Given the above there are no traffic engineering objections to approval subject to conditions *Original comments - 24 November 2021* The development application is for demolition of the existing residence and construction of a mixed use development on the site comprised of 5 residential units, 80 sqm of café and 58sqm of commercial space. 13 off-street carparking spaces are proposed within a basement carpark with one car space also proposed off a separate driveway along the sites northern boundary. <u>Traffic Generation</u> The Traffic & Parking Impact Assessment report provided with the application estimates the traffic generation from rates in the RMS

Internal Referral Body	Comments
	Guide to Traffic Generating Developments. The developed site has been estimated to generate 3 vehicle trips per hour in the am peak and 7 vehicle trips per hour in the pm peak. When traffic generated from the existing site is subtracted this reduces the nett traffic generation from the proposed development to 2.2 trips in the am peak and 6 trips in the pm peak. These volumes of traffic will not have an appreciable impact upon traffic conditions in the surrounding road network. <u>Parking</u> The DCP parking requirements applicable to this development are: 1 space per dwelling for 1 bedroom units, 2 spaces per dwelling for 2 or more bedroom dwellings plus 1 visitor space for each 3 dwellings (rounded up) 2.5 spaces for each 100sqm of GLA for business/office 1 space for each 30sqm of GLA for cafes/restaurants Using these rates there is a parking requirement of 13.2 spaces, including 7residential spaces, 2 residential visitor spaces and 4.2 spaces for café and commercial uses (4 spaces). 2 of the parking spaces are for disabled use. The developer proposes to provide 14 car parking spaces. It is noted that the parking space accessed off a separate driveway along the northern boundary of the site is sited largely on the nature strip area. This is not permissible. The provision of a second point of vehicle access to the site is also not supported and particularly not at this location on a bend with limited sightlines. This parking space and the associated vehicle crossing shall be deleted from the plans. It is also noted that 6 of the parking spaces are proposed to be located in car stacker units. The Pittwater DCP states that the proportion of tandem parking spaces (which would, by function, also include vehicles in car stacker units) does not exceed 10% of the total residential parking for two (2) or more bedroom units. The number of spaces in car stackers is considered excessive and vehicles in each car stacker pair would need to be allocated to the same unit. The use of car stackers to meet parking requirements for single bed units, visitor spaces or for office and retail uses is not permissible under the DCP. While 2 car stacker units would be accepted to cater for the parking requirements of the 3 bed and 2 bed apartments, a third stacker unit is not supported. The parking requirements for other uses must be provided within individual spaces. Although the quantum of parking is acceptable the parking arrangements as proposed have an

Internal Referral Body	Comments
	over reliance on the use of car stackers and are unacceptable. An amended car parking layout is required which notes on the plans which spaces will be allocated to which use. The shared space between the two disabled spaces must also be shown hatched and incorporate a bollard to prevent it being used as a parking space. Visitor parking spaces and those allocated for cafe use must be publicly accessible at all times (i.e not located behind a secure roller shutter). <u>Vehicular Access</u> As outlined above, the 2nd vehicle crossing at the northern boundary of the site is not supported and should be deleted from the plans <u>Loading/ deliveries</u> No loading or delivery space has been provided. The Pittwater DCP only requires the provision of a designated space for deliveries or couriers where the business or office use exceeds 400 sqm. For cafe use "adequate" space for delivery vehicles is required. The traffic and parking report only states that deliveries for the commercial and café uses are expected to be undertaken by B99 light commercial vehicles. While it is accepted that most deliveries are likely to be undertaken by such vehicles, no discussion of where delivery vehicles will park has been provided. It is noted that parking on the street frontage of the site is not permitted. An additional space to cater for deliveries is considered necessary. <u>Summary</u> Given the concerns outlined above additional information and amendment to the plans are required prior to further consideration of this development
Waste Officer	***Supported, with conditions*** ***(Amended plans dated 13 May 2022)*** **No objection to the revised plans, subject to conditions as recommended.** ***(Superseded plans dated 21 April 2022)*** This proposal does not comply with Northern Beaches Council's Waste Management Design Guidelines.

Internal Referral Body	Comments
	Specifically: An external permanent residential Waste Storage Area must: a) Be roofed with a minimum ceiling height of 2100mm throughout and clear of any obstructions with walls from floor to ceiling to screen the bins from view from the street. b) Be a secure room that residents can access with a code, card or key. c) Any doors fitted on the waste storage area must be unobstructed by any locks and security devices on the nominated collection day - and be able to be latched in the open position. We request a timer lock to be fitted to the residential waste room door providing access to the street to be open from 6am-6pm on collection day. ***(Superseded original plans)*** This proposal does not comply with Northern Beaches Council's Waste Management Design Guidelines. Specifically: **<u>Transfer of Waste Bins between the Basement Bin room and the Holding Bay</u>** Transferring the bins between the basement binroom and the holding bay requires the use of the vehicular driveway - unacceptable. Access to the basement has a gradient of 1 in 4.3 - Maximum gradient for wheeling bins is 1 in 8, or else this will require the use of a bin tug to negotiate when take full bins up to the holding bay. If there are no persons onsite prepared to transfer the bins, this arrangement will create an ongoing financial burden for the owners. A pathway for wheeling bins that is separate from the driveway is required. Alternatively transferring the bins between the basement binroom and the holding bay using the lift then requires occupants to leave the property and walk along the footpath to reach the bin holding bay -

Internal Referral Body	Comments
	unacceptable. The transfer of bins must take place entirely within the property. To improve access and safety, the applicant may choose to use the holding bay as a permanent bin storage area removing the need for a residential bin room in the basement. An external permanent Waste Storage Area must: a) Have a minimum wall height of 1600mm b) Be roofed with a minimum ceiling height of 2100mm throughout and clear of any obstructions. c) Have a path for the residents to use that is within the property. The proposal does not meet Councils requirements. Specifically: • The waste bin storage area is too far from the property boundary with the street. • The bin room in the basement is only accessible via the lift or the driveway and appears to have secure access. • A Residential Waste Room separate to the Commercial Waste Room must be provided. As this is a multiple occupancy proposal, Council will be providing a “wheel out / wheel in” service from Kalang Road for the residential bins. The owners corporation / building occupants are not to place the bins at the kerbside for collection. Council will be providing 6 x 240 litre residential bins: 2 x garbage, 2 x paper recycling, 1 container recycling bins, 1 x vegetation bin. The dimensions for each bin are: · Depth: 750mm · Width: 600mm · Height: 1080mm A suitably located bin storage room will need to be provided that complies with Council’s requirements. - Within 12 metres of the property boundary with the

Internal Referral Body	Comments
	street. (Please note: the distance is normally 6.5 metres. Due to site constraints Waste Services will allow up to 12 metres). - Service access for Council waste collection staff must be via a pathway that is separate to the vehicular driveway. - Service access pathway to have a flat, smooth non-slip surface with no steps or ramps with a gradient steeper than 1 in 8 and 1.2m wide. - Access to the bin storage area must not be obstructed by locked doors. - Doors must be able to be latched in an open position, openable in an outward direction and be a minimum 1.2 metres wide. Please be advised that if there is a holding bay at street level that meets Council's location and access requirements, it is possible for the bins to be stored in a basement bin room. It would be the responsibility of the owners corporation to transfer the bins between the basement bin room and the holding bay. Please note that the vehicular driveway must not be used to transfer the bins between the basement binroom and the holding bay. A viable alternative must be provided that meets WHS requirements e.g. no stairs and no ramps steeper than 1 in 8. **Commercial waste storage room** A commercial waste storage room has not been provided. The residential bin room is required to be separate from the commercial bin room. Please show as separate rooms on the proposed plan.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections to the 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 65 - Design Quality of Residential Apartment Development

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a part-three / part-four storey shop top housing development plus basement car parking for the provisions of five (5) self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council's Design and Sustainability Advisory Panel reviewed the application and their comments can be found later in this report.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment

The transitionary nature of the site from local centre to residential inherently means that achieving a form appropriate to both contexts is challenging by virtue of built form and land uses.

The proposed land use of one retail, one office and five apartments is considered to be an appropriate mix for the Elanora Village locale and will contribute to the neighbourhood.

The architecture of the proposal is considered to be both interesting and non-offensive to neighbours, as would be required in a transitional site. The site is a challenging shape and is prejudiced by unusual built form controls under the planning instruments.

In summary of the above and as detailed in the preceding eight principles, the development is considered to appropriate respond to context and neighbourhood character.

Principle 2: Built Form and Scale

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

Comment

Notwithstanding the fact that the development does breach the building height control and several DCP controls, the overall built form, scale and proportion of the building are considered to be acceptable with regards to surrounding properties and the wider Elanora Village locale.

The development generally aligns with the pattern of mixed-use buildings along Kalang Road and will, over time, be screened by landscaping.

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 proposal achieves satisfactory internal and external amenity for future residents in accordance with the relevant ADG principles as assessed below. The density of the development (five apartments) is not considered excessive and will contribute to providing housing diversity in a locale that is predominantly detached single dwelling houses.

Principle 4: Sustainability

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

Comment

The proposal includes an acceptable degree of sustainability credentials including passive shading and cross ventilation, and mechanical systems such as photovoltaic cells and water capture.

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

It is noted that the existing site does have some desirable mature trees, however the location of those trees and their root zones severely prejudice the ability for the site to be developed in any reasonable capacity (commensurate to the land use and planning controls). The application is accompanied by a landscape plan, and that plan is enhanced further by conditions from Council's Landscape Officers. Subject to that plans and conditions the proposal will provide for an acceptable landscape both immediately, but more so into longevity as the plantings mature.

Principle 6: Amenity

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

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts

and service areas, and ease of access for all age groups and degrees of mobility.

Comment

The proposal provides a satisfactory provision of amenity in accordance with the ADG principles as described below, noting that solar amenity is severely prejudiced by existing neighbouring buildings. The proposal has appropriate ease of access for all age groups and degrees of mobility.

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 is considered to provide a safe environment for occupants, pedestrians and surrounding land users.

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 Elanora Heights locale is generally dominated by detached single family dwelling houses, with some alternative land uses interspersed throughout. The outlier to this statement is the Elanora Village centre that generally comprises of commercial and retail offerings that are either older single storey buildings or newer shop top housing developments. Such is the premise of this development application.

The site has been envisaged for an extended period of time (by virtue of the planning controls) to accommodate a mixed-use development. The offering of five residential units of one, two or three bedrooms provide an appropriate housing diversity and alternate offering to prospective buyers commensurate to the prevailing housing typology in the suburb.

Principle 9: Aesthetics

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

The visual appearance of well designed apartment development responds to the existing or future local

context, particularly desirable elements and repetitions of the streetscape.

Comment

The proposed development is considered to be appropriately designed with regards to its visual presentation to the streetscape and neighbouring properties. The design is somewhat unique along the Kalang Road streetscape, however that is deemed appropriate given that the site is the last block of the village centre before transitioning to low density residential buildings.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	**Consistent** The development is considered to be appropriately sited given the existing flank wall to the north and the reasonably open curtilage presented to the southeast.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	**Consistent** The site's ability to achieve a high level of solar access within is significantly prejudiced by its location southwards of a large building built to the boundary which removes any opportunity for northern sunlight. The building is appropriately orientated to Kalang Road and to neighbouring properties to provide the best level of amenity possible to both future occupants, and neighbours.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	**Consistent** The proposal entails the establishment of new retail units at ground floor facing the street and flowing on to (what is assumed to be) outdoor dining areas. The design of the building

		appropriately transitions between private and public domain without compromising safety and security. The public domain is enhanced by way of an improved landscaped outcome, albeit the large angophora trees are being removed, and through the addition of new retail and office offerings.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	**Inconsistent (satisfactory on merit)** The site does not have any dedicated communal open space for residents, although it is noted that there is a small courtyard area to the eastern edge of the site accessible from the basement. Each of the five apartments has surplus internal and external areas which mitigate any loss of amenity caused by a shortfall in communal open space. It is further noted that the entire frontage of the site, at ground level, is somewhat dedicated as public open space, being a cafe with terraces and a landscaped area. Occupants of the development would be able to use this space (as customers, and if a future application does indeed secure this space as a cafe / food and drink offering). The site also looks over and is immediately adjacent to the Allington Reserve park.

<table>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:

<table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr><tr><td>Greater than 1,500m^2</td><td>6m</td></tr><tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr></table></td><td>Consistent
The site has a surveyed area of 661.7m^2.
The frontage of the site has a deep soil zone of 94m^2 or 14.2% of the total site area. The site has two additional smaller areas of deep soil landscaping which increase the overall quantum of deep soil landscaping to ~ 20%.</td></tr>
<tr><td>Visual Privacy</td><td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>
Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</td><td>Consistent</td></tr>
<tr><td>Pedestrian Access and entries</td><td>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.</td><td>Consistent</td></tr>
<tr><td>Vehicle Access</td><td>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high</td><td>Consistent</td></tr>
</table>

	quality streetscapes?	
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.	**Inconsistent (satisfactory on merit)** The development is required to provide 14 car parking spaces (7 residential, 2 visitor and 4.2 commercial) but only provides 13. Given the village centre location of the site it is not considered that a shortfall of one space will compromise the availability of street parking. It is further considered to be seldom occurrence that both visitor spaces and all five commercial spaces would be at capacity at any one time. Council's Traffic Engineer supports the shortfall in car parking and therefore the variation is supported on planning grounds.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	**Consistent** The ability to provide solar access within the site is prejudiced by the orientation of the site southward of large building. Unit 1.3 receives one hour of direct sunlight to its primary balcony and living room between 9am and 3pm on its winter solstice. The other four units in the development exceed the requirements. Therefore, 80% of apartments in the development receive the minimum solar access, and thus the development is

<table>
<tr><td></td><td></td><td>compliant.</td></tr>
<tr><td></td><td>• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</td><td>Consistent</td></tr>
<tr><td>Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</td><td>Consistent</td></tr>
<tr><td></td><td>• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td>Consistent</td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:
<table>
<tr><th colspan="2">Minimum ceiling height</th></tr>
<tr><td>Habitable rooms</td><td>2.7m</td></tr>
<tr><td>Non-habitable</td><td>2.4m</td></tr>
<tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr>
<tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr>
<tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr>
</table></td><td>Consistent</td></tr>
<tr><td>Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:
<table>
<tr><th>Apartment type</th><th>Minimum internal area</th></tr>
<tr><td>Studio</td><td>35m^2</td></tr>
<tr><td>1 bedroom</td><td>50m^2</td></tr>
<tr><td>2 bedroom</td><td>70m^2</td></tr>
<tr><td>3 bedroom</td><td>90m^2</td></tr>
</table>
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each.</td><td>Consistent</td></tr>
</table>

<table>
<tr><td></td><td>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each.</td><td></td></tr>
<tr><td></td><td>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.</td><td>Consistent</td></tr>
<tr><td></td><td>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</td><td>Consistent</td></tr>
<tr><td></td><td>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</td><td>Consistent</td></tr>
<tr><td></td><td>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</td><td>Consistent</td></tr>
<tr><td></td><td>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.</td><td>Consistent</td></tr>
<tr><td></td><td>Living rooms or combined living/dining rooms have a minimum width of:

• 3.6m for studio and 1 bedroom apartments
• 4m for 2 and 3 bedroom apartments</td><td>Consistent</td></tr>
<tr><td></td><td>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</td><td>Consistent</td></tr>
<tr><td>Private Open Space and Balconies</td><td>All apartments are required to have primary balconies as follows:

<table>
<tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr>
<tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr>
<tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr>
<tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr>
<tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr>
</table>

The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>Consistent</td></tr>
<tr><td></td><td>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.</td><td>N/A</td></tr>
<tr><td>Common Circulation and Spaces</td><td>The maximum number of apartments off a circulation core on a single level is eight.</td><td>Consistent</td></tr>
<tr><td></td><td>For buildings of 10 storeys and over, the maximum number of apartments sharing a single</td><td>N/A</td></tr>
</table>

	lift is 40.	
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments: $4m^2$ 1 bedroom apartments: $6m^2$ 2 bedroom apartments: $8m^2$ 3+ bedroom apartments: $10m^2$ At least 50% of the required storage is to be located within the apartment.	**Consistent**
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	**Consistent**
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	**Consistent**
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	**Consistent** The development comprises a mix of one, two and three bedroom apartments.
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.	**Consistent**
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	**Consistent** In this location it is not deemed appropriate to permit a roof area to be used as trafficable space. The roof area is used as an architectural feature addressing the street, and then a functional area for photovoltaic panels for the remainder.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	**Consistent** The landscape plan submitted responds

<table>
<tr><td></td><td></td><td>appropriately to the site conditions and context. It is considered that further amendments to the landscape plan incorporating public domain treatments will result in an even better outcome, and therefore Council's Landscape Officer has required that the plans be further detailed prior to the issuance of a Construction Certificate.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
<tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr>
<tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr>
<tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr>
</table></td><td>N/A</td></tr>
<tr><td>Universal Design</td><td>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features</td><td>Consistent</td></tr>
<tr><td>Adaptable Reuse</td><td>New additions to existing buildings are contemporary and complementary and enhance</td><td>N/A
The development does not</td></tr>
</table>

	an area's identity and sense of place.	comprise of adaptive reuse, and the existing structure on site is not appropriate for such.
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.	**Consistent** The site is within the village centre and is accessible via public transport. It is considered the density and mix of the building is appropriate for its location and positively contributes to the wider public domain.
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.	**Consistent** Appropriate awnings are provided at ground level to complement to architecture of the building and to improve amenity for users of the ground floor retail space. No signage is proposed or approved under this consent.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	**Consistent**
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	**Consistent**
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	**Consistent**
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	**Consistent**

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
(b) if the internal area for each apartment will be equal to, or greater than, the recommended

minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment
The development is not being refused on any of these grounds.

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

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

(3) To remove doubt:

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

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

Comment
This assessment has given regards to the design quality principles and the objectives of the ADG and on balance, the amended plans for the development application are acceptable.

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.

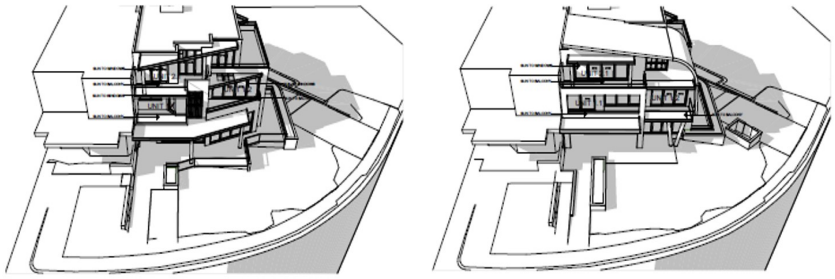
SEPP (Resilience and Hazards) 2021

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 mixed-use residential / commercial land use.

DESIGN AND SUSTAINABILITY ADVISORY PANEL

The DA was reviewed by Council's DSAP on 28 October 2021. The Panel acknowledged the significant constraints of the site caused by the DCP control and noted that the design, as proposed, was overly complex because of the DCP controls. The Panel recommended that Council apply a degree of flexibility in these controls given the poor outcome that the result in. The below table details the DSAP recommendations and the applicant's responses.

DSAP RECOMMENDATIONS	APPLICANT RESPONSE TO RECOMMENDATIONS
Revise the design to simplify interior layouts, minimise the amount of balconies over habitable spaces and simplify the overall building form.	The applicant amended their development to modify the internal layout of the building to improve amenity, circulation and to rationalise service functions. The balconies and building form were amended to reduce the extent to which they overlapped with levels below and to create an increased depth to the building facade.
Investigate how the design and overall layout and arrangement of rooms could be improved if the building extended to C-1 on the ground and first floors and the set back from C to B was reduced to 1.5m. on the second floor	The DSAP saw that the prescriptive built form controls were creating a difficult design environment for the project architect. The applicant elected to maintain a similar building footprint / setbacks to what was originally proposed as they did not want to exacerbate existing levels of non-compliance.
Not withstanding 1 and 2, the areas of excavation should be reduced by eliminating the inefficient garbage store	The residential garbage room was deleted from the basement carpark and relocated to ground level. The commercial garbage rooms remain in the basement. Overall the extent of excavation was reduced to a small degree consequent of the revised plans.
A very high priority should be given to the protection and retention of the mature angophora T01	Tree T01 is now being retained under the re revised plans.
Building form should be	The applicant sought to simply the overall building form in response to the

DSAP RECOMMENDATIONS	APPLICANT RESPONSE TO RECOMMENDATIONS
simplified and made more coherent.	DSAP advice. The left image is the front axonometric drawing as submitted, and the right is the proposal as amended (the plans of which are the subject of this Assessment Report). 
Given two large Angophora will be removed from site we would encourage the planting of one semi mature Angophora in the location of the driveway entry in deep soil (replaces Tree 42) to offset this loss.	The application is accompanied by a landscape plan which has been deemed to be acceptable by Council's Landscape Officer, subject to conditions as recommended.
Internal layouts need to be simplified so both ground floor tenancies have a streetscape presence, and the residential entry is clearly defined.	The permitted width of the building does not easily lend itself to provide a frontage to both ground floor tenancies and the residential lobby. In this instance it is considered appropriate to dedicate the majority of the frontage to the future food and drink premises and its outdoor seating areas.
Investigate whether the north western most tree 'T02' (there are 3 T02a) could be retained if the basement were replanned.	The basement design is considered to be acceptable and does not require a redesign. Council's Traffic Engineer and Landscape Officer raise no objections to the development.
Reconsider mix of units	The mix of units proposed in the development is acceptable for the location and does not require revision.
Replan internal layout in response comments on DSAP Report Page 3.	Internal layout revised to rationalise service cores, reduce amount of circulation space, provide more windows and natural ventilations to unit, and to provide better living spaces for future occupants.
Check egress arrangements for required stairs	The stairs proposed appear to be acceptable, and will be subject to future design detail under the CC in accordance with the relevant Australian Standards.
The at-grade car space should be removed	Removed.

DSAP RECOMMENDATIONS	APPLICANT RESPONSE TO RECOMMENDATIONS
Simplify the car parking layout	Council' Traffic Engineer supports the car parking layout and therefore no changes are required.
Consider not requiring parking for patrons on site to reduce the amount of excavation required	Council's Traffic Engineer supports the amount of car parking proposed and finds that the number should not be further reduced.
Remove the glazed balustrades at ground level	Removed.
Reconsider the use of glazed balustrades in this part of the centre that is more residential and vegetated in character	Some balustrades amended to include partial solid/partial glazed construction. This concern is not pertinent to the DA planning assessment.
100% EV charging	Some EV charging ports added to basement car park.
Improve shading to windows	The revised front building facade (as seen in the above axonometrics) results in an improved level of shading to windows which still retaining a compliant degree of solar access.
Switch from gas to electric for hot water and stoves	This is a design detail to be addressed at CC stage.
Include PV on the roof	The application is amended to include PV on the roof.
Include a skylight over lobby	The application is amended to include a skylight over the main lobby.
Include rainwater recycling	This is a design detail to be addressed at CC stage.

Concluding comments:

The applicant has responded to the recommendations made by the DSAP by submitted revised plans which include a multitude of changes. Whilst the two schemes may appear similar at a cursory and plan-view review, there are a number of small and positive changes that are tantamount to a significantly improved design. Most notable is the overall change to the front facade of the building and the changes to its massing created by the addition of a sweeping curved roof. The plans result in an improved internal layout with reduced circulation, better amenity and a simplification of services thereby leading to an easier construction process.

Council is satisfied that the applicant has responded appropriately to the DSAP.

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:	Green - 8.5m Yellow - 11.0m 	11.5m 12.33m	35.2% (3m) 12.9% (1.33m)	**No** **No**

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
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

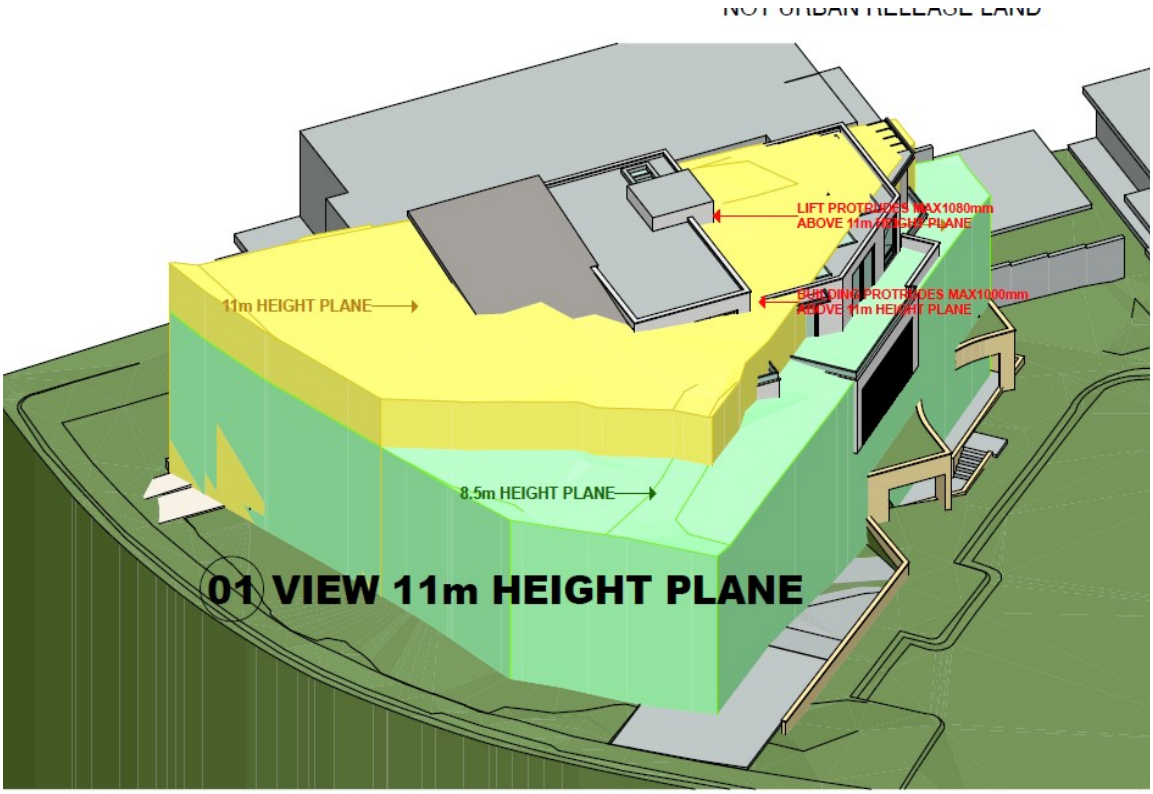
Development standard:	Height of Buildings
Requirement:	Green: 8.5m Yellow: 11.0m
Proposed:	(in 8.5m area): 11.5m (in 11m area): 12.33m

Percentage variation to requirement:	(in 8.5m area): 35.2% (in 11m area): 12.9%

The subject site is located on the periphery of the B2 Local Centre zone and the R2 Low Density Residential zone and as such, a control exists to split the height of the development, understood to be in place to allow for a transition in scale between commercial and residential development.

The height of buildings maps can be found above, where the yellow area represents an 11m height limit, and the green area represents an 8.5m height limit.

The project architect has extrapolated these requirements in the same colour on a digital model of the development to show the extents of non-compliance proposed as below:



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 (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 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 Request

The applicants written request argues, in part:

- *that the extent of non-compliance is largely resultant of the sites topography;*
- *that the extent of non-compliance is largely non-discernible from the public domain or neighbouring properties, and does not result in any significant impacts on adjoining land;*
- *that the height of the development is generally consistent with the rest of the mixed-use developments along Kalang Road and is not inconsistent with what could reasonably be expected to be built on the site.*

It is agreed that the development of the site is largely constrained by the shape of the lot, a split height control and unusual setback controls. It is concurred that the extent of building encroaching beyond the height plane (as illustrated on the above diagram) is unlikely to cause any detrimental impacts to the amenity of adjoining land. The land use, proportions and general architecture of the building is considered to be congruous with the streetscape and consistent with what could reasonably be expected to be built on the site.

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 B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

> *a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
>
> Comment:
>
> Consistency with the desired future character of the locality is discussed later in this report but in summary, the height and scale of the building is considered acceptable and consistent with the intent of the planning controls 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:
>
> Whilst the proposed building will be of a height slightly greater than other commercial sites on the street block (that is sites north of the subject site, east of Kalang Road and south of St Andrews Gate) it does not appear visually incongruous with the existing proportions and is generally consistent with the height of newer development throughout the town centre. The proposal does attain a height greater than what is permitted on the properties to the south and east, however

that increased height is mitigated by the openness of the adjoining site (49A Kalang Road) which is considered likely to remain in the future, even if that site were to be redeveloped.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal is not assessed as causing any unreasonable overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposal is not assessed as causing any unreasonable extent of view loss from neighbouring properties.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

Topographically the land slopes away from the street (west to east) and as such, the building steps down that slope by way of changing floor levels internally, and pulling back the eastern edges of the building progressively.

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

Comment:

The development is not anticipated to have an adverse visual impact on the natural environment, heritage conservation areas or heritage items.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

  Comment:

  The development provides one retail offering with outdoor dining facing Kalang Road, and one small office unit to the rear of the building. This range of retail and business floorspace is considered beneficial to the local community.

- *To encourage employment opportunities in accessible locations.*

  Comment:

  As described above, depending on the tenants of the two commercial premises the development will provide employment opportunities.

- *To maximise public transport patronage and encourage walking and cycling.*

  Comment:

  The site is located in proximity to public transport and is within the village centre whereby it is anticipated that the predominant patronage would be locals who could walk to the site, or utilise existing on-street car parking.

- *To provide healthy, attractive, vibrant and safe local centres.*

  Comment:

  The proposed development is considered to provide an appropriate development for the village centre which contributes to the overall healthy, attractive, vibrant and safe nature of the locale.

- *To strengthen the role of centres as places of employment.*

  Comment:

  Commensurate to the total floor area of the development, the proposal is considered to provide an appropriate degree of employment floor space.

- *To provide an active day and evening economy.*

  Comment:

  The retail spaces have the potential to contribute to the day and evening economy, however that will be the subject of future DAs for the uses of those spaces.

- *To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.*

  Comment:

  The proposal is for shop top housing and thus the residential units are located on levels above commercial spaces.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

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

the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

(g) the proximity to, and potential for adverse impacts on, any 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
The site is subject to built form controls pursuant to clauses D5 Elanora Heights Locality of the P 21 DCP which generally differ from regular built form controls in that they are reliant on diagrams contained within the various clauses to outline what the appropriate setbacks are.

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Varies. approx. 7.0m to the west, 12.0m to the south	Building: Complies Terrace: Encroachment	- -	Yes **No**
Rear building line	8.0m from eastern corner	Terrace: 8.0m Building: 11.6m	- -	Yes Yes
Side building line	north - nil (to adjoin neighbouring building)	Nil	-	Yes
	Southeast - 3.0m to ground and first floor	Building: 3.0m	-	Yes
	Southeast - 6.0m to second floor	Building: 5.0m+ Balcony: 3.0m	17% 50%	**No** **No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.21 Food Premises Design Standards	N/A	N/A
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D5.2 Scenic protection - General	Yes	Yes
D5.15 Amalgamation - Elanora Heights Village Centre	No	Yes
D5.17 Front Building Line - Elanora Heights Village Centre	No	Yes
D5.18 Side and Rear Setbacks - Elanora Heights Village Centre	Yes	Yes
D5.19 Setbacks to Upper Levels - Elanora Heights Village Centre	No	Yes
D5.20 Separation - Elanora Heights Village Centre	Yes	Yes
D5.21 Building Depth - Elanora Heights Village Centre	Yes	Yes
D5.22 Ceiling Height - Elanora Heights Village Centre	Yes	Yes
D5.23 Design Excellence - Elanora Heights Village Centre	Yes	Yes
D5.24 Facade Articulation - Elanora Heights Village Centre	Yes	Yes
D5.25 Roof Forms - Elanora Heights Village Centre	Yes	Yes
D5.26 Materials - Elanora Heights VIllage Centre	Yes	Yes
D5.27 Colours - Elanora Heights Village Centre	Yes	Yes
D5.28 Active Frontages - Elanora Heights Village Centre	Yes	Yes
D5.29 Entries - Elanora Heights Village Centre	Yes	Yes
D5.30 Signage - Elanora Heights Village Centre	N/A	N/A
D5.31 Awnings and Colonnades - Elanora Heights Village Centre	No	Yes
D5.32 Fences - Elanora Heights Village Centre	Yes	Yes
D5.33 Ecologically Sustainable Development Responsive Design - Elanora Heights Village Centre	Yes	Yes
D5.34 Public Domain - Elanora Heights Village Centre	Yes	Yes
D5.35 Landscaping - Elanora Heights Village Centre	Yes	Yes
D5.36 Solar Access - Elanora Heights Village Centre	Yes	Yes
D5.37 Visual Privacy - Elanora Heights Village Centre	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D5.38 View Sharing - Elanora Heights Village Centre	Yes	Yes
D5.39 Acoustic Privacy - Elanora Heights Village Centre	Yes	Yes
D5.40 Private Open Space - Elanora Heights Village Centre	Yes	Yes
D5.41 Natural Ventilation - Elanora Heights Village Centre	Yes	Yes
D5.42 Storage - Elanora Heights Village Centre	Yes	Yes
D5.43 Vehicular Access - Elanora Heights Village Centre	Yes	Yes
D5.45 Off-Street Vehicle Parking Requirements - Elanora Heights Village Centre	Yes	Yes

Detailed Assessment

A4.5 Elanora Heights Locality

The desired character of the Elanora Heights Village centre is as follows:

Elanora Heights is a small village centre with great sense of community, making it one of the great places to live in the northern beaches.

Local residents enjoy an easy-going lifestyle while shopping, dining and socializing in the lively village centre shops and cafes open onto the footpaths. The new town square on the western verge, south of St Andrews Gate, offers great choices for "breaky" or a good cup of coffee on the weekends. It offers public art and informal play opportunities for kids, and the favourite sunny spot of both young and senior residents.

Elanora Heights is a relaxed, easy-going place that has adapted gracefully over time with its improved public domain, tree-lined main street and characteristic, low scale, 3-storey built form with colourful facades and high quality architecture.

The architecture reflects the village atmosphere and coastal location. Buildings abut each other along both sides of Kalang Road. Driveways do not interrupt the pedestrian verges. The deep balconies to the upper levels create a play of light and shade on the facades. The use of natural materials enhances the facades and streetscape. The lower scale edges of the buildings to the rear of the properties and St Andrews Gate create a gentle transition to the lower scale houses.

The community centre, its adjacent open space with tall trees, shade canopies and playground space are ideal for the locals to meet and attend community events.

Lush planting and shading devices along generous footpaths give plenty of shade to pedestrians. The landscaped verges have regular seating areas that do not interrupt the flow of pedestrians past the shop fronts.

The extensive street trees give Kalang Road a dappled, leafy character emphasised by the tree planted central median.

The street frontages of the new buildings are active with well designed, fine grain shop fronts and high quality signage under the colonnade on the western verge along Kalang Road or under the awnings along the eastern verge. Together with the landscape master plan and the built form they create a holistic vision and character for the village centre.

The design principles underpinning the desired character for Elanora Heights Village Centre are:

- *To enhance and activate the existing character of Kalang Road;*
- *To create a high quality public domain environment;*
- *To encourage upgrades to existing properties and shops;*
- *To ensure development achieves design excellence;*
- *To create a strong sense of place as a small scale coastal village centre;*
- *To extend the village centre uses and activity to the southern block on Kalang Road;*
- *To ensure the whole length of the village centre is active and vibrant with increased visitation to the southern block;*
- *To ensure the village retains a low scale fine grain character;*
- *To maximize opportunities for cafes and restaurants;*
- *To announce arrival at the village centre through architectural and landscape markers;*
- *To improve visibility of the existing Community Centre and children's playground to Kalang Road and the rest of the village centre; and*
- *To encourage greater knowledge of Kywong Reserve.*

Comment:
For the reasons explained throughout this report, the proposal is deemed to achieve and contribute to the desired character of the village centre.

The proposal maintains a predominantly three storey appearance and provides the maximum available retail frontage to Kalang Road, buffered by an area of landscaping. For a transitionary site between the village centre and a residential area, the balance of land uses and building proportions is considered appropriate to minimise impacts on neighbouring houses whilst still contributing to the vibrancy of the town centre.

B6.3 Off-Street Vehicle Parking Requirements

Council's Traffic Engineer has determined that the proposed 13 car parking spaces is short by one (1) space, when measured against the control requirements. Notwithstanding this, the engineer has advised that the shortfall is unlikely to create any detrimental impacts on the provision of publicly available car parking on the street or the surrounding road network.

Given the location of the site, people are generally more inclined to utilise existing on-street car parking when visiting the village centre and are considered less likely to find the commercial spaces within a development itself. Additionally, this type of centre is generally one where customers carry out multi-purpose visits rather than a single destination shop.

C2.21 Food Premises Design Standards

The use of the two commercial spaces shall be subject to future development applications at which time the requirements of this clause will become applicable. For the purpose of this current development application, the clause is not applicable.

D5.15 Amalgamation - Elanora Heights Village Centre

Clause D5.15 indicates that the development site should be amalgamated with Nos. 53 and 55 Kalang

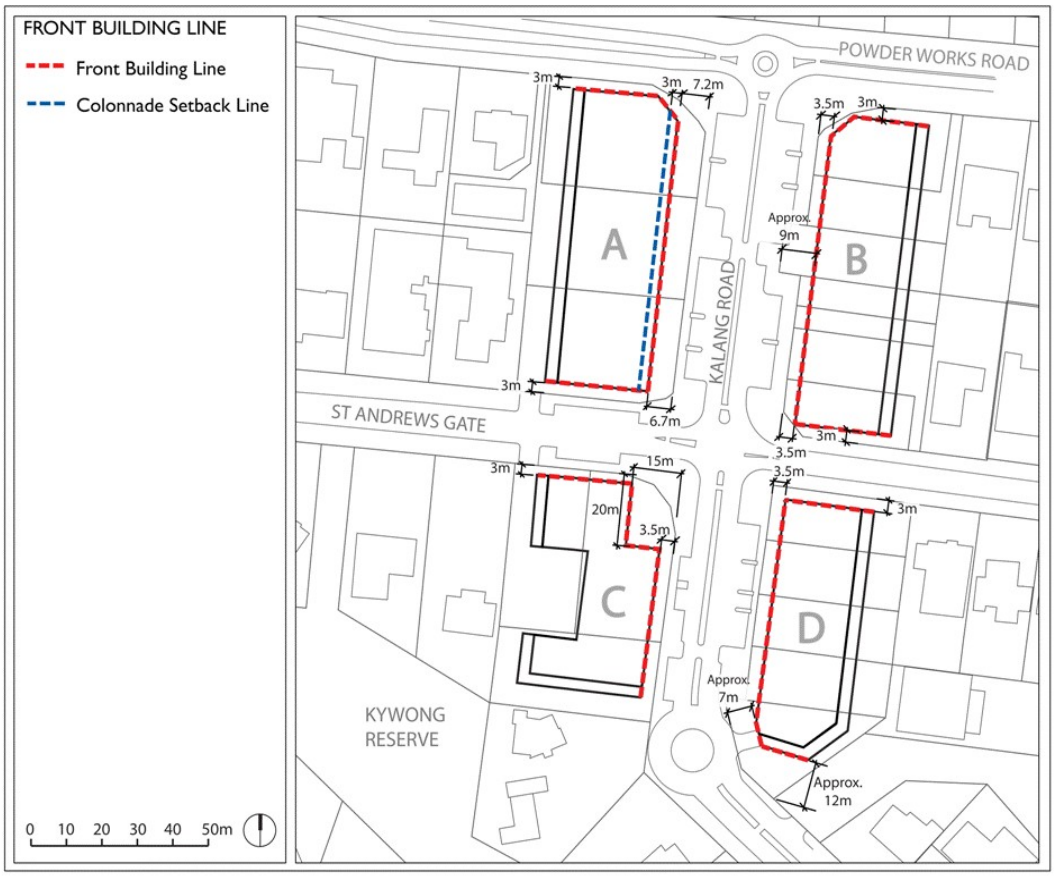
Avenue to the north, to permit a larger site area with greater development potential.

These two northwards buildings are dated, but appear to be structurally sound and are occupied with numerous owners. Whilst it would represent a greater opportunity and potentially a better outcome to have the whole street-block developed holistically, that is not a realistic outcome given the present situation with a multitude of owners. Furthermore, the combination of these three sites being development as one development could present issues such as village scale and compatible character which is in scale for the low-rise village centre and be contrary to the intent of the locale.

On that basis, it is considered that the subject site is capable of being independently developed, and that that development does not prejudice the ability of adjoining sites to be developed to a similar capacity.

D5.17 Front Building Line - Elanora Heights Village Centre

The site is subject to a front building line provision which indicates that the setback of building to the front boundary should be vary from approximately 7.0m to 12.0m, as shown in the figure below.



The majority of the building complies with the requirements, however the outdoor terrace for the ground floor commercial tenancy encroaches within the prescribed setback area. The variation is therefore assessed against the underlying outcomes of the control as follows:

- *To achieve a consistent street alignment.*

Comment:

The site has an unusual alignment commensurate to the rest of the village centre whereby the front boundary line projects closer to the street than its neighbours. The other developments within the centre are generally built hard up to the front boundary line.

The setbacks proposed in the control, and as displayed in the development are appropriate to allow for a transitionary development between the centre and the low density residential neighbourhood.

The setback of the building is consistent with the controls and achieves an appropriate alignment. The building is setback further into the site than the requirement for dwelling houses in the adjoining residential zone.

The encroachment of the the terrace encroachment facilitates outdoor dining and does not have any roof structure above, thereby not impeding any prevailing pattern of building alignment.

- *To ensure retail uses activate the public domain.*

  Comment:

  The entire frontage of the building is a retail use with outdoor dining opportunities which provide sufficient opportunity to activate the public domain. The future use of that space will be subject to a separate development application.

- *To achieve a strong edge and sense of enclosure to Kalang Road.*

  Comment:

  The shape of the lot and presence of a large and valuable angophora tree does not lend the site to have a strong edge to the road. Rather it is considered in this instance to be more appropriate to have a landscaped frontage similar to the existing building on site, and as proposed in this development.

- *To provide adequate exposure to shop fronts and avoid opportunities for concealment at ground level.*

  Comment:

  The retail unit G.1 addressing the street has the maximum possible exposure to the public domain and does not provide any opportunities for concealment.

- *To improve pedestrian amenity and avoid interruptions in pedestrian flow.*

  Comment:

  The building does not impede on existing pedestrian amenity or avoid interruptions in pedestrian flow. Comments from Council's Road Assets Officer requiring the footpath to be widened to a minimum of 1.5m will improve amenity.

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

Comment:

The site is subject to an unusual context to respond to, given its awkward shape and transitionary nature between two zones. Notwithstanding that it is considered that the landscaped front setback of the development provides an appropriate transition into and out-of the village centre (depending which way one is travelling) and responds to the spatial characteristics of the existing urban environment.

On balance of all factors it is considered that the variation to D5.17 Front Building Line - Elanora Heights Village Centre is supported.

D5.19 Setbacks to Upper Levels - Elanora Heights Village Centre

The P21DCP prescribes two different sets of side setback requirements. The first (D5.18) is a 3.0m setback requirement which applies to all levels of the building up until the third level (second floor). The second control (D5.19) requires that the third level of a building be set back a further 3.0m (6.0m in total) from a side boundary but permits eaves and shading structures to encroach within the setback.

Generally, the proposal is designed to comply with the setback requirements and no encroachments are proposed at ground or first floor level. The second floor of the building breaches the 6m setback control to the south-eastern edge of the building, presenting a balcony with a 3.0m setback, and the building with a 5.0m setback, thus encroaching the required setback zone. The extent of encroachment can be observed in the earlier 3D massing diagram under section 4.6 of this report.

The variations sought are assessed against the underlying outcomes of the control:

- *The bulk and scale of the built form adjacent to adjoining low scale residential properties and to courtyard spaces is minimised.*

  Comment:

  The offending balcony is not considered to create any bulk or scale when viewed from neighbouring properties, as an alternate compliant scheme would have a roof form in this location that would be of a greater proportion that a balcony railing.

  The offending building edge is setback 5.0m from the boundary. The site is separated from the neighbouring dwelling at 49 Kalang Road by a Council car park which measures some 18.0m in width. The offending building element is therefore some 23.0m from the boundary of 49 Kalang Road, and it is not considered that a 1m increase to the setback would present a discernible visual benefit of reducing bulk and scale. Further to that is the fact that the majority of the second floor has a significantly greater than required setback.

  The proposal is considered to meet this objective.

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

  Comment:

  The variation sought to the upper level setback control is not considered to cause any unreasonable overshadowing of the neighbouring properties (noting that compliant solar access

is achieved).

Whilst there is a significant degree of spatial separation between the building and the neighbour, the degree of privacy could be improved by simply raising the glazed portion of balcony balustrade to be a height of 1.5m above finished floor level and be of an opaque finish. This would not prevent overlooking when standing at the edge of the balcony, however it would prevent downwards sightlines into the garden of 49 Kalang Road from inside the apartment.

On that basis a condition to that effect is imposed.

- *To ensure the built form of new development transitions are in scale to existing development surrounding the village centre.*

  Comment:

  The proposal is generally consistent with the proportions of other built form within the village centre, and is of a height and scale that could reasonably be anticipated to be developed on the site.

D5.23 Design Excellence - Elanora Heights Village Centre

The primary objectives of Clause D5.23 are:

- *To achieve high quality of architecture, landscape architecture and urban design for Elanora Heights Village Centre.*
- *Quality buildings that respond to their prominent visual setting.*
- *Contemporary village character.*

The proposal is considered to be of an acceptable design for the site and maintains a generous curtilage around its edges to provide a landscaped buffer and spatial separation.

The more contemporary in its architecture that its neighbours which is considered to be a good thing. The building is not unduly prominent and provides an appropriate transition between zones.

On balance, the design is considered to be of an acceptable quality within a pleasant landscaped setting that should contribute to the continued urban design success of the Elanora Heights Village Centre.

D5.30 Signage - Elanora Heights Village Centre

No signage is proposed or approved under this development consent.

D5.31 Awnings and Colonnades - Elanora Heights Village Centre

The shape of the site in having a front boundary projecting further westwards than its neighbours, and the change in topography between the site and its northern neighbour do not lend the site appropriate as having an awning the same as the other buildings within the village centre.

It is not considered warranted to require a continuous awning in this location as such would result in an awkward building alignment and awning design. The setback requirements do not allow buildings to be

constructed immediately adjacent to the footpath which negates the benefit of having a continuous awning along the road.

D5.38 View Sharing - Elanora Heights Village Centre

The proposal is not anticipated to cause any view loss from any neighbouring properties, nor from the public domain.

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 $26,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,650,000.

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 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

This report demonstrates that the proposed development has been appropriately designed for the transitionary context of the site forming the interface between the village centre and the low density residential areas in Kalang Road.

The development is not anticipated to generate any unreasonable amenity impacts on the village centre, the adjoining community centre or residential dwellings. Where an impact may occur, that impact has been assessed and can be appropriately managed or mitigated by way of condition.

Notwithstanding the variation sought to the height of building development standard, the overall proportions and architecture of the building result in an appropriately scaled and designed addition to the village centre. The variation to the development standard for building height is well founded under the Clause 4.6 Variation request and is without unreasonable impact.

The Applicant has responded to all the feedback from Council and the DSAP and has redesigned the proposal to address initial concerns which has resulted in a higher quality development.

On the balance of all factors, the proposal is deemed to be acceptable, and this report therefore concludes with the recommendation that the NBLPP grants **DEFERRED COMMENCEMENT APPROVAL** to the development application.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2021/1426 for Demolition works and construction of a shop top housing development on land at Lot 2 DP 528120,51 Kalang Road, ELANORA HEIGHTS, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Stormwater Drainage Easement**
As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the approved drainage plans. The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA-01 Amendment C - Roof and Site Plan	21 April 2022	Fortey + Grant Architecture
DA-06 Amendment C - Basement Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-07 Amendment C - Ground Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-08 Amendment C - First Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-09 Amendment C - Second Floor Plan	21 April 2022	Fortey + Grant Architecture
DA-10 Amendment C - North Elevation	21 April 2022	Fortey + Grant Architecture
DA-11 Amendment C - South Elevation	21 April 2022	Fortey + Grant Architecture
DA-12 Amendment C - East Elevation	21 April 2022	Fortey + Grant Architecture
DA-13 Amendment C - West Elevation	21 April 2022	Fortey + Grant Architecture
DA-14 Amendment C - Section	21 April 2022	Fortey + Grant Architecture
DA-15 Amendment C - Section	21 April 2022	Fortey + Grant Architecture
DA-17 Amendment C- Materials and Finishes Schedule	21 April 2022	Fortey + Grant Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Report	12 May 2021	Landscape Matrix Pty Ltd
BASIX Certificate No. 1132917M_03	09 February 2022	Lin & Associates Pty Ltd
Disability Access Report (ref: LP_20280)	05 May 2021	LPA Access
Environmental Noise Impact Assessment (ref: 7273-1.1R)	09 August 2021	Day Design Pty Ltd

Geotechnical Assessment (ref: 20210301-R1)	05 July 2021	Willows Engineering
Traffic and Parking Assessment Report (ref: 20461)	09 March 2021	Varga Traffic Planning Pty Ltd
Construction Traffic Management Plan (ref: 20461)	23 July 2021	Varga Traffic Planning Pty Ltd

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**
20115DA1 Rev. A - Landscape Concept Plan	05 March 2021	Vision Dynamics Pty Ltd

Waste Management Plan		
Report Title	**Dated**	**Prepared By**
Waste Management Plan	05 May 2021	Steve Djogo

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.

3. **No Approval for Ground Floor Land Use**
No approval is granted under this Development Consent for any land use of the two ground floor tenancies. A separate Development Application must be submitted to Council for approval prior to the use of the premises.

Reason: To ensure compliance with the relevant Local Environmental Plan.

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

      Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council’s property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $26,500.00 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 $2,650,000.00.

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.

7. **Security Bond**

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

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $35,000 as security against any damage or failure to complete the construction of the stormwater drainage works in the adjoining Council reserve as part of this consent.

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

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**
The applicant is to lodge a Bond of $30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and

removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works (Security Bond)**
A bond of $25,000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

Reason: Protection of Council's infrastructure.

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

11. **Amended Landscape Plans and Public Domain Plan**
An Amended Landscape Plan and Public Domain Plan is to be issued to the Certifying Authority documenting the following required changes:
i) the indicated carspace located part within Council's road verge is to be removed and replaced with an extended garden area and lawn,
ii) the existing footpath fronting the site to be widened to 1500mm and paved as Sesame Grey granite pavement to match the granite pavement treatment existing along the road reserve pavement to the northern part of Kalang Road,
iii) the proposed footpath between kerb and building entry shall be a minimum 1500mm width and paved as Sesame Grey granite pavement,
iv) one (1) Lophostemon confertus (Brushbox) is to be planted within the lawn area within the road verge, and shall be planted at a minimum pre-ordered 200 litre container size,
v) all nominated trees within the plant schedule shall be planted at a minimum 75 litre constainer size,
vi) the proposed Pennisteum species shall be substituted for a non self-seeding / invasive species of similar form and size.

The Certifying Authority shall document acceptance of the Amended Landscape Plan and Public Domain Plan satisfying the above conditions i), ii), iii), iv), v), and vi).

Reason: To ensure that the landscape treatments are installed to provide landscape and public domain amenity, and soften the built form.

12. **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) Angophora street tree within the road verge,
ii) existing Angophora or other Gum at the rear of the property.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:
i) location of tree protection fencing / barriers,
ii) root protection in the form of mulching or boards proposed within the tree protection zone,

iii) trunk and branch protection within the tree protection zone,
iv) location of stockpile areas and materials storage,
v) inspection hold points,
vi) 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.

13. **On Slab Landscape Works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:
i) 600mm minimum for shrubs

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

14. **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.

15. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the Stormwater Plans dated 6 October 2020 and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or

machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

17. **Removal of Redundant Driveways**
All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To remove vehicle crossings that are no longer needed in accordance with Council policy.

18. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

19. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The glazed portion of balcony handrail for Unit 2.2 shall be increased in height to 1.5m above finished floor level and shall be finished in opaque glazing.

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.

20. **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.

21. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY fore DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by Civil and Stormwater Engineering, drawing number 200870 DRW 101C,102C,103B,105B,106B, dated 31/3/22. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. The 80mm rising main from the pump out pit is to be connected and discharge to the On site detention tank.
ii The drainage plans are to incorporate a long section of the proposed 375mm RCP line to run through Councils adjoining reserve and include the levels of all relevant services within the reserve demonstrating adequate clearances to the stormwater line can be achieved.
iii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

22. **Submission Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of kerb and gutter reinstatement, vehicle crossing, road reserve regrading/filling works and concrete footpath works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:
1)Filling of road reserve to level with the kerb may require adjustment of utilities services and filling over underground power cables which require consent from the energy authority

2)The fee associated with the assessment and approval of the application is to be in accordance

with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

23. **Utilities Services**
Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

(a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
(b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

25. **Shoring of Council's Road Reserve (Temporary road anchors)**
Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

26. **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.

27. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the 375mm RCP pipe running within Council adjoining public reserve and connection to Councils downstream drainage system. The engineering drainage works are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

28. **Mechanical Plant Design and Location**
Prior to Construction Certification, a detailed plan identifying the location of all mechanical plant including exhaust outlets is to be provided to a suitably qualified acoustic consultant to review the design and equipment and provide a report on how the equipment complies with the below articles.
The plans are to include the location and specifications of all plant, air conditioning units, exhaust and fan outlets and any plant associated with the commercial units that may be applicable. The designs and locations of the plant must demonstrate compliance with AS1668, The use of mechanical ventilation, Building Code and recommendations in Section 6.2.1 to 6.2.4 within the acoustic report prepared by Day Design Pty Ltd dated 9 August 2021.

Reason: Protect amenity of the area

29. **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.

30. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin

- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

31. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:
i) Angophora street tree within the road verge, as listed in the Arboricultural Impact Assessment under section 2.1 Observations,
ii) existing Angophora or other Gum at the rear of the property.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing 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.

32. **No Access Through Adjoining Park/Reserves**
Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

33. **Work Zones and Permits**
Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

34. **Demolition Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

35. **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:

- 53 Kalang Avenue, Elanora Heights
- 49A Kalang Avenue, Elanora Heights (community centre)

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 rising from the works.

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

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

36. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

37. **Protection of Existing Street Tree**
The existing Angophora street tree within the road verge frontage of the site shall be protected during all stages of construction . Construction temporary fencing consisting of 1.8m high x 2.4m widein accordance with the Tree Protection Plan.

As a minimum, the tree protection fencing for street tree fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture, in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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.

38. **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 (ie. Angophora street tree and Angophora or other Gum at rear of the site), 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.

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

39. **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.

40. **Dewatering Management**
Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

41. **Implementation of Demolition Traffic Management Plan**
All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for

approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

42. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

43. **Ongoing Management**
The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

44. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

45. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels,

prior to concrete slab being poured/flooring being laid.

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

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

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

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

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

47. **Property Boundary Levels**
The Applicant is to regrade the property frontage from the kerb to the property boundary so fall to the street is achieved. Approval is required for any change to existing property alignment levels to accommodate the development.

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

Reason: To achieve a fall from the property boundary to the street for stormwater management,

48. **Progress Certification (Road & Subdivision)**
The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Roads Authority/Council for the following stages of works:

(a) Silt and sediment control facilities
(b) Laying of stormwater pipes and construction of pits
(c) Proof Roll
(d) Sub-grade trimmed and compacted **
(e) Base-course laid and compacted **
(f) Kerb and gutter construction
(g) Pavement
(h) Landscaping and vegetation
(i) Clean-up of site, and of adjoining Council roadway and drainage system.
(**To be tested by a recognised N.A.T.A. approved laboratory).

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

Reason: To ensure compliance of civil works with Council's specification for engineering works.

49. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval and Section 68

approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

50. **Footpath Construction**
The applicant shall construct a 1.5m wide concrete footpath for the entire property frontage.The works shall be in accordance with the following:

(a) All footpath works are to be constructed in accordance with Section 138 Road Act approval
(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

51. **Notification of Inspections (infrastructure works to be handed over to Council)**
Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:
(a) Installation of Silt and Sediment control devices
(b) Prior to backfilling of pipelines
(c) Prior to pouring of stormwater gully pits
(d) Prior to pouring of kerb and gutter
(e) Subgrade level / basecourse level / subbase
(f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

52. **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.

53. **Vehicle Crossings**
The Applicant is to construct a vehicle crossing 6.2 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal Low 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.

54. **Site filling - Virgin Excavated Natural Material (VENM)**
Where site fill material is necessary, fill materials must:
1. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
3. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifying Authority for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

55. **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.

56. **Waste/Recycling Requirements (Materials)**
During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

57. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Amended Landscape Plan and Public Domain Plan.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved Amended Landscape Plan and Public Domain Plan, inclusive of any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

58. **Stormwater Disposal**
The site stormwater drainage works and 375mm RCP pipe connection within Councils reserve shall be certified as compliant with Councils Water management policy for development and the

approved Construction certificate drainage plans by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

59. **Post-Construction Road Reserve Dilapidation Report (Major Development)**
The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

60. **Works as Executed Drawings - Stormwater Treatment Measures**
Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

61. **Allocated Parking Spaces (retail/commercial)**
Parking allocated to this development must be clearly signposted and linemarked as being for the exclusive use of this development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability.

62. **Shared Zone Bollard**
A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

63. **Footpath Construction**
The footpath, in accordance to Council's standard specifications, shall be reconstructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property.

64. **Convex Mirror at Ramps**
One (1) convex mirror is to be installed and maintained at the curved ramp leading from road to

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

Reason: To minimise vehicular conflicts at ramps.

65. **Mechanical Car Stacker Servicing**
The applicant is to include a Section 88E instrument on the title permitting Council to provide direction as to the repair/maintenance of any mechanical devices. In the instance where the building manager does not comply with the direction of Council, or fails to address repair/maintenance requirements in a timely manner, Council reserves the right to undertake the repairs and all fees associated will be borne by the building manager.

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

Reason: To ensure the mechanical services are maintained in a serviceable state at all times.

66. **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.

67. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

68. **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.

69. **Reinstatement of Kerb**
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

70. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

71. **Mechanical Ventilation certification**
Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation systems that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements. (DACHPFPOC4)

72. **Garbage and Recycling Facilities**
All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

73. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

74. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**
The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

75. **Undergrounding of Telecommunications Services**
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.

76. **Fire Safety Matters**
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

77. **Removal of All Temporary Structures, Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

78. **Car Stackers**
That the installation of the car stackers and their operation in accordance with the approved plans and specifications be certified by the manufacturer or their agent and such certification be provided to the certifying authority

Reason: to confirm correct installation of car stackers

79. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

80. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

81. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

82. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be

planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

83. **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.

84. **Fencing Height / Vegetation**
All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that fencing and vegetation does not exceed one (1) metre in height with the 2.0 x 2.5m pedestrian sight line splay. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

85. **Parking Enclosure**
No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

86. **Stacked Parking Spaces (Residential)**
Spaces within car stackers pairs shall be assigned to the same unit.

Reason: To minimize conflicts regarding parking areas and familiarity with access arrangements.

87. **Sight lines within carparks**
The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

88. **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 me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

89. **Proposed Outdoor Dining Condition**
No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with SEPP Exempt and Complying. Any outdoor dining that is consistent with SEPP Exempt and Complying shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

90. **Access to the Residential Bin Storage Room**
- The door to the residential bin room must be unobstructed by any locks and security devices on the nominated collection day - and be able to be latched in the open position. We request a timer lock to be fitted to the residential waste room door providing access to the street to be open from 6am-6pm on collection day.
- The residential bin room doors are to remain locked at all other times with only residents having key/card/code access. Commercial operators are not to have access to the residential bin storage area.

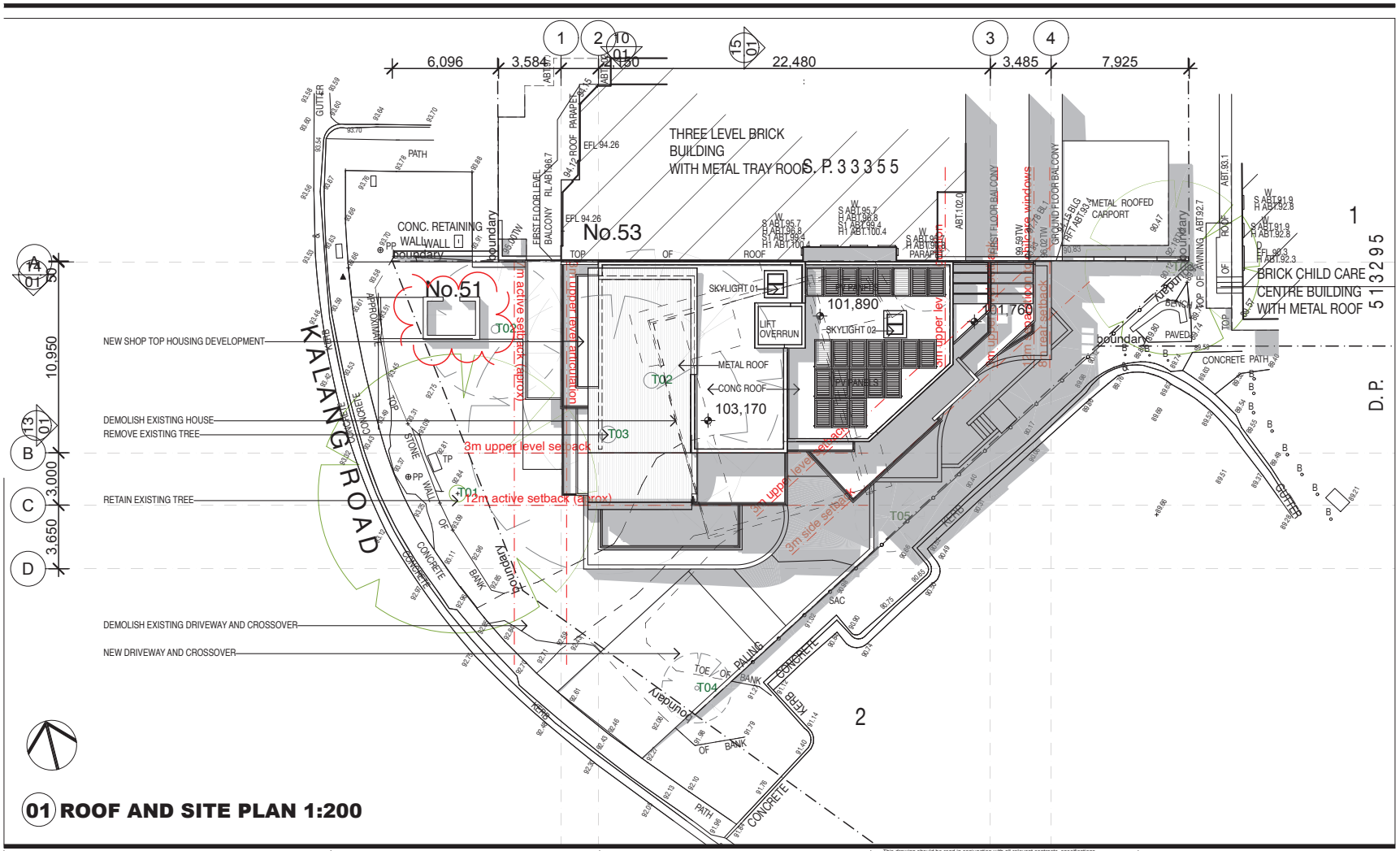
Reason: To ensure ongoing clear access to empty the residential bins.

91. **Commercial Waste and Recycling Storage**
Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

92. **No Approval for Signage**
No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.



01 ROOF AND SITE PLAN 1:200

Amendments		
A	ISSUED FOR DA	23/04/21
B	AMENDED RE COUNCIL'S COMMENT	21/01/22
C	RESIDENTIAL BINS RELOCATED	21/04/22

Architect

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Project Details

SHOP TOP HOUSING AT

51 KALANG ROAD ELANORA HEIGHTS NSW 2101

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. All dimensions used to be figured dimensions only. Do not scale from drawings. Report any discepencies to the Architect for a decision before proceeding with work.

Drawn	Approved	Date Printed
JG	JG	21/4/22

Job Number 2002

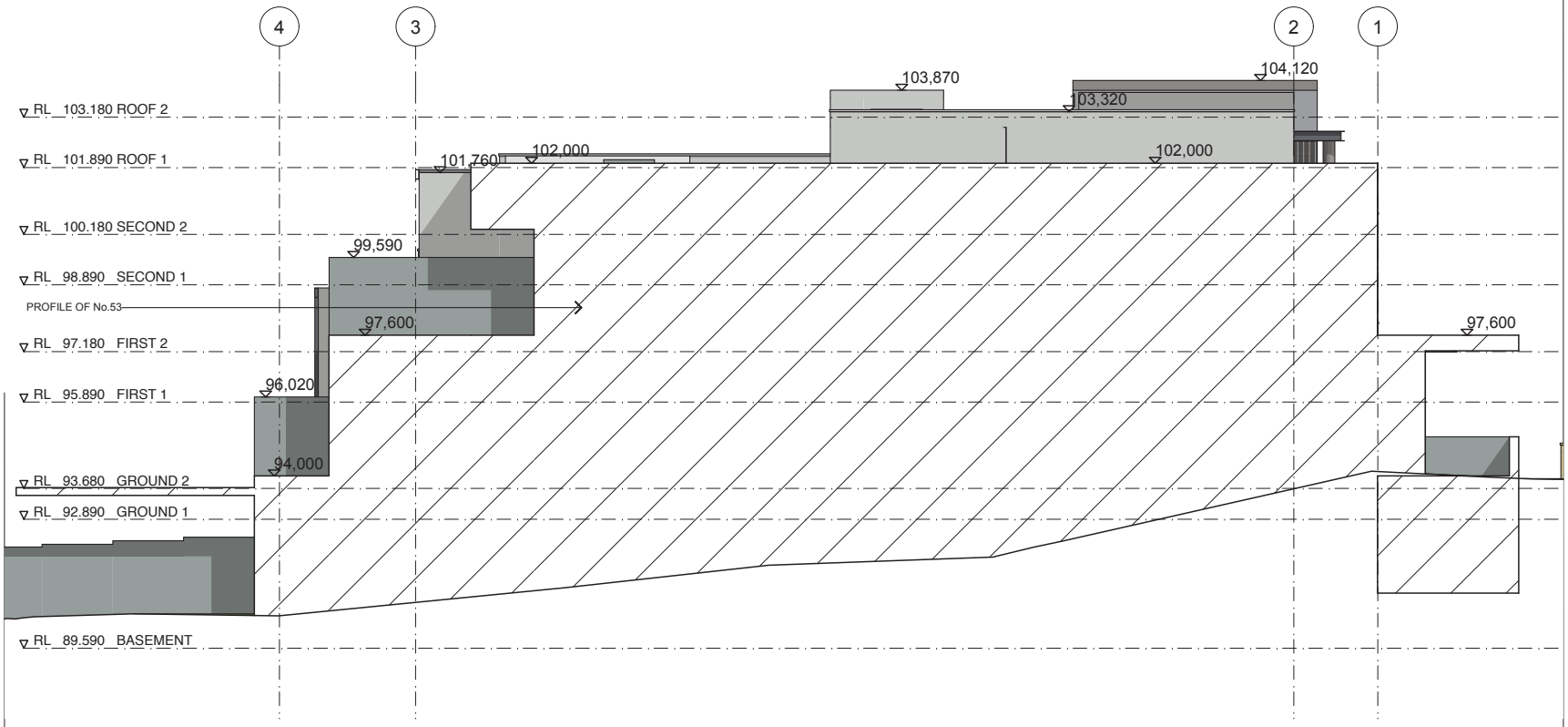
Scale As shown @ A3

Drawing name

ROOF AND SITE PLAN

Drawing Number **DA-01**

Amendment **C**



01 NORTH ELEVATION 1:100

Amendments

A	ISSUED FOR DA	23/04/21
B	AMENDED RE COUNCIL'S COMMENT	21/01/22
C	RESIDENTIAL BINS RELOCATED	21/04/22

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SHOP TOP HOUSING AT

51 KALANG ROAD
ELANORA HEIGHTS
NSW 2101

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JG	JG	21/4/22

Job Number 2002

Scale As shown @ A3

Drawing name

NORTH ELEVATION

Drawing Number **DA-10**

Amendment **C**

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RL 101.890 ROOF 1
METAL ROOF
RL 100.180 SECOND 2
RL 98.890 SECOND 1
STEEL ROOF FRAMING
RL 97.180 FIRST 2
PAINTED CONCRETE COLUMN
RL 95.890 FIRST 1
ALUMINIUM FRAMED WINDOW
SANDSTONE TILING
RL 93.680 GROUND 2
RL 92.890 GROUND 1
RL 89.590 BASEMENT
ALUMINIUM LOUVRES
GLASS HANDRAIL
W2.03
W2.04
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01 EAST ELEVATION 1:100

Amendments

A	ISSUED FOR DA	23/04/21
B	AMENDED RE COUNCIL'S COMMENT	21/01/22
C	RESIDENTIAL BINS RELOCATED	21/04/22

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SHOP TOP HOUSING AT

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Drawn	Approved	Date Printed
JG	JG	21/4/22

Job Number 2002

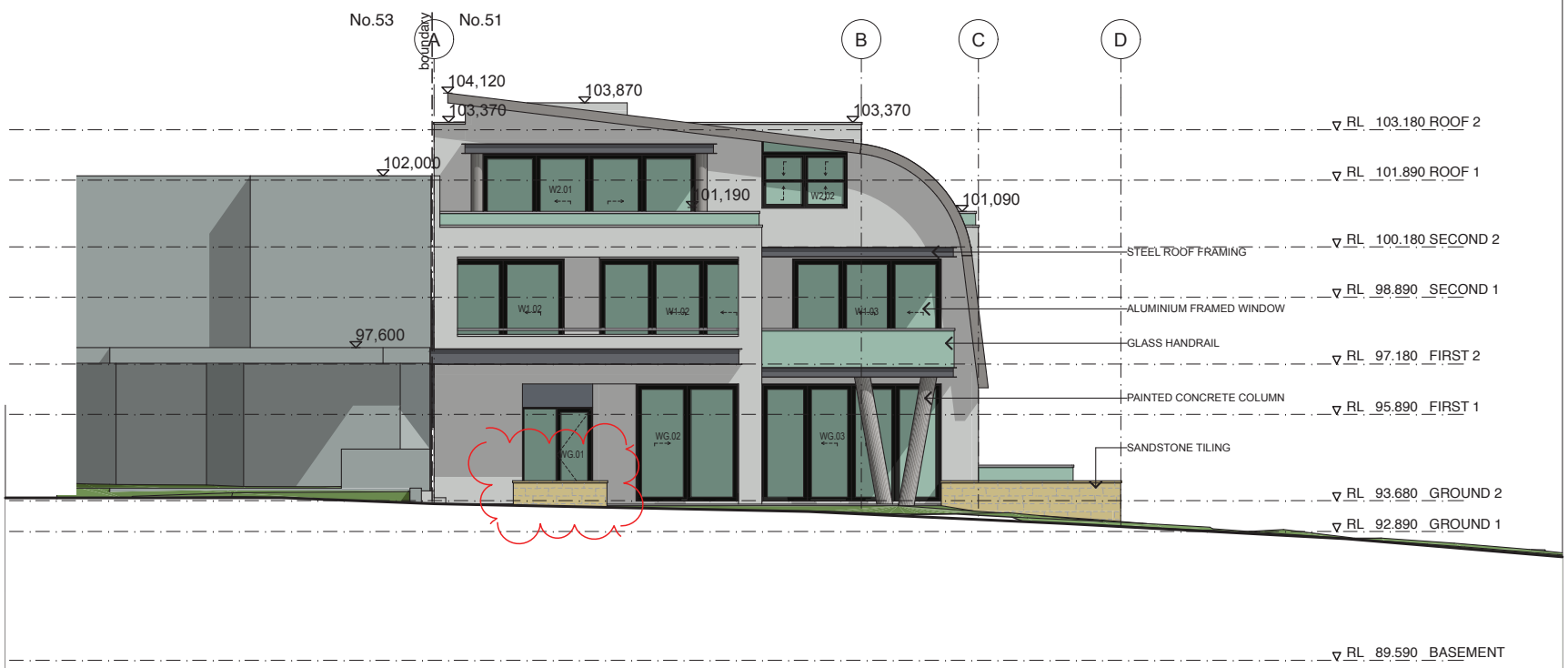
Scale As shown @ A3

Drawing name

EAST ELEVATION

Drawing Number **DA-12**

Amendment **C**



01 WEST ELEVATION 1:100

Amendments

A	ISSUED FOR DA	23/04/21
B	AMENDED RE COUNCIL'S COMMENT	21/01/22
C	RESIDENTIAL BINS RELOCATED	21/04/22

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SHOP TOP HOUSING AT

51 KALANG ROAD
ELANORA HEIGHTS
NSW 2101

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Drawn	Approved	Date Printed
JG	JG	13/5/22

Job Number 2002

Scale As shown @ A3

Drawing name

WEST ELEVATION

Drawing Number **DA-13**

Amendment **C**

REQUEST FOR EXEMPTION
(Amended 27 January 2022)
PITTWATER LOCAL ENVIRIONMETNAL PLAN 2014
CLAUSE 4.6
EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT: Coastplan Consulting
PROPOSAL: Demolition of Existing Dwelling & Construction of Shop Top Housing
PROPERTY: 51 Kalang Road Elanora Heights
RELEVANT DEVELOPMENT STANDARD: Clause 4.3 Height of Buildings

Introduction

This submission is a request for exemption to the development standard contained in Clause 4.3 of PLEP 2014, specifically, the 11m and 8.5m height limit under Clause 4.3(2) of the LEP which applies to the subject land. This request, on behalf of the applicant, 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 submission seeks to enable council to be satisfied that-

(i) this 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,

The Development Standard to which the request relates

1. Height of Buildings

Clause 4.3 (2) of the PLEP 2014 states:

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map.

The respective map identifies the site as being within Category P2 which has a height limit of 11m and 8.5m.

The Objectives of the Development Standard

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

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

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

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

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

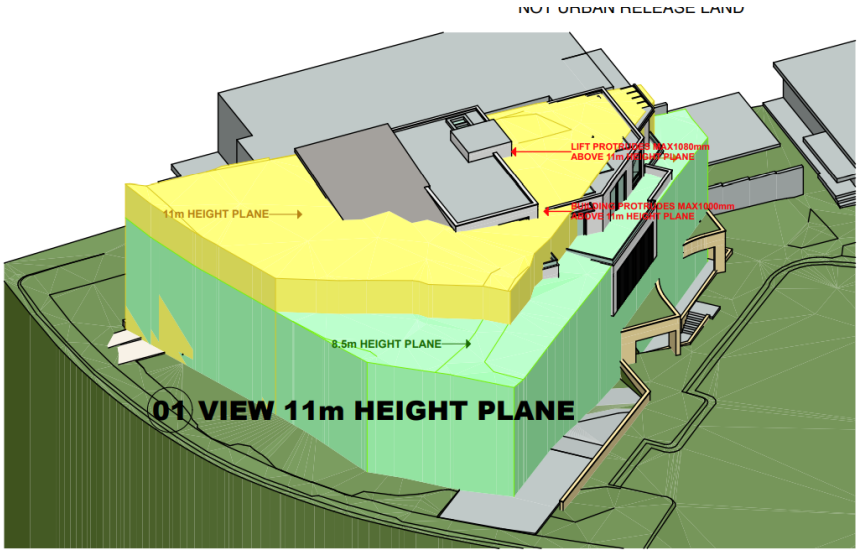
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The Nature of the Departure from the Development Standard

The proposed residential flat building has a height of RL12.08m at the lift overrun above natural ground level which exceeds the maximum height limit of 11m by up to 1.08m or 9.8% and 12m on the corner of the building which exceeds the maximum height limit of 11m by 1m or 9%.

Part of the top of the roof over the front of the building on the southern side has a height of 12.33m which exceeds the height by 1.09m at the highest point or 10%.

Where the site has a maximum of 8.5m the development has a height of 11.5m at the highest part of the roof above natural ground level which exceeds the maximum height limit of 8.5m by 3m or 35%. This part of the building only relates to a small section of wall of the bedroom to unit 1.2 at 1st floor level and the bedroom and study and roof overhang to unit 2.at 2nd floor level. The extent of the encroachment above the height limit is shown in the diagram below.



Why Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The following reasons to demonstrate that compliance with the development standard is unreasonable or unnecessary are based on the relevant reasons summarised by the Chief Judge in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] ("*Wehbe")* and repeated in *Initial Action*[17]-[21]. The relevant matter is that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. In this regard the departure from the development standard is consistent with the objectives of the development in Clause 4.3 of the PLEP which are as follows-

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment

The additional height of the building above the height limit does not cause the building to be inconsistent with the desired character of the locality. This has been outlined in the Statement of Environmental Effects that accompanies the development application.

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

Comment

The proposed development will be slightly higher than the existing adjoining building to the north but remains compatible with the height of this building and the other development in the Elanora Heights commercial centre. The part of the building that exceeds the 8.5m height limit relates to a small part of the corner of the bedroom at 1st floor level and the bedroom and study to unit 2.2 at 2nd floor level where the height of buildings control changes from 8.5m to 11m.

(c) to minimise any overshadowing of neighbouring properties,

Comment

the additional height of the building will cause indiscernible overshadowing impact on any adjoining property. The shadow diagrams indicate that the shadow cast by the development overshadow the car parking area to the community building to the south.

(d) to allow for the reasonable sharing of views,

Comment

The additional height of the building does not result in any loss of view to any adjoining property or other property in the locality.

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

Comment

The building has been designed to respond to the topography of the site in that it is stepped down the site to follow the contours of the site which minimises the exceedance to the height control. However it should be noted that the stepping and overall height of the building is constrained by the existing levels of the site, the driveway access to the basement and the need to have the ground floor commercial area relatively level with the street level.

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

Comment

The additional height of the development above the height controls will not result in any significant bulk and scale resulting in adverse visual impact on the natural environment. There are no heritage items in the locality and the site is not within a heritage conservation area. When viewed from the south in Kalang Street the

overall height of the building will not appear to be excessive. It is clear that the two height controls applying to the building of 11m reducing to 8.5m on the southern side of the site are there to achieve stepping of the height of the building at the transition between the boundary of the commercial and adjoining residential zone. Although there is some encroachment within the 8.5m limit this relates to a small section of the building and has acceptable impact on the visual amenity of the locality.

Given the above, it is apparent that the objectives of the height limit controls in Clause 4.3 of the PLEP 2014 are satisfied on this occasion, notwithstanding the departure from the standard. As such, it is unreasonable and unnecessary that the standard be strictly applied in this instance.

The Environmental Planning Grounds Which Justify Contravening the Development Standards in Clause 4.3(2) of SEPP (GCC)

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion which include the following.

- The slope of the land which falls from the front to the rear boundary results in the building being designed so it is stepped down the site to follow the contours of the site. Due to the slope of the land small parts of the building encroach on the building height limit as the building steps which results in some parts of the building being below the height limit and some being above.
- There are also two height controls relating to the site which is reflected in the desire to have the development to provide a transition between the business zone and the adjoining residential zone. The encroachments outside of the height controls will still maintain this transition. The encroachments outside of the 11m height limit relate to part of the roof and lift overrun and the encroachments outside of the 8.5m relate to a small section of the building at 1st and 2nd floor level of the building. Whilst the encroachment of the 8.5m height appears to be significant being 35% the height controls applying to the site are reasonably unique as two separate height controls apply. Any encroachment of the top floor level of the building even if it projected 1mm beyond the 11m height line would has the same numerical encroachment on the 8.5m height limit. Therefore I suggest that this encroachment be assessed in the context of the height controls and the actual extent of the encroachment by the part of the

building that has a height control of 11m into the part of the building that has a height control of 8.5m.

- The additional height of the building does not result in any significant loss of view or overshadowing impacts of the adjoining properties or the public domain.
- Lowering the height of the building by providing additional excavation will result in the ground floor shop at the front of the building below the footpath level resulting in access issues.
- The additional height of the building will still result in a development which is of comparable scale with the existing and future development in the locality with the development providing a transition between the commercial centre and the residential land to the south. Therefore, the proposal will not be out of keeping with other development in the locality.

The Public Interest, Consistency with the Objectives of the Development Standard in Clause 4.3(2) and the objectives for development within the B4 Mixed Use Zone

The proposed development is consistent with the objectives of the development standard that has been varied. The proposed development is also consistent with the objectives of the B2 zone which are set out below:

Objectives of zone

Objectives of zone

• To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
• To encourage employment opportunities in accessible locations.
• To maximise public transport patronage and encourage walking and cycling.
• To provide healthy, attractive, vibrant and safe local centres.
• To strengthen the role of centres as places of employment.
• To provide an active day and evening economy.
• To provide for residential uses above street level where they are compatible with the characteristics and uses of the site and its surroundings.

The proposed development is consistent with the relevant objectives of the zone in that the proposal will:

- provide a range of retail, business, uses that serve the needs of people who live in, work in and visit the local area.
- encourage employment opportunities in accessible locations.

- maximise public transport patronage and encourage walking and cycling.
- Provide a development where the outcome will add to the healthy, attractive, vibrant and safe local centre.
- Provide employment opportunities.
- provide an active day and evening economy by having a mix of residential and commercial uses.
- The residential uses above street level will be compatible with the characteristics and uses of the site and its surroundings.

Conclusion

The proposed development is consistent with the objectives of Clause 4.6 of the Pittwater LEP 2014 in providing an appropriate degree of flexibility in the application of the development standards relating to the proposed development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. The proposed development is also consistent with the objectives of the development standards relating to the height of buildings and the objectives of the B4 zone.

A review of this proposal in accordance with the requirements of Clause 4.6 of PLEP 2014 indicates that in this instance the written request has adequately addressed the matters required to be demonstrated by subclause (3), and the proposed development and 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.

Therefore, the justification for departure from the development standard in Clause 4.3(2) is worthy of support.

T Tuxworth

Tony Tuxworth
Grad Dip Urban and Regional Planning, MPIA

January 2022

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

6 - DA2021 1426 - 51 Kalang Road ELANORA HEIGHTS

PANEL COMMENT AND RECOMMENDATIONS

General

The subject site is located on the southern end of the Elanora village centre zoned as B2, and adjacent to a current car park of an SP2 Community Facility (Elanora Community Preschool). It is triangular shaped and has 2 significant angophoras – one within the front setback garden and the other a street tree.

The applicant attended a PLM with council officers on 25 June 2020 prior to the establishment of the Design and Sustainability Advisory Panel.

Pittwater 21 DCP has site specific setback and building requirements 7m aligned with lots to the north (primarily for at-grade car parking) increasing to 12m around the curve. A min 3m side setback to the south and the geometry for the rear then aligns with the 8m setback of lots to the north.

Strict compliance with these quite complex set back controls on this irregularly shaped site appear to have been the principal generators of the built form and consequently the interior planning is convoluted and has also resulted in a complex stepped built form.

It is the responsibility of Council officers to advise the applicant of compliance with the controls.

One of the roles of the Panel, particularly at pre-DA stage, is to assess whether any noncompliance is acceptable if it can be demonstrated that there would be a better result.

The panel recommends this approach:

Any non-compliance with planning controls can only be considered where there is:

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

In order to demonstrate the benefits of non-compliance the non-compliant proposal should be benchmarked and compared to a complying ‘reference scheme’.

Should the applicant wish to revise the design, to simplify the layouts, circulation and the improve the buildability, the current scheme could be used as the ‘reference scheme’ in the process outlined above.

The Panel strongly encourages the applicant to revise the design.

Strategic context, urban context: surrounding area character

The proposed use is consistent with the zone objectives and is permissible development.

The Panel brings the importance of design quality in light of obligations under the DBP Act for Class 2 development.

The complicated form of the building with balconies over living areas, wet areas over living areas as well as the convoluted interior layouts, suggest that the compliance with the precise setback requirements have driven the design rather than a concern for minimising the exposure of design teams to risk of poor detailing and construction.

Building form appears quite disordered and as if too many ideas and elements have been put together.

It is the Panel's view that the building might extend to the point '1-C' on the ground and first levels. This would continue the alignment of the building to the north without having any significant impacts to the south, with the aim of simplifying the built form.

The Panel supports the setbacks above the 2nd level but considers the 3m set back C-B unnecessary and potentially reduced to 1.5m

The Panel does not consider a further set back to alignment B by 3m necessary and does not understand why the sense of having a large balcony serving Bed 1 and 2 in unit 2.1 and a very small balcony serving the living dining area.

Setbacks from the south eastern boundary should be retained.

Basement protrusions are poorly resolved and indicative that too many car spaces are being accommodated for this site.

Recommendations

1. Revise the design to simplify interior layouts, minimise the amount of balconies over habitable spaces and simplify the overall building form.
2. Investigate how the design and overall layout and arrangement of rooms could be improved if the building extended to C-1 on the ground and first floors and the set back from C to B was reduced to 1.5m. on the second floor
3. Not withstanding 1 and 2, the areas of excavation should be reduced by eliminating the inefficient garbage store
4. A very high priority should be given to the protection and retention of the mature angophora T01
5. Building form should be simplified and made more coherent.

Public Domain and Landscape

Satisfactory landscape plan and scheme.

Arborist report indicates a minor encroachment to the Angophora on Councils verge. This is supported subject to the specified Tree management plan being prepared and site tree protection adopted. Any subsequent revisions to the design should not cause any greater impacts.

Recommendations

6. Given two large Angophora will be removed from site we would encourage the planting of one semi mature Angophora in the location of the driveway entry in deep soil (replaces Tree 42) to offset this loss. Internal layouts need to be simplified so both ground floor tenancies have a streetscape presence, and the residential entry is clearly defined.
7. Investigate whether the north western most tree 'T02' (there are 3 T02a) could be retained if the basement were replanned.

Internal planning and amenity

The internal planning is inefficient and poorly resolved:

- The split-level approach also seems to have been driven by a concern for strict compliance with height limits. This results in excessive areas around the lift, stairs between half levels and increase in the bulk of the building overall to accommodate this excess circulation space.
- G.1 and g.2 stores occupy valuable external wall area
- Accessible toilet in G.1 not naturally lit and ventilated
- Note clear why G.2 has an accessible WC and another WC, neither of which are naturally lit and ventilated -the store for G.2 is on an exterior wall instead
- Poor access to 1.1 balcony from living
- 1.1 small bedroom as main bedroom

- Awkward shaped balcony for 1.2
- 1.2, 1.3 very small areas for kitchen /living/dining
- 2.2 awkward shaped 2nd bedroom, small main bedroom
- 2.1 balcony of bedrooms larger than of living
- 2.1 2.2 bathroom could be naturally lit and ventilated from above
- 2.1 2.2 main bedrooms very small
- level excessive circulation space level 1 and 2
- stair and lobby on level 2 could be naturally lit and ventilated
- 2.1 ensuite without window

Residential FL-FL height needs to increase to 3.1m. In particular, note where balconies or wet areas are above habitable rooms below.

It is not uncommon that effective resolution of waterproofing at thresholds and set-downs in structure, accommodating services etc requires 3.2m where terraces are above habitable rooms below to ensure no bulkheads intrude into habitable rooms.

Recommendations

8. Reconsider mix of units
9. Replan internal layout in response to point outlined above
10. Check egress arrangements for required stairs

Access, vehicular movement and car parking

At-grade car space impacts on the streetscape and appears has been included in part to resolve the somewhat awkward basement configuration for the garbage store below.

It is the Panels view that the retention of the angophora should be given priority over compliance with car parking numbers. The long-term health of protected trees is at risk with complex or impractical excavation.

Recommendations

11. The at-grade car space should be removed
12. Simplify the car parking layout
13. Consider not requiring parking for patrons on site to reduce the amount of excavation required

Façade treatment/Aesthetics

The glazed balustrades are not supported and not necessary at the ground level –this is not consistent with the character of the area.

Recommendations

14. Remove the glazed balustrades at ground level.
15. Reconsider the use of glazed balustrades in this part of the centre that is more residential and vegetated in character.

Sustainability

Cross ventilation and private open space will be improved with alternative internal layouts that should also better resolve controlled solar amenity and shading when needed.

Recommendations

16. Electric charging for 100% of vehicles should be accommodated as this is likely to be needed within the life-cycle of all new developments.
17. Apartments 1.1, 1.2 and 1.3 seem to have no or minimal shading over the living room glazing which will result in them being hot in summer
18. Switch from gas to electric for hot water and stoves
19. Include PV on the roof
20. No roof plan – suggest a skylight on the top of the lobby/stairwell to provide natural light to the space.
21. Include some rainwater recycling and connect it to landscaping and toilets.
22. Provide shading to all ground level apartment living room windows.

PANEL CONCLUSION

The Panel does not support the proposal in its current form.

The Panel strongly recommends that the design be revised to improve internal amenity, room sizes, efficiency of layout and to ensure the retention of one or more trees.

To facilitate this, some breaches of the precise setback controls and car parking to be accommodated on site may be considered.

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PROPOSAL FOR A SHOP TOP HOUSING

At

51 KALANG ROAD ELENORA HEIGHTS

SEPP 65 REPORT

A-October 2020
Prepared by Fortey & Grant Architecture

SEPP 65 REPORT 1

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The street setbacks are being established by the proposed design and are deemed desirable for the future character of the area by the current planning requirements. ..... **Error! Bookmark not defined.**

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PART 1 - DESIGN QUALITY PRINCIPLES

INTRODUCTION

This report assesses the design of the proposed shop top housing at 51 Kalang Road, Elenora Heights in terms of the 9-design quality principles set out in SEPP 65.

PRINCIPLE 1: CONTEXT AND NEIGBOURHOOD 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 irregularly shape. It is located on Kalang Road at the southern edge of the shopping centre. The site adjoins a neighbouring property to the north and this northern neighbour defines the current southern extent of Elenora Heights shops. Kalang Road supports local traffic and wraps around the site to the south. The western part of the site facing Kalang Road is the primary frontage. The proposed design addresses the primary frontage as well as the secondary frontages to the south and the public reserve to the south east. The site slopes steeply down from north to south and from west to east. The design places the main pedestrian entrance on primary frontage to the west and the vehicular entrance is positioned on the southern part of Kalang Road where it is does not conflict with pedestrian traffic associated with Elenora Heights Shops.

All the land to the north has been developed as shops. This commercial zoning is extended to 51 Kalang Road. The site contains a freestanding 2 storey house. The desired future character of the area as indicated by the zoning. 51 Kalang road is to be developed as part of and an extension to the existing commercial area. The proposed building fits with this desired future character. As such the proposed development type is permissible under current Councils Codes. The proposed development fits into the context of the current commercial development.

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 the 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 building is built up to and sometimes exceeds the 11m-height plane. The building exceeds the height due to the sloping nature of the site and the overrun of the lift. It is not a result of overdevelopment as the storey limit and setback

requirements have been met. The places where the height plane is exceeded tend to be in the centre of the site where they do not impact on the building's bulk.

The scale of the building is appropriate for itself and the existing development to the north.

The proposed building is setback from its East, South and Western boundaries in a manner consistent with the requirements of council's DCP. There is no setback to the north as that is the desired setbacks for shops adjacent to each other. The public land and roadways on the East, South and Western boundaries achieve the 6 and 9m setbacks required in the Apartment Design Guide in relation to buildings that may be constructed in the future on the sites in both these directions.

The proposed elevations are strongly articulated into forms that step the building's form in relation to the site's contours and the setbacks required by the council's DCP. These articulated forms are emphasised in different materials and fenestration. All elevations are different and demonstrate a response to the varying requirements of solar access, views and privacy the site's various aspects offer. The height of the building does not get emphasised by the sloping site as the proposed design steps back in relation to the changing levels on the ground.

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 the context.

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The Existing site contains 1 dwelling. The development proposes 5 residential units and 2 commercial units at ground level. Of the residential units 3 are 1-bed units, 1 is a 2-bed unit and 1 is a 3-bed unit. This density is encouraged in this area by local government planning and therefore considered appropriate. The apartment mix reflects the opinions of real estate agents for what is most desirable in that location. The proposed density is also supported by the site's proximity to shops employment and public transport. Creating residential units above commercial units is good for the patronage of Elenora Heights Shops and the diversity of housing types in the area.

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 re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

4 out of 5 units get sun at some time of the day for a min of two hours. There is an oversupply of cross-ventilated units. No units have a single aspect single aspect facing south. The windows are oriented for good solar access. Solar access is controlled with louvers and large overhangs to avoid dependence on mechanical ventilation, heating and cooling.

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-coordinating water and soil management, solar access, microclimate, tree canopy, habitat values and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long-term management.

The shop top housing development proposed will have the effect of reducing the amount of landscaping from the amount currently supported. The landscaping has been supplied in the setbacks required in councils DCP and these setbacks control the amount of landscaping the development can provide. The deep soil has been located on the western side boundary where it helps to separate the proposed design from the street and maintain the substantial mature street tree. As the last commercial development in the commercial row the proposal provides substantially more landscaped area than the shops to the north and creates a transition zone via the landscaping to the residential development to the south.

A landscape plan has been provided with this application

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 unit designs are 100% SEPP 65 compliant or exceed minimum SEPP 65 requirements. The development places housing in a convenient and walkable location to shops and transport. The top units access filtered views of the Pacific Ocean in the distance to the east.

The balconies are often oversized due to compliance with council's DCP stepped setbacks. The location of balconies maximises solar access.

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.

Approximately half the units proposed can perform the role of passive surveillance of the street. The entry to the units is direct and visible.

The entry can be surveyed by the apartments above it and directly from the street. Shop top housing increases the times commercial areas are legitimately occupied. Private and public space is well defined throughout the development. Private residential space is secured and separated from the public domain. The pedestrian and vehicular entrances separate with pedestrian access taking precedence.

All building entrances, pathways and driveway will have automatic night lighting. The basement and stairwell will have timer controlled on demand/movement triggered lighting as the case requires. This will optimise safety, security and energy efficiency in those areas.

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 shop top housing model is all about promoting housing diversity and social interaction due to it's deliberate mixing of different land uses. The proposed development achieves this desired outcome.

PRINCIPLE 9: AESTHETICS

Good design achieves a built form that has good proportions and a balanced composition of element, 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 streetscape.

The detailed design of the proposed buildings is of high quality and is likely to appeal to potential buyers. The proposal uses modern forms and a limited materials pallet to pick out major features on the elevation and points of entry. The use of sandstone cladding to the lowest floor walls gives the building a base that steps with the site contours and provides detail and texture to match the planters and planting provided at this level. Sun shading and fenestration add to the level of detail and texture of the proposed building. The external detailing makes an individual statement of the building. The angled balcony elements respond to the geometry of the site. The

stepping of the elevation reduces the building's bulk and impact on the surrounding area.

The building elements, materials and colours to be used are consistent with those generally found in quality developments of this type. The Materials schedule demonstrates that the texture of the materials to be used, as well as the materials themselves and their colouring are consistent with one another and are an improvement on those found in the immediate area. The photomontage also demonstrates this.

The deliberate and consistent manipulation of balconies, finishes and fenestration break up the building into more domestic size pieces. This avoids the heavy and institutional look of a symmetrical façade. It also fits the design to the slope of the land through the stepping forms created.

CONCLUSION

The proposed design satisfies all the principals of good design and sets a high standard for the desired future development of the area. The design achieves these outcomes with a minimal impact on the existing area.

PART 2 – OBJECTIVES, CRITERIA AND DESIGN GUIDENCE

INTRODUCTION

This report assesses the design of a proposed residential flat building at 93-95 Henry Parry Drive against the Design Quality objectives of Sepp 65 2015.

OBJECTIVE 2G Street Setbacks

Street setbacks establish the alignment of buildings along the street frontage, spatially defining the width of the street. The street setbacks established by existing residential house development do not match those promoted by council's development controls for this area. The proposed design meets the street setbacks required in plan by Council. The heights at the required setbacks are also met. There are small height non-compliances that arise from the site's slope. These non-compliances have no impact on the site and surrounding area. The proposed building's relationship with the height planes is documented in the architectural drawings.

OBJECTIVE 2H Side and Rear Setbacks

Side and rear setbacks govern the distance of a building from the side and rear boundaries and are related to the height of the building.

The proposed design meets the setbacks required in plan by Council. The heights at the required setbacks are also met. There are small height non-compliances that arise from the site's slope. These non-compliances have no impact on the site and surrounding area. The proposed building's relationship with the height planes is documented in the architectural drawings.

OBJECTIVE 3A-1

Site Analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.

SITE LOCATION

The site is located on an elevated position with filtered views of the Pacific Ocean to the southeast. Additional balconies not required for solar access compliance access these views

LOCAL CONTEXT

The site is at the end of a row of shops. The design terminates the commercial development along Kalang road and eases the transition of built form towards the residential housing dominant in the south.

SITE CONTEXT

The site is shaped like a slice of Pizza with the curved edged being the western frontage on Kalang road. Kalang Road supports local traffic and is the primary frontage. The site falls from north to south along this frontage. The secondary frontage is to the south east on the public reserve. The design places the main pedestrian entrance on the primary frontage as north as possible and the vehicular entrance is relegated further south.

STREETSCAPE

The commercial streetscape on Kalang Road consists of an irregular assortment of older 2 storey shops and newer 3 storey shop top housing. The proposed design seeks to extend and terminate the shop top housing format to the extent allowable in council's DCP.

ANALYSIS

With a large bulky neighbour built to the boundary to the north the solar access is limited to the East and West. The street tree is an important part of. The streetscape and the transition from commercial to housing development. Water views distant and filtered to the east and south east from the upper stories. The local shops and transport are positive resource for people living in this area.

The proposed building maximises the numbers of units acquiring solar access. The units and basement are positioned away from the street tree to maintain it's existence. Water views are achieved from the balconies in the top floor setback. The front door to the residential units has been located as close as possible to the existing shops and in a position where it does not impact on the working of the proposed shops at ground level.

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OBJECTIVE 3B-1

Building Types and layouts respond to the streetscape and site while optimising solar access within the development.

STREET FRONTAGE

The primary street frontage faces west. 3 of the 5 units face west. All the proposed units have a western or eastern orientation for solar access. 4 out of 5 units also have a southern orientation. Vehicular access from the south west does not interfere with solar access, views or privacy.

OBJECTIVE 3B-2

Overshadowing is minimised during mid winter.

The proposed development does not overshadow any developments as the shadows cast by the development fall on Kalang road or the public reserve.
Shadow diagrams and views have been provided to demonstrate this.

OBJECTIVE 3C-1
Transition between private and public domain is achieved without compromising safety and security.

The pedestrian entrance is clearly visible on the western elevation. Pathways to and from this entrance are not obstructed but the commercial activities proposed at the ground level of the development.

Upper level balconies overlook the public domain. These balconies have the opportunity to casually interact with people in the public domain. The development is too small in scale to offer more in this regard. There are no public areas on site where people can conceal themselves.

OBJECTIVE 3C-2
Amenity of the public domain is retained and enhanced.

The development provides planting on its boundaries to soften the transition between public and private domains. The mailboxes are located next to pedestrian entrance lobby, on the street boundary and perpendicular to the street. Garbage areas and plant rooms are located out of site in the basement. The materials chosen for the building are durable and graffiti resistant.

OBJECTIVE 3D-1
An Adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.

Design criteria	
1.	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)
2.	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)

The small scale of the development makes the provision of communal open space difficult to do any meaningful of useful way. Communal open space at ground level is limited by building setbacks and the size of the site. The commercial uses at ground level effectively take up the role of community open space. Unit G1 is provided with an extensive terrace and landscaping with access to afternoon sun making it an ideal location for a restaurant or café.

OBJECTIVE 3D-2
Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.

The commercial ground floor takes up the role of community open space in shop top housing of this size.

OBJECTIVE 3D-3
Communal open space is designed to maximise safety.

There are no safety issues arising from the communal open space provided.

OBJECTIVE 3D-4
Public open space. Where provided is responsive to the existing pattern and uses of the neigbourhood.

The building has been designed to allow the large street tree to the west to be maintained. This has created a large landscaped space at the front of the site to be enjoyed by the public and residents.

OBJECTIVE 3E-1
Deep soil zones provide areas on the site that allow and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Design criteria

1. Deep soil zones are to meet the following minimum requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
less than 650m²	-	7%
650m² - 1,500m²	3m	
greater than 1,500m²	6m	
greater than 1,500m² with significant existing tree cover	6m	

The site area is 661.7m2 the site is required to provide 7% of the site area as Deep soil. The proposed development provides 130.9m2 or 19% of the site as deep soil. With a min dimension of 3m this amount decreases to 9m2 or 14%. This amount still complies. The basement is consolidated under the building footprint. The proposed deep soil is located adjacent to the deep soil of the neighbours to the east and west. The development's appearance will not suffer from the proposed amount of deep soil as most of the deep soil on located on the primary frontage

OBJECTIVE 3F-1
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal privacy.

Design criteria

1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties

Due to the road reserve and Kalang Road the required separation distances will be met despite the proposed 3m setbacks in places.

OBJECTIVE 3F-2
Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and provide open space.

The design attempts to orient as many units as possible towards the sun. The best strategy to achieve this is to maximise the number of units on the west elevation where sun is achievable. The design of units on the west includes splayed walls and angled roofs to share the limited sun available.

OBJECTIVE 3G-1
Building entries and pedestrian access connects to and addresses the public domain.

The front door to the proposed building connects directly to the footpath of the local shops at Elenora Heights.

OBJECTIVE 3G-2
Access, entries and pathways are accessible and easy to identify.

Access to lift lobbies and is clearly visible from the public domain. Hallways are at a minimum due to the small scale of the development. The entrance lobby is located

on the contour providing level access to Kalang Road. There are no steps or ramps at the entrance inside the site boundary.

OBJECTIVE 3G-3
Large site provides pedestrian links for access to streets and connection to destinations.

The design is too small to provide meaningful connections to meaningful destinations.

OBJECTIVE 3H-1
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.

Car park access is separately located on Kalang Road south of the pedestrian entrance. As most of the pedestrian traffic will heading north from the proposed building towards shops and transport the position of the Vehicular access reduces conflicts with pedestrian access further. The vehicular entry is integrated into the landscape as it seeks to maintain existing ground levels. Cars and Loading vehicles can safely enter and exit the site in a forward direction.

OBJECTIVE 3J-1
Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.

Design criteria

1. For development in the following locations:
   - on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or
   - on land zoned, and sites within 400 metres 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

The car park space numbers proposed comply with the minimum required. A traffic engineering report has been supplied with this application

OBJECTIVE 3J-2
Parking and facilities are provided for other modes of transport.

The correct amount of bicycle and motorbike spaces has been provided for in the basement.

OBJECTIVE 3J-3
Car park design and access is safe and secure.

Supporting facilities in the basement are located centrally around the lift core and stairs. The car park level is simply designed, small and easily navigated. The lift and stairs have been provided with a clearly indicated and safe lobby.

OBJECTIVE 3J-4
Visual and environmental impacts of underground car parking are minimised.

The car park is designed to be underground or hidden from view by the retained landscape to the western boundary. The car park is naturally ventilated.

OBJECTIVE 4A-1
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

Design criteria	
1.	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas
2.	In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter
3.	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter

80% of units get 3 hours sun and no apartments receive no sun at all.
All apartments have shallow layouts to maximise natural light and solar access.

OBJECTIVE 4A-2
Daylight access is maximised where sunlight is limited.

Sunlight is not limited but daylight access is maximised through the shallow unit layouts.

OBJECTIVE 4A-3
Design incorporates shading and glare control, particularly for warmer months.

The proposed balconies extend far enough to provide shade from the summer sun. Shading devices have been used on windows as required. Vertical shading devices have been used on the western windows.

OBJECTIVE 4B-1
All habitable rooms are naturally ventilated.

The proposed design's orientation maximises the capture and use of prevailing breezes for natural ventilation in habitable rooms. Habitable rooms are located on the corners of the building to facilitate natural ventilation. The depth of habitable rooms support natural ventilation. Rooms are well supplied with operable window areas in excess of 5% of room floor area. Light wells are not required in the design.

OBJECTIVE 4B-2
The layout and design of single aspect apartments maximises natural ventilation.

There are no light wells in the design. Habitable rooms are located near corners to facilitate cross ventilation.

OBJECTIVE 4B-3
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.

Design criteria	
1.	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
2.	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line

80% of units are naturally cross ventilated. No apartments are deeper than 18m

OBJECTIVE 4c-1
Ceiling height achieves sufficient natural ventilation and daylight access.

Design criteria

1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height for apartment and mixed use buildings	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use

These minimums do not preclude higher ceilings if desired

All apartments contain habitable rooms with 2.7m ceiling heights. Non-habitable room ceiling heights are 2.4m.

OBJECTIVE 4C-2
Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.

The hierarchy of rooms is defined with habitable rooms having taller ceilings than non-habitable rooms. Services are stacked preventing bulkheads from intruding into desirable ceiling heights.

OBJECTIVE 4C-3
Ceiling height contributes to the flexibility of building use over the life of the building.

Then ceiling heights in the commercial areas are 3.3m

OBJECTIVE 4D-1
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Design criteria

1. Apartments are required to have the following minimum internal areas:

Apartment type	Minimum internal area
Studio	35m²
1 bedroom	50m²
2 bedroom	70m²
3 bedroom	90m²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each

2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms

There are no studio apartments. All proposed 1-bedroom unit areas are more than 50m^2. The 2 bedroom is more than 70m^2. The 3-bedroom unit is more than 90m^2. All apartments with unsuits have an additional 5m2. Every habitable room has a window in an external wall greater than 10% of the room's floor area. Kitchens have not been located as part of the main circulation space. All windows are visible from all parts of all habitable rooms.

OBJECTIVE 4D-2
Environmental Performance of the apartment is maximised.

Design criteria	
1.	Habitable room depths are limited to a maximum of 2.5 x the ceiling height
2.	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

All habitable room depths are less than 2.7 x 2.5 = 6.75m. None of the open plan living layouts are deeper than 8m. Bathrooms contain external operable windows where possible. Living and bedroom areas are located on the external face of the building. The main living spaces are oriented towards the primary outlook and solar access.

OBJECTIVE 4D-3
Apartment layouts are designed to accommodate a variety of household activities and needs.

Design criteria	
1.	Master bedrooms have a minimum area of $10m^2$ and other bedrooms $9m^2$ (excluding wardrobe space)
2.	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)
3.	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments
4.	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts

All master bedrooms have a minimum area greater than $10m^2$. All other bedrooms have a minimum area of $9m^2$. All bedrooms have a min dimension of 3m. All 1-bedroom apartments have a minimum width of 3.6m. All 2 and 3 bedroom units have a minimum dimension of 4m. Bedrooms, bathrooms and laundries do not give direct access to living areas. All bedroom robes are more than 1.5m long. All main bedroom robes are greater than 1.8m long in their non-adapted form. The apartment layouts allow for flexible furnishing and contain efficient circulation.

OBJECTIVE 4E-1
Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Design criteria

1. All apartments are required to have primary balconies as follows:

Dwelling type	Minimum area	Minimum depth
Studio apartments	$4m^2$	-
1 bedroom apartments	$8m^2$	2m
2 bedroom apartments	$10m^2$	2m
3+ bedroom apartments	$12m^2$	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m

2. 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

All 1-bedroom apartments have balcony areas are greater than $8m^2$. The 2-bedroom apartment has a balcony area greater than $10m^2$. The 3-bedroom apartment has a balcony area greater than $12m^2$. All balconies have a minimum depth greater than 1m. Due to the slope of the site there are effectively no units on ground level.

OBJECTIVE 4E-2
Primary private open space and balconies are appropriately located to enhance liveability for residents.

Primary open spaces are located near the living rooms to extend living areas for all apartments. All primary open spaces face east and west. Primary open spaces are located with the long side facing outwards. Air conditioning is located on the roof.

OBJECTIVE 4E-3
Primary open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.

Balconies are positioned to respond to their location on site and on the building. They are designed to allow views and passive surveillance of the street while maintaining visual privacy and various uses of the balcony. The balcony design is integrated into

the forms of the building. There is ample room on the balconies for effective clothes drying.

OBJECTIVE 4E-4
Private open space and balcony design maximises safety.

Changes in ground levels or landscaping are minimised. Design and detailing of balconies avoid opportunities for climbing and falls.

OBJECTIVE 4F-1
Common circulation spaces achieve good amenity and properly service the number of apartments.

Design criteria	
1.	The maximum number of apartments off a circulation core on a single level is eight
2.	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40

The maximum number of apartments off a circulation core on a single level is less than eight. The building is under 10 stories and the number of apartments sharing a single lift is less than 40. Corridor widths are 1.6 and 1.8m. Corridors are provided with and natural ventilation. Windows are provided to the common circulation spaces. Corridors are less than 12m in length. Corridor design allows almost all the apartments to be dual aspect. Primary living rooms do not open directly onto common circulation spaces.

OBJECTIVE 4F-2
Common circulation spaces promote safety and provide for social interaction between residents.

Direct and legible access is provided between vertical circulation points and apartment entries by minimising corridor length and providing short, straight, and clear sight lines.

OBJECTIVE 4G-1
Adequate well-designed storage is provided in each apartment.

Design criteria

1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling type	Storage size volume
Studio apartments	$4m^3$
1 bedroom apartments	$6m^3$
2 bedroom apartments	$8m^3$
3+ bedroom apartments	$10m^3$

At least 50% of the required storage is to be located within the apartment

Over $6m^3$ of storage has been provided to the 1-bed apartments. Over $8m^3$ of storage has been provided to the 2-bed apartment. Over 10m3 of storage has been provided to the 3-bed apartment. 50% of the minimum storage requirement has been provided within the apartments. Storage is accessible from living and circulation areas.

OBJECTIVE 4G-2
Additional storage is conveniently located, accessible, and nominated for individual apartments.

The storage not located in the apartments is secure and clearly allocated to specific apartments. Storage is provided for larger and less frequently accessed items. Storage not located in an apartment is integrated into the overall building's design.

OBJECTIVE 4H-1
Noise transfer is minimised through the siting of buildings and their layout.

Adequate building separation is provided from the neighbouring buildings. Window and door openings are generally oriented away from noise sources where they can be. Noisy areas within the building are located next to and above each other as are quiet areas. Storage areas are located within apartments as a buffer between noisy and quieter areas. Party walls are sound insulated in accordance with the BCA.

OBJECTIVE 4H-2
Noise impacts are mitigated within apartment through layout and acoustic treatments.

Rooms with similar noise requirements are grouped together. Doors separate different use zones. Wardrobes in bedrooms act as a sound buffer.

OBJECTIVE 4J-1
In noisy or hostile environments, the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.

This part of Gosford does not suffer from any particular amount of noise or pollution.

OBJECTIVE 4J-2
Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.

The number and size of openings facing the eastern neighbours are limited in size and number. The building is constructed in concrete, the mass of which helps to mitigate noise transfer.

OBJECTIVE 4K-1
A range of apartment types and sizes is provided to cater for different household types now and into the future.

A variety of apartment types have been provided. The apartment mix is appropriate taking it consideration the distances to shops and transport, the scale of the proposed development and the current real estate market.

OBJECTIVE 4K-2
The apartment mix is distributed to suitable locations within the building.

Different apartment types are located to achieve successful façade composition and to optimise solar access.

OBJECTIVE 4L-1
Street frontage activity is maximised where ground floor apartments are located.

Shop top housing does not allow ground floor apartments.
Street frontage activity is promoted by the commercial activities at the ground floor

OBJECTIVE 4L-2
Design of ground floor apartments delivers amenity and safety for residents.

Shop top housing does not allow ground floor apartments.
Street frontage activity is promoted by the commercial activities at the ground floor

OBJECTIVE 4M-1
Building facades provide visual interest along the street while respecting the character of the local area.

The design provides building facades composed of varied building elements and materials in keeping with the scale of the building and the proposed future local character of the area. Building services are integrated within the building envelope. The buildings façade is well resolved with an appropriate scale and proportion to the streetscape and human scale.

OBJECTIVE 4M-2
Building functions are expressed by the facade.

The building's entry is clearly defined. Important corners in the building are given prominence. Apartment layout is expressed externally through façade features.

OBJECTIVE 4N-1
Roof treatments are integrated into the building design and positively respond to the street.

Roof design is dominated by the angled balcony roofs that are a function of solar access and the site.

OBJECTIVE 4N-2
Opportunities to use roof space for residential accommodation and open space are maximised.

Roof spaces have been minimised by council's height plan requirements.

OBJECTIVE 4N-3
Roof design incorporates sustainable features.

The roof design allows for good overhangs to glazed areas.

OBJECTIVE 4O-1
Landscape design is viable and sustainable.

The landscape design complies with BASIX requirements for water usage and plant species.

OBJECTIVE 4O-2
Landscape design contributes to streetscape amenity.

The landscape design responds to change in levels. The significant street tree is to be kept by the proposed design.

OBJECTIVE 4P-1
Appropriate soil profiles are provided.

There is nothing more complex than planter boxes being proposed. The details of these are contained in the Landscape Architect's drawings. The planters have been provided to soften hard surfaces and lines in the design.

OBJECTIVE 4P-2
Plant growth is optimised with appropriate selection and maintenance.

Plants have been selected for their suitability to site conditions.

OBJECTIVE 4P-3
Planting on structures contributes to the quality and amenity of communal and public spaces.

The building design incorporates opportunities for planting on the structure in the form of planter boxes.

OBJECTIVE 4O-1
Universal design features are included in apartment design to promote flexible housing for all community members.

The design provides the required number of liveable apartments.

OBJECTIVE 4O-2
A variety of apartments with adaptable designs are provided.

The design provides the required number of adaptable apartments.

OBJECTIVE 4O-3
Apartment layouts are flexible and accommodate a range of lifestyle needs.

Open plan living areas allow occupants to inhabit spaces as they choose.

OBJECTIVE 4R1
New additions to existing buildings are contemporary and complimentary and enhance an area's identity and sense of place.

Not Applicable.

OBJECTIVE 4R-2
Adapted buildings provide residential amenity while not precluding future adaptive reuse.

Not Applicable.

OBJECTIVE 4S-1
Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.

The development is shop top housing which provides active street frontages and encourages pedestrian movement.

OBJECTIVE 4S-2
Residential levels of a building are integrated within the development, and safety and amenity are maximised for the residents.

Unintentional interaction between the housing and shops contained in the proposed development has been minimised through the location of the residential front door.

OBJECTIVE 4T-1
Awnings are well located and complement and integrate with the building design.

Awnings have been used as shading for north and east facing windows and doors. Awnings have been provided to the outdoor space associated with the ground floor commercial use.

OBJECTIVE 4T-2
Signage responds to the context and desired streetscape character.

Not Applicable.

OBJECTIVE 4U-1
Development incorporates passive environmental design.

Well-located outdoor areas are provided for clothes drying.

OBJECTIVE 4U-2
Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.

The development uses thermal glazing technology as per the BASIX report. The thermal mass of the concrete walls and floors are utilised to stabilise temperatures internally. The roofs and floors are insulted thermally. The building incorporates overhangs and shading devises to control solar access.

OBJECTIVE 4U-3
Adequate natural ventilation minimises the need for mechanical ventilation.

Natural cross ventilation is optimised by the design all rooms that can have a window do so. Natural ventilation is provided to all habitable rooms.

OBJECTIVE 4V-1
Potable water use is minimised.

Water efficient fittings and equipment are to be installed as per the BASIX specification. Apartments are individually metered. Rainwater is collected and re-used on site. Drought tolerant, low water use plants are used on site as per BASIX requirements.

OBJECTIVE 4V-2
Urban stormwater is treated on site before being discharged to receiving waters.

Rainwater retention tanks are incorporated in the buildings design.

OBJECTIVE 4V-3
Flood management systems are integrated into the site design.

Rainwater Detention tanks are incorporated in the buildings design

OBJECTIVE 4W-1
Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.

The waste and recycling area is located below ground and near kerbside pickup area. The communal waste and recycling room location is located conveniently near the lift for the residents.

OBJECTIVE 4W-2
Domestic waste is minimised by providing safe and convenient separation and recycling.

All dwellings will be fitted with waste bins in the kitchens that allow for the sorting of different types of waste. The communal waste and recycling room is located conveniently near the building's central circulation core.

OBJECTIVE 4X-1
Building design detail provides protection from weathering.

Balcony terraces protect the larger areas of glass. Smaller windows are protected with the louvers provided. Parapets, windowsills and window heads are to be provided with drip lines.

OBJECTIVE 4X-2
Systems and access enable ease of maintenance.

Window design enables cleaning of both sides from inside. Manually operated sunshades are employed in preference to mechanical ones.

OBJECTIVE 4X-3
Materials selection reduces ongoing maintenance costs.

The building is built out of concrete, which is a stable, and long-lasting material, Concrete wall are easily cleaned and graffiti resistant. The areas of sandstone cladding weather well and improve with time.

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	**DA2021/2435 - 40 HILLCREST AVENUE, MONA VALE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SPA.**
AUTHORISING MANAGER	**Phil Lane**
TRIM FILE REF	**2022/310985**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plans & Elevations** **3 ⇩Clause 4.6 Variation**

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 under Clause 7.8 – Limited Development on Foreshore Area.

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 on Foreshore Area to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2435 for Alterations and additions to a dwelling house including a spa on land at Lot 18 DP 6195, 40 Hillcrest Avenue, MONA VALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2435

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 18 DP 6195, 40 Hillcrest Avenue MONA VALE NSW 2103
Proposed Development:	Alterations and additions to a dwelling house including a spa
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:	Scott Bradley Kershaw Meryl Doris Kershaw
Applicant:	Nanna Margrethe Lesiuk

Application Lodged:	08/12/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/12/2021 to 19/01/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Yes, 7.8 - Limited Development on Foreshore Area
Recommendation:	Approval

Estimated Cost of Works:	$ 1,840,000.00

EXECUTIVE SUMMARY

The subject development application seeks consent for alterations and additions to an existing dwelling house.

The application is referred to the Northern Beaches Local Planning Panel for determination, as the proposal seeks to vary a non-numerical development standard, that being Clause 7.8 –Limited Development on Foreshore Area of the Pittwater LEP 2014. Clause 7.8 specifies that a building footprint must not extend further into the designated foreshore area. The proposal will extend the dwelling's footprint up to 2.4m into the foreshore area.

Following notification and preliminary assessment of the proposal, concerns were raised with the

applicant, including; limited landscaping information and works in the foreshore area. Amended landscape plans and a Clause 4.6 variation request were submitted to address these concerns. The assessment of the application is based on the amended details.

One (1) submission was made in response to the original notification, which was later revised in response to the amended plans and additional information. The submission raised the following concerns with the proposal; works within the foreshore area, view loss, privacy, height and bulking bulk, setbacks, overshadowing, and height of landscaping.

Overall, it is considered that the proposal has been designed appropriatley to remain compatible with the exiting built form on the site and in the wider locale. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

With regards to the proposed works within the foreshore area, the encroaching elements relate to a ground floor open terrace area and the first floor bedroom balcony above. In addition, the works involve minor alterations to the existing swimming pool and outbuilding that are located within the foreshore area. These works will be constructed over the existing building footprint, inline with the requirements of Clause 7.8 –Limited Development on Foreshore Area of the Pittwater LEP 2014.

The application is also supported by a Clause 4.6 variation for the dwelling's encroachment within this area. The Clause 4.6 is supported under this assessment and for the reasons detailed later in the report. The proposed elements (as conditioned) that encroach the foreshore area do not result in the loss of protected or significant vegetation, nor will they impact on foreshore processes or result in unreasonable amenity impacts. The design will allow for a functional dwelling, with minimal environmental impacts.

Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable, subject to conditions relating to the deletion of the main bedroom balcony.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to an existing dwelling, including a spa. The works comprise;

- Reconfigure existing garage entry and driveway,
- Construction of new street level pedestrian entry,
- Alterations to existing garage roof terrace and landscaping,
- Internal alterations to ground floor,
- Construction of new covered terrace area,
- Alterations to existing pool and cabana, including the installation of a spa,
- Internal alterations to first floor,
- Northern extension (5.9m) to main bedroom wing, including an open balcony,
- Alterations to existing roof form.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - SEPP (Transport and Infrastructure) 2021
Assessment - SEPP (Resilience and Hazards) 2021
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.7 Side and rear building line
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 18 DP 6195 , 40 Hillcrest Avenue MONA VALE NSW 2103
Detailed Site Description:	The subject site is legally described as Lot 18 Sec D in Deposited Plan 6195 and is known as 40 Hillcrest Avenue, Mona Vale. The site falls within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014. The site is trapezoidal in shape with a street frontage of 17.02m, depths of 45m and 53m and an overall surveyed area of 752.5m^2. The northeastern edge of the site is cliff-side and steeply drops down to the Pacific Ocean.

	The site presently accommodates a two storey dwelling house over one level of basement, with a swimming pool and cabana outbuilding in the rear garden. The site is largely paved but has a landscaped perimeter. Surrounding properties consist of other detached dwelling houses of varying age, size and construction.

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:

- **Development Application No. N0268/08** for alterations and additions to the existing dwelling, approved 17 July 2008.
- **Building Certificate No. 19/92** for part one and part two storey brick and stone house roofed with tiles together with a basement garden and cabana - not including swimming pool. Approved 25 March 1992.

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 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an amended landscape plan and a Clause 4.6 variation request. 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 of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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.

Section 4.15 Matters for Consideration	Comments
	(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 14/12/2021 to 19/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Planning Progress	Po Box 213 AVALON NSW 2107

The following issues were raised in the submissions:

- **Views,**
- **Privacy**,
- **Bulk and scale**,
- **Overshadowing**,
- **Landscaping impacts,**
- **Assessment against approved built form.**

The above issues are addressed as follows:

- **Views**

  The submissions raised concerns that the proposal will result in unreasonable view loss for No. 42 Hillcrest Avenue, as the first floor additions encroach the Foreshore Building Line (FBL).

Comment:

This issue is discussed in detail under clause C1.3 View Sharing in this report. In summary, the proposal is considered to maintain a reasonable sharing of views irrespective of the FBL encroachment. Amendment or refusal of the application is not recommended in this regard.

- **Privacy**

  The submissions raised concerns that proposed first floor balcony will result in adverse privacy impacts for No. 42 Hillcrest Avenue.

  Comment:
  This issue is discussed in detail under clause C1.5 Visual Privacy in this report. Overall, the proposal as conditioned will maintain a reasonable level of privacy. Amendment or refusal of the application is not recommended in this regard.

- **Bulk and scale**

  The submissions raised concerns that the proposed additions are excessively bulk and will result in adverse visual impacts .

  Comment:

  The proposed encroachment within the southeast side boundary envelope is considered reasonable, as the proposed additions are highly articulated and respond appropriately to the host dwelling. In addition, the proposal provides a compliant southeast side setback, which exceeds the minimum 1.0m requirement. The proposal involves a comprehensive landscape design that effectively integrates the dwelling within the landform and landscape, when viewed from adjoining public and private spaces. In this regard it is considered that the proposal complies with the requirements of Part D9.1 Character as viewed from a public place and D9.17 Scenic Protection Category One Areas of P21DCP, as the dwelling remains commensurate to landscaping and vegetation. Amendment or refusal of the application is not recommended in this regard.

- **Overshadowing**

  The submissions raised concerns that the proposal will overshadow No. 42 Hillcrest Avenue's private open space and internal living areas.

  Comment:
  The application is accompanied by shadow diagrams which demonstrates that the extent of additional overshadowing commensurate to the current situation is minor. The subject site is on a northeast / southwest orientation and it does not overshadow adjoining private open space and living room windows for more than 3 hours between 9am and 3pm. Overall, compliance with Part C1.4 Solar Access of the P21DCP has been demonstrated. Amendment or refusal of the application is not recommended in this regard.

- **Landscaping impacts**

  The submissions raised concerns with the potential height of landscaping and the impacts on the existing Banksia located near the eastern common boundary.

Comment:
The proposed landscaping works have been reviewed by Council's Landscaping division who are generally supportive, subject to conditions, which include that all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of view loss and overshadowing. In addition, the landscaping works located within the road reserve do not form part of this recommendation. Amendment or refusal of the application is not recommended in this regard.

- **Assessment against approved built form**

  The submissions raised concerns with the proposal and it's potential impacts upon the approved built form (DA2021/2267) located at the adjoining site known as No. 42 Hillcrest Avenue.

  Comment:
  At the time of writing this report development consent no. 2021/2267 has not been completed or physically commenced. In this regard, there are no assurances that these works will be completed. The assessment process seeks to protect and enhance the residential use and amenity of existing residential environments. Therefore, an assessment of the proposal's impacts have been completed with consideration of adjoining and surrounding existing residential developments. Amendment or refusal of the application is not recommended in this regard.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to an existing dwelling. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D9 Mona Vale Locality *updated comments:* Landscape Plans are submitted indicating retention of landscape features including planting, and proposed landscape works, as contained within the property. No Landscape Referral concerns are raised subject to imposed conditions. No new landscape works are permitted within the public road reserve verge. *previous comments:* 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.

Internal Referral Body	Comments
	There are existing encroachment into the public road reserve verge including stairs, paths, fencing and garden planting. The development proposal involves realignment of works within the road verge including the driveway, and the proposal includes landscape structure encroachments including walling, fence and gate, pavements and planting within the road reserve verge and this is not supported. Applicants may apply for a separate Minor Encroachment within public road reserve for circumstances including the requirement for retaining walls in association with driveways, and consideration of any public road reserve encroachment shall also seek support from Council's Road Reserve Referral Team. However landscape structures such as fencing and gates shall be located along the property boundaries and not within public land. As identified in the Survey Plan, no prescribed trees (ie protected by Council's DCP for trees over 5 metres in height) are present within the property. No Landscape Plan is submitted and the master plan set drawings indicate landscape works without any detailed landscape notations to allow Landscape Referral to consider the likely landscape outcome, and given that the site is constrained by exposure, information of the landscape treatments is required and it is advised that a qualified landscape architect or landscape designer submit such information including: existing trees to be retained or removed, landscape structures and surface treatments, and an indication of a planting scheme, such that Landscape Referral are able to determine is the objectives of the LEP C4 zone are satisfied and that the DCP landscape control of C1.1 is satisfied.
NECC (Coast and Catchments)	The application has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. ***Coastal Management Act 2016*** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Coastal Management) 2018** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment and as assessed in the submitted Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Pittwater LEP 2014 and Pittwater 21 DCP** The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site. **Coastline Bluff Hazard Management** A Geotechnical Investigation Report by While Geotechnical Group dated 7 December 2021 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. An impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021 has been appended with the Geotechnical Report. The report assessed that the long term erosion/recession of the sea cliff that falls from the NE boundary of the property is a potential hazard (Risk Acceptable). A mass failure of the sea cliff is a potential hazard (Risk acceptable). The portion of remaining fill immediately below and around the existing cabana deck is a potential hazard (Risk unacceptable). The proposed excavations for the driveway and cabana are a potential hazard (Risk Unacceptable).To move the risk to 'ACCEPTABLE' levels, the recommendations in Sections 13 and 16 are to be followed. As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP. **Development on Foreshore Area** Further, a section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes works like pool, cabana and improvement in recreation area. All these proposed works are consistent with Clause 7.8(2)(b).

Internal Referral Body	Comments
	On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Housed by Nanna Lesiuk dated 21 October 2021, the DA satisfies the objectives and requirements of the Pittwater LEP 2014.
NECC (Development Engineering)	**25/02/2022:** Application seeks approval for alterations and additions including • Demolishing the existing driveway and construct new driveway by excavating to a depth of ~2.5m • Extending existing cabana on the uphill side by excavating to a depth of ~1.4m • Extend the existing house on the NE side • Reduce the footprint of the existing pool and install a new spa. Construct a new deck over the footprint of the existing pool pavement. **Geotech** Geotechnical assessment by White Geotechnical Group Pty Ltd, Ref J3740, Dated 7th Dec 2021 is provided. As per the report an acceptable risk can be achieved for the proposed development. **Stormwater** Proposed stormwater concept plan by Housed Architects, dated 17/11/2021, have partial writing on it, which makes it unclear to understand. Also a pit is shown (unclear if its existing or proposed) partially on public road reserve and partially within the site. This pit to be totally with in the site. **Access** Site is currently accessed via a concrete driveway. Proposal is to demolish the existing driveway and construct a new driveway by excavating to a depth of ~2.5m, proposal also includes landscaping, retaining structures, access stairs with gate within public road reserve. Proposed works within public road reserve require assessment/approval from Council's Road asset team. No longitudinal section of proposed driveway is provided. **For Planner** Please seek comments from Council's Road Team for the proposed works within public road reserve. **29/04/2022:** Updated driveway and stormwater plans are provided.
Parks, reserves, beaches, foreshore	The development site adjoins Newport Beach Reserve coastal bluff that is located downslope of the property.

Internal Referral Body	Comments
	All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve, and conditions are imposed within the Natural Environment Referral Response - Coastal to satisfy this requirement. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. Public access to the coastal bluff is not interrupted by the development proposal and as such Parks, Reserves and Foreshores raise no concerns.
Road Reserve	Development Engineering to require a Road Act application for civil works for adjustments to Council's retaining walls. Original Plans DA08 17/11/21 indicate gating of pedestrian access road verge which is not permissible. Old driveway and layback to be removed

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A430122 dated 24 September 2021).

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

<u>Ausgrid</u>

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.

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 1 Coastal Wetlands and littoral rainforest area
2.7 Development on certain land within coastal wetlands and littoral rainforests area

1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
   a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
   b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
   c) the carrying out of any of the following:
      i) earthworks (including the depositing of material on land),
      ii) constructing a levee,
      iii) draining the land,
      iv) environmental protection works,
   d) any other development

Comment:
The development is not located on land located within a coastal wetland or littoral rainforest area.

Clause 10 is not applicable.

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

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

littoral rainforest, or

b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:
The development is not located on land located within proximity to a coastal wetland or littoral rainforest area.

Clause 11 is not applicable.

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 NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "*at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified*".

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.

Comment:
The site is located within the Coastal Environment Area.

The development is situated on the cliff and the changes proposed to the existing dwelling are such that no impact will occur which adversely affect the matters raised in points (a) to (g). Conditions are also imposed to appropriately address construction activity such as structural adequacy and excavation work, the protection of rock formations and erosion/sediment control to ensure that the development will not adversely affect the matters raised in Points (a) to (g).

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

a) the development is designed, sited and will be managed to avoid an adverse impact referred to in 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:
Council is satisfied that the development is designed, sited and will be managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

The development satisfies Clause 13(1) and (2).

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
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
iv) foreshores,
v) the visual amenity and scenic qualities of the coast, including coastal headlands,
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
ii) impact referred to in paragraph (a), or
iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
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 development has been designed to ensure that no adverse impact will be caused to the matters raised in Point (a)(i) to (v).

Therefore, Council is satisfied that the development has been designed, sited and will be managed (subject to condition) to avoid any adverse impact referred to in Point (a).

This assessment has considered the development against the applicable standards and controls to take into account the bulk, scale and size of the development within the surrounding coastal and built environment.

The development satisfies Clause 14(1).

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 development is for the modification of consent has been designed to respond to the nature of the site and provide appropriate waste and drainage management systems to avoid any increased risk of coastal hazard.

The development satisfies Clause 15.

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	Complies
Height of Buildings:	8.5m	7.6m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	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
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	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:	Building footprint must not extend further into the foreshore area
Proposed:	Non-numerical development standard - proposed addition encroaches the foreshore building line by 2.4m
Percentage variation to requirement:	N/A - Non-numerical development 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 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 works represent a relatively minor addition to an existing residential dwelling. The works will have little impact on the environmental value of the area or the foreshore processes*
- *We note that the non-compliant sections at ground and first floor terrace/balcony extensions will not give rise to adverse visual or aural privacy impacts to neighbouring properties given the significant spatial separation maintained between living and private open space areas with no adverse shadowing impacts arising as demonstrated by the shadow diagrams submitted in support of the application as of non-compliance do not give rise to any significant amenity impacts with regard to views, privacy or overshadowing.*
- *The works do not give rise to any unreasonable bulk and scale concerns. The existing scale of the dwelling is to largely remain the same as existing. The encroaching elements relate to a*

ground floor terrace and first floor balcony which are open structures. This reduces any perceived unreasonable visual bulk with the new works.

- *The existing public access to the foreshore area will not be impacted by the areas of encroachment.*
- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *The variation facilitates good design and enhanced amenity (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

Planner's Comments:
The applicants justification is concurred with. The proposal's encroachment within the foreshore area is minor and the elements of the proposal which extend further into the foreshore area include the ground floor terrace and first floor balcony that are reasonably open areas. The encroaching elements (as condtitoned) into the foreshore area do not involve the removal of protected or significant vegetation nor would they impact foreshore processes or result in unreasonable amenity impacts. In addition, it is noted that the site's developable area is heavily constrained by the foreshore building line that traverses through a large portion (300.9sqm) of the site, along with the location of existing structures and the steep cliff located within northern (rear) portion of the site. Overall, the design allows for a functional dwelling, with minimal environmental impacts.

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 Limited Development on Foreshore Area 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 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 additions maintain the surrounding two-three storey low density character of Hillcrest Avenue. The works will not facilitate the removal of significant vegetation or require any significant earthworks for its construction. The development is sited well below the stipulated 8.5m height control. The proposal's design will modernise and enhance the existing dwelling's appearance with a highly articulated built form and innovative roof pitch. The proposal involves a high quality landscape design that will enhance the site's natural features. The design of proposed additions are commensurate to the exiting built form and surrounding buildings and would not substantially change the appearance of the site as viewed from the adjacent foreshore areas downslope, given the significant level difference and the overall distance from Bungan beach. The additional elements within the foreshore area will not give rise to any adverse amenity impacts, as discussed later in this report.

The proposal was referred to Council's Parks, Reserves, Beaches, Foreshore; and Coast and Catchments Officers who raised no objection to the proposal with regards to impact on natural foreshore processes.

(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 would be over 16m from mean high water mark (and associated property boundary).

Zone Objectives

The underlying objectives of the C4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

  Comment:
  The proposed additions will retain the low density character of the locality, while the works will be built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform.

- *To ensure that residential development does not have an adverse effect on those values.*

  Comment:
  The landscape plan provides for an enhancement of native species on the site which add to the ecological value of the local area. The proposal has been reviewed by Council's Coastal Officer, Landscape Officer, and Development Engineer who have raised no objection to the works and associated impacts to the surrounding natural environment.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

  Comment:

The proposed development does not dominate the natural environment and is maintaining a two-storey character prevalent within the localised streetscape. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a 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 development will not effect wildlife corridors nor will it have an effect on foreshore vegetation.

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 Limited development on foreshore area Development Standard is assumed by the Local Planning Panel.

7.5 Coastal risk planning

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

(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

(c) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment:
The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.7 Geotechnical hazards

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

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

Comment:

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

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

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

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

Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

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 proposal involves alterations to the existing swimming pool and outbuilding that are located within the foreshore area. These works will be constructed over the existing building footprint, inline with the requirements of this control. However, the proposed development involves additions to the existing dwelling that project within the foreshore area, which is contrary to the provisions of Clause 7.8 of the Pittwater LEP. Accordingly, a request to vary this development standard for has been made under Clause 4.6 of the Pittwater LEP 2014. As discussed further within this report, the departure from the standard is supported in this instance, given the nature of the proposed works and the site constraints in conjunction with the location of the foreshore building line. Additionally, the elements encroaching into the foreshore area do not facilitate the loss of protected or significant vegetation nor would they

impact foreshore processes or result in unreasonable amenity impacts. The design allows for a functional dwelling, with minimal environmental impacts. This is discussed further in Clause 4.6 of the Pittwater LEP of this report.

Clause 7.8 also specifies that 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.*

<u>Comment</u>
The proposed development is consistent with the objectives of the C4 Environmental living zone. The proposal modernises the appearance of the dwelling, while remaining compatible with the established built form, which is symptomatic of two - three storey, low density residential developments that are sensitively integrated within the coastal headland landform and landscape.

The proposed development is not considered to result in adverse environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposal was referred to Council’s Parks, Reserves, Beaches, Foreshore; and Coast & Catchments Officers who raised no objection to the proposal with regards to impact on natural foreshore processes and coastal environment.

The foreshore area is largely defined by a steep overgrown cliff face, which does not have existing public access. In this regard, the works will not cause congestion or generate conflict between people using open space areas or the waterway nor will it prevent opportunities to provide continuous public access along the foreshore and to the waterway.

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 landscape plan provides for an enhancement of native species on the site which add to the biodiversity value of the local area. The proposal has been reviewed by Council's Coastal Officer, Landscape Officer, and Development Engineer who have raised no objection to the works and associated impacts to the

surrounding natural environment. The proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding coastal and built environment.

The proposed development will not have an unreasonable impact on the amenity or aesthetic appearance of the foreshore. The proposed additions are relatively minor and will remain commensurate to the established built form. The works are sited primarily within built upon areas and will not result in the removal of significant vegetation or require significant alteration to the landform. The development is sited well below the stipulated 8.5m height control. The proposal is appropriately modulated and articulated to minimise the visual impact of the built form. Proposed landscaping, in conjunction with existing, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposed works would be over 16m from mean high water mark and the foreshore would remain predominantly landscaped, retaining the aesthetic appearance of the existing site and adjoining properties.

The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns. The proposal has been reviewed by Council's Coastal Officer and Development Engineers who have raised no objection in this regard. The application is supported by a Coastal Engineering report which deems the proposed works acceptable. The recommendations of this report will be included within any consent.

Clause 7.8 further specifies that 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 not impact public access to and along the foreshore. 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 (southwest)	0.2m (Existing garage)	99%	**No**
Rear building line	Foreshore Building Line (FSBL)	Balcony encroaches by 2.4m	-	**No**
Side building line	2.5m (northwest)	1.0m (Dwelling)	60%	**No**
	1m (southeast)	1.1 - 1.5m (Dwelling)	-	Yes

Building envelope	3.5m (northwest)	Within envelope	-	Yes
	3.5m (southeast)	Outside envelope up to 1.2m	34%	**No**
Landscaped area	60% (451.5m^2)	37.6% (283.2m^2) + 6% variation (45.15m^2) Total: 43.6% (328.35m^2)	27.3%	**No**

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
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	No	Yes
D9.9 Building envelope	No	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:

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

  1. Nature of the views affected

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

  Comment to Principle 1:
  No. 42 Hillcrest Avenue

  From the first floor master bedroom/balcony - Enjoys up to 180 degrees (north to south) of expansive ocean views, which includes Bungan beach and Bungan headland.

Figure 1. No.42 Hillcrest Avenue's northern outlook from master bedroom (photo provided by neighbour).

Figure 2. No.42 Hillcrest Avenue's north-west outlook from master bedroom balcony (photo provided by neighbour).

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*".

<u>Comment to Principle 2:</u>
From the first floor bedroom/balcony - The views are obtained from both seated and standing positions, over No.42 Hillcrest Avenue's rear boundary and the common side boundary shared with the subject site.

3. Extent of impact

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

Comment to Principle 3:
From the first floor bedroom/balcony - The impacted areas involve views from the north-west facing bedroom windows, which would include partial view loss of Bungan headland and the ocean. However, these windows have a sill height of 1.6m above the finished floor level (as determined on survey), meaning that water views to the north are only attained at acute angles when an individual is standing directly at the window. In addition, the expansive water views from the concerned bedroom's northern windows and associated balcony remain by the proposal. Given that the impacted views are taken from unnatural positions, directly across the side boundaries, and from a bedroom, the view loss is considered negligible in the context of these principles.

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 critical controls relating to view loss for No. 42 Hillcrest Avenue are height and rear setback of the proposed first floor addition. The subject site's rear setback control is non-numerical, as the foreshore building line (FBL) applies. As discussed earlier in this report the proposed first floor addition involves a minor encroachment of the FBL up to 2.4m. Notwithstanding, the proposed additions will generally share a rear alignment with No. 42 Hillcrest Avenue, to ensure that a reasonable sharing of views is achieved. In this regard, the minor FBL encroachment does not have a significant bearing on view loss.

The proposal achieves reasonable compliance with the built form controls, which have a significant bearing on the retention of views from No. 42 Hillcrest Avenue, being overall height of the southeast elevation. In fact, the proposed ridge is sited 0.9m below the 8.5m height, while imposed conditions will require the deletion of the main bedroom balcony, which maintains a reasonable view corridor from No. 42 Hillcrest Avenue's north-west facing bedroom windows.

It is acknowledged that the objection has requested that the view loss assessment considers the impacts from the approved built form (DA2021/2267). However, as stated earlier in this report this is not a relevant consideration for the assessment of this application. Notwithstanding, the affected windows are proposed to be externally screened and would not be impacts by the proposed works.

These factors minimise the view loss from No. 42 Hillcrest Avenue and it is considered that there is not a more skilful design that would achieve the same development potential while retaining more views. In this regard, it is considered that the proposal is the compromise solution, that it is a reasonable outcome for the site and will allow a reasonable sharing of views, taking into account the considerations discussed above.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

Public views will not be impeded by this proposal.

- *Canopy trees take priority over views.*

  Comment:
  No canopy trees are to be removed to obtain views.

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.

C1.5 Visual Privacy

Merit consideration

One objection relating to privacy concerns prompted by overlooking was received and is detailed as follows;

No. 42 Hillcrest Avenue (South of the subject site);

- First floor addition - Concern is raised that the first floor rear balcony will give rise to adverse visual and acoustical privacy impacts, given it's proximity to adjoining private open space areas and bedrooms.

The development is considered against the underlying objectives of the control as follows:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

  Comment:
  The open sided balcony presents unreasonable privacy impacts prompted by overlooking, as direct and close views of the neighbouring pool area are readily accessible. In this regard, imposed conditions will require the deletion of this balcony with the area to be made non-trafficable by replacing the sliding doors with full-height windows. Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

- *A sense of territory and safety is provided for residents.*

  Comment:
  It is assumed the sense of territory and safety will be provided for residents.

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, subject to conditions, in this particular circumstance.

D9.6 Front building line

Description of non-compliance

The proposal involves centrally relocating the garage entry, while maintaining the existing front building line of 0.2m. The control requires a minimum setback of 6.5m.

The existing garage is not readily visible from the street, as it is screened by the access gate, road reserve retaining walls and landscaping, which are required to be removed to facilitate the new driveway and garage entry. In this regard, a merit assessment of the reconfigured frontage is required.

Merit consideration

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

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

  Comment:
  The proposed development is appropriately sized in terms of bulk and scale, as it maintains compliance with the height of buildings development standard, is centrally sited and the provision of an enhanced landscape design will assist in softening the built form as viewed from the public domain and adjoining properties. In turn, the development is considered to achieve the desired the future character of the area.

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

  Comment:
  This matter is discussed within Part C1.3 of this report. In summary, the revised frontage will not result in any view loss.

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

  Comment:
  The subject site does not adjoin a main road.

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

  Comment:
  No significant vegetation is required to be removed in order to facilitate the proposed development.

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

  Comment:
  The application has been reviewed by Council's Development Engineer and Road's Asset officer having regard to vehicle movement and safety and has raised no objection to the proposed parking provisions and driveway location, subject to conditions. It is therefore considered the reconfigured access will enable vehicles to enter and exit the site safely.

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

  Comment:
  The subject site currently does not contain any notable vegetation within the front setback area,

however as a result of the application, the landscape provision within the frontage will be enhanced through upgrading the existing garage roof terrace to include raised planters and reduce the extent of hard paved areas.

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

  Comment:
  The development will provide sufficient area in the front setback to facilitate gardens and the planting of small to medium shrubs and medium sized trees. Existing landscaped areas in the street verge also assist in providing an attractive streetscape.

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

  Comment:
  The surrounding urban environment is made up of a similar-scale residential development of varying ages and architectural styles within landscaped settings. The design of the proposed development will in turn respond to such characteristics, in that it comprises a modern design that sensitively relates to the directly adjoining dwellings by way of ensuring reasonable amenity can be maintained for all occupants.

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.

D9.7 Side and rear building line

Detailed description of non-compliance

The control requires structures to be setback 2.5m from at least one side boundary and 1.0m to the other side.

The proposal involves reducing the existing first floor deck, which is currently set back 1.0m from the northwest boundary resulting in a technical non-compliance with the 2.5m setback requirement.

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:
  Under A4.9 of P21 DCP, the proposal is consistent with the objectives of the desired future character of Mona Vale. The proposal will achieve a height that is well below the 8.5m development standard. Furthermore, the proposal includes a detailed landscape plan that will enhance the site's natural features. The bulk and scale of the development is minor in nature and is unlikely to impact upon the amenity of adjoining properties.

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

Comment:
The proposal involves enclosing a portion (5.3sqm) of the existing first floor deck to provide a new bedroom within the dwelling's western wing. The works remain commensurate to the existing built form and do not give rise to any adverse building bulk.

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

  Comment:
  This matter is discussed within Part C1.3 of this report. In summary, the minor alterations will not result in the loss of views.

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

  Comment:
  As discussed above, the proposal will not result in the loss 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:
  The proposal has been designed and sited to minimise impacts on neighbouring properties, as the newly enclosed areas contain no obtrusive windows. In addition, the proposal includes sufficient planting along the boundaries, which will further minimise any visual amenity and privacy impacts. Furthermore, due to the orientation of the the site, the development is unlikely to cause significant overshadowing to adjoining properties.

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

  Comment:
  The proposed development does not involve the removal of any significant vegetation and will allow for substantive landscaping across the site. Council's Landscape Officer has reviewed the proposal and raised no objection subject to conditions.

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

  Comment:
  The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties. Access to the site will remain relatively unaltered from existing.

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

  Comment:
  The proposal does not include the removal of any significant vegetation and will not result in an unreasonable built form within the locality.

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

  Comment:
  This clause is not applicable.

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.

D9.9 Building envelope

Description of Non-compliance

The DCP requires that the building be within a building envelope measured at 45 degrees from 3.5m above the side boundary line.

The proposal has a non-compliance to the building envelope on both side elevations. The extent of the building envelope non-compliance is shown in the figures below (highlighted in red):

Figure 1: Envelope breach on the northwest elevation shown in red.

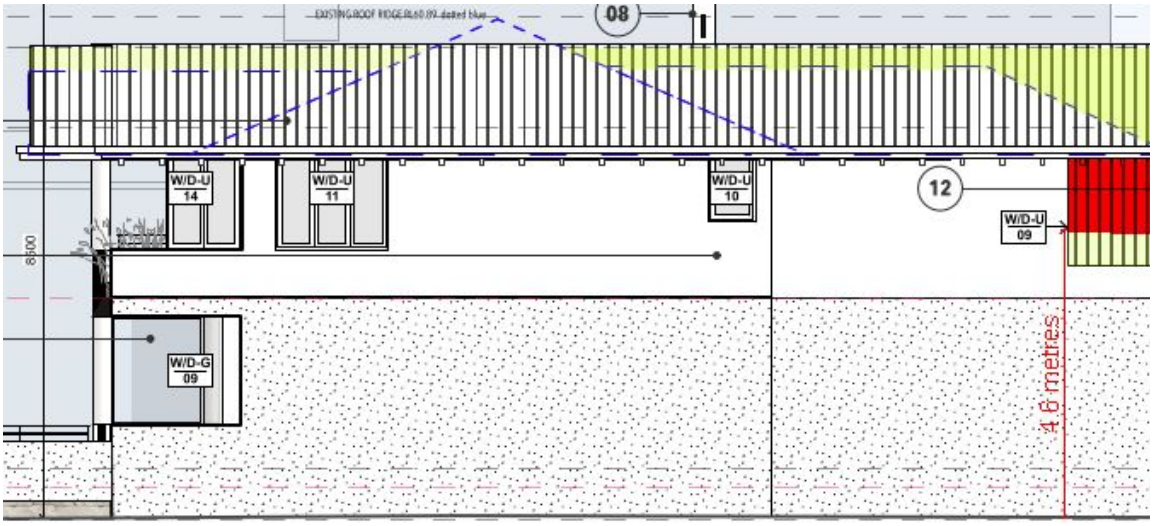


Figure 2: *Envelope breach on the southeast elevation shown in red.*

Clause D9.9 permits a variation which permits eaves or shading devices to extend outside the building envelope. As such the proposed roof eaves and balcony roof has not been included within this assessment.

Merit Consideration

In assessing the non-compliance, the proposal is considered against the outcomes of the control as follows:

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

  Comment:
  The proposed development is consistent with the desired future character of the Mona Vale Locality.

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

  Comment:
  The subject site does not contain any significant canopy trees that define the natural environment. Notwithstanding, the proposed additions provide a compliant building height, which is compatible with the locality's established building scale and density. In addition, the proposal involves a comprehensive landscaping design, which will enhance the site's natural features. Overall, the works as a whole improve the streetscape.

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

  Comment:
  The encroachments outside of the prescribed envelopes are consequent of following the existing building lines of the house. However, by following the existing building line of the house, it is found

that the development has a lesser visual dominance compared to a design that did comply, which would result in an awkward building step that would draw more attention to the wall than what is proposed. Notwithstanding this, the additions are not of an excessive scale and are designed in a contextually appropriate way to ensure it is compatible to the streetscape.

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

  Comment:
  The proposed additions are appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and changes in materials and roof formation to break up built form. Furthermore, the proposal would retain and introduce suitable landscaping to minimise the visual impact of the development from adjoining properties and the public realm. Overall, the proportions of the encroaching elements are not considered to be unreasonably scaled or bulky.

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

  Comment:
  The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. The elements of the proposal that are non-compliant with building envelope are not considered to result in unreasonable view loss. No submissions in relation to view loss have been received.

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

  Comment:
  It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered that subject to the recommended conditions of this consent no unreasonable privacy impacts would occur as a result of the development.

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

  Comment:
  The development does not require the removal of significant vegetation. The existing and proposed landscape treatments on site are sufficient and ensure the site is not dominated by the built form. The application has been reviewed by Council's Landscape Officer who have raised no objection to the proposal subject to recommended conditions for tree protection and adherence to the proposed landscape plan. Overall, it is considered that remaining and proposed vegetation will adequately reduce the visual impact of the 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.

D9.11 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The application proposes a total landscaped area of 37.6% (283.2m2), which fails to comply with the 60% requirement. It is noted that with the inclusion of impervious areas permitted under this control, the total landscaped area is 43.6% (328.35m2).

Merit consideration

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

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

  Comment:
  The proposed development is generally consistent with the desired character statement of the Mona Vale locality.

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

  Comment:
  The proposal achieves general compliance with the relevant development controls used to assess the bulk and scale of a development, including; building envelope and maximum building height. Additionally, additional planting is proposed within the frontage, which will reduce the visual impact of the development when viewed from the street. In this regard, it is considered that the bulk and scale of the development is modest and appropriately integrated into the landform and landscape.

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

  Comment:
  The proposal will allow for sufficient provisions of privacy, amenity and solar access to be maintained throughout the subject site and adjoining properties.

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

  Comment:
  As discussed elsewhere in this report, the proposal's design is adequately sited to maintain ample landscaped areas around the development that will assist in visually reducing the built form.

- *Conservation of natural vegetation and biodiversity.*

  Comment:
  The proposed development will enhance the site's natural features with a high quality landscape design; therefore, providing adequate opportunities for natural vegetation and biodiversity.

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

  Comment:
  The proposal has been reviewed by Council's development engineer having regard to provisions of stormwater management and has raised no objection to the proposal subject to conditions. In turn, Council can be satisfied that stormwater runoff will be appropriately reduced, preventing soil erosion and siltation of natural drainage channels.

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

  Comment:
  Development within the subject streetscape and surrounding locale consists of low density residential developments of varying styles and scales within altered landscaped settings, such that the character of the area would not be classified as rural or bushland. However, the site is sufficiently landscaped and the proposed development being within the rear yard will remain unseen as viewed from the streetscape.

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

  Comment:
  The site will remain afforded with sufficient soft surface so as to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

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 $18,400 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,840,000.

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.

In summary, the application has been assessed with regard to the relevant Pittwater LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

The issues raised in the submission is considered to be addressed by way of the amended plans and and conditions of consent.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the NBLPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.
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 DA2021/2435 for Alterations and additions to a dwelling house including a spa on land at Lot 18 DP 6195, 40 Hillcrest Avenue, MONA VALE, 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**
DA06 - Site plan	17 November 2021	HOUSED By Nanna Lesiuk
DA08 - Entry level	17 November 2021	HOUSED By Nanna Lesiuk
DA09 - Cabana/pool plan	17 November 2021	HOUSED By Nanna Lesiuk
DA10 - Ground floor plan	17 November 2021	HOUSED By Nanna Lesiuk
DA11 - First floor plan	17 November 2021	HOUSED By Nanna Lesiuk
DA12 - North elevation	17 November 2021	HOUSED By Nanna Lesiuk
DA13 - South elevation	17 November 2021	HOUSED By Nanna Lesiuk
DA14 - West elevation	17 November 2021	HOUSED By Nanna Lesiuk
DA15 - East elevation	17 November 2021	HOUSED By Nanna Lesiuk
DA16 - Section AA	17 November 2021	HOUSED By Nanna Lesiuk
DA17 - Section BB	17 November 2021	HOUSED By Nanna Lesiuk

DA18 - Section 01	17 November 2021	HOUSED By Nanna Lesiuk

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Engineering Report	7 December 2021	White 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**
LP01-D2322: Landscape Plan 1	21 March 2022	Dangar Barin Smith
LP01-D2322: Landscape Plan 2	21 March 2022	Dangar Barin Smith
DA19 - Landscape plan	23 March 2022	HOUSED By Nanna Lesiuk
DA19.3 - Landscape section	23 March 2022	HOUSED By Nanna Lesiuk

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	25 November 2021	HOUSED By Nanna Lesiuk

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working

hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council’s property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $18,400.00 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 $1,840,000.00.

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.

5. **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

6. **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 existing approved system.

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.

7. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group Pty Ltd, Ref J3740, Dated 7th Dec 2021 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.

8. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The main bedroom balcony is to be deleted, a slimline flat roof may remain over the bbq area below.
- The main bedroom sliding doors (W/D-U 07) are to be replaced with full height windows.

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.

9. **Vehicle Driveway Gradients**
The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

11. **Submission of Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.
The application is to include four (4) copies of Civil Engineering plans for the design of the driveway and the retaining walls with in public road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC ONE. The plans shall be prepared by a qualified Structural Engineer.

The design must include the following information:

1) A vehicle crossing 4.5 metres wide should be constructed in accordance with Northern Beaches Council's standard Drawing No A4-3330/1N.
2) Longitudinal section of driveway from street gutter invert with existing and proposed levels and grades.
3) Structural details of the "return" on the proposed retaining wall across the public road reserve shall be provided.
4) Provision of any vehicle gate or pedestrian gate on the public road reserve is not permitted.
5) Details of pedestrian access (stairs) to site are to be provided
6) All driveways gradients and safe sight distances etc. shall be designed comply with AS 2890.1:2004 (Off-street Parking Standards).
7) Any adjustment to existing services are to be approved by the relevant service authority with all costs associated borne by the applicant.
8) All vehicles are to be wholly contained on site before being required to stop.
9) To ensure there are no adverse impacts arising from construction works, the applicant must engage a suitably qualified and practicing Civil or Structural Engineer specializing in geotechnical and the hydrogeological field to design.
10) Reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

12. **Coastal Bluff Engineering Assessment Implementation**
The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Horton Coastal Engineering Pty. Ltd. dated 2 December 2021, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are

minimised

13. **Coastal Bluff Engineering Assessment Implementation**
All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

14. **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.

15. **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)

16. **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:
- “Tap in” details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council’s road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for

the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

18. **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

19. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, 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) 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, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

20. **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.

21. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

22. **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.

23. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

24. **Geotechnical Issues**
All conditions outlined in Geotechnical Investigation prepared by White Geotechnical Group dated 7 December 2021 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings, etc. are undertaken in an appropriate manner and structurally sound.

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

OCCUPATION CERTIFICATE

25. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plans prepared by Dangar Barin Smith, and inclusive of the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, 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 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 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,
v) new landscape works are to be contained within the property boundaries.

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.

26. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Council's Water Management for Development Policy by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

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

27. **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.

28. **Reinstatement of Kerb**
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

29. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(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 warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
(c) All signage shall be located in a prominent position within the pool area.

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 a Interim / Final Occupation Certificate.

Reason: To protect human life.

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

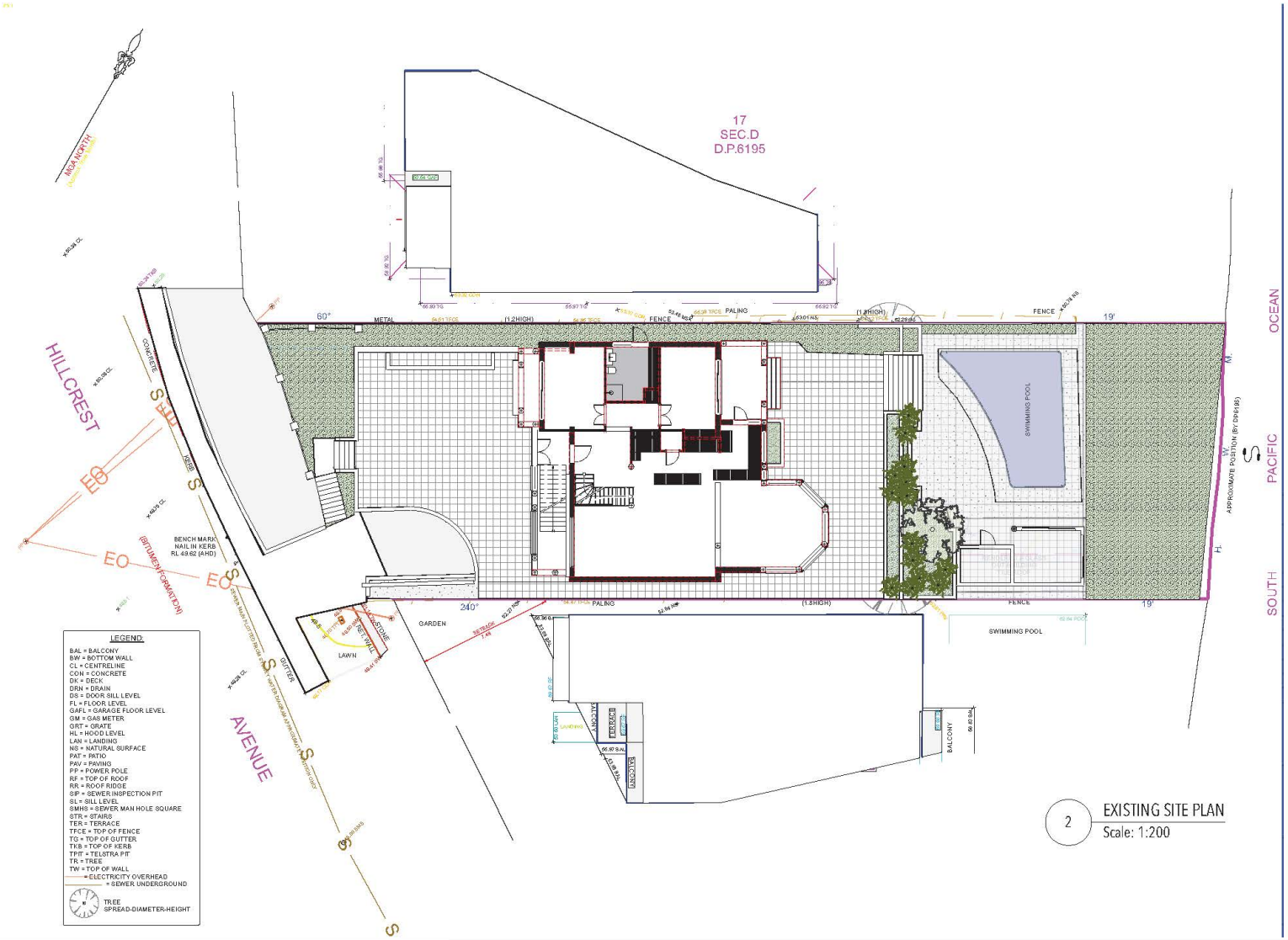
31. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time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

32. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) 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.



HOUSED
BY NANNA LESIUK
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project:
40 HILLCREST AVENUE
MONA VALE

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Nominated Architect Nanna Lesiuk, 10702

drawing: DA.02 EXISTING SITE PLAN	date: 17/11/21	
status: DEVLOPMENT APPLICATION	scale: 1:100	

01	PROPOSED NEW DRIVEWAY INTO EXISTING GARAGE
02	PROPOSED NEW PEDESTRIAN ENTRY
03	PROPOSED SPA, MODIFIED POOL FENCE AS PER AS 1926.1 - 2012, NEW DECKING TO POOL AREA.
04	MODIFIED EXISTING CABANA
05	PROPOSED LANDSCAPING TO EXISTING TERRACE
06	REPLANNING OF INTERIOR SPACE - DEMOLITION LINES SHOWN AS BLUE DASH
07	DEMOLITION OF FACETED ROOM, EXTENSION TO THE NORTH
08	PROPOSED FIRE PLACE + CHIMNEY
09	PROPOSED AQUA ROOF AND PEBBLE ROOF GARDEN ON TOP OF MODIFIED CABANA
10	PROPOSED STEPS TO EXISTING OUTDOOR TERRACE.
11	PROPOSED NEW ROOF
12	PROPOSED WINDOW BOX

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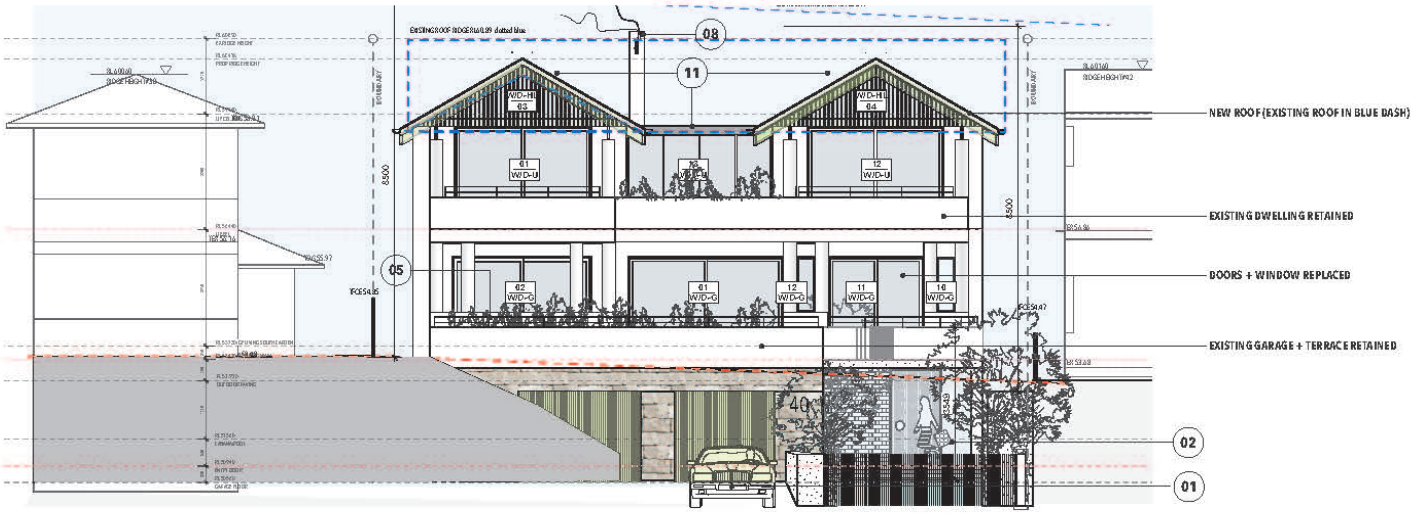
Nominated Architect Nanna Lesiuk, 10732

drawing:	date :
DA.12 PROPOSED NORTH ELEVATION	17/11/21
status : DEVELOPMENT APPLICATION	scale : 1:100

scale bar



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07	DEMOLITION OF FACETED ROOM, EXTENSION TO THE NORTH
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12	PROPOSED WINDOW BOX

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40 HILLCREST AVENUE
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drawing.
DA.13 PROPOSED SOUTH ELEVATION

status.
DEVELOPMENT APPLICATION

date.
17/11/21

scale.
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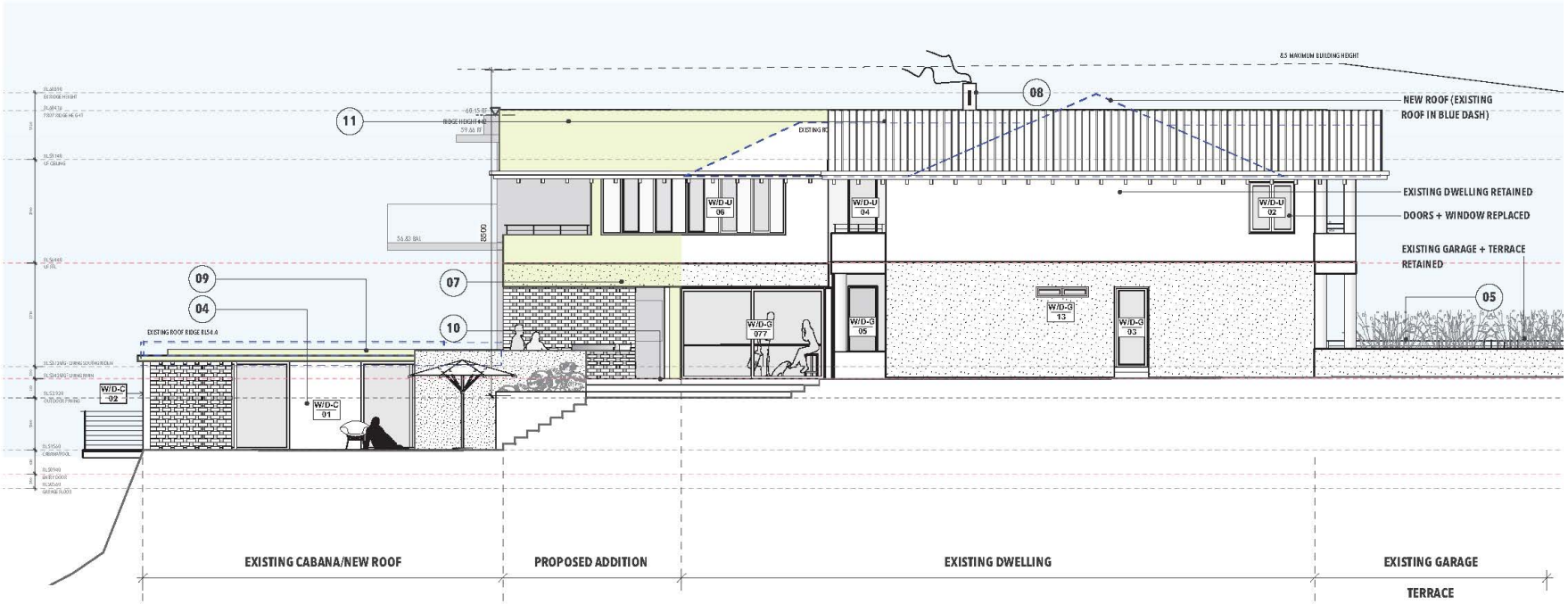

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03	PROPOSED SPA, MODIFIED POOL FENCE AS PER AS 1926.1 - 2012, NEW DECKING TO POOL AREA.
04	MODIFIED EXISTING CABANA
05	PROPOSED LANDSCAPING TO EXISTING TERRACE
06	REPLANNING OF INTERIOR SPACE - DEMOLITION LINES SHOWN AS BLUE DASH
07	DEMOLITION OF FACETED ROOM, EXTENSION TO THE NORTH
08	PROPOSED FIRE PLACE + CHIMNEY
09	PROPOSED AQUA ROOF AND PEBBLE ROOF GARDEN ON TOP OF MODIFIED CABANA
10	PROPOSED STEPS TO EXISTING OUTDOOR TERRACE.
11	PROPOSED NEW ROOF
12	PROPOSED WINDOW BOX

HOUSED
BY NANNA LESIUK
m:0405128186 e:nannalesiuk@housedarchitects.com

project:
40 HILLCREST AVENUE
MONA VALE

NOTE: All work to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions.
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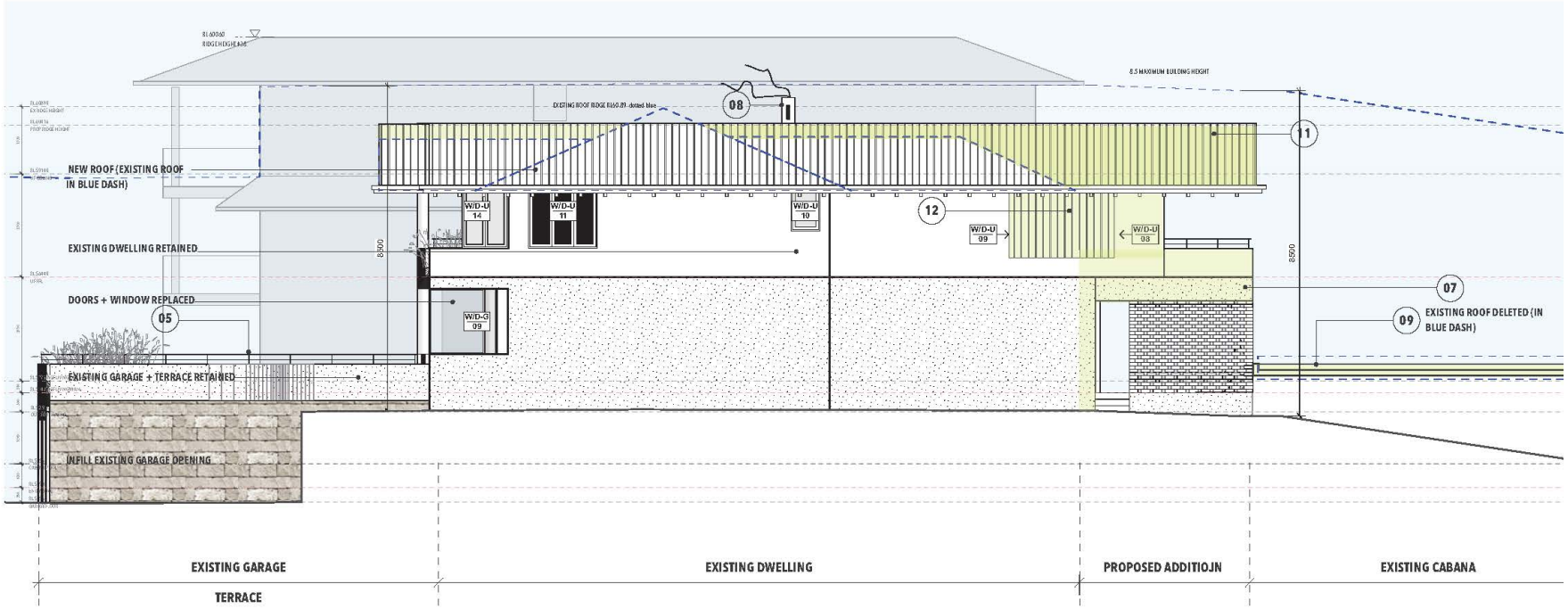
Nominated Architect Nanna Lesiuk, 10732

drawing:	date :
DA.14 PROPOSED WEST ELEVATION	17/11/21
status : DEVELOPMENT APPLICATION	scale : 1:100

scale bar



01 PROPOSED NEW DRIVEWAY INTO EXISTING GARAGE
02 PROPOSED NEW PEDESTRIAN ENTRY
03 PROPOSED SPA, MODIFIED POOL FENCE AS PER AS 1926.1 - 2012, NEW DECKING TO POOL AREA.
04 MODIFIED EXISTING CABANA
05 PROPOSED LANDSCAPING TO EXISTING TERRACE
06 REPLANNING OF INTERIOR SPACE - DEMOLITION LINES SHOWN AS BLUE DASH
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Nominated Architect Nanna Lesiuk, 10732

drawing: DA.15 PROPOSED EAST ELEVATION
status: DEVELOPMENT APPLICATION
date: 17/11/21
scale: 1:100
scale bar

BBF TOWN PLANNERS

Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

3 March 2022

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Adam Mitchell

Development Application DA2021/2435
Clause 4.6 request to vary the Foreshore Building Line Development Standard.
40 Hillcrest Avenue, Mona Vale

Foreshore building line

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 2012 ("PLEP")

2.1 Clause 7.8 – Foreshore building line

Pursuant to clause 7.8 of PLEP development consent must not be granted for development on land in the foreshore area except for the following purposes:

2) *the rebuilding of an existing building wholly or partly in the foreshore area,*

   a. *the erection of a building in the foreshore area, but only if the building is at or below the existing ground level, and if the levels, depth or other exceptional features of the site make it appropriate to do so,*

   b. *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs or swimming pools.*

The objectives of the foreshore building line control are as follows:

   c. *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

d. to ensure continuous public access along the foreshore area and to the waterway.

I confirm that the extension proposed to the southern wing does extend further into the foreshore building line. The ground floor terrace and first floor balcony extend further into the foreshore building line as shown below.

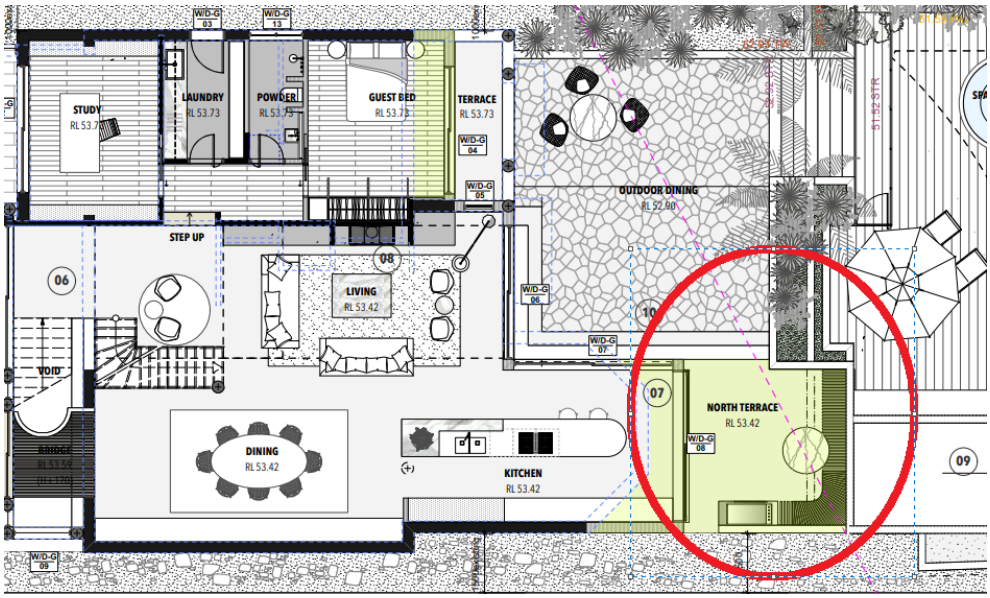


Figure 1 – Foreshore building line breach - Ground floor

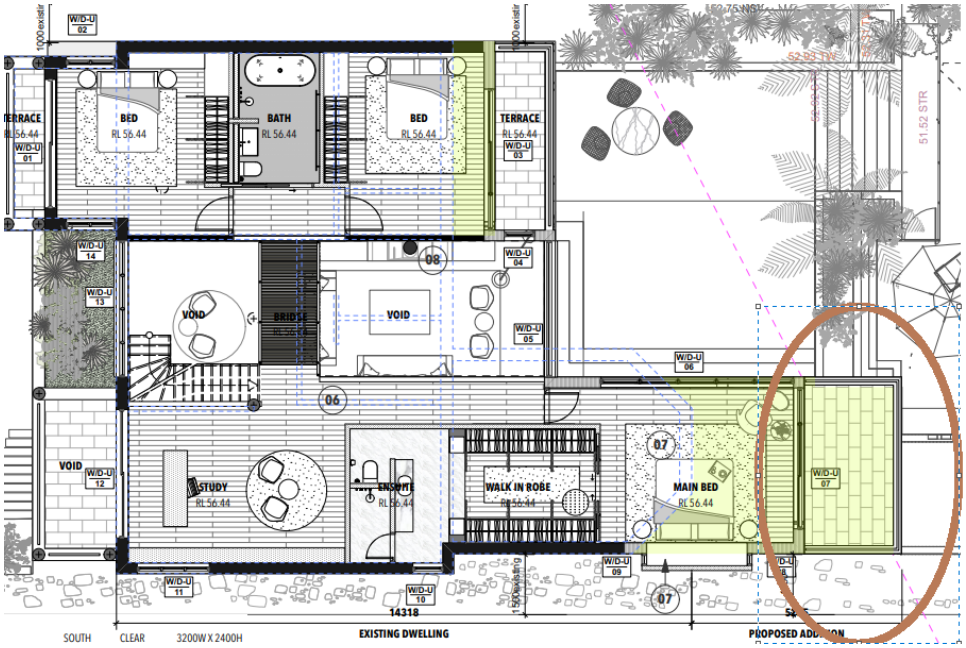


Figure 2: *Foreshore Building Line Breach – first floor*

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 Limited Development on Foreshore Area

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 foreshore building line provisions in 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 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 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of 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.

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 development standards?

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 standard 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 development standards?

Clause 7.8 prescribes a provision that seeks to limit the extent of development with the foreshore area and accordingly is considered to be a development standard to which clause 4.6 PLEP applies.

4.2 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 foreshore building line 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 ground floor level terrace and first floor balcony extension will not impact on natural foreshore processes or affect the significance and amenity of the area. The site is located on the headland between Bungan and Mona Vale Beach and has a steep drop off down to the foreshore. In this regard, the works will have no impact on the natural processes of the foreshore area.

Further, in terms of potential amenity impacts, we note that the non-compliant sections at ground and first floor terrace/balcony extensions will not give rise to adverse visual or aural privacy impacts to neighbouring properties given the significant spatial separation maintained between living and private open space areas with no adverse shadowing impacts arising as demonstrated by the shadow diagrams submitted in support of the application. Having inspected the site and its surrounds to identify potential view lines I am also satisfied that the non-compliant portion of the first floor terrace extension will not give rise to any public or private view impacts.

I am satisfied that the non-compliant portion of the first floor terrace extension will not impact on natural foreshore processes or affect the significance and amenity of the area. This objective is achieved.

(b) to ensure continuous public access along the foreshore area and to the waterway.

The existing public access to the foreshore area will not be impacted by the areas of encroachment.

Consistency with zone objectives

The subject site is zoned C4 Environmental Living pursuant to the provisions of PLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the C4 zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Response: The works represent a relatively minor addition to an existing residential dwelling. The works will have little impact on the environmental value of the area or the foreshore processes.

- *To ensure that residential development does not have an adverse effect on those values.*

Response: The development will not have an adverse impact on those values. No prescribes trees are to be removed and the encroaching works extend over an area of the site that has been previously modified to create a terraced garden with stepping stones.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Response: The works do not give rise to any unreasonable bulk and scale concerns. The existing scale of the dwelling is to largely remain the same as existing. The encroaching elements relate to a ground floor terrace and first floor balcony which are open structures. This reduces any perceived unreasonable visual bulk with the new works.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Response: The areas of non-compliance do not impact on any riparian zone, foreshore vegetation or wildlife corridors.

The non-compliant component of the development, as it relates to foreshore building line, demonstrates consistency with objectives of the C4 Environmental Living zone and clause 7.8 of the PLEP. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

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

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

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC

90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the fact that the application proposes legitimate alterations and additions with the height, bulk and scale of the development consistent and compatible with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

The proposed works will significantly enhance the amenity of the dwelling by enhancing the main habitable spaces at ground level and the first floor master bedroom. The private open space areas are accessed from these spaces and facilitate improved indoor/outdoor living in this superior location.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal facilitates ecologically sustainable development through the retention of the existing building fabric and adopting alterations and additions (1.3(b)).
- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The variation facilitates good design and enhanced amenity (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the propose 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 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.

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.

4.5 Secretary's concurrence

By Planning Circular dated 21st February 2018, 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

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

(a) that the contextually responsive development is consistent with the zone objectives, and

(b) that the contextually responsive development is consistent with the objectives of the foreshore building line standard, and

(c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

(d) that having regard to (a), (b) and (c) above that compliance with the foreshore building line standard is unreasonable or unnecessary in the circumstances of the case, and

(e) that given the developments ability to comply with the zone and foreshore building line standard objectives that approval would not be antipathetic to the public interest, and

(f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and

(g) Concurrence of the Secretary can be assumed in this case.

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 foreshore building line variation in this instance.

Boston Blyth Fleming Pty Limited

William Fleming
BS, MPLAN
Director

ITEM 5.2	**MOD2021/0771 - 68 A QUEENSCLIFF ROAD, QUEENSCLIFF - MODIFICATION OF DEVELOPMENT CONSENT DA2015/1079 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN EXISTING SHOP TOP HOUSING DEVELOPMENT AND STRATA SUBDIVISION OF LOW RENTAL DWELLINGS UNDER SEPP (AFFORDABLE RENTAL HOUSING) 2009.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2022/311012**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans & Elevations

PURPOSE

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

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2021/0771 for Modification of Development Consent DA2015/1079 granted for alterations and additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 on land at Lot A DP 961049,68 A Queenscliff Road, QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0771

Responsible Officer:	David Auster
Land to be developed (Address):	Lot A DP 961049, 68 A Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2015/1079 granted for alterations and additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Christine Coulits
Applicant:	Erol Ozdirik

Application Lodged:	08/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/10/2021 to 08/11/2021
Advertised:	25/10/2021
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 23.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for various modifications to the previously approved built form.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to non-compliance with the height of buildings development standard. This is due to a change in the roof form, which, although maintaining the level of non-compliance, shifts the non-compliance to a different place on site. The result is a reduction in the overall height of the building, but an increase in height of the southern side of the roof.

No submissions were received, and the proposal generally maintains or increases views for the neighbouring buildings across the road to the north, by the change to a flat roof design.

Critical assessment issues included the addition of balconies to the southern elevation in the south eastern corner, which create some privacy concerns in terms of overlooking the southern neighbour. A condition is recommended in this regard to reduce the size of the balconies.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications comprise:

Ground Floor

- Minor reduction in area of shop 1 and minor extensions to shop 2 and common entry area
- Extension in areas of both residential levels
- Reconfigured internal areas to comprise revised internal stair and new lift access to levels over
- Deletion of common WC and provision of relocated accessible toilet
- Deletion of upper-level walkway along southern elevation and platform lift to outdoor seating area

First and Second Floor Plans

- Reconfigured and enlarged circulation spaces to accommodate revised internal stair, new lift access and services stack
- New windows to internal stairwell on southern façade

Units 1 & 3

- Extension of bedrooms 1 and 2 towards northern boundary and extended balcony with feature curves to northern and southern unit boundaries
- Internal reconfiguration to comprise 2 bedrooms with 70sqm internal and 23.6sqm balcony spaces
- New external window shading devices to bedroom windows
- New stacker adjustable louver shade privacy screens to north facing balconies
- New fixed privacy screens to southern balconies (western edges)

Units 2 and 4

- Extension of bedroom 1 towards northern boundary and extended balcony with feature curve
- Internal reconfiguration to comprise 2 bedrooms with 68.2sqm internal and 12sqm balcony spaces
- New external window shading devices to bedroom windows
- New stacker adjustable louver shade and privacy screens to balcony edges

Roof

- Increased internal ceiling height to second floor level to 2700mm (units 3 and 4)
- Deletion of the existing pitched tiled roof with feature metal eaves and incorporation of flat roof form
- Reduction in overall roof height by 945mm

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot A DP 961049 , 68 A Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site is a generally rectangular corner lot, with street frontage to Queenscliff Road and Bridge Street, and a total area of 315.3m². The site is zoned B1 Neighbourhood centre. A three storey shop top housing development occupies the site. The subject site adjoins a one and two storey dwelling house to the south and a three storey apartment building adjoins the site to the west. Surrounding development comprises a mixture of modern and traditional style dwelling houses and apartment style buildings within landscape

	settings. The adjacent southern neighbour is also zoned B1 Neighbourhood Centre. Land across Queenscliff Road to the north is zoned R3 Medium Density Residential, while land to the east, south and west is generally zoned R2 Low Density Residential. However, despite being in zone R2, the adjacent building to the west is an existing residential flat building. Queenscliff Beach is located approximately 120m downslope from the property. The land is identified as Land Slip Risk Map-Area B under WLEP 2011 and has a fall of approximately 0.4m across the width of the Queenscliff Road frontage of the site and falls of 1.6m over the entire frontage of the land to Bridge Road representing a gradient of approximately 13%. Vehicle access to the site is provided from Queenscliff Road.

Map:

SITE HISTORY

- **DA2001/1528** - Development Application - Installation of External Windows & Deck
- **DA2015/1079** - Development Application proposed for modification by the current application – Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009. Approved by Warringah Council Application Determination Panel (ADP) on 05/04/2016.
- **CC2018/0053** - Construction Certificate – Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009. Determined: 15/01/2018
- **NOC2018/0068** - PCA Notification of Commencement – Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009. Submitted: 17/01/2018

- **DA2019/0845** - Development Application - Demolition works and construction and strata subdivision of a shop top housing comprising 2 commercial units and 5 residential units. Refused by Northern Beaches Local Planning Panel on 5/02/2020. Appeal to Land and Environment Court lodged & withdrawn.

Further information was provided during the assessment for the current modification application in relation to commencement of works for DA2015/1079. The works carried out include demolition of the southern deck that used to exist on site adjacent to the ground level shop. The evidence provided satisfactorily demonstrates that the consent was activated, and works commenced.

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 DA2015/1079, 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	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 DA2015/1079 for the following reasons: The proposed modifications are such that the overall shape, bulk and scale of the development as previously approved is generally maintained. The proposed modifications have the effect of lowering the overall height of the development by change to roof design, and the proposed changes to setbacks comply with the requirements for nil front setbacks to the front boundaries. No significant change to the location of the building on the property is proposed. The number of units, and number of

Section 4.55 (2) - Other Modifications	Comments
	bedrooms within those units is not altered, and overall the proposal remains for shoptop housing including four residential units, two commercial units, and five parking spaces, as previously approved.
(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 DA2015/1079 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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) –	See discussion on “Environmental Planning Instruments” in this

Section 4.15 'Matters for Consideration'	Comments
Provisions of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to evidence of commencement of works prior to lapsing of the original approval. Clause 61 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. Clauses 62 and/or 64 of the EP&A Regulation 2021 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 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,	(i) **Environmental Impact** The environmental impacts of the proposed development on the

Section 4.15 'Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/10/2021 to 08/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions 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.

Internal Referral Body	Comments
Environmental Health (Industrial)	Proposed changes are unlikely to modify the amenity criteria such as commercial noise impacts of patrons on residents. We have no objections to the changes.
Landscape Officer	No objections are raised to the proposed modification with regard to landscape issues.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Coastal Management) 2018 (clauses 13 & 15); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported subject to conditions: • Stormwater management (prior to construction certificate) • Installation and maintenance of erosion and sediment controls (prior to commencement)
NECC (Development Engineering)	The proposed modifications do not alter the original assessment and approval by Development Engineering. No objection to the proposal with no additional or modified conditions of consent recommended.
Strategic and Place Planning (Urban Design)	The proposal will have to address the following issues: 1. The new balconies proposed facing south will present overlooking privacy and noise nuisance issues to the adjacent property to the south. 2. Similarly, the proposed south facing glazed acoustic barrier to the outdoor seating area should be opaque glazing up to a height of 1.2m from the floor to reduce overlooking privacy issue to the southern neighbour. 3. The applicant should address the possible amenity nuisance issues (especially light and noise) from the extended outdoor seating area which is proposed to double in size allowing more people to gather along the southern boundary. **Planner's Comment:** The urban designer has misunderstood the proposal with regard to the southern deck located off the commercial units at ground level. The current modification application does not propose any modifications to this area, to either the size of the deck or the acoustic barrier. These elements are exactly as previously approved. It is not reasonable for Council to require changes to this area which is not the

Internal Referral Body	Comments
	subject of the modification application. With regard to the southern balconies proposed off the upper level residential units, a condition is recommended to reduce these balconies in depth to 900mm, to limit privacy impacts. This will prevent the balconies from having a high level of use for sitting and overlooking. This issue is discussed in greater detail under SEPP 65 in this report, however, the condition of consent is considered to adequately protect privacy to the south.
Traffic Engineer	Proposal description: Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing). The plans (Master Set) designed by NEXUS Architecture Pty. Ltd., dated 8/7/2021, has been reviewed by the Traffic team. The proposed modifications do not alter the original assessment and comments from the Transport Network team. It is noted that the original consent included condition No.15 required the widening of the driveway to 6m to allow for improved access to and from tehs tacked parkings paces and to prevent parking in the small gap between adjacent driveways. This driveway widening has not been reflected in the current amended plans so the condition, which is still required has been restated. No objection to the proposal with no additional or modified conditions of consent recommended. Conditions from the previous consent still stand. The proposal is therefore supported.
Waste Officer	Waste Management Updated Assessment: Section of Amended Plans showing the Residential and Commercial Waste Storage Areas received 17 November 2021. The application is supported subject to conditions. **Planner's Comment:** Council's Waste Officer provided a number of conditions, almost all of which are included in the existing consent for DA2015/1079, with the same or very similar wording. As such, these conditions have not been recommended for modification. Only condition 34 has been modified which related to ensuring doors did not open outwards over the property boundary. This condition has been modified to delete the previous requirement in this regard, and a new condition 34A has been added to include the new requirements of Council's Waste Officer in this regard to ensure the doors do not open outwards over the boundary from the waste room.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no concerns and declined to impose any conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for the current purposes for a significant period of time with no prior evidence of contamination. 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 continuation of the existing shoptop housing land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the alterations and additions to a three storey 'shoptop housing' development for the provisions of four self-contained dwellings.

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

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment

Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated "Apartment Design Guide". This application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made by the assessment of DA2015/1079. As such the assessment of that application is adopted for the purposes of this assessment, with the exception of the following departures from the Apartment Design Guide.

APARTMENT DESIGN GUIDE

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

<table>
<tr><th>Development Control</th><th>Criteria / Guideline</th><th>Comments</th></tr>
<tr><td colspan="3">Part 3 Siting the Development</td></tr>
<tr><td>Visual Privacy</td><td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:
<table>
<tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr>
<tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr>
<tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr>
<tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr>
</table>
Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</td><td>The proposed modifications include extending the south western upper level balconies around to the western elevation, a minimum of 2.245m from the western side boundary. New southern balconies are also proposed, a minimum of 1.1m from the southern boundary. These new elements do not comply with the required 6m setback.

The extension of the south western balconies is well to the north of the adjacent western neighbouring building (23 Greycliffe St), and there will be separation of approximately 11m - 12m between the nearest balconies at the subject site and number 23 Greycliffe. Additionally, the orientation of the modified balconies will remain primarily over the front boundary to Queenscliff Road, and it is unlikely that these balconies will be used with any regularity for people looking back to the south towards the western neighbour. The modifications are acceptable in this regard.</td></tr>
</table>

			The proposed new balconies to the southern elevation are more problematic, as they are 1.1m from the southern side boundary, and located generally above and approximately 4.5m minimum from the adjacent front first floor balcony and sliding glass doors. The proposed southern balconies are curved in shape and between 900mm and 1.8m wide. The lower of the two new balconies is provided with a solid balustrade which will provide some level of privacy to the adjacent neighbour, and the upper level balcony is provided with a clear glass balustrade. The windows previously approved in this location are also to be converted to doors to provide access to the balcony. A condition is recommended requiring that the balconies be limited in width to 900mm. This will reasonably prevent their use for tables and chairs, thereby limiting the privacy impacts created by their addition. The solid balustrade at the lower level will block views from the extended doors (compared to the previous windows), and at the upper level the 900mm wide balcony will act as a horizontal screen to prevent downwards viewing towards the neighbour that will be similar in effect to the previously approved window sill height of approximately 720mm. However, given that the balconies are in close proximity to the neighbouring front deck, and well above, it is also recommended that the upper level balustrade be made translucent. Subject to this condition, the proposal is

<table>
<tr><td></td><td></td><td>considered acceptable with regard to this issue.</td></tr>
<tr><td colspan="3">Part 4 Designing the Building</td></tr>
<tr><td colspan="3">Amenity</td></tr>
<tr><td>Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:

<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m^2</td></tr><tr><td>1 bedroom</td><td>50m^2</td></tr><tr><td>2 bedroom</td><td>70m^2</td></tr><tr><td>3 bedroom</td><td>90m^2</td></tr></table>
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.</td><td>The sizes of the units have been increased by the proposed modifications to:

Unit 1 - 70sqm (previous approval 60.1sqm)
Unit 2 - 68.2sqm (previous approval 68sqm)
Unit 3 - 70sqm (previous approval 61.8sqm)
Unit 4 - 68.2sqm (previous approval 68sqm)

All four units have two bedrooms. Therefore units 2 and 4 do not comply. However, units 2 and 4 are marginally more compliant than previously approved, and units 1 and 3 now comply in full, where they did not previously. The proposed modifications therefore result in improvements in relation to this control.</td></tr>
<tr><td>Private Open Space and Balconies</td><td>All apartments are required to have primary balconies as follows:

<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr></table>
The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>Unit 1 - 21.6sqm
Unit 2 - 12sqm
Unit 3 - 21.6sqm
Unit 4 - 12sqm

All units achieve the minimum requirement for square metres. However, all units have less than a minimum depth of 2m as required. The previous approval had minimum balcony depths of 2m. The new balconies proposed are between 1.85m and 2.25m deep for units 1 and 3, and between 1.4m and 1.92m for units 2 and 4. Despite the generally minor non-compliance in depth, all four units are provided with increased total balcony space compared to the original approval, and given the</td></tr>
</table>

		design of the modifications, it is considered that greater amenity is provided to the units by the new design, despite the minimum depths not being achieved. The proposal is considered acceptable in this regard.
Configuration		
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The proposed modifications are considered to generally improve the presentation of the facades to the street frontages and neighbouring buildings.
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 proposed flat roof design will allow for greater views for properties to the north across Queenscliff Road. No common open space was previously approved, nor is it proposed now.

(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: As stated above, the proposed modifications are not of a scale and extent that the assessment of DA2015/1079 is substantially altered. The proposed modified building demonstrates adequate regard to the design quality principles, and the relevant objectives of the Apartment Design Guide.

The proposed modified development is considered to remain consistent with the relevant matters under the SEPP.

SEPP (Affordable Rental Housing) 2009

The assessment for DA2015/1079 found that the existing building was subject to the provisions of this SEPP in terms of retention of affordable housing, and imposed appropriate conditions of consent. The proposed physical modifications do not alter the development with regard to those requirements, and the conditions of approval previously imposed are not proposed for modification. The assessment of DA2015/1079 is adopted for the purposes of this assessment, with additional relevant comments below.

Division 1: In-fill affordable housing

Definitions:

For the purposes of this Division, the Standard Instrument defines dual occupancies, multi dwelling housing or residential flat buildings as follows:

- ***Dual occupancy*** means a dual occupancy (attached) or a dual occupancy (detached).
- ***Dual occupancy (attached)*** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.
- ***Dual occupancy (detached)*** means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.
- ***Multi dwelling housing*** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.
- ***Residential flat building*** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Clause 16: Continued application of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65)

Matter for consideration	Comment
Is this application subject to the provisions of SEPP 65?	Yes
Have the provisions of SEPP 65 been considered and addressed in this report?	Yes
Is this development consistent with the Design Principles of SEPP 65?	Yes
Is this development consistent with the provisions of the Residential Flat Design Code (RFDC)?	Yes

Clause 16A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior

Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

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

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

Comment:
The proposed modifications are not major in the context of what was previously approved. The reduction in overall roof height will reduce the bulk and scale of the proposal, and the addition of new balconies provides greater articulation to the development. The development will remain generally compatible with the streetscape and existing character of the area.

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

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

Comment:
The proposed modifications do not make significant changes to the overall size of the development, other than to reduce the overall height through use of a modified flat roof design.

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

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

Comment:

The proposed modifications do not make any alterations to the topography or landscaped area on site.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

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

Comment:

The proposed design of the building is generally attractive and modern, and will be generally consistent with other more modern development in the area.

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

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

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

Comment:

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

Constraints on the development potential of surrounding sites

The proposed modifications are generally relatively minor, and not considered to create any particular constraints on the development potential of surrounding sites.

Privacy

The proposed addition of balconies in the south eastern corner of the residential units at the upper levels is considered to result in some unreasonable privacy concerns. A condition is recommended to reduce the width of these balconies to 900mm, to reduce their usability for tables and chairs. Subject to this condition, the proposal is considered to generally maintain privacy compared to the original approval, and not result in any significant increased impacts in terms of constraining development on neighbouring properties.

Overshadowing

The proposal does not significantly increase overshadowing. The southern edge of the roof is increased in height by being extended to the south above the falling topography, however, the southern neighbour was already overshadowed by the previously approved roof line, and the proposed modifications will not make significant changes in this regard.

Noise

The proposed modifications are unlikely to result in any increased noise impacts or constraints to neighbouring development in this regard.

Conclusion to character assessment

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

This matter does not warrant the refusal of the Development Application.

Conclusion

The proposed modifications are generally relatively minor, and approval of the application is recommended, subject to conditions as discussed in this report.

SEPP (Building Sustainability Index: BASIX) 2004

Updated BASIX Certificates have been provided with the application for each of the four units. An existing condition of consent requires compliance with the BASIX commitments specified within.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The proposed modifications will not have any significant impacts on any of the above matters for consideration. No additional excavation is proposed as part of the modifications, and the site is a significant distance from the ocean and lagoon, with a number of properties and roads in between. There are no identified Aboriginal heritage items in proximity to the site.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:
The proposed modifications are designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

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 site is a significant distance from the water, and is not identified as being affected by any mapped hazards. The proposed modifications to the approved alterations and additions will not have any significant impacts in this regard.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	New building components: 8.5m to 10m Existing building: 10.5m	10.5m	23.5%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Approved:	10.5m
Proposed:	10.5m
Percentage variation to requirement:	23.5%

Assessment of request to vary a development standard:
The proposed modifications reduce the overall height of the previously approved application by changing the pitched roof to a flat roof design. The flat roof extends slightly further south than the previous approval, so that the height above ground is 10.5m at the southern side of the proposed new roof design, but the Reduced Level (RL) of this roof is 36.155, which is 945mm lower than the previously approved highest RL of 37.100 along the previous ridge.

Whilst the modification application will still result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the E4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposed new roof form results in a reduction to the highest ridge height of 945mm.
- The new flat roof design is lesser in scale and contributes less bulk than the approved roof form
- The non-compliance will result in no unreasonable amenity impacts

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The height of the proposed flat roof is lower than that of the approved roof (in terms of RLs) and reduces the bulk of the roof structure
- The slightly increased non-compliance at the southern side (in terms of height above ground level) caused by extending the roof slightly to the south (where the land falls away) allows for the reduction in the overall height of the development, by replacement of the pitched roof with a flat roof.
- This in turn provides increased views for properties across the road to the north.
- The slight extension of the roof to the south has negligible extra impacts on southern neighbours in terms of solar access.

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.

4.3 Height of buildings

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The proposed development is generally consistent with the approved building and surrounding buildings, and maintains the desired character of the locality.

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

Comment:

The proposed modification results in a reduction to the height of the approved development in terms of the highest point, and the building will remain generally of a scale consistent with existing development in the area.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed change to the approved roof will result in negligible extra overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed flat roof will provide increased ocean, headland and beach views for properties across the road to the north.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The modification generally improves the response of the building to the natural topography by significantly reducing the proportion of the building that is non-compliant.

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

Comment:

The proposed modification will reduce the visual impact of the development by reducing the overall height.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment:

The proposal will continue to provide a shoptop housing development, serving the needs of those who live or work locally.

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

  Comment:

  The proposed modifications do not alter the development in any significant way in this regard. The lower level will continue to provide for uses that will help to create a village like atmosphere, and casual overlooking of the public domain will be maintained.

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

  Comment:

  The proposed modifications do not significantly alter the development with regard to this objective. The proposal will not have any unreasonable impacts on neighbouring residential land.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 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.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B6 Merit Assessment of Side Boundary Setbacks	Merit assessment	West: 2.63m to 3.15m South: 3.1m to elevation nil to outdoor seating	West: Extended balcony 2.245m South: New balconies 1.1m	Yes (Subject to condition to reduce proposed southern balconies, see detailed assessment)
B7 Front Boundary Setbacks	Nil	Queenscliff Road (north): 700mm	Nil Nil	Yes

		Bridge Road (east): nil		
B10 Merit assessment of rear boundary setbacks	N/A (corner lot)	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

The proposed modifications result in a reduced side setback to the western side boundary, caused by the upper level south western balconies. The application also proposes new south eastern balconies at

the upper level residential units, that are 1.1m from the southern side boundary. Council's Urban Designer has recommended changes to these balconies to address overlooking and noise concerns to the southern neighbour.

Merit consideration:

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

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

  Comment:
  The proposed upper level balconies will not affect the amount of deep soil on the property.

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

  Comment:

  The proposed modifications, including the balconies closer to the southern and western side boundaries, will not cause significant changes to the overall visual dominance of the building. They provide further articulation to the building that will help to break up the bulk of the building and reduce visual dominance.

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

  Comment:

  The proposed balconies do not significantly add to the bulk and scale, and will help to break up the existing bulk and scale by providing articulation and depth on the southern and western sides.

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

  Comment:

  As discussed above, Council's Urban Designer has raised concerns with the impacts of the proposed south eastern balconies on the amenity of the southern neighbour. No submissions were received from this neighbour. However, the new balconies are situated above a living room deck of the southern neighbour. A condition is recommended to reduce the size of the southern balconies to a maximum of 900mm in width (measured from the southern wall of the building). This will ensure the balconies are not highly useable for table and chairs etc, that may encourage users to frequently overlook the southern neighbour. The reduction in the width of the decks will enable increased amenity for the subject site, while protecting a reasonable level of privacy for the southern neighbour.

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

  Comment:
  View sharing will be reasonably maintained by the proposal. The addition of balconies to the southern and western sides do not significantly or unreasonably impact on views.

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

D7 Views

No submissions were received in relation to the proposed modifications. The properties across the road to the north have iconic views of Manly Beach, North Head and the surrounds. The proposed change to the roof form, from a pitched roof to a flat roof design, will enable greater views than previously for the properties across the road to the north, and will provide significant benefit in this regard. The alterations to the balconies are generally minor in nature when viewed from the properties across the road to the north, and will have minimal impacts on the views. As such, the proposed modifications will maintain a reasonable sharing of views.

D8 Privacy

No submissions were received in relation to the proposed modifications. The proposal provides for new balconies to the residential units at the upper levels at the south eastern corner and north western corner of the building. The southern balconies have been recommended for reduction in width due to potential overlooking impacts to the south (see discussions under SEPP 65 and clause B6 Merit Assessment of Side Boundary Setbacks in this report). Subject to this condition, the proposed modifications are considered to maintain a reasonable level of privacy.

E10 Landslip Risk

A geotechnical report was provided with the original application, and referenced in the conditions of consent. The modification application has not been provided with an updated report. However, the modifications do not propose any further excavation than previously approved, and generally relate to additional balconies and reduced setbacks for a small part of the building on the northern side. A condition is recommended requiring the geotechnical report to be updated prior to an amended construction certificate being issued, and any extra or modified recommendations being incorporated into the development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

This proposal, for modification of development consent DA2015/1079 granted for alterations and additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to non-compliance with the height of buildings development standard.

No submissions were received to the proposed modifications.

The critical assessment issues included privacy concerns to the south. These have been addressed by a recommended condition of consent to reduce the size of the new south eastern upper level decks.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0771 for Modification of Development Consent DA2015/1079 granted for alterations and additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 on land at Lot A DP 961049,68 A Queenscliff Road, QUEENSCLIFF, 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**
035/15 Sheet 1 of 6	8/7/21	Classic Plans
035/15 Sheet 2 of 6	8/7/21	Classic Plans
035/15 Sheet 3 of 6	8/7/21	Classic Plans
035/15 Sheet 4 of 6	8/7/21	Classic Plans
035/15 Sheet 5 of 6	8/7/21	Classic Plans
035/15 Sheet 6 of 6	8/7/21	Classic Plans
035/15 Sheet C	8/7/21	Classic Plans

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

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

B. Add condition 16A Modifications to approved plans to be satisfied prior to issue of a Construction Certificate, to read as follows:

16A Modifications to approved plans

The approved plans are to be modified to reduce the width of the southern balconies for residential Units 1 and 3 to a maximum of 900mm from the southern elevation of the building. The south facing balustrades for both units 1 and 3 are to be translucent glazing.

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

Reason: Protection of privacy.

C. Add condition 16B Geotechnical Report to be satisfied prior to issue of a Construction Certificate, to read as follows:

16B. Geotechnical Report

The geotechnical report (prepared by Jk Geotechnics, dated 16 October 2013) referenced in the Notice of Determination for DA2015/1079 is to be updated to reference the approved modification plans. Any updated recommendations of the report are to be incorporated into the development.

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

Reason: Geotechnical safety.

D. Add Condition 16C Access and Egress to be satisfied prior to issue of a Construction Certificate, to read as follows:

16C. Access and Egress
The building is to comply with Part D of the Building Code of Australia – 'Access and Egress'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.

In this regard Compliance with D1.10 "Discharge from exits" is required to be complied with in regard to discharge of the required exit stairs and the path of travel to the road.

Reason: To ensure adequate provision is made for Access & Egress and building occupant health and safety.

E. Add Condition 16D Stormwater Management to be satisfied prior to issue of a Construction Certificate, to read as follows:

16D 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.

F. Modify Condition 34 Waste and Recycling Facilities Certificate of Compliance to read as follows:

34. Waste and Recycling Facilities Certificate of Compliance
The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management.

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.

G. Add Condition 34A Waste Storage Areas Access to be complied with prior to issue of the occupation certificate:

34A Waste Storage Areas Access

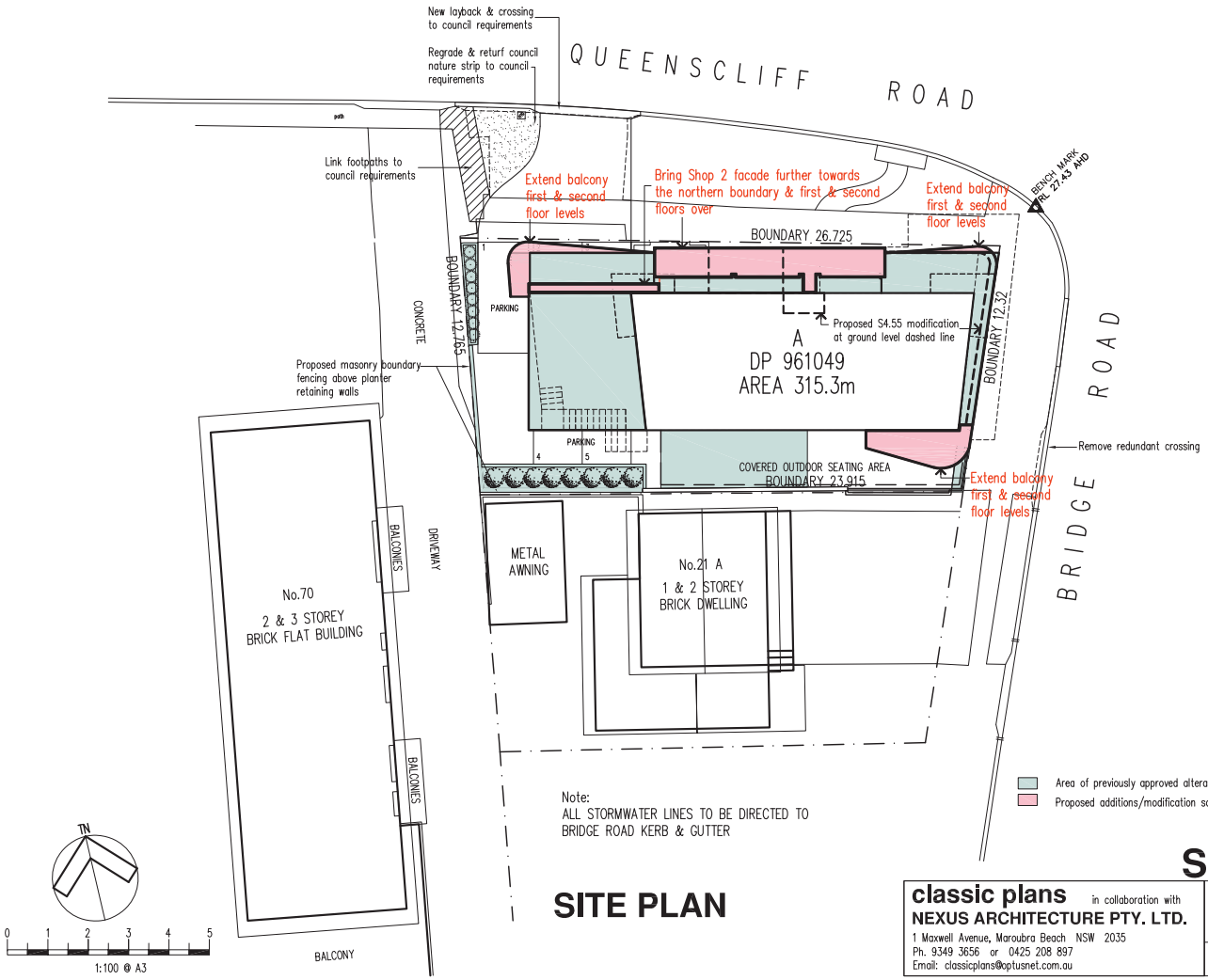
- To improve pedestrian safety, the doors fitted on the Residential and Commercial Waste Storage Areas must swing inwards and be able to be opened flat against the wall opposite the bins and be latched in the open position. These doors must be unobstructed by any locks and security devices to ensure ongoing clear access to empty the bins. A timer lock fitted to the residential waste room door open from 6am-6pm on collection day will provide unobstructed access for servicing of waste facilities.

- The Residential and Commercial Waste Storage Areas are separate designated areas to accommodate communal use waste and recycling bins for the residential and commercial premises. These areas must not be used to store any other items and must be clear of any service and utilities infrastructure and related activities.

Reason: To improve the safety of passing pedestrians and to ensure ongoing access for servicing of waste facilities.

GENERAL NOTES:

- These plans are subject copyright and must not be used, copied or reproduced without the authority of the designer.
- Do not scale, use figured dimensions only. If a dimension is not shown or is required consult with the designer.



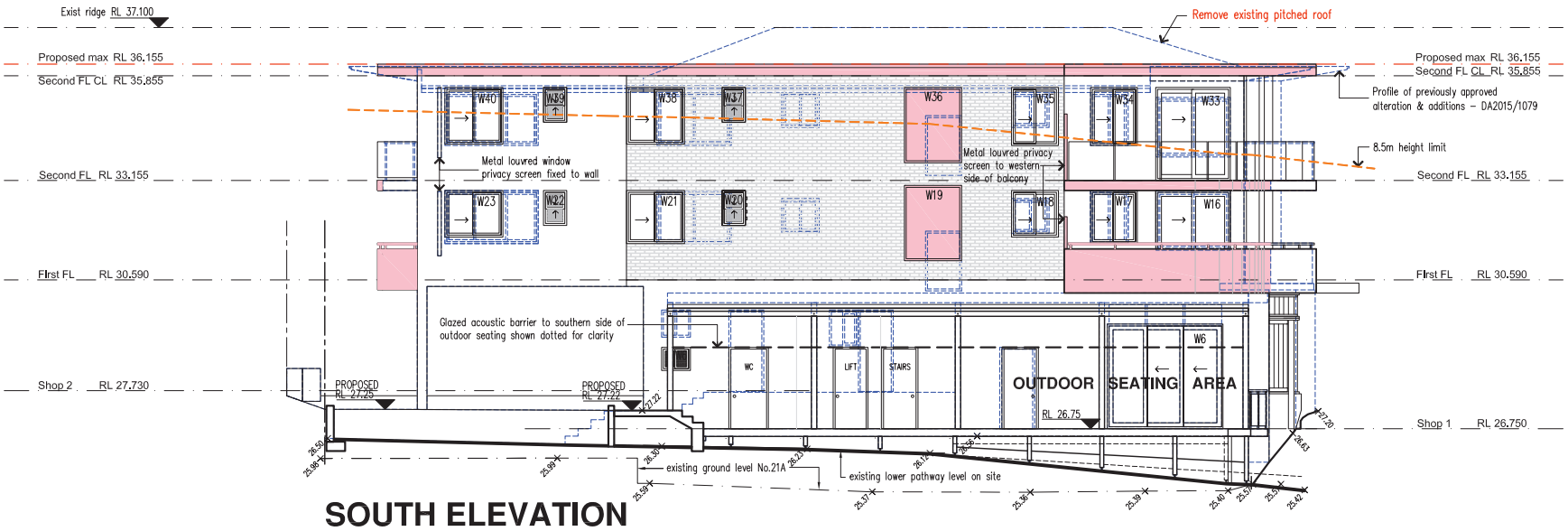
Note:
ALL STORMWATER LINES TO BE DIRECTED TO BRIDGE ROAD KERB & GUTTER

Area of previously approved alteration & additions – DA2015/1079
Proposed additions/modification sought by way of S4.55 application

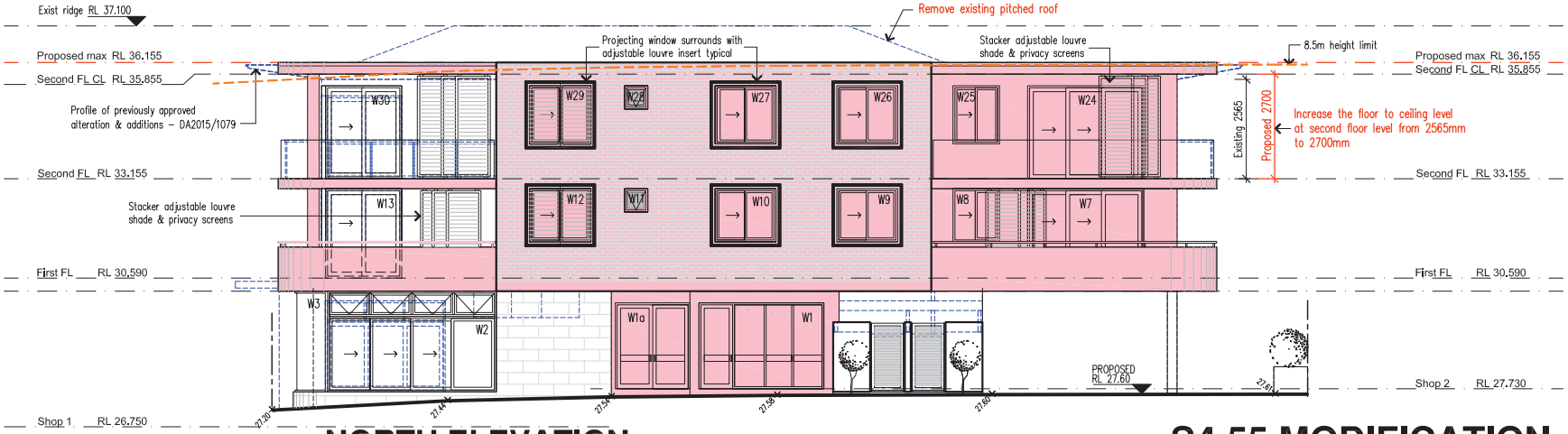
SITE PLAN

S4.55 MODIFICATION

classic plans in collaboration with **NEXUS ARCHITECTURE PTY. LTD.** 1 Maxwell Avenue, Maroubra Beach NSW 2035 Ph. 9349 3656 or 0425 208 897 Email: classicplans@optusnet.com.au	project: PROPOSED ALTERATIONS & ADDITIONS 68A QUEENSCLIFF ROAD, QUEENSCLIFF LOT A DP 961049 client: COULITS FAMILY	scale – 1:100 date – 8/7/21 sk1 issue A dwg. no. – 035/15 sheet 1 of 6



SOUTH ELEVATION



NORTH ELEVATION

S4.55 MODIFICATION

KEY

- Proposed additions/modification sought by way of S4.55 application
- Profile of previously approved alteration & additions – DA2015/1079
- Existing spot levels

0 1 2 3 4 5
1:100 @ A3

classic plans in collaboration with
NEXUS ARCHITECTURE PTY. LTD.
1 Maxwell Avenue, Maroubra Beach NSW 2035
Ph. 9349 3656 or 0425 208 897
Email: classicplans@optusnet.com.au

project:
PROPOSED ALTERATIONS & ADDITIONS
68A QUEENSCLIFF ROAD, QUEENSCLIFF
LOT A DP 961049

client:
COULITS FAMILY

scale – 1:100
date – 8/7/21
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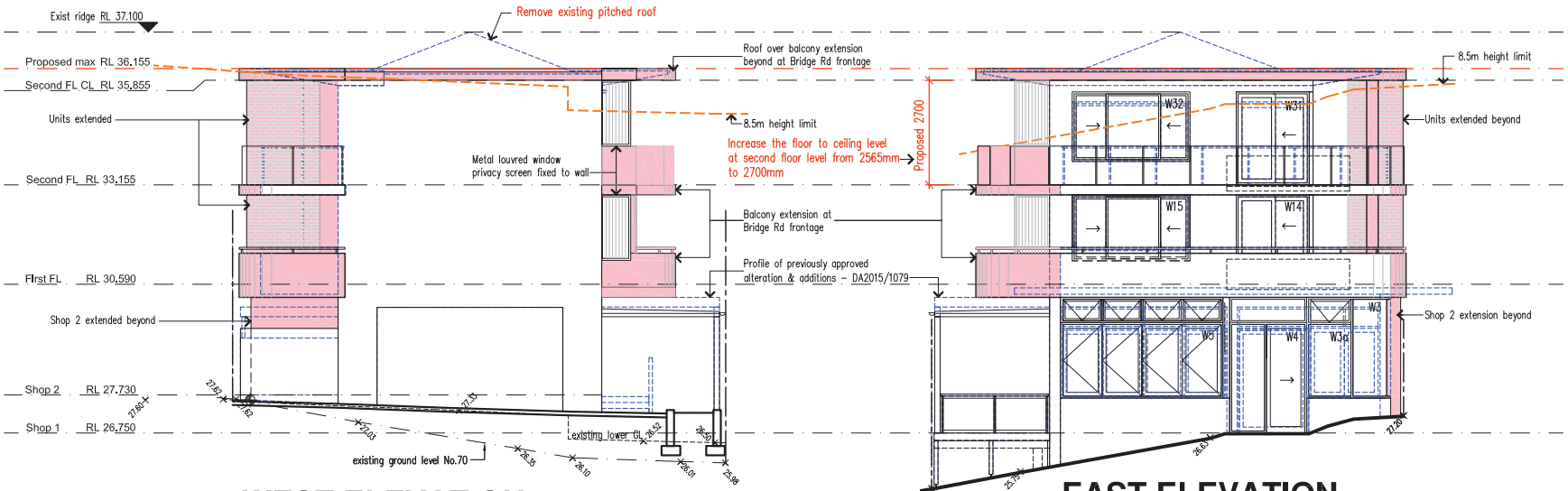
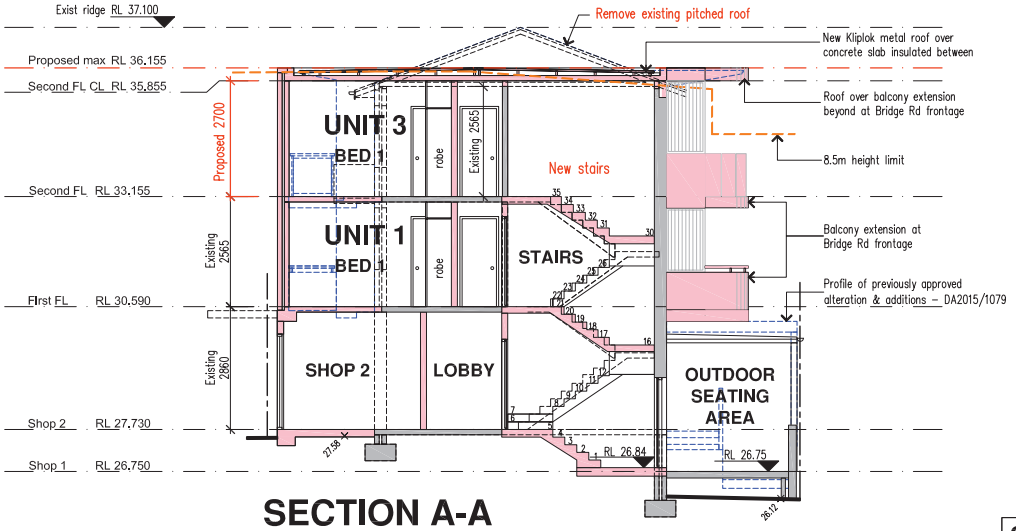
dwg. no. – 035/15
sheet 5 of 6



WEST ELEVATION

EAST ELEVATION



SECTION A-A

KEY

- Proposed additions/modification sought by way of S4.55 application
- Profile of previously approved alteration & additions – DA2015/1079
- Existing spot levels

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S4.55 MODIFICATION

classic plans in collaboration with **NEXUS ARCHITECTURE PTY. LTD.** 1 Maxwell Avenue, Maroubra Beach NSW 2035 Ph. 9349 3656 or 0425 208 897 Email: classicplans@optusnet.com.au	project: PROPOSED ALTERATIONS & ADDITIONS 68A QUEENSCLIFF ROAD, QUEENSCLIFF LOT A DP 961049 client: COULITS FAMILY	scale – 1:100 date – 8/7/21 sk1 issue A dwg. no. – 035/15 sheet 6 of 6