

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a meeting of the Development Determination Panel will be held via teleconference

WEDNESDAY 24 AUGUST 2022



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 24 August 2022
via teleconference
Commencing at 10:00am**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.1	Minutes of Development Determination Panel held 10 August 2022	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 10 AUGUST 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 10 August 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	MOD2022/0146 - 31 THE CRESCENT MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0215 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2022/506839
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to MOD2022/0146 for Modification of Development Consent DA2019/0215 granted for alterations and additions to a dwelling house on land at Lot 1 DP 1085978, 31 The Crescent MANLY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0146
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 1 DP 1085978, 31 The Crescent MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2019/0215 granted for alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stanislawa Ewa Linforth Steven Craig Linforth
Applicant:	Stanislawa Ewa Linforth
Application Lodged:	04/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	14/04/2022 to 28/04/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is for a modification of development consent DA2019/0215 granted for demolition and additions and alterations to an existing dwelling house, approved by the Northern Beaches Local Planning Panel (LPP). The proposal seeks to further increase the existing floor space ratio non-compliance up to a maximum of 6.6% (26.7m²) and has received a total of 9 objections to the 'Section 4.55 (2)' modification application, therefore the application is referred to Development Determination Panel (DDP).

The modified proposal seeks to increase the overall floor space ratio by an additional 26.7m² resulting in an FSR of 0.83:1, in addition to a range of changes to the layout of the approved dwelling. Overall the impacts on views, overshadowing, privacy, streetscape and associated amenity / environmental considerations under the Manly Local Environmental Plan (LEP) and Development Control Plans (DCP)

are substantially the same as the originally approved development. The modification does not depart from any existing conditions or reasons for approval by the LPP.

The modified application is considered to be consistent with the objectives of Clause 4.4 / 6.16 Floor Space Ratio, including associated amenity considerations, to support the change in FSR as assessed and detailed pursuant to "Clause 4.55" of the Act and relevant considerations as a Modification of development consent.

The modified scheme has satisfactorily addressed the assessment considerations under the Manly LEP and DCP, and the modification can be supported, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No. DA2019/0215 granted for additions and alterations to an existing dwelling house in the following manner:

- Additional ground floor floor space is associated with the widening of the corridor to the lift which is located further into the floor plate and the breaking into the subfloor area in the area of the lounge room to create a greater space.
- Reconfiguration and relocation of core to provide internal access to ground floor.
- Amendments to the wall and floor elements are either reconstructed or demolish as recommended by the Structural and Stormwater Engineer's advice to ensure structural integrity.
- The ground floor lowered by 190mm to maintain 2.7m ceilings in habitable room at ground in accordance with approval, subsequent changes to external stairs.
- Streamlining overall design to include curved glazing and masonry, including minor amendments to internal lay-out, slight change to curved walls/balconies radius and straightening up to kitchen walls on Level 1.
- Adjustments to some windows and privacy screens due to the above changes.
- Carport and Garage roof redesigned and green roof added - The approved garage roof RL was 23.990 compared to the modified RL of 24.495 an increase of 505mm. The increase in roof height is required to accommodate the proposed green roof which is an improvement for the properties who look over the development site and the roof of the garage towards the view beyond. The height of the garage, as modified, sits well below the height of the dwelling house and to that extent will not impact views.
- upgrade and extend cross over and layback.
- Adjustments to garden walls for a better level transition.
- Flues for Fireplaces introduced and skylight relocated and made circular.
- Redesign of awning to side boundary.
- Services including A/C, Hot Water to be upgraded and located along the western boundary to comply with current regulations.
- Façade bands made consistent in width and height, all within the approved envelope of the roof over.

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 - 4.4 Floor space ratio

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 1085978 , 31 The Crescent MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of The Crescent Manly. The site is irregular in shape with a frontage of 9.15m along The Crescent and 15.855m along Commonwealth Parade. The property has an average depth of 44.6m and a surveyed area of 533.8m². The site is located within the R1 General Residential zone and accommodates a part one and part two storey dwelling house. The site slopes from north to south and includes a crossfall of 4.84m. The southern boundary of the site is bound by a sandstone retaining wall of a variable height. The site does not include any significant vegetation or landscape features. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential flat buildings ranging in height from three to eight storeys.

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:

PLM2018/0173 - This pre-lodgement meeting was held over a development similar to the one currently proposed. The original proposal included the provision of three parking spaces. It was advised that the parking design would dominate the street frontage and could not be supported. The plans were later amended to include two parking spaces. It was advised that the parking design was satisfactory. It was advised that the eastern side of the development consider the approved development under DA294/2011 with regards to the loss of views.

DA294/2011 - Demolition of existing structures and construction of a three (3) storey Residential Flat Building consisting of three (3) dwellings with basement car park, rooftop terrace, balconies, driveway and landscaping - This application was refused by the Manly Independent Assessment Panel and following amendments approved by the Land and Environment Court (Linforth v Manly Council [2012] NSWLEC 1352).

DA2019/0215 - This DA was granted consent by Northern Beaches Planning Panel for additions and alterations to an existing dwelling house, which consistent of:

Ground Floor

- Rumpus room and bedroom with attached patio, services/storage lift

First Floor

- Alterations to provide for open plan living, dining and kitchen, attached pantry, bedroom, bathrooms, laundry, lift, guest room and bedroom with ensuite and walk in robe

Second Floor

- Addition for parents retreat with bar, library, study, bathroom, lift, outdoor entertainment area and bedroom with walk in robe and ensuite.

Another works included

- Landscaping
- Privacy screening
- Garage with 1.8m high automatic door

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55(2) Assessment

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 DA2019/0215 for the following reasons: • The modified development remains consistent with the description of development outlined in the assessment report prepared with respect to DA2019/0215, being additions and alterations to an existing dwelling house. • The modified development is generally maintained within the footprint and volume of development approved pursuant DA2019/0215. • The change to the architectural expression of the development is not so dramatic as to result in a radically different development.
(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	Development Application DA2018/0215 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
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	
(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 Regulation 2000 and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the EP&A Act, in determining a modification application, 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(1) of the EP&A Act are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in

Section 4.15 'Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted with the modification application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested and subsequently provided. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 not 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 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of the ADG and MDCP 2013 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/04/2022 to 28/04/2022 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 9 submission/s from:

Name:	Address:
Mr Robert Darcy Joy Ms Olga Glenis Joy	2 / 12 The Crescent MANLY NSW 2095
Ms Wendy Elizabeth Hague	11 / 29 The Crescent MANLY NSW 2095
Mrs Glenis Joy	Address Unknown
Mrs Helen Gay Murrell	GPO Box 1216 CANBERRA NSW 2601
Withheld Ms Julianne Lonie	MANLY NSW 2095
Withheld Ms Julianne Lonie	1 / 12 The Crescent MANLY NSW 2095
George Kenelm Kerswell	2 / 33 The Crescent MANLY NSW 2095
Mr Marshall Frank Smither	4 / 12 The Crescent MANLY NSW 2095
Miss Amanda Jane Kirkby	2 / 33 The Crescent MANLY NSW 2095
Ms Susan Linda Lewers	33 / 29 The Crescent MANLY NSW 2095

All submissions received are in objection to the proposed development. The concerns raised in the submissions are addressed, as follows:

- **Garage height**

Concern has been raised regarding the increase height of the garage. The existing garage was always nominated as being “remediated” as a part of the original DA consent. The proposed modification to the roof of the garage is clearly identified as Amendments 6 on the list of amendments nominated on the

architectural plans.

The approved garage roof RL was 23.990 compared to the modified RL of 24.495 an increase of 505mm. The increase in roof height is required to accommodate the proposed green roof which is an improvement for the properties who look over the development site and the roof of the garage towards the view beyond. The height of the garage, as modified, sits well below the height of the dwelling house and to that extent will not impact views.

- **Landscaping**

The issue relating to the Landscape works appears to be the same as the original assessment. Council's Landscape officer has reviewed the amended landscape plan and has raised no objection to the approved or modified Landscape works.

- **Bulk and Scale and Volume**

This issue relates to the dissatisfaction with the assessment and determination of the original application as the plan reference is the actual approved development. The modified development is generally maintained within the footprint/volume of that previously approved, therefore the modified development will not result in any additional impacts upon views.

- **Shadowing**

Concerns have been raised regarding the loss of daylight to adjoining properties and areas of open space. The modified development generally maintains the form and volume of the approved development, and does not alter the level of sunlight or daylight received by adjoining properties compared to that anticipated by the original approval.

The modification application is accompanied by certified shadow diagrams which demonstrate that between 10am and 3pm on 21st June that the proposed development, as modified, does not cast shadow onto the adjoining property at No. 33 from which the objection has been made.

- **Damage during construction**

Submissions have been received in objection to the modified development, with concerns that an increase to the footprint of the development will result in additional impacts upon adjoining properties during construction. The proposal has been amended to ensure that the footprint of the development is generally consistent with that originally approved, with existing conditions of consent imposed to ensure that adjoining buildings are protected during construction.

- **Duration of building works**

A submission has been received that requests assurances from Council that the construction works will be completed in an expeditious manner. Council has no ability to prescribe the speed of construction and with the exception of receipt of a Notice of Commencement, Council is not informed of the intended time-frame of any building works.

- **Inconsistency with s4.55 of the EP&A Act**

Submissions have been received in objection to the subject application being lodged under the

provisions of s4.55 of the EP&A Act, with suggestions that it should be considered as a new development application. The proposed modifications do not radically alter the development to a degree where the modified development is said to be substantially different to that which was originally approved, and as such, the proposed amendments can be considered as a modification application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported (Subject to conditions) The application is for modification to development consent DA2019/0215, seeking amendments to the internal layout and redesign of the carport and garage roof with added green roof. It is noted an updated Landscape Plan is submitted with the modification however the spatial layout generally remains the same as DA2019/0215, and therefore raises no concerns. A green roof has been added to the garage and carport, and appropriate soil depth shall be included to ensure health and vigour of the proposed plant species, subject to the imposed conditions.
NECC (Development Engineering)	Supported The application proposed the amendments on the garage's height, roof top landscape and internal changings of the building. The building footpath of this modification is similar to the original DA. All aspects of vehicle access and stormwater are remained. As such, Development Engineering has no objection to the application.
Strategic and Place Planning (Heritage Officer)	Supported Discussion of reason for referral The proposal has been referred to Heritage as the subject property is within the vicinity of heritage items: Item I1 - Harbour Foreshores - Municipal Boundary adjacent to the harbour Item I115 - House - 10 The Crescent Item I251 - Park - West Esplanade Details of heritage items affected Details of the heritage listed items as contained within the Manly inventory are: Item I1 - Harbour Foreshores <u>Statement of Significance:</u> Natural landscape type - Aesthetic. <u>Physical Description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and

Internal Referral Body	Comments																					
	sandstone retaining walls and timber structures. Item I115 - House <u>Statement of Significance:</u> Fine rare example of a Victorian Regency style residence with at least one surviving outbuilding. <u>Physical Description:</u> Substantial 2 storey sandstone Victorian Regency style residence with 2 sandstone chimneys (elaborately detailed with semi-circular chimney cowls), 2 storey hipped concave curved verandah roof. Hipped terracotta main roof. Timber verandah posts with timber verandah frieze to ground floor, iron lace balustrade to first floor fibro enclosed verandah. The building features a corrugated iron roofed turret to a sandstone tower on the south (side) elevation, which joins another hipped roofed pavilion. The house has french doors with fanlights. There is in addition to the main house, a single storey Victorian Georgian style cottage with rendered brick walls and a hipped corrugated metal roof, towards the north rear side of the main house, which is set at an angle from the main house. Item I251 - Park <u>Statement of Significance:</u> Part of earliest cultural treatment of Manly landscape and provision of designed open space. High visual significance. <u>Physical Description:</u> Open space, beach, sandstone retaining wall, pavings, grassed surfaces, monument, structures and cultural plantings of Norfolk Island pine, Moreton Bay Figs, Port Jackson figs and Canary Island Palms. Raised planting beds, with spilt stone edging of Edwardian period characterise the eastern part of the Park. Recent paving detracts from the Edwardian character. Park - West EsplanadePark - West Esplanade <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> Consideration of Application The proposal seeks consent for modifications to the development	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	
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Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																					
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NSW State Heritage Register	No																					
National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	N/A																					

Internal Referral Body	Comments
	consent DA2019/0215, approved on 4 September 2020. The proposal involves changes to the approved layout including the garage and the external appearance including the landscaping. The proposal retains the existing sandstone retaining wall at the Commonwealth Parade boundary. The approved DA2019/0215 involves the demolition of the existing building on the subject site, which is an intact building, originally constructed in the Federation period, with some alterations and additions dating back to the Inter-War period, that is considered to be a reflection of the early development of Manly as it has changed over time. Given that the proposed works mainly remain within the same envelope of the approved development consent, with similar external appearance, the additional impact of the proposal upon the significance of the heritage items or the character of the local area is considered negligible. Therefore, no objections are raised on heritage grounds subject to two conditions. <u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A revised BASIX certificate has been submitted with the application (see Certificate No.A443608 and dated 21 December 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

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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.

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	Approved	Proposed	% Variation	Complies

Height of Buildings:	11.0m	7.5m-10.7m	10.825m	-	Yes
Floor Space Ratio	FSR: 0.75:1 (400.08m ²)	FSR: 0.748:1 (399.8m ²)	FSR: 0.823:1 (439.15m ²)	(6.6%) (26.7m ²)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	N/A
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The proposal seeks a 26.7m² increase in GFA resulting in an FSR of 0.83:1 with the additional floor space located wholly within the previously approved building footprint and envelope.

The additional ground floor floor space is associated with the widening of the corridor to the lift which is located further into the floor plate and the breaking into the subfloor area in the area of the lounge room to create a greater space.

The floor space is reduced at first floor level. The additional second floor floor space is associated with the relocation of the lift and northern wall further into the covered outdoor entertaining area.

Although clause 4.6 does not apply to an application made pursuant to section 4.55 of the Act it has been determined that having regard to the objectives of the standard that strict compliance with the numerical control is both unreasonable and unnecessary as overall the proposal complies with Clause 4.4 regarding permitted net FSR and maintains consistency with the objectives of Clause 4.4 and the Manly LEP.

The objectives of this clause are as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not

obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Considerations of building bulk, scale and density in context with streetscape have been considered and the external wall outlines are substantially the same with some minor restyling to assist the reconfiguration of the internal layout. Overall the additional floor space does not alter the approved bulk and scale with the development not readily discernible in a streetscape context. The FSR maintains consistency with the approved scheme in terms of visual relationship its surroundings, and environmental impacts.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 533.4sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 per 150sqm	1 per 533.4sqm	unaltered	Yes
4.1.2.1 Wall Height	East: 9.7m (based on gradient 1:8.3)	9.4m	10.2m	No
	West: 9.7m (based on gradient 1:7.6)	10m	10.3m	No
4.1.2.2 Number of Storeys	3	3	3	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.6m	0.615m	No
4.1.4.1 Street Front Setbacks	6m - The Crescent	Dwelling 14m Garages - Nil	14.2m unaltered	Yes N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	East 3.1m - 2.3m	2.9m - 1.2m	unaltered	N/A
	West 2.3m - 3.3m	1.28m	unaltered	N/A
	Windows: 3m	1.28m	unaltered	N/A
4.1.4.4 Rear Setbacks	8m - Commonwealth Pde	Building 3.79m - 6.6m	unaltered	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (266.7sqm)	46% (246.7sqm)	unaltered	N/A
	Open space above ground 25% of total open space (61.7sqm)	43.7% (108sqm)	unaltered	N/A
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (74sqm)	36.8% (90.9sqm)	unaltered	N/A
	3 native trees	nil	unaltered	N/A
4.1.5.3 Private Open Space	18sqm per dwelling	22.3sqm	unaltered	N/A
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.3m	unaltered	N/A

4.1.10 Fencing	1.5 where 30% transparent above 1m	The Crescent - 1.6m -1.8 Commonwealth Parade - 2.8m - 2.9m	unaltered	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	N/A	N/A
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	No	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	N/A	N/A
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	N/A	N/A
4.4.2 Alterations and Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

The proposed development is maintained within the envelope of the approved development, therefore the proposed modifications do not result in any unreasonable impacts upon views and view sharing between properties is achieved.

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

Description of Non-compliance

The Manly DCP 2013 permits a maximum wall height calculated from the slope of the land. In accordance with this provision:

- The western elevation is permitted to have a maximum wall height of 10m. The proposed western elevation includes a maximum wall height of 10.3m representing a variation of 3% to the control.
- The eastern elevation is permitted to have a maximum wall height of 9.4m. The proposed eastern elevation includes a maximum wall height of 10.2m representing a variation of 8.5% to the control.

Merit Consideration

The Manly DCP 2013 does not contain objectives specific to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. With regard to the consideration of the variation, the development is considered under the relevant objectives below:

(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 additional wall height is due to the basement being lowered, it does not change the overall approved building height. The development, as modified sits comfortably within the maximum permitted building height for the area. There are no roof forms that are characteristic to the area nor is the proposed roof form restricted by the Manly DCP 2013. The proposal is consistent with the streetscape of the locality and consistent with this objective.

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

Comment:

Within the context of the surrounding properties, and considering what is approved on the site, the non-compliance will not be visually prominent. The proposal will not result in any unreasonable bulk and scale within the locality.

(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:

An assessment of the view loss has been conducted within the original assessment report with regard to Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the View Planning Principle established by the NSW Land and Environment Court. The assessment has found the development to minimise the disruption of views. The additional non-compliance with the wall height does not result in any unreasonable view impacts within the locality.

(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 development, as amended would maintain an equitable access to light and sunshine within the locality. The additional non-compliance with the wall height control will not result in any unreasonable impacts on the solar access of the neighbouring properties.

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

Comment:

Not applicable.

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

4.1.3 Floor Space Ratio (FSR)

The proposed modification does not comply with the maximum floor space ratio (see Clause 4.4 'Floor Space Ratio' for further discussion).

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 2022

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;
- 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

The modification application seeks to modify development consent No.DA2019/0215, determined by the *Northern Beaches Local Planning Panel (LPP)*, has been assessed as being substantially the same for the purposes of overall context of the approved scheme. The reconfiguration of the proposal involves design and constructability issues identified during the preparation of the Construction Certificate documentation including the need to replace the existing Level 1 timber floor and supporting stone and brick walls with new structural support walls and concrete floor to satisfy structural loading requirements.

Principal considerations under MLEP 2013 and MDCP 2013 have been addressed to ensure minimal change to impacts of solar access amenity, privacy, views, parking, noise and construction impacts, heritage and environmental considerations for neighbouring properties. Generally the proposal remains consistent with the reasons for granting of approval by the LPP.

In modifying the development the applicant has also maintained compliance with the overall building height, but increases the overall FSR by an additional 26.7m², however the additional floor space is located wholly within the previously approved building envelope. The variation to FSR proportions is supported on merit.

The concerns raised within public submissions have been considered including views, privacy, visual bulk, solar access operational management and the like, including consideration of past submissions. Issues are dealt with by conditions (existing or as modified) and do not warrant refusal of the application.

The streetscape design of the building, landscape, internal layout and residential amenity is suitable to meet the Manly LEP, DCP in terms of an appropriate design response to ensure no unreasonable amenity impacts to surrounding land or for occupants within the development. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0146 for Modification of Development Consent DA2019/0215 granted for alterations and additions to a dwelling house on land at Lot 1 DP 1085978,31 The Crescent, MANLY, 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
A1.02, A1.03.1, A1.03.2, A1.04.1, A1.04.2, A1.05, A1.50, A2.01, A2.02.1, A2.02.2, A2.03.1, A2.04, A2.05, A2.06, A3.01.1, A3.01.2, A3.04, (Revision S4.55)	2022.02.23	Platfrom Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (Certificate Number: A443608)	21 December 2021	AGA Consultants

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
DA- L01, DA- L03, DA- L04, DA- L05, DA- L06	17/12/2021	Sydney Design Collective

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

B. Add Condition <4A- Landscape Maintenance> to read as follows:

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. 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 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.

B. Add Condition <14A- Landscape Maintenance> to read as follows:

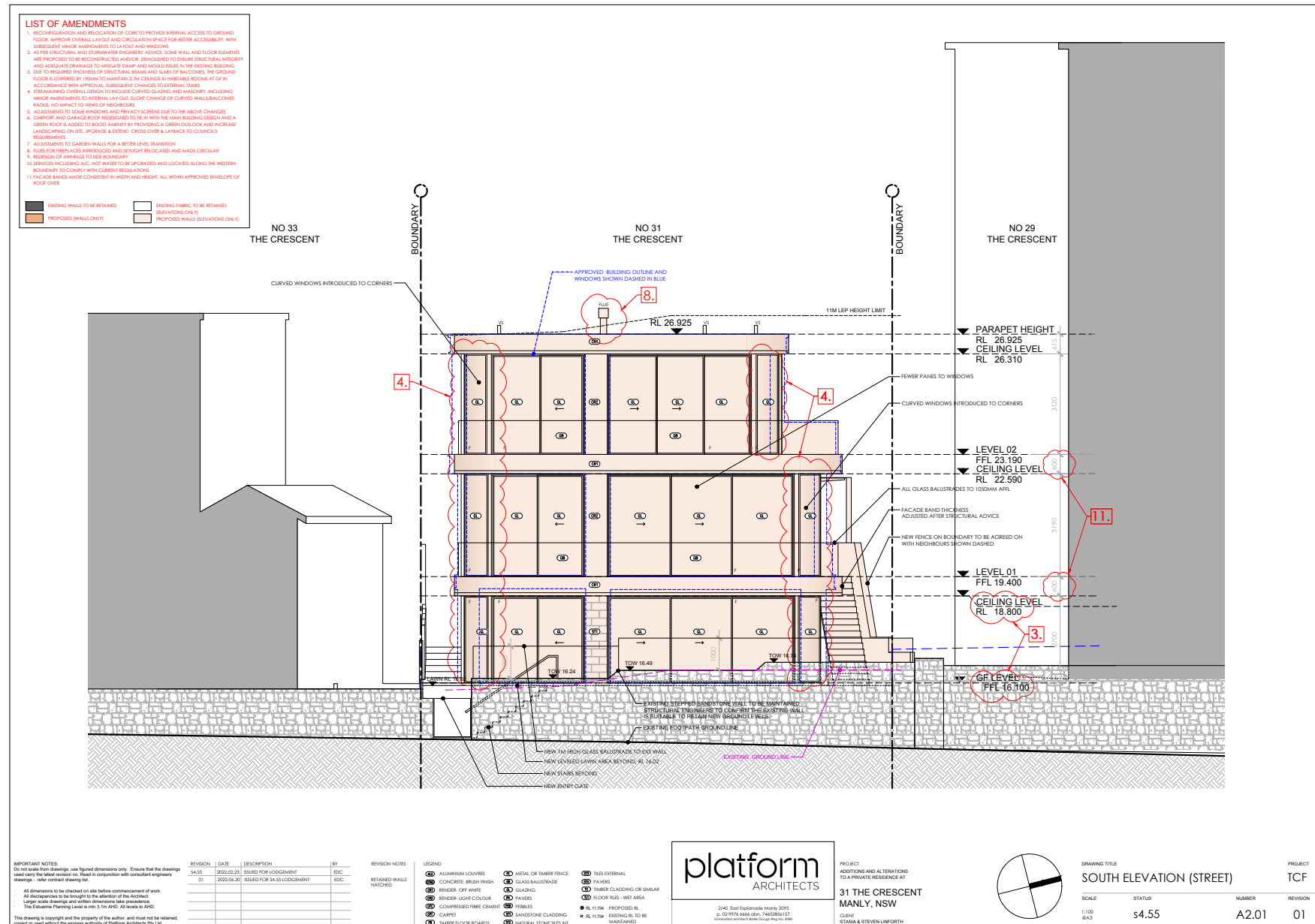
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

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) minimum 300mm soil depth (not including drainage requirements).

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.

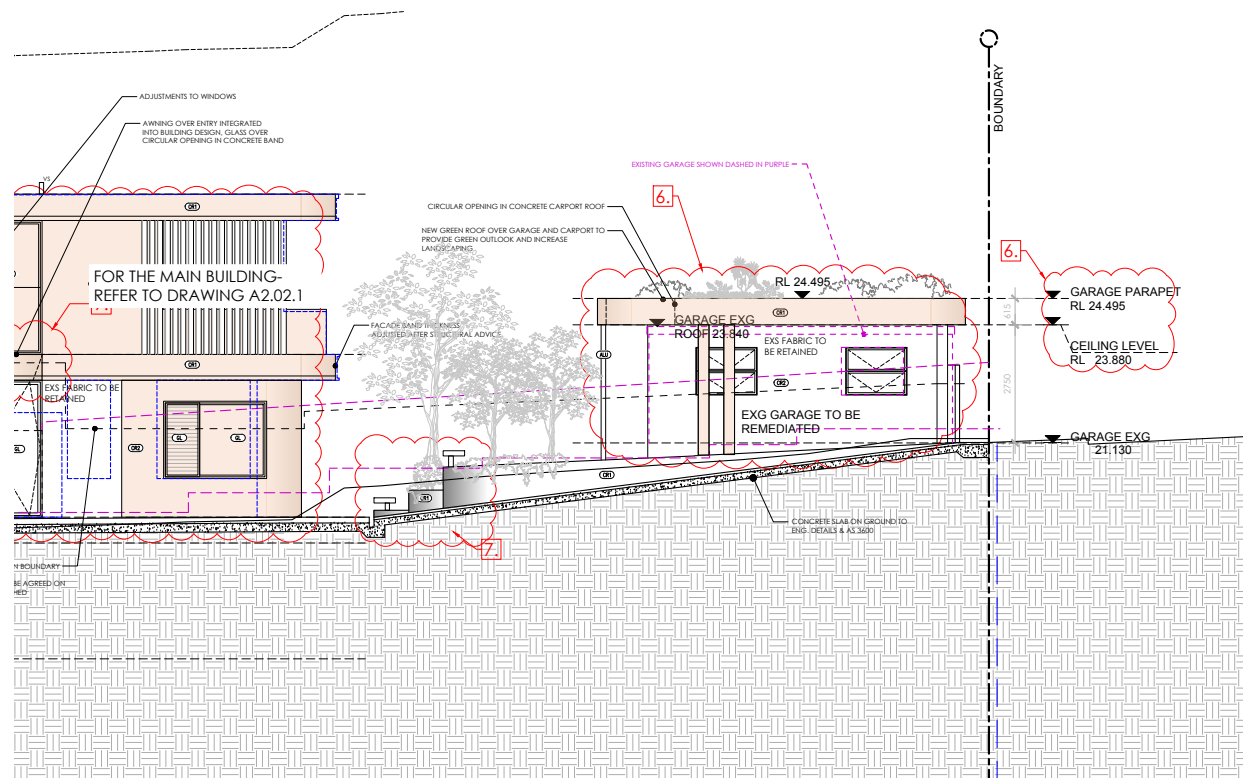




LIST OF AMENDMENTS

1. RECONFIGURATION AND RELOCATION OF CORE TO PROVIDE INTERNAL ACCESS TO GROUND FLOOR, IMPROVE OVERALL LAYOUT AND CIRCULATION SPACE FOR BETTER ACCESSIBILITY, WITH SUBSEQUENT WINDOW AMENDMENTS TO LAYOUT AND WINDOWING.
2. AS PER STRUCTURAL AND DRAINAGE ENGINEER'S ADVICE, SOME WALL AND FLOOR ELEMENTS ARE PROPOSED TO BE RECONSTRUCTED AND/OR DRAINAGE TO BE RECONSTRUCTED TO ENSURE DRAINAGE AND ADEQUATE DRAINAGE TO MITIGATE DAMP AND MOISTURE ISSUES IN THE EXISTING BUILDING.
3. DUE TO REQUIRED THICKNESS OF STRUCTURAL BEAMS AND SLAB OF BALCONIES, THE GROUND FLOOR IS LOWERED BY 190MM TO MAINTAIN 2.7M CEILINGS IN HABITABLE ROOMS AT G/F IN ACCORDANCE WITH APPROVAL SUBSEQUENT CHANGES TO EXISTING SEAMS.
4. DRAINAGE OVERALL DESIGN TO INCLUDE CURVED GARDEN AND MANDATORY INCLUDING WINDOW AMENDMENTS TO INTERNAL LAY-OUT, SLIGHT CHANGE OF CURVED WALLS/BALCONIES ROOF, NO IMPACT TO VIEW OR VESIBILITIES.
5. ADJUSTMENTS TO SOME WINDOWS AND PRIVACY SCREENS DUE TO THE ABOVE CHANGES.
6. CARPORT AND GARAGE ROOF REDESIGNED TO BE IN WITH THE MAIN BUILDING DESIGN AND A GREEN ROOF IS ADDED TO BOOST ANNUITY BY PROVIDING A GREEN OUTLOOK AND INCREASE LANDSCAPING ON THE UPGRADE & STRETCH CROSS OVER & BACK TO COUNCIL'S REQUIREMENTS.
7. ADJUSTMENTS TO GARDEN WALLS FOR A BETTER LEVEL TRANSITION.
8. FLUES FOR FIREPLACES INTRODUCED AND SLIGHT REDLOCATED AND MADE CIRCULAR.
9. DESIGN OF AWNING TO SIDE BOUNDARY.
10. SERVICES INCLUDING A/C, HOT WATER TO BE UPGRADED AND LOCATED ALONG THE WESTERN BOUNDARY TO COMPLY WITH CURRENT REGULATIONS.
11. FACADE BANDS MADE CONSISTENT IN WORK AND HEIGHT, ALL WITHIN APPROVED ENVELOPE OF ROOF OVER.

	EXISTING WALLS TO BE RETAINED		EXISTING FABRIC TO BE RETAINED (ELEVATIONS ONLY)
	PROPOSED (WALLS ONLY)		PROPOSED WALLS (ELEVATIONS ONLY)

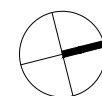


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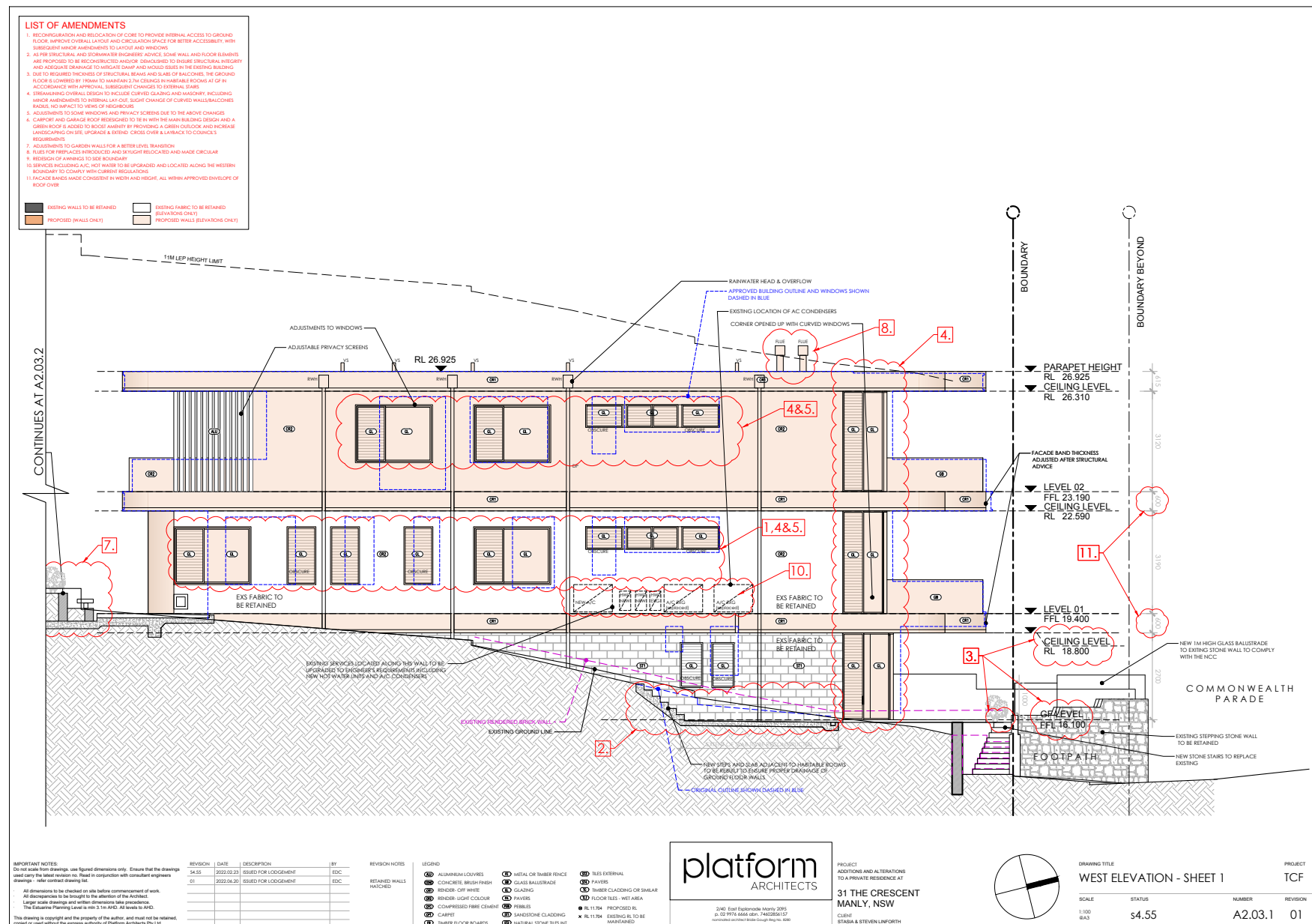
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14.55	2022.02.20	ISSUED FOR LODGEMENT	EDC
01	2022.06.20	ISSUED FOR LODGEMENT	EDC

REVISION NOTES
RETAINED WALLS HATCHED

LEGEND		
 ALUMINUM LOUVERS	 METAL OR TIMBER FENCE	 TILES EXTERNAL
 CONCRETE, BRUSH FINISH	 GLASS BALUSTRADE	 PAVERS
 RENDER, OFF WHITE	 CLADDING	 TIMBER CLADDING OR SIMILAR
 RENDER, LIGHT COLOUR	 PAVERS	 FLOOR TILES - WET AREA
 COMPRESSED FIBRE CEMENT	 PEBBLES	 FLOOR TILES - WET AREA
 CARPET	 SANDSTONE CLADDING	 FLOOR TILES - WET AREA
 TIMBER FLOOR BOARDS	 NATURAL STONE TILES INT.	 FLOOR TILES - WET AREA
		 FLOOR TILES - WET AREA
		 FLOOR TILES - WET AREA
		 FLOOR TILES - WET AREA
		 FLOOR TILES - WET AREA
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		 FLOOR TILES - WET AREA



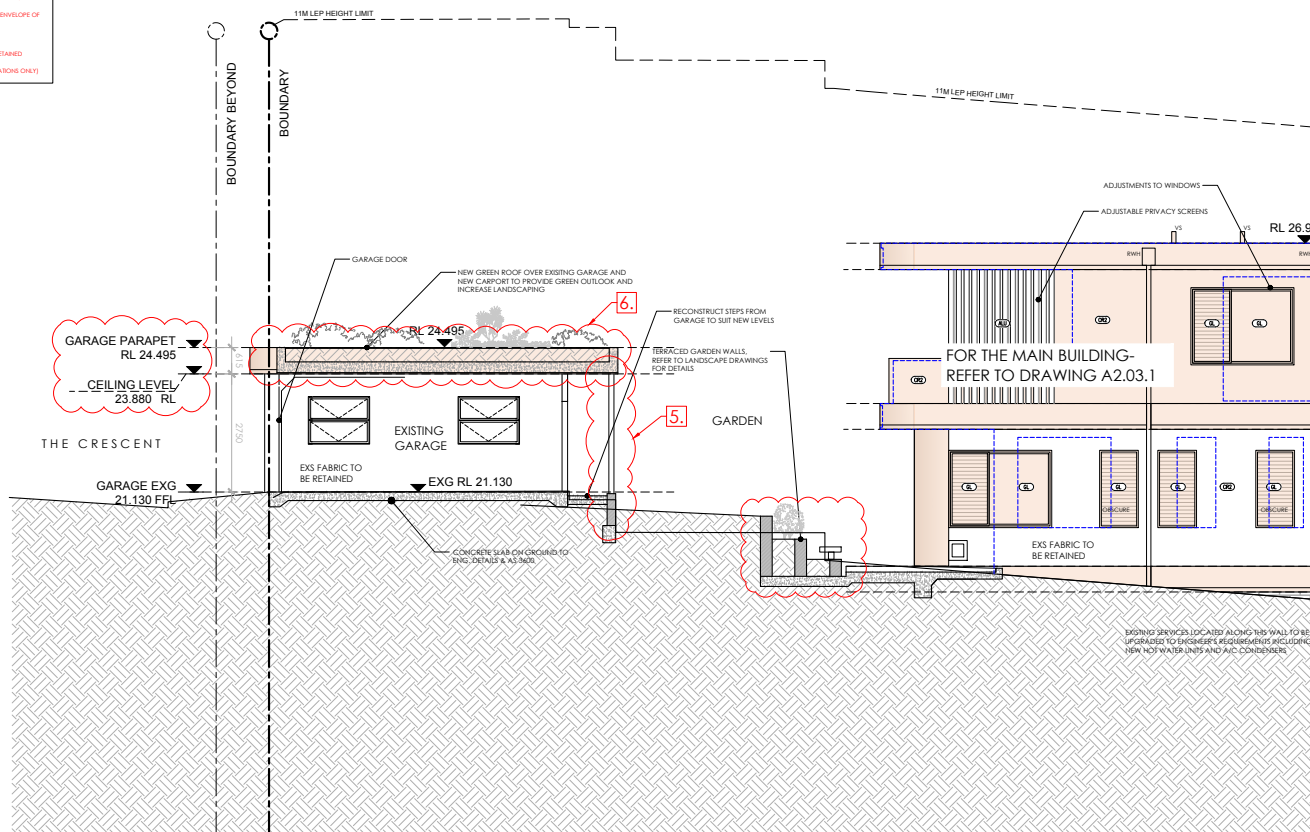
DRAWING TITLE			PROJECT
EAST ELEVATION - SHEET 2			TCF
SCALE	STATUS	NUMBER	REVISION
1:100 @A3	\$4.55	A2.02.2	01



LIST OF AMENDMENTS

1. RECONFIGURATION AND RELOCATION OF CORE TO PROVIDE INTERNAL ACCESS TO GROUND FLOOR, IMPROVE OVERALL LAYOUT AND CIRCULATION SPACE FOR BETTER ACCESSIBILITY, WITH SUBSEQUENT WINDOW AMENDMENTS TO LAYOUT AND WINDOW.
2. AS PER STRUCTURAL AND DRAINAGE ENGINEER ADVICE, SOME WALL AND FLOOR ELEMENTS ARE PROPOSED TO BE RECONSTRUCTED AND/OR DRAINAGE TO BE RECONSTRUCTED TO ENSURE STRUCTURAL INTEGRITY AND ADEQUATE DRAINAGE TO MITIGATE DAMP AND MOIST ISSUES IN THE EXISTING BUILDING.
3. DUE TO REQUIRED THICKNESS OF STRUCTURAL BEAM AND SLAB OF BALCONY, THE GROUND FLOOR IS LOWERED BY 190MM TO MAINTAIN 2.7M CEILINGS IN HABITABLE ROOMS AT G/F IN ACCORDANCE WITH APPROVAL. SUBSEQUENT CHANGES TO EXTERNAL STAIRS.
4. DRAINAGE OVERALL DESIGN TO INCLUDE CURVED GARDEN AND HANDSOME INCLUDING WINDOW AMENDMENTS TO INTERNAL LAY-OUT, SLIGHT CHANGE OF CURVED WALLS/BALCONIES ABOVE, NO IMPACT TO VIEW OF NEIGHBOURS.
5. ADJUSTMENTS TO SOME WINDOWS AND PRIVACY SCREENS DUE TO THE ABOVE CHANGES.
6. CARPORT AND GARAGE ROOF REDESIGNED TO BE IN WITH THE MAIN BUILDING DESIGN AND A GREEN ROOF IS ADDED TO BOOST AMENITY BY PROVIDING A GREEN OUTLOOK AND INCREASE LANDSCAPING ON SITE. UPGRADE & STRETCH CROSS OVER & BACK TO COUNCIL'S REQUIREMENTS.
7. ADJUSTMENTS TO GARDEN WALLS FOR A BETTER LEVEL TRANSITION.
8. FLUES FOR FIREPLACES INTRODUCED AND SLIGHT REDLOCATED AND MADE CIRCULAR.
9. DESIGN OF AWNINGS TO SIDE BOUNDARY.
10. SERVICES INCLUDING A/C, HOT WATER TO BE UPGRADED AND LOCATED ALONG THE WESTERN BOUNDARY TO COMPLY WITH CURRENT REGULATIONS.
11. FACADE RANDED MADE CONSISTENT IN WORK AND HEIGHT, ALL WITHIN APPROVED ENVELOPE OF ROOF OVER.

	EXISTING WALLS TO BE RETAINED		EXISTING FABRIC TO BE RETAINED (ELEVATIONS ONLY)
	PROPOSED (WALLS ONLY)		PROPOSED WALLS (ELEVATIONS ONLY)



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REVISION	DATE	DESCRIPTION	BY
S4.55	2022.02.20	ISSUED FOR LODGEMENT	EDC
01	2022.06.20	ISSUED FOR LODGEMENT	EDC

REVISION NOTES
RETAINED WALLS
HATCHED

LEGEND	
	ALUMINUM LOUVERS
	CONCRETE BRICK PAVING
	RENDER - OFF WHITE
	RENDER - LIGHT COLOUR
	COMPRESSED FIBRE CEMENT
	CARPET
	TIMBER FLOOR BOARDS
	METAL OR TIMBER FENCE
	GLASS BALUSTRADE
	GLAZING
	PAVERS
	PEBBLES
	SANDSTONE CLADDING
	NATURAL STONE TILES INT.
	TILES EXTERNAL
	PAVERS
	TIMBER CLADDING OR SIMILAR
	FLOOR TILES - WET AREA
	PROPOSED R.
	EXISTING R. TO BE MAINTAINED

**platform
ARCHITECTS**
2/40 East Esplanade Manly 2005
P.O. BOX 976 Manly NSW 1585
MANLY (02) 9371 8000 / 0400 600 600

PROJECT
ADDITIONS AND ALTERATIONS
TO A PRIVATE RESIDENCE AT
**31 THE CRESCENT
MANLY, NSW**
CLIENT
STARRA & STEVEN LINFORTH

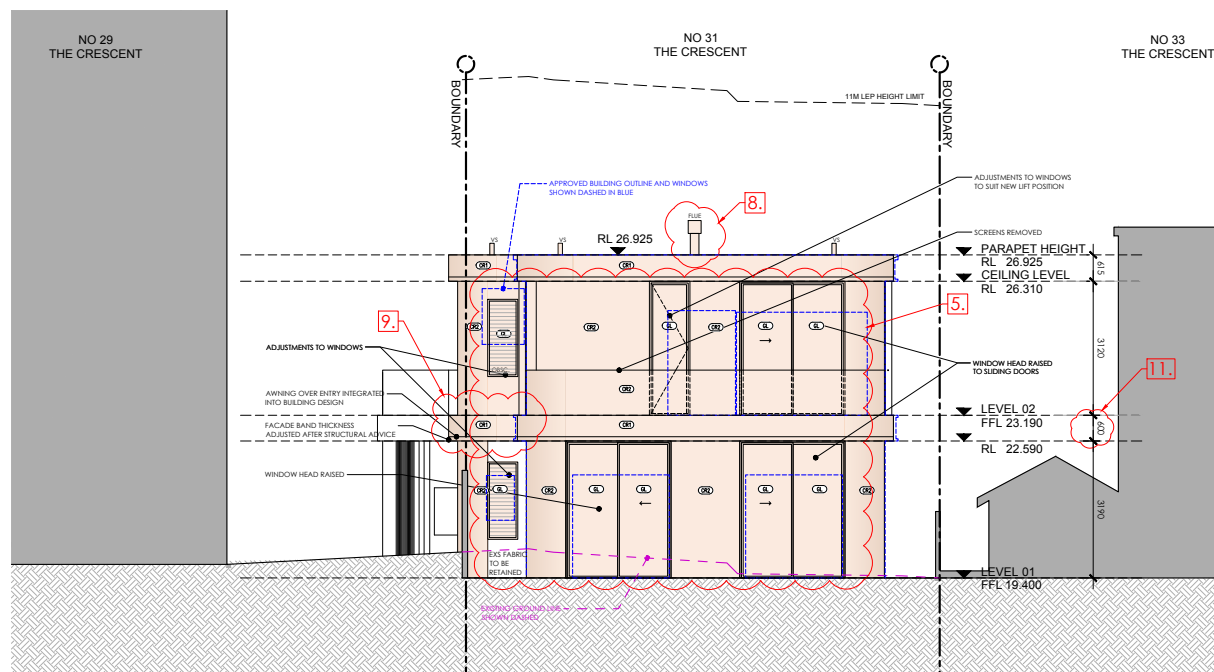


DRAWING TITLE	STATUS	NUMBER	REVISION
WEST ELEVATION - SHEET 2	S4.55	A2.03.2	01
SCALE	1:100		
READ			

LIST OF AMENDMENTS

1. RECONFIGURATION AND RELOCATION OF CORE TO PROVIDE INTERNAL ACCESS TO GROUND FLOOR. IMPROVE OVERALL LAYOUT AND CIRCULATION SPACE FOR BETTER ACCESSIBILITY, WITH SUBSEQUENT WINDOW AMENDMENTS TO LAYOUT AND WINDOWS.
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4. DRAINAGE OVERALL DESIGN TO INCLUDE CURVED GLAZING AND HANDOVER, INCLUDING WINDOW AMENDMENTS TO INTERNAL LAY-OUT. SLIGHT CHANGE OF CURVED WALLS/BALCONIES BOLD, NO IMPACT TO VIEW OR REDUCED.
5. ADJUSTMENTS TO SOME WINDOWS AND PRIVACY SCREENS DUE TO THE ABOVE CHANGES.
6. CARPORT AND GARAGE ROOF REDESIGNED TO BE IN WITH THE MAIN BUILDING DESIGN AND A GREEN ROOF IS ADDED TO BOOST AESTHETIC BY PROVIDING A GREEN OUTLOOK AND INCREASE LANDSCAPING ON SITE. UPGRADE & EXTEND CROSS OVER & BACK TO COUNCILS REQUIREMENTS.
7. ADJUSTMENTS TO CARPORT WALLS FOR A BETTER LEVEL TRANSITION.
8. RULES FOR REPLACES INTRODUCED AND SKYLIGHT RELOCATED AND MADE CIRCULAR.
9. REDSIGN OF AWNINGS TO SIDE BOUNDARY.
10. SERVICES INCLUDING A/C, HOT WATER TO BE UPGRADED AND LOCATED ALONG THE WESTERN BOUNDARY TO COMPLY WITH CURRENT REGULATIONS.
11. FACADE BANDS MADE CONSISTENT IN WIDTH AND HEIGHT, ALL WITHIN APPROVED ENVELOPE OF ROOF OVER.

 EXISTING WALLS TO BE RETAINED	 EXISTING FABRIC TO BE RETAINED (ELEVATIONS ONLY)
 PROPOSED (WALLS ONLY)	 PROPOSED WALLS (ELEVATIONS ONLY)



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- Larger scale drawings and written dimensions take precedence.
- The Architect's drawings shall be in A3 or A4 as per the contract.
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14.55	2021.12.08	ISSUED FOR LOGGEMENT	EDC
15	2022.08.20	ISSUED FOR I.A.S.S. LOGGEMENT	EDC

REVISION NOTES
RETAINED WALLS HATCHED

LEGEND	LEGEND
 ALUMINIUM LOUVRES	 METAL OR TIMBER FENCE
 CONCRETE BRICK PIER	 GLASS BALUSTRADE
 RENDER - OFF WHITE	 GLAZING
 RENDER - LIGHT COLOUR	 PAVERS
 COMPRESSED FIBRE CONCRETE	 PORCELS
 CARPET	 SANDSTONE CLADDING
 TIMBER FLOOR BOARDS	 NATURAL STONE TILES INE

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ARCHITECTS**
2140 East Espinade, Manly, 2095
P.O. Box 978, Manly, NSW 1509
www.platformarchitects.com.au

PROJECT
ADDITIONS AND ALTERATIONS
TO A PRIVATE RESIDENCE AT
**31 THE CRESCENT
MANLY, NSW**
CLIENT
STARRA & STEVEN LINDFORTH

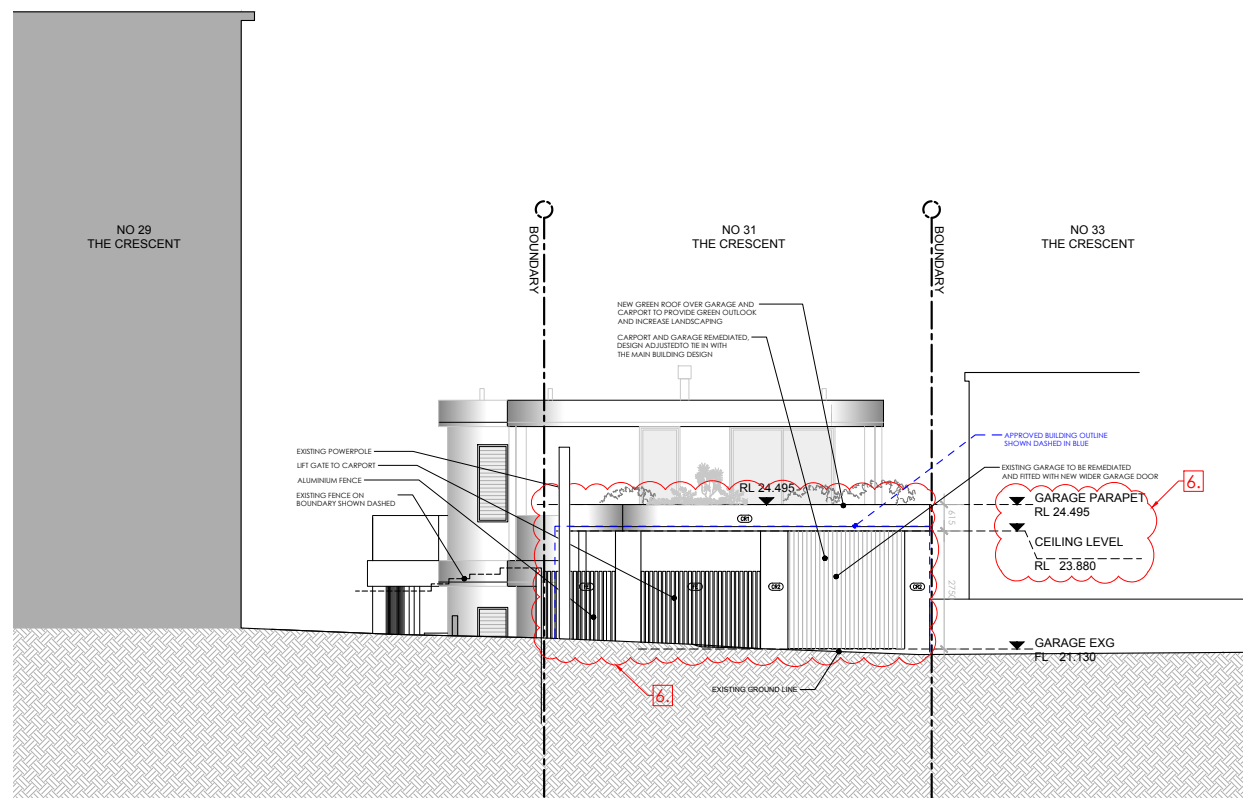


DRAWING TITLE
NORTH ELEVATION
SCALE
1:100
STATUS
s4.55

PROJECT
TCF
NUMBER
A2.04
REVISION
01

LIST OF AMENDMENTS

1. RECONFIGURATION AND RELOCATION OF CORE TO PROVIDE INTERNAL ACCESS TO GROUND FLOOR. IMPROVE OVERALL LAYOUT AND CIRCULATION SPACE FOR BETTER ACCESSIBILITY, WITH SUBSEQUENT WINDOW AMENDMENTS TO LAYOUT AND WINDOWS.
2. AS PER STRUCTURAL AND DRAINAGE ENGINEER ADVICE, SOME WALL AND FLOOR ELEMENTS ARE PROPOSED TO BE RECONFIGURED TO AVOID/ DRAINAGE TO ENSURE STRUCTURAL INTEGRITY AND ADEQUATE DRAINAGE TO MITIGATE DAMP AND MOULD ISSUES IN THE EXISTING BUILDING.
3. DUE TO REQUIRED THICKNESS OF STRUCTURAL BEAMS AND SLAB ON BALCONIES, THE GROUND FLOOR IS LOWERED BY 190MM TO MAINTAIN 2.7M CEILINGS IN HABITABLE ROOMS AT G/F IN ACCORDANCE WITH APPROVAL. SUBSEQUENT CHANGES TO EXTERIOR STAIRS.
4. DRAINAGE OVERALL DESIGN TO INCLUDE CURVED SLABING AND HANDRAIL, INCLUDING WINDOW AMENDMENTS TO INTERNAL LAY-OUT. SLIGHT CHANGE OF CURVED WALL/BALCONIES RAILING AND STRENGTHENING UP OF KITCHEN WALLS ON LEVEL 1, NO IMPACT TO VIEW OF NEIGHBOURS.
5. ADJUSTMENTS TO SOME WINDOWS AND PRIVACY SCREENS DUE TO THE ABOVE CHANGES.
6. CARPORT AND GARAGE ROOF REDESIGNED TO TIE IN WITH THE MAIN BUILDING DESIGN AND A GREEN ROOF IS ADDED TO BOOST HABITAT BY PROVIDING A GREEN OUTLOOK AND INCREASE LANDSCAPING ON SITE. UPGRADE & EXTEND CROSS OVER & LAYBACK TO COUNCIL'S REQUIREMENTS.
7. ADJUSTMENTS TO GARDEN WALLS FOR A BETTER LEVEL TRANSITION.
8. FENCE FOR PERIMETER REDUCED AND SLIGHTLY RELOCATED AND MADE CIRCULAR.
9. REDESIGN OF FENCING TO SEE BOUNDARY.
10. SERVICES INCLUDING A/C, HOT WATER TO BE UPGRADED AND LOCATED ALONG THE WESTERN BOUNDARY TO COMPLY WITH CURRENT REGULATIONS.
11. FACADE BANDS MADE CONSISTENT IN WIDTH AND HEIGHT. ALL WITHIN APPROVED ENVELOPE OF ROOF OVER.



IMPORTANT NOTES:
Do not scale from drawings. Use figured dimensions only. Ensure that the drawings used carry the latest revision no. Read in conjunction with consultant engineers drawings - refer contract drawing list.
- All dimensions to be checked on site before commencement of work.
- All discrepancies to be brought to the attention of the Architect.
- Larger scale drawings and written dimensions take precedence.
- The Architect's drawings shall prevail in the event of any conflict.
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REVISION	DATE	DESCRIPTION	BY
34.55	2022.02.20	ISSUED FOR LODGEMENT	EDC

REVISION NOTES

- ALUMINIUM LOUVRES - CONCRETE BRUSH FINISH - RENDER - OFF WHITE - RENDER - LIGHT COLOUR - COMPRESSED FIBRE CONCRETE - CARPET - TIMBER FLOOR BOARDS	- METAL OR TIMBER FENCE - GLASS BALUSTRADE - GLAZING - PAVERS - POBBLES - SANDSTONE CLADDING - NATURAL STONE TILES IN	- TILES EXTERNAL - PAVERS - FLOOR CLADDING OR SIMILAR - FLOOR TILES - WET AREA - PROPOSED RL - EXISTING RL TO BE MAINTAINED
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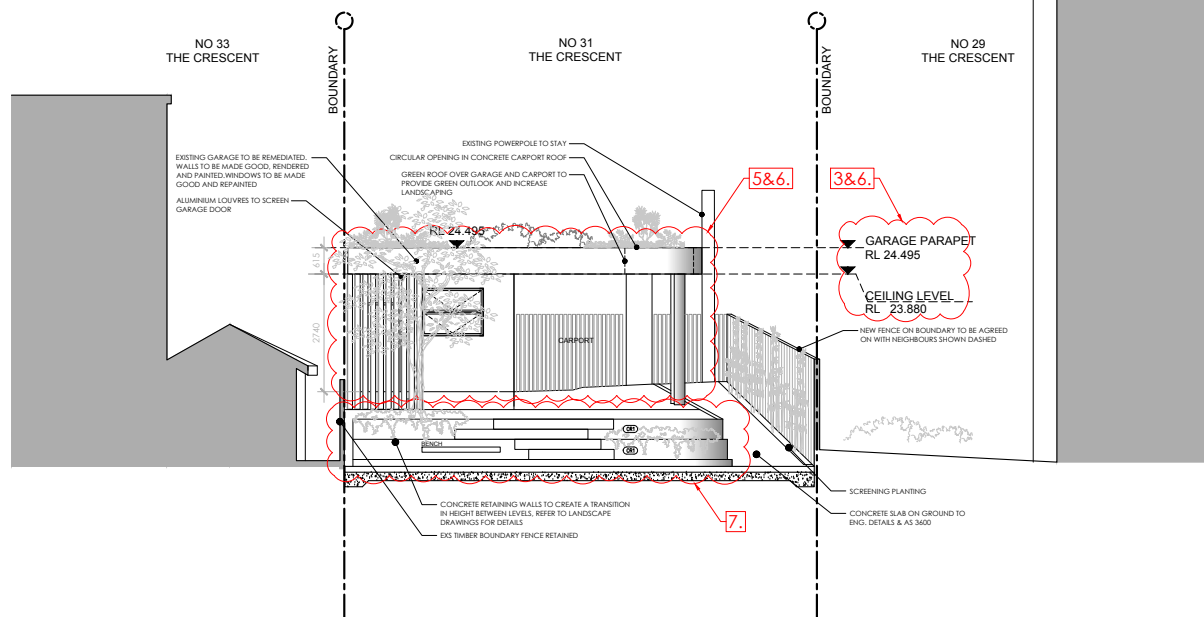
PROJECT
ADDITIONS AND ALTERATIONS
TO A PRIVATE RESIDENCE AT
**31 THE CRESCENT
MANLY, NSW**
CLIENT
STARR & STEVEN LINFORTH



DRAWING TITLE	STATUS	NUMBER	REVISION
NORTH ELEVATION - STREET	S4.55	A2.05	S4.55
SCALE	1:100		

LIST OF AMENDMENTS

1. RECONFIGURATION AND RELOCATION OF CORE TO PROVIDE INTERNAL ACCESS TO GROUND FLOOR. IMPROVE OVERALL LAYOUT AND CIRCULATION SPACE FOR BETTER ACCESSIBILITY, WITH SUBSEQUENT WINDOW AMENDMENTS TO LAYOUT AND WINDOW.
2. AS PER STRUCTURAL AND DRAINAGE ENGINEER ADVICE, SOME WALL AND FLOOR ELEMENTS ARE PROPOSED TO BE RECONSTRUCTED AND/OR DRAINAGE TO BE RECONSTRUCTED TO ENSURE STRUCTURAL INTEGRITY AND ADEQUATE DRAINAGE TO MITIGATE DAMP AND MOULD ISSUES IN THE EXISTING BUILDING.
3. DUE TO REQUIRED THICKNESS OF STRUCTURAL BEAMS AND SLAB OF BALCONY, THE GROUND FLOOR IS LOWERED BY 190MM TO MAINTAIN 2.7M CEILINGS IN HABITABLE ROOMS AT G/F IN ACCORDANCE WITH APPROVAL. SUBSEQUENT CHANGES TO EXTERNAL STAIRS.
4. DRAINAGE OVERALL DESIGN TO INCLUDE CURVED GARDEN AND MANDATORY, INCLUDING MINOR AMENDMENTS TO INTERNAL LAY-OUT. SLIGHT CHANGE OF CURVED WALLS/BALCONIES ROADS AND STRENGTHENING UP OF KITCHEN WALL ON LEVEL 1, NO IMPACT TO VIEW OF NEIGHBOURS.
5. ADJUSTMENTS TO SOME WINDOWS AND PRIVACY SCREENS DUE TO THE ABOVE CHANGES.
6. CARPORT AND GARAGE ROOF REDESIGNED TO BE IN WITH THE MAIN BUILDING DESIGN AND A GREEN ROOF IS ADDED TO BOOST AMBITY BY PROVIDING A GREEN OUTLOOK AND INCREASE LANDSCAPING ON SITE. UPGRADE & EXTEND CROSS OVER & LAYBACK TO COUNCIL'S REQUIREMENTS.
7. ADJUSTMENTS TO GARDEN WALLS FOR A BETTER LEVEL TRANSITION.
8. FLES FOR REPLACES INTRODUCED AND SKYLIGHT RELOCATED AND MADE CIRCULAR.
9. DESIGN OF ANNEXES TO SEE BOUNDARY.
10. SERVICES INCLUDING A/C, HOT WATER TO BE UPGRADED AND LOCATED ALONG THE WESTERN BOUNDARY TO COMPLY WITH CURRENT REGULATIONS.
11. FACADE BANDS MADE CONSISTENT IN WIDTH AND HEIGHT, ALL WITHIN APPROVED ENVELOPE OF ROOF OVER.



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All dimensions to be checked on site before commencement of work.
All discrepancies to be brought to the attention of the Architect.
Larger scale drawings and written dimensions take precedence.
The Executive Planning Level is set at 5.1m AHD. All levels in AHD.
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REVISION	DATE	DESCRIPTION	BY
14.55	2022.02.23	ISSUED FOR LODGMENT	EDC

REVISION NOTES

LEGEND

- ALUMINIUM LOUVRES
- CONCRETE BRUSH FINISH
- RENDER - OFF WHITE
- RENDER - LIGHT COLOUR
- COMPRESSED FIBRE CONCRETE
- CARPET
- TIMBER FLOOR BOARDS
- METAL OR TIMBER FENCE
- GLASS BALUSTRADE
- GLAZING
- PAVERS
- PERGOLA
- SANDSTONE CLADDING
- NATURAL STONE TILES INT.
- TILES EXTERNAL
- PAVERS
- TIMBER CLADDING OR SIMILAR
- FLOOR TILES - WET AREA
- PROPOSED RL
- EXISTING RL TO BE MAINTAINED



PROJECT
ADDITIONS AND ALTERATIONS
TO A PRIVATE RESIDENCE AT
**31 THE CRESCENT
MANLY, NSW**
CLIENT
STARRA & STEVEN LINORTH



DRAWING TITLE

SOUTH ELEVATION (GARAGE)

PROJECT

TCF

SCALE	STATUS	NUMBER	REVISION
1:100 8/4/2	\$4.55	A2.06	\$4.55

ITEM 3.2	DA2022/0741 - 15 CARLTON STREET MANLY - ALTERATIONS AND ADDITIONS TO AN ATTACHED DWELLING
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2022/499586
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0741 for alterations and additions to an attached dwelling on land at Lot B DP 301571, 15 Carlton Street MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0741
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot B DP 301571, 15 Carlton Street MANLY NSW 2095
Proposed Development:	Alterations and additions to an attached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Fernando Miguel Lulli Marie-Claire Lulli
Applicant:	Bradley David Dorn
Application Lodged:	16/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/05/2022 to 08/06/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 39.44%
Recommendation:	Approval
Estimated Cost of Works:	\$ 390,284.00

EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to an attached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a variation of more than 10% to Clause 4.4 Floor space ratio (FSR) of Manly Local Environmental Plan 2013. The required FSR is 0.6:1 (110.16m²), and the proposed FSR is 0.84:1 (153.6m²), presenting a variation of 39.44% (43.44m²).

The proposed development was notified in accordance with Northern Beaches Community Participation Plan (CPP) and no submissions were received.

Critical assessment issues include the Floor Space Ratio variation and subsequent Clause 4.6 variation

request. Furthermore the proposal seeks variations to the side setbacks, window setbacks, rear setbacks, and total open space controls. Notwithstanding, the variations to the controls have been assessed against the objectives of the controls and are supportable in this circumstance.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Demolition:

- Partial demolition of the rear of the attached dwelling containing the kitchen, bathroom and laundry;
- Removal of some trees to rear garden & associated landscaping;

Construction:

- Partial rebuild of the ground floor living area to the rear of the existing attached dwelling including the kitchen;
- Minor alterations to existing bedrooms and hall;
- Construction of a new first storey addition containing bedrooms, small bathroom and attic room, with a new stair for access;
- New covered deck to rear of new ground floor addition; and
- Associated landscaping to rear garden including a small garden shed.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot B DP 301571 , 15 Carlton Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Carlton Street. The site is regular in shape with a frontage of 5.12m along Carlton Street and a maximum depth of 24.325m. The site has a surveyed area of 183.6m². The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a single storey attached dwelling, and metal shed in the rear yard. The site is generally flat with no significant level changes. The site contains garden beds, grass areas, and trees. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by attached dwellings, semi-detached dwellings, detached dwelling houses, residential flat buildings, and commercial premises.

Map:



SITE HISTORY

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

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

Application History

Following the preliminary assessment of the application, additional information was requested in relation to the calculation of Clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013 and the accompanying Clause 4.6 variation request. Furthermore, clarification was sought in relation to the calculation of Clause 4.1.5.1 Total Open Space and Landscaped Area of Manly Development Control Plan 2013. Subsequently, the applicant provided amended Plans - Master Set, amended Statement of Environmental Effects, and an amended Clause 4.6 variation request.

Furthermore, the applicant spoke with Council's Heritage Officer in relation to the initial comments and recommended conditions. As such, Council's Heritage Officer provided amended comments and amended conditions after discussing the proposal with the applicant.

The amended documentation did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> 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 clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the calculation of Clause 4.4 Floor space ratio of Manly Local Environmental Plan 2013 and the accompanying Clause 4.6 variation request. Furthermore, clarification was sought in relation to the calculation of Clause 4.1.5.1 Total Open Space and Landscaped Area of Manly Development Control Plan 2013. Subsequently, the applicant provided amended Plans - Master Set, amended Statement of Environmental Effects, and an amended Clause 4.6 variation request. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> 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. <u>Clause 69</u> 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. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development

Section 4.15 Matters for Consideration	Comments
environmental impacts on the natural and built environment and social and economic impacts in the locality	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 25/05/2022 to 08/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions 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
Landscape Officer	The development application is for alterations and additions to the existing semi detached dwelling, as described and illustrated in the reports and plans. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping No significant trees are proposed to be removed to facilitate the works. Two <i>Dracaena</i> and one <i>Cyathea australis</i> are proposed to be removed, however are exempt by size or species, and do not require consent for removal. All other trees are proposed to be retained and as such shall be protected, subject to the imposed conditions. Majority of the works will be contained within the existing dwelling footprint, and within the rear setback the removal of impervious materials is proposed, which is supported. Any stormwater works within the tree protection zone of trees to be retained shall comply with the tree protection requirements. Planting is only shown indicatively, and any planting installed shall meet the requirements outlined in the conditions of consent.
NECC (Bushland and Biodiversity)	The subject site is not located within the Manly Biodiversity Map area nor does it contain threatened species habitat. There are therefore no objections to the proposal.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The front of the house and part of the rear yard are within the Medium Flood Risk Precinct, but the whole property is outside the 1% AEP flood extent. The proposed development includes the addition of a second storey. At ground level, the front of the house would remain essentially the same, but the rear of the house and awned area would be demolished and rebuilt. The proposed extension for the living area at the rear of the house is just outside the Medium Flood Risk Precinct extent. There are no applicable flood related development controls.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is located in the C1 - Pittwater Road Conservation Area and within the vicinity of heritage items, all listed in Schedule 5 of Manly Local Environmental Plan 2013: Item I164 - Natural escarpment - Kangaroo Reserve Park Item I201 - House - 77 Pittwater Road

Internal Referral Body	Comments															
	Details of heritage items affected Details of the Conservation Area and the heritage items as contained within the Manly Heritage Inventory are: C1 - Pittwater Road Conservation Area <u>Statement of Significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. <u>Physical Description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed 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. Item I201 - House <u>Statement of Significance:</u> An unusual landmark corner building in Federation Queen Anne Style. <u>Physical Description:</u> Substantial 2-storey Federation Queen Anne style house with unusual round corner tower with onion dome. Hipped and gabled roof. Tower fixtures elaborate 1920's style leadlight windows. Features a pair of oriel windows to Carlton Street elevation with gables above. First floor roughcast stuccoed, ground floor face brick. Front fence sandstone with curved pillars and picket infill. Other relevant heritage listings <table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th	No	
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	No															

Internal Referral Body	Comments
	Century Buildings of Significance
	Other
	No
	Consideration of Application
	The proposal seeks consent for alterations and additions to the Federation style semi-detached cottage. The property is not heritage listed, however, it is located within the Pittwater Road Conservation Area and in the vicinity of heritage items. The proposed ground floor alterations and the first floor addition are mainly confined to the rear of the site and not visible from Carlton Street. Consideration must be given to the roof height of the first floor addition, so that the roofline at the party wall is preserved. Therefore the upper most level of the rear roof must not be visible from the front of the dwelling and there must not be any elements visible above the ridgeline of the existing roof. The front portion of the original dwelling is retained except some minor changes to the front elevation, which includes rendering the brickwork, a new timber storage to the existing verandah and the replacement of the front door, window and the concrete roof tiles. The proposed replacement of the concrete roof tiles with terracotta tiles and the replacement of the front door and window - similar to the adjoining semi are all supported by Heritage. Replacement of the brick pier with a timber post is an improvement, however it will effect the existing symmetry with the adjoining semi and the hipped roof above the entry. It may be preferable to defer this change until such time as both semis are happy to remove the brick columns and restore original timber verandah posts. Therefore, no objections are raised on heritage grounds subject to two conditions. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? 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: 26 May 2022
	AMENDED BY: Janine Formica, Heritage Planner DATE: 22 July 2022
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the

External Referral Body	Comments
	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A449513 dated 8 March 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

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

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	6.9m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (110.16m ²)	FSR: 0.84:1 (153.6m ²)	39.44% (43.44m ²)	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
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
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (110.16m ²)
Proposed:	0.84:1 (153.6m ²)
Percentage variation to requirement:	39.44% (43.44m ²)

Assessment of request to vary a development standard:

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

130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- "The proposal meets the objectives of both the R1 general residential zone and the floor space ratio development standard as demonstrated above.
- The Manly development control plan (DCP) provides exceptions to FSR for undersized lots (clause 4.1.3.1 of the DCP) which states that: "On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a)." The minimum lot size for this site is calculated at 250m². Based on a lot size of 250m² the FSR would equate to 0.61:1. This is negligibly above the FSR allowance with this DCP

provision however is considered reasonable in this instance. The minor breach does not contribute to any unreasonable bulk and scale or visual impacts nor does it create any unreasonable amenity impacts.

- The proposed additions have been innovatively designed with regard to heritage conservation area sensitivities while ensuring appropriate levels of amenity are maintained. The additional floor space has been distributed across the ground and first floors appropriately so that it sits behind and below the existing roof ridge height to the front façade. The heritage value and amenity to neighbouring properties will not be adversely impacted with the works proposed.
- Council has applied the floor space ratio flexibly in this location and have been willing to vary the development standard. We note that 7 Carlton Street was approved with an FSR of 0.84:1 which equated to a 39.5% variation in 2019 (DA2019/0019). This variation was recommended for approval by the assessing officer and supported by the Local Planning Panel. The proposed variation for 15 Carlton Street is virtually identical. The same architect from 7 Carlton Street DA has been used for this DA and utilises the same considered design approach.

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 agreed that the proposal is subject to Clause 4.1.3.1 Exceptions to FSR for Undersized Lots under Manly Development Control Plan 2013 (MDCP 2013). As outlined under Clause 4.1.3.1 of MDCP 2013, the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3). The proposal results in a variation of 39.44% (43.44m²), and it is considered the written request has demonstrated consistency with the objectives of the FSR development standard and zone objectives. The example of No.7 Carlton Street is noted, however each application is assessed independently based on the site conditions, and on its own merits. Notwithstanding, it is considered that the applicant has demonstrated that proposal has incorporated good design that responds appropriately to the amenity of the built environment and is appropriate within the general residential zoning.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The bulk and scale of the development is consistent with the existing and desired streetscape the includes attached dwellings along Carlton Street. The existing front facade is retained, with the proposed first floor setback from the front boundary line to ensure streetscape character is retained.

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

Comment:

There are no important landscape or townscape features that will be unreasonably impacted by the proposed works, as the density and bulk of the proposal is compliant with the height of buildings development standards, and includes increased setbacks to the new first floor to mitigate density and bulk.

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

Comment:

The proposal is setback from the front boundary line to retain the existing character of the streetscape and to ensure an appropriate visual relationship between the existing ground floor and proposed first floor.

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

Comment:

The proposal does not give rise to any adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

e) to provide for the viability of business zones and encourage the development,

expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposal will be continually used for residential use. Therefore this objective is not relevant in this instance.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed works include alterations and additions to the existing attached dwelling that will maintain the existing residential use.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the residential use of the attached dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

The existing residential land use is maintained and is appropriate to meet the needs of the residents.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the 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, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 183.6m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.5m (based on no gradient)	6.2m	-	Yes
	W: 6.5m (based on no gradient)	6.2m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.6m	-	Yes
	Parapet Height: 0.6m	0.3m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Ground Floor: unaltered, consistent with prevailing setback First Floor: 5.4m-6.1m, consistent with prevailing setback	- -	Yes Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.07m (based on 1/3 wall height)	Ground Floor: 0.0m-0.9m (existing) First Floor: 0.0m-0.9m	56.52%-100% (1.17m-2.07m) 56.52%-100% (1.17m-2.07m)	No No
	W: 2.07m (based on 1/3 wall height)	Ground Floor: 0.0m First Floor: 0.0m	100% (2.07m) 100% (2.07m)	No No
	Windows: 3m	0.9m-1.0m	66.67%-70% (2.0m-2.1m)	No
4.1.4.4 Rear Setbacks	8m	9.57m (Dwelling House) 0m (Garden Shed)	- 100% (8m)	Yes No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (100.98m ²)	23.09% (42.4m ²)	58.01% (58.58m ²)	No
	Open space above ground 25% of total open space (13.23m ²)	0%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (14.84m ²)	67.69% (28.7m ²)	-	Yes
	1 native tree	>1 tree (existing)	-	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces (unaltered)	-	N/A

Compliance Assessment

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

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly Local Environmental Plan 2013. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary.

The subject site is 183.6m² that equates to a FSR requirement of 0.6:1 (110.16m²) under Manly Local Environmental Plan 2013. However, under Clause 4.1.3.1 Exceptions to FSR for Undersized Lots of Manly Development Control Plan 2013, the subject site is an 'undersized allotment' as the subject site is located in Area C on the LEP LSZ map. Therefore, when calculating the FSR against a site area of 250m², the FSR requirement equates to 0.6:1 (150m²). The proposed FSR is 153.6m² and as such would result in a minor variation of 2.34% (3.6m²) based on the undersized lot allowable floor space ratio. Notwithstanding, the proposal has been assessed under Clause 4.6 within the report and in summary the proposal is supportable.

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

Description of non-compliance

Under Clause 4.1.4.2 of Manly Development Control Plan 2013, setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. In this instance the wall height is 6.5m, requiring a side setback of 2.07m for the eastern and western facade. The proposed eastern side setback is nil to 0.9m (existing) for the ground floor and nil to 0.9m for the first floor. The proposed western side setback is a nil setback for both the ground floor and first floor.

Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3m from side boundaries. The proposal presents new windows to the ground floor that are setback 0.9m to the eastern side boundary and new windows to the first floor that are setback 1.0m from the eastern side boundary.

Under Clause 4.1.4.4 of MDCP 2013, the rear setback requirements state that the distance between any part of a building and the rear boundary must not be less than 8m. The proposed rear setback to the dwelling house is 9.57m, however the proposed garden shed has a nil setback to the rear boundary line.

The variation to the side setback requirements, window setback requirements, and rear setback requirements are supportable in this circumstance as the objectives of the control have been met as outlined below.

Merit consideration:

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

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

Comment:

The existing streetscape has been maintained in this instance, as the proposed first floor has been appropriately setback from the front boundary line. The proposal is consistent with the desired spatial proportions of the street, and the street edge along Carlton Street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal ensure local amenity is maintained by providing appropriate privacy measures to adjoining properties. The proposal includes new windows along the eastern facade only, as the western facade abuts the adjoining attached dwelling. The windows along the ground floor will not give rise to unreasonable privacy impacts as the site is separated by an existing boundary fence and proposed supplementary plantings to ensure privacy is maintained. The windows along the first floor include privacy screens and vertical reveals to ensure no unreasonable privacy impacts. The proposal is accompanied with shadow diagrams that demonstrate equitable access to light, sunshine, and air movement. The proposal does not result in any adverse view impacts to and from public and private spaces. The streetscape character is maintained in this instance and is consistent with the attached dwellings located along Carlton Street. Lastly, the proposal will not alter any traffic conditions as a result of the proposal.

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

Flexibility is afforded in this circumstance, as the side setback, window setback, and rear setback variations will not result in unreasonable amenity impacts to adjoining sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development results in an more than compliant landscaped area that includes plantings, deep soil zones, and vegetation. The subject site does not detract from the context of the site and the site does not adjoin open space lands, national parks, or urban bushland.

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

The subject site is not located in bush fire prone land and therefore this objective is not relevant.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area 3. As such, at least 55% (1100.98m²) of the site is to be open space and at least 35% (14.84m²) of the open space to be landscaped area. The proposed development results in a numerically non-compliant total open space of 23.09% (42.4m²), presenting a variation to this control by 58.01% (58.58m²).

The proposal achieves compliance with the landscaped area with a total of 67.69% (28.7m²) provided.

In this instance, the variation to the total open space is considered to be supportable as the objectives of the control have been met as outlined below.

Merit consideration:

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

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

Comment:

The proposal retains existing landscape features and vegetation and the proposal does not result in the removal of any significant vegetation.

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

Comment:

The proposal maximises soft landscaped areas and open space at ground level and provides a more than compliant landscaped area. The proposal includes the addition of lawn areas, and plantings to enhance the existing vegetation on site.

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

Comment:

The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. The proposed works are setback from the front boundary line and will therefore not result in unacceptable changes to the existing streetscape.

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

Comment:

The proposed development provides increased areas of soft open spaces to provide onsite water infiltration to minimise stormwater runoff.

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

Comment:

The proposed development is not likely to lead to the significant spread of weeds, or degradation of private open space. Council's Landscape Officer has recommended an on-going Landscape Maintenance condition stating, all weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

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

Comment:

Council's Bushland and Biodiversity Officer has reviewed the application and has no objections to the proposal, noting that the proposed development is not likely to affect any existing wildlife habitat and potential for wildlife corridors.

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

The subject site does not currently provide any parking spaces and no new parking spaces are proposed. The proposal does not amend the frontage of the ground floor and the existing front setback does not allow for the required dimensions for a car space on the subject site. Therefore, whilst the proposal is numerically inconsistent with Schedule 3 of MDCP 2013 that requires 2 parking spaces, the provision of car parking within the subject site is not achievable within the existing site context.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$3,903 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$390,284.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

This proposal, for Alterations and additions to a semi-detached dwelling has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to Clause 4.4 Floor space ratio development standard under Manly Local Environmental Plan 2013.

The development application was notified in accordance with Northern Beaches Community Participation Plan (CPP) and no submissions were received.

The critical assessment issues surrounding the variation request for the floor space ratio development standard under Manly Local Environmental Plan 2013 has been assessed. The Clause 4.6 variation request has demonstrated compliance with the standards are unreasonable and unnecessary and sufficient planning grounds have justified the contravention.

The variation to the side setbacks, window setbacks, rear setbacks, and total open space controls under Manly Development Control Plan 2013 have been assessed against the objectives of the controls. In this regard, the objectives of the controls have been satisfactorily met and the variations are supportable.

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.

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0741 for Alterations and additions to an attached dwelling on land at Lot B DP 301571, 15 Carlton Street, 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
Site Plan/Site Analysis Plan - DA1.00, Rev A	28 January 2022	Dorn Design
Level 00 Plan - DA2.00, Rev B	27 July 2022	Dorn Design
Level 01 Plan - DA2.01, Rev A	28 January 2022	Dorn Design
Roof Plan - DA2.02, Rev A	28 January 2022	Dorn Design
Elevations North & East - DA5.00, Rev B	27 July 2022	Dorn Design
Elevations South & West - DA5.01, Rev A	28 January 2022	Dorn Design
Sections - DA6.00, Rev A	28 January 2022	Dorn Design

Engineering Plans		
Drawing No.	Dated	Prepared By
Notes and Standard Details - Sheet 1, Issue A	18 January 2022	Nitma Consulting
Erosion & Sediment Control Plan - Sheet 2, Issue A	18 January 2022	Nitma Consulting
Drainage Plan - Sheet 3, Issue A	18 January 2022	Nitma Consulting
Pit Details - Sheet 4, Issue A	18 January 2022	Nitma Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

BASIX Certificate (No.A449513)	8 March 2022	Bradley Dorn
Flood Report	28 April 2022	Taylor Consulting
Heritage Report	February 2022	Lynch Heritage Consulting
Tree Schedule with Plan Report	17 August 2021	Raintree Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Report	March 2022	Dorn Design

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	21 June 2022

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a

safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,902.84 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 \$390,284.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Photographic Heritage Record**

A simple photographic heritage record of the site is to be made of all buildings and structures, as a record of the site prior to works.

This record must be submitted and approved by the Principal Certifying Authority prior to commencement of any demolition or works on-site.

This photographic record should be made using digital technology 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;
- Existing plans of any buildings (floor plans and elevations);
- Photographs of all elevations, interiors and key features (including gardens, fences, architectural details such as windows, joinery etc.) as well as a number of contextual shots depicting the sites surrounding environment.

Note: All images should be cross-referenced to a catalogue sheet.

Reason: To provide an historical photographic record of the site, including any buildings and landscape elements, prior to any works.

8. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

9. **Ceiling Height**

The ceiling height to the Bedroom 3 (Attic) is required to comply with Part 3.8.2, Volume 2 of the BCA. Details being provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity.

10. **No visible elements above roof ridgeline**

The roof of the first floor addition must not have any visible elements above the ridge level of the main roof. This includes no capping or exposed flashings. Details demonstrating compliance are to be submitted to the Council prior to the issue of the Construction Certificate.

Reason: To ensure that the heritage significance of the conservation area is maintained.

11. **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.

12. **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.

13. **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.

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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.

16. **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.

17. **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.

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

18. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved plans, and inclusive of the following conditions:

i) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,

Prior to the issue of an Occupation Certificate, details 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.

19. **Stormwater Drainage Disposal Certification**

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

20. **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.

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

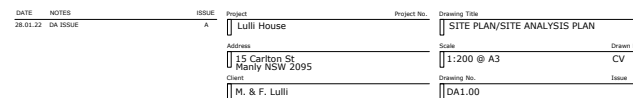
21. **Landscape Maintenance**

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

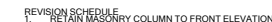
If any shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.



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Top of Roof RL 12.4
First Floor FFL RL 12.1
First Floor FFL RL 9.4
Ground Floor FFL RL 9.1
ex. Ground Level FFL RL 6.4

REAR LANEWAY

ex. chimney RL 14.43 sz
METAL CLADDING TO DORMER ROOF
ex. roof ridge RL 12.64 sz

FIBRECEMENT WEATHERBOARD CLADDING (PAINT FINISH)
ALUMINUM SUNSHADE TO WINDOWS
NEW METAL ROOF SHEETING
EXTENT OF EXISTING DWELLING TO BE DEMOLISHED
NEW WINDOW
NEW WINDOW
NEW GLAZED DOOR
NEW WINDOW TO EXISTING OPENING
LINE OF PARAPET IN FOREGROUND SHOWN DASHED

TRANSPARENT CANOPY ROOF
EXPOSED STEEL FRAME (EPOXY PAINT FINISH)
BRICK
NEW WINDOW
NEW MASONRY WALLS (PAINT FINISH)
BOUNDARY FENCE IN FOREGROUND, TO BE RETAINED
EXTENT OF EXISTING BRICK WALL TO BE RETAINED
EXISTING WINDOWS TO BE DEMOLISHED
CLOTHES LINE

ADJACENT DWELLING NO. 11A

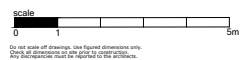
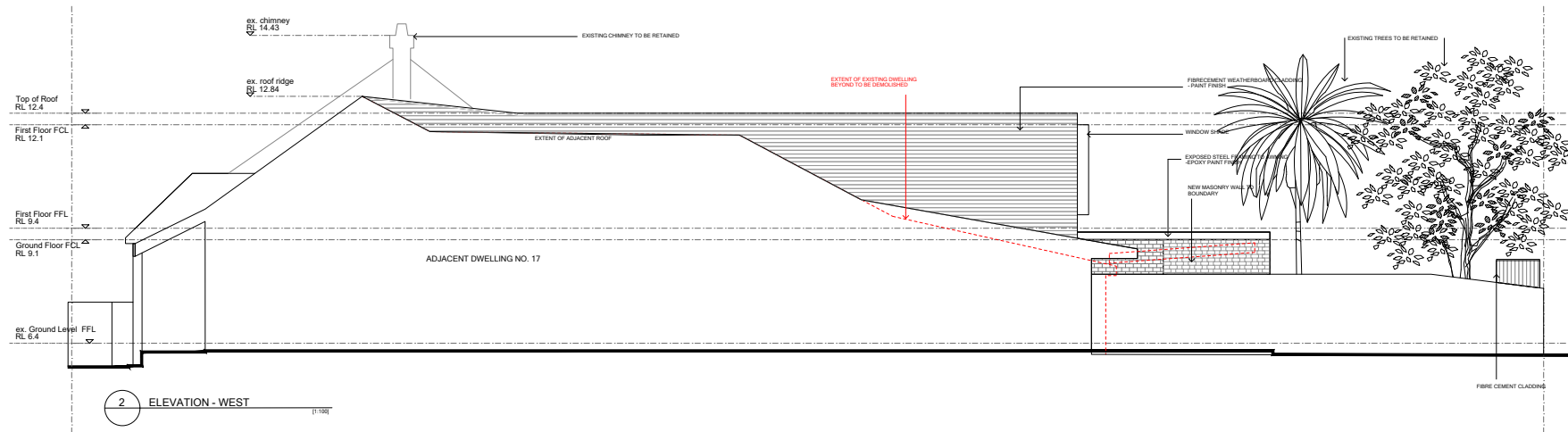
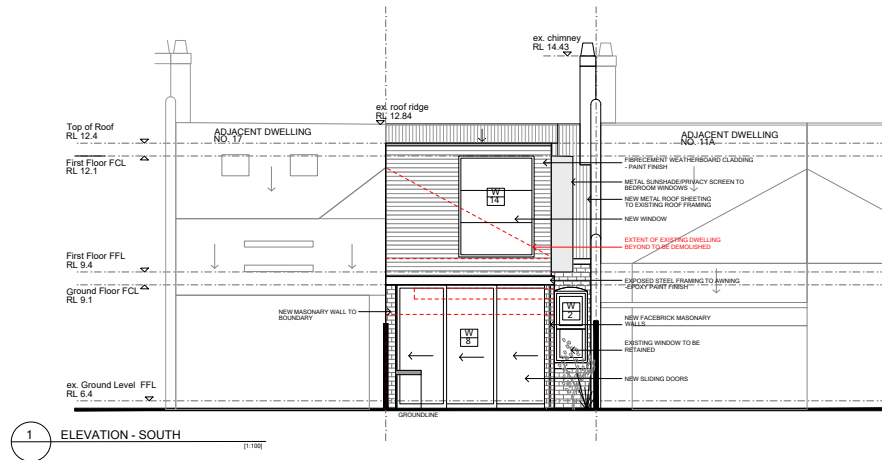
GROUNDLINE

2 ELEVATION EAST

					
FLAT GREY WEATHERED PAINT FRESH	METAL ROOF SHEETING PAINT GREY	BRICK MASONRY WALL PAINT FRESH	ALUMINUM FRAMED DOORS & WALL BLACK POWDER COAT PAINT FRESH	ROOF TILES SPLIT GREY	PAVING IRREGULAR SPLIT STONE PAVING

DATE	NOTES	I	Project	Project No.	Drawing Title	
28.03.22	DA ISSUE	A	Lullu House		ELEVATIONS NORTH & EAST	
27.07.22	DA ISSUE - HERITAGE REFERRAL AMENDMENT	B				
			Address	Scale		Drawn By
			15 Carlton St Manly NSW 2095	1:100 @ A3		CV
			Client	Drawing No.		Issue
			M. & F. Lulli	DA5.00		

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MATERIALS SCHEDULE



DATE	NOTES	ISSUE	Project	Project No.	Drawing Title
28.01.22	DA ISSUE	A	Lulli House		ELEVATION SOUTH & WEST
			Address 15 Carlton St Randy NSW 2095		Scale 1:100 @ A3
			Client M. & F. Lulli		Drawn By CV
					Issue DAS.01

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16 March 2022

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

**RE: CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO
DEVELOPMENT STANDARD**

15 CARLTON STREET, MANLY

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 (“MLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to clause 4.4 of MLEP the prescribed floor space ratio for the site is 0.6:1. The site has an area of 183.6m² which equates to a permissible gross floor area of 110.16m². The works proposed will have a gross floor area measured at 153.6m² and FSR of 0.84:1. This equates to a variation of 43.44m² or 39.44%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 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 MLEP 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 4.4 floor space ratio

Clause 4.6(3) of MLEP 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 floor space ratio provisions in clause 4.4 of MLEP 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 MLEP provides:

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

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

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 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 MLEP 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 4.4 of MLEP 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 4.4 of MLEP 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 4.4 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 6.3 of MLEP?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP development standards?

Clause 4.4 prescribes a provision that seeks to limit amount of gross floor area on site and sits within Part 4 – Principal Development Standards. Accordingly, it is considered to be a development standard to which clause 4.6 MLEP 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 floor space ratio standard

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

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

Comment: The proposed works are consistent with height, bulk and scale of adjoining dwellings and with the row of terraces generally within the streetscape. The existing

front façade is to be preserved with the proposed additions siting behind and below the existing roof ridge line.

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

Comment: The proposed works will not impact on any important landscape or townscape features. The preservation of the front façade ensures the existing streetscape character within the heritage conservation area is maintained.

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

Comment: The additions have been confined to the rear to maintain the existing character of the streetscape and the heritage value of the area.

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

Comment: The proposed works will not have an unreasonable impact on the amenity of adjoining properties and the public domain. The works will maintain compliant levels of solar access to adjoining properties. Privacy measures have been included where appropriate and windows have minimised to the east elevation to limit overlooking. No views will be impacted.

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

Comment: N/A – existing residential use maintained.

Consistency with zone objectives

The subject site is zoned R1 General Residential pursuant to the provisions of MLEP. Semi-detached dwellings are permissible in the zone with the consent of council. The stated objectives of the R1 zone are as follows:

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

Response: The works relate to alterations and additions to an existing semi-detached dwelling. The residential use to be maintained.

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

Response: The works preserve the existing semi-detached housing typology.

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

Response: Again, existing residential land use to be retained and is the most appropriate use for this site.

The non-compliant component of the development, as it relates to floor space ratio, demonstrates consistency with objectives of the R1 zone and clause 4.4 of the MLEP. Adopting the first option in *Wehbe* strict compliance with the floor space ratio standard has been demonstrated to be 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. Specifically, the environmental planning grounds are as follows:

- The proposal meets the objectives of both the R1 general residential zone and the floor space ratio development standard as demonstrated above.
- The Manly development control plan (DCP) provides exceptions to FSR for undersized lots (clause 4.1.3.1 of the DCP) which states that:

“On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).”

The minimum lot size for this site is calculated at 250m². Based on a lot size of 250m² the FSR would equate to 0.61:1. This is negligibly above the FSR allowance with this DCP provision however is considered reasonable in this instance. The minor breach does not contribute to any unreasonable bulk and scale or visual impacts nor does it create any unreasonable amenity impacts.

- The proposed additions have been innovatively designed with regard to heritage conservation area sensitivities while ensuring appropriate levels of amenity are maintained. The additional floor space has been distributed across the ground and first floors appropriately so that it sits behind and below the existing roof ridge height to the front façade. The heritage value and amenity to neighbouring properties will not be adversely impacted with the works proposed.
- Council has applied the floor space ratio flexibly in this location and have been willing to vary the development standard. We note that 7 Carlton Street was approved with an FSR of 0.84:1 which equated to a 39.5% variation in 2019 (DA2019/0019). This variation was recommended for approval by the assessing officer and supported by the Local Planning Panel. The proposed variation for 15 Carlton Street is virtually identical. The same architect from 7 Carlton Street DA has been used for this DA and utilises the same considered design approach.

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 as detailed previously.

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 proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

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

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives

for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development 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 floor space ratio 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 floor space ratio standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and floor space ratio 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 floor space ratio variation in this instance.

Boston Blyth Fleming Pty Limited

William Fleming
BS, MPLAN
Director

ITEM 3.3

**DA2022/0492 - 397 CONDAMINE STREET ALLAMBIE HEIGHTS
- ALTERATIONS AND ADDITIONS TO EXISTING TWO STOREY
BUILDING TO PROVIDE A CENTRE-BASED CHILD CARE
FACILITY WITH ASSOCIATED EARTHWORKS, LANDSCAPING
AND AT-GRADE PARKING.**

REPORTING MANAGER**Rod Piggott****TRIM FILE REF****2022/499979****ATTACHMENTS**

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

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to DA2022/0492 for alterations and additions to existing two storey building to provide a centre-based child care facility with associated earthworks, landscaping and at-grade parking on land at Lot 1 DP 624845, 397 Condamine Street ALLAMBIE HEIGHTS, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0492
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 624845, 397 Condamine Street ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Alterations and additions to existing two storey building to provide a centre-based child care facility with associated earthworks, landscaping and at-grade parking.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Double Arts Properties Pty Ltd
Applicant:	Giraffe Child Care Group Pty Ltd
Application Lodged:	13/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	02/05/2022 to 16/05/2022
Advertised:	02/05/2022
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 3,752,311.02

Executive Summary

The proposal is referred to the Development Determination Panel (DDP) as the development application (DA) has received more than 5 submissions of objection. The DA involves alterations and additions to convert the existing 'Warringah Golf Club' building into a childcare Centre with a capacity of up to 150 children ranging from 0 years to 5 years old. Childcare centres are permitted in R2 Low Density Residential areas of the Warringah LEP and therefore no existing use rights issues are relevant. However, the future use and past works on the site require potential contamination issues to be thoroughly investigated. Buried asbestos has been identified with initial site testing and further investigative analysis is required to address the present limitations of this hazard within the ground

material and parts of the site that will be subject to disturbance. Council's Environmental Health team have assessed the contamination reports provided and the acoustic report. Insufficient information is provided to satisfy Council's Environmental Health concerns with the DA and therefore the proposal is not supported. The applicant has lodged a Class 1 Appeal (basis of Deemed Refusal) in the *NSW Land and Environment Court* (LEC) and therefore determination of the application is required by Council to assist in 'delimiting' any Contentions to be raised in future LEC Proceedings.

Overall the change of use is considered satisfactory in terms of carparking arrangements, vehicle access, drainage, landscaping works, intensity of use, building alterations and additions, including the design response to the *Warringah Development Control Plan* built form controls and *Warringah Local Environmental Plan 2011* (LEP) development standards. Generally the appearance of the building viewed from Condamine Street will remain substantially the same with internal fit-out, renovation work and that conversion of part the existing carpark will be at the rear, for the new playground areas.

Submission issues raised have been considered in detail and may be addressed by conditions to ensure the potential amenity impacts have been minimised and will not create unreasonable environmental impacts on surrounding land including traffic, parking, safety, dilapidation, land use activity, stormwater, privacy (visual), stormwater, bulk, scale and waste management. However, due to insufficient information to address asbestos contamination and noise management this childcare centre DA is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks a change of use to the existing Warringah Golf Clubhouse building for use as a child care Centre. The works including alterations and additions with building refurbishment, landscaping and conversion of selected parking areas for playground space and ancillary works. Details include:

- The centre will cater for 150 children between the ages of 0-5+ years old, 35 staff (mix of part time and full time) and will provide 38 parking spaces, in a reconfigured at-grade car park.
- The centre will operate from 7am to 6pm Monday to Friday. The centre will be closed on weekends.

First Floor area

- New reception area accessed via a ramp from the car parking area.
- Staff and administration rooms, a meeting room, kitchen, pram store, storage rooms, and staff toilet are also located in this entry area.
- Lift and stair access is also provided to the lower (ground) level.
- A transition area provided access to the front of the building at first floor level, which includes 2 x class rooms – each for 3-5 years (40 children each), bathrooms and storage areas.
- A fire stair is also located at the front, accessed via an airlock.

Ground Floor area

- Refurbished stair/lift lobby, toilets, staff bathrooms and a laundry. It also contains two classroom areas - one for 0-2 years (30 children) and one for 2-3 years (40 children).
- The 0-2 year's area includes 2 x indoor play areas, 2 x cot rooms, toilets, and store rooms.
- The 2-3 year's area includes 2 x indoor play areas, toilets, and storage.

External Play areas

- Two (2) areas are provided for 0-2 years on the ground level. One of them is partially enclosed on the northern side of the building and one at the rear with associated outdoor storage. The rear space will be created by between 1.5m to 2.1m of excavation.
- The 2-3 years outdoor play area is located on the southern side and rear of the building and includes associated storage.
- The 3-5 years outdoor play area is located on the southeast side of the building and is accessed from first floor level.

Carparking area

- Car parking will be provided at-grade, with reconfiguration and new line marking / signage of the existing car parking areas.
- The car park will provide a total of 38 car parking spaces, including 1 accessible space.
- One (1) motorcycle space is proposed within the car parking area.
- Bicycle parking is also located adjacent the southern boundary with 6 spaces, comprising of 2 for staff and 4 for visitors.
- The car park will be accessed via the existing two-way vehicle access only from James Street.
- A pedestrian ramp provides level access from the car parking areas to the first floor the proposed child care centre.
- Pedestrian access only from Pittwater road will remain.

Ancillary works

- Site preparation and demolition works (including removal of any hazardous materials and BCA upgrading work)
- New waste bin room building and loading bay. Waste collection and deliveries generally outside principal am/pm drop off / pick up times.
- Drainage works
- Landscaping (including selected tree removal / replacement), minor excavation and landfill / retaining walls
- Fencing and ancillary site works.
- No signage is proposed as part of this application. Signage will be dealt with separately. The existing "Warringah Golf Club" signage will be removed from the building facades and front boundary walls.

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 - NSW Roads and Maritime Services - (SEPP 64 Signage - cl 18(2))
 Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 101 Development with frontage to classified road)
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D13 Front Fences and Front Walls
 Warringah Development Control Plan - D15 Side and Rear Fences

SITE DESCRIPTION

Property Description:	Lot 1 DP 624845 , 397 Condamine Street ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The site has an irregular shape with an 25.6 metre (m) eastern frontage to Condamine Street, a stepped southern boundary of 120.33m in total length, a rear (western) boundary of 26.66m, and a 10m wide frontage for access to James Street. The site has a total area of 4,071 square metres (sqm). The site contains a two storey building of masonry construction with a flat roof at the front and pitched tiled roof to the rear. The building is currently used as the club house for Warringah Golf Club. Vehicle access is currently provided via a two-way from James Street and accesses a large at-grade split-level bitumen car park located across a large extent of the site, behind the existing building. Two concrete driveways from Condamine Street also provide vehicle access to the existing building. The site contains a number of trees, palms and shrubs, located within all setback areas and dotted throughout the car parking area. Levels vary significantly across the site, rising some 13.6m from the low point at Condamine Street to the high point at the rearmost (western) side of the site. The car parking

areas is split into two levels, with the lower (eastern) side being at RL 10.58 (measured centrally) and the upper (western) side being rising from RL 12.89 (eastern side) to RL 16.06 (western side). Sandstone, concrete and masonry retaining walls are located throughout the site and provide terracing for the car park and to site boundaries.

The surrounding area is generally characterised by one and two storey residential dwelling houses of masonry and render construction, with pitched tiled roofs. Most dwellings include consistent front setbacks that incorporate lawns and soft landscaping, with driveway access to off-street parking. The general scale and typology of built form surrounding the site is typical of its R2 Low Density Residential zoning.

Condamine Street adjacent the east of the subject site is a 6 lane road (including 2 bus lanes) and is a classified road (zoned SP2 Infrastructure) under management of Transport for NSW. In this regard the site is separated from the Warringah Golf Club fairways and golf course buildings located on the eastern side of the road and zoned RE1 Public Recreation.

Six residential properties adjoin the site to the south and north that front Condamine Street

Map:



SITE HISTORY

Building Application No.1395/78 for Warringah Golf Club car parking area was approved by Council in 1978.

Development Application No.1995/200 was granted consent No.95/332 at Warringah Golf Club on

Lot 1 DP624845 for internal alterations to the building involving the conversion of an existing amenities are into a new poker machine room, on 28.6.1995.

Development Application No.1998/148 was granted consent No.98/195 for alterations and additions to the existing clubhouse on 24.6.1998

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	Previously the provisions of any draft environmental planning instrument <i>Draft State Environmental Planning Policy (Remediation of Land)</i> 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 Warringah Golf Club members purposes for an extended period of time. The proposed development changes the use to childcare which is a permissible use within the residential area. A level of contamination risk has been identified within the site and existing state of the site from previous development work (asbestos material and the like). This issue is addressed by Council's Environmental Health Officer.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan (DCP) 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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be appropriately addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000. Council requested additional information which has been considered the number of days taken in this assessment in light of this clause within the Regulations. The additional information requested relates to potential contamination issues and acoustic treatment for plant equipment. The additional information seeks to clarify methodology and clarification of acoustic details and does not warrant additional notification pursuant to the <i>Community Participation Plan</i>. The plans and documents remain accessible for public viewing online during the assessment and are considered in context of any submissions and any general enquires regarding the application.

Section 4.15 Matters for Consideration'	Comments
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters may be appropriately 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). These matters may be appropriately 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. These matters may be appropriately 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). These matters may be appropriately 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 <i>Warringah Development Control Plan (DCP)</i> section in this report and under Warringah LEP. Details are provided within the relevant sections of this assessment report and summarised in the Conclusion. (ii) Social Impact Subject to conditions and the effective implementation of an Operational Plan of Management (OPM), the proposed development will not have a detrimental social impact in the locality. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed residential land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the type of land use proposed.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to not be consistent with the relevant provisions of the Warringah LEP 2011 and Warringah DCP 2011, particularly in relation to setbacks, noise, landscaping amenity, boundary fencing and privacy considerations as per the SEPP (EECCF) 2017

Section 4.15 Matters for Consideration'	Comments
	In this regard, the development, as proposed maintains matters of the public interest that remain unresolved reasons given by way of refusal as provided.

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 02/05/2022 to 16/05/2022 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 8 submission/s from:

Name:	Address:
Mr Martin Conneally	9 James Street ALLAMBIE HEIGHTS NSW 2100
Ms Lindsey Margaret Fletcher	11 James Street ALLAMBIE HEIGHTS NSW 2100
Withheld	ALLAMBIE HEIGHTS NSW 2100
Mr Scott Ronald Turner	395 Condamine Street ALLAMBIE HEIGHTS NSW 2100
Mr Michael John Clark	407 Condamine Street ALLAMBIE HEIGHTS NSW 2100
Mrs Suzette Mary Gately	1 James Street ALLAMBIE HEIGHTS NSW 2100
Mrs Selina Amelia Rogers	37 Pozieres Parade ALLAMBIE HEIGHTS NSW 2100
Mr Mark Anthony Reber	399 Condamine Street ALLAMBIE HEIGHTS NSW 2100

The following issues were raised in the submissions:

1. Noise / sunlight amenity
2. Stormwater
3. Dilapidation risk
4. Traffic and pedestrian safety
5. Carparking
6. Fencing
7. Overdevelopment
8. Environmental assessment

The above issues are addressed as follows:

- 1. Concern that play areas are only 1.7m away from adjacent residential buildings along the southern side of the building that will create noise and privacy concerns to adjacent land

(No.395 Condamine Street), including that the sandpit play area will create noise pollution and receives no sunlight for childrens Vitamin D.

Comment:

This is not the only available play space and most of the outdoor play areas have good solar access. This area is shielded by existing wall sections and play areas are supervised (including noise activity). This area is a sloping area and new play surfaces will step down the area with decking, sand pit and play surfaces. In association with operational management, acoustic treatment to fencing and activity supervision the area may create unreasonable noise impacts. During the night time period the Childcare Centre is vacant and therefore noise is limited to daytime operational hours.

- *2 Concern that site works will affect stormwater overland runoff toward No.395 Condamine Street.*

Comment:

The stormwater management plans have been prepared by a qualified practising engineer subject to adequate construction (during works) the proposal demonstrates that, despite proposed land modification works, stormwater can be appropriately managed on site without adversely impacting on drainage patterns and prevent nuisance overland flooding. It should be noted that natural overland flow (dispersed) is permitted where this is not concentrated and allowed to replicate ("state of nature") runoff. This issue is addressed in detail under the heading *C4 Stormwater* within this report and subject to conditions does not warrant refusal of the application.

- *3 . Concern that site works will create dilapidation risk for adjacent residential property assets.*

Comment:

This issue is suitably address by dilapidation reports to be prepared for adjacent property assets where they may be subject to dilapidation risk from site works such as excavation during the site preparation / construction period.

- *4. Concern that the proposal will create traffic and pedestrian safety concerns in James Street and Pixiers Parade.*

Comment:

This issue is addressed in detail by Council's Traffic Engineer and within *Part C2 Traffic Access and Safety* and *C3 Parking Facilities* of this report. Additionally the applicant has provided a detail traffic assessment to address this issue. In summary the changes proposed to the parking area and intensity of use are able to be accommodated, subject to conditions without unreadable impacts to traffic and pedestrian safety.

- *5. Concern that the proposal has insufficient carparking (including a lack of electric recharge points)*

Comment:

This issue is addressed in detail by Council's Traffic Engineer and within *Part C3 Parking Facilities* of this report. Additionally the applicant has provided a detail traffic assessment to address parking compliance with EV charging not being a mandatory requirement. In summary the proposal complies with car parking requirements for the intensity of use. The inclusion of EV recharging would only be suitable for staff as parent drop off pick up is fairly limited in time. Recharging a car in addition to managing children in and out of the carpark area would be unlikely to be suited to most vehicle movements.

- *6. Concern that the boundary fencing on other common boundary lines is inadequate for*

acoustic protection and privacy.

Comment:

This issue is considered in detail under the heading *D8 Privacy* and *D15 Side and Rear Fences* within this report. While it is noted that extra fencing options (as and "acoustic wall") is proposed this can raise other issues with ongoing dampness (overshadowing) and "walling out" surrounding land by extreme fence heights that are not consistent with low density residential character. The use of landscape buffers, variable outdoor times, detailed operational management procedures, complaint handling, play equipment design (eg. non-metal moving parts), intensity of use and other considerations can provide more sustainable and acceptable solutions. The proposal has not included a plan of operational management and therefore this concern warrants reason for refusal.

- *7. Concern that there are too many childcare centres in the local vicinity already and this is an over-development for the area.*

Comment:

The location and size of the building is suitably located to service the surrounding area and potentially takes pressure off other childcare centres that cannot meet demand or have less accessible facilities in terms of journey to work considerations. The proposal increases competition and allows for greater choice in childcare services. This issue does not warrant refusal of the application as it is a permissible use of the land.

- *8. Concern that the traffic report and environmental reports for the proposal are not impartial and independent and therefore are inaccurate / biased to favour the proposal.*

Comment:

Council's assessment is impartial and balanced against considerations across a range of experts within staff and levels of delegated authority with a wide range of experience. This includes consideration by Council's *Development Determination Panel* to ensure transparency in consideration of all issues objectively including the details of the development application, with any submissions in the public interest.

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 (Contaminated Lands)	Not supported Applicant has provided the following contaminated land reports:

Internal Referral Body	Comments
	• Preliminary (Stage 1) Site Investigation by JK Environments dated 7 October 2021 (reference: E34356BDrpt) • Detailed (Stage 2) Site Investigation by JK Environments dated 10 June 2022 (reference: E34356BDrpt2) • Remedial Action Plan (RAP) by JK Environments dated 8 July 2022 (reference: E34356BDrpt3-RAP) A Detailed Site Investigation Investigation employed the use of 14 boreholes and found bonded asbestos above the site assessment criteria within one of the boreholes and asbestos fines/fibrous asbestos - AF/FA form below the site assessment criteria within one of the boreholes. The RAP identifies the following asbestos remediation extent: <i>Based on the results of the PSI and DSI, it is assumed that widespread asbestos in fill does not exist, and remediation of asbestos is likely to be limited to localised areas of fill. Therefore, the remediation extent of asbestos has been assessed to include the vertical and horizontal extent of fill from the borehole in which asbestos was encountered (i.e. BH9 and BH103) to the nearest borehole/site feature (including the site boundary, retaining wall to the east and north of BH104 and to the west of BH9 and vertical sandstone bedrock cut to the east of BH9). The approximate extent of remediation is shown on Figure 4 attached in Appendix A. This should be confirmed by validation sampling outlined in this RAP.</i> Given that the Detailed Site Investigation only employed the use of boreholes, Environmental Health is of the opinion that the extent of asbestos remediation has not been sufficiently identified/determined across the site. Section 11.3.1 within Schedule B2 – Guideline on Site Characterisation within The National Environment Protection (Assessment of Site Contamination) Measure 1999 (ASC NEPM) advises the following regarding the assessment of asbestos contamination: <i>With regards to reliability of findings, test pits and trenches are preferred to boreholes to determine the presence or extent of any asbestos contamination, because a larger area of the subsurface is exposed during assessment and is available for visual inspection. It is therefore recommended that the SAQP places greater reliance on judgmental sampling involving test pits and trenches based on a thorough site history, rather than boreholes. Appropriately designed judgmental sampling plans can help avoid unnecessary broad area sampling. Grid sampling, however, is appropriate when asbestos contamination is widespread or is of unknown extent/location(s) at a site.</i> Additionally, the WA DOH Guidelines for the assessment, remediation

Internal Referral Body	Comments
	and management of asbestos-contaminated sites in Western Australia – May 2009 (endorsed in NEPM 2013) provides further guidance on asbestos sampling with the recommendation of tests pits or trenches. Asbestos contamination does not follow the same principals as a chemical contaminant that can be investigated with the use of boreholes. Asbestos is typically heterogenous in fill material and does not exhibit the homogenous distribution/plume patters like chemicals. As a result, the use of bore holes does not allow for an adequate assessment of asbestos due to the smaller area of subsurface exposed during sampling. We estimate that no more than 1% of surface area has been sampled via the 14 boreholes. The presence of the hardstand across the carpark, also impedes a visual assessment of surface/near surface contamination that may be present, furthering the importance of testing with a method that allows for a larger surface area to be investigated. As illuminated above, the chance of finding asbestos within a bore hole is generally low compared to tests pits due to the significant difference in the amount of surface area of investigation. Given that asbestos has been found within 2 boreholes and construction and demolition fill has been found in boreholes across the site, suggests that more asbestos could be present across the site. In summary, Environmental Health have the following concerns: • proposed use (childcare centre) is high risk when considering contamination; • ACM sampling has not been conducted in accordance with the guidelines; • given the information provided, the extent of contamination is unclear and results suggest that more asbestos may be present; • works involve excavation for new play areas; and • it is imperative to know the extent of any asbestos contamination during the planning and construction phases so that the future use of the site is able to be determined 'suitable and safe'. As such, in order to support the application Environmental Health recommends that additional testing for asbestos be conducted in order to ascertain if there is further contamination across the entire car park. The testing and reporting is to be in accordance with the relevant guidelines including NEPM and WA DOH Guidelines. Following the additional testing an updated RAP is to to be prepared based on the findings of the additional testing. The report for the additional testing and the updated RAP is to be prepared by, or reviewed and approved, by a certified consultant as defined under NSW EPA Contaminated Land Consultant Certification Policy.
Environmental Health	

Internal Referral Body	Comments
(Industrial)	General Comments The applicant has provided an Acoustic Report by Renzo Tonin & Associates dated 25 February 2022 (reference: TM355-01F01 Noise Impact Assessment (r2)). The report concludes that the noise impacts from outdoor play areas to the nearest residential receivers are predicted to comply with the noise criteria with the implementation of the following measures: • <i>Acoustic screens as described in Section 5.1.2 and presented in APPENDIX B.</i> • <i>Operational management plan to specify that any windows to indoor playrooms shall remain closed during noise activities such as singing and music.</i> The acoustic report has proposed 2.4m high acoustic screening at the southern boundary of both upper and lower 3-5yrs active outdoor play areas & along the boundary with 395 Condamine Street. From correspondence with Council's Planner, a 2.4m screen fence may not be supported due to impacts on neighbouring properties. As such, the applicant will likely need to review the proposed screening height with Council's Planner. Any changes to the screening will need to be followed with an updated acoustic report that demonstrates that the noise impacts from outdoor play areas on the nearest residential receivers will comply with the noise criteria. Additionally, the applicant has not provided a Plan of Management with noise mitigation measures. A robust plan of management is important in minimising noise impacts on neighbouring properties. This is particularly important for childcare centres as appropriate management practices can have major benefits in reducing amenity impacts. In order to support the application, Environmental Health requests that an appropriate plan of management be submitted for Environmental Health to review. The plan of management should include but not limited to: • Amenity measures including measures for noise and odours; • Method of recording and actioning complaints received directly from affected residents. This is to include a requirement that phone number/email address be provided to residents on request who wish to lodge a complaint. • Incorporate any recommendations from the acoustic report; • Measures for comforting crying children outside; • Training procedure for educators on noise mitigation measures; and • Measures for educators to supervise children's outside play and measures to discourage unnecessary loud activities. Recommendation

Internal Referral Body	Comments
	Not Supported - Further Information Required <u>Planning Comment:</u> In the absence of the detailed noise issues being addressed with additional information and the need for an Operational Management Plan [draft] the proposal is not supportable without this critical noise related information.
Environmental Health (Food Premises, Skin Pen.)	Supported with conditions. <u>General Comments</u> Childcare Kitchen to be constructed according to Australian Standards. No objections.
Landscape Officer	Supported with conditions. The development application is for alterations and additions to an existing building to provide a centre-based child care facility with associated earthworks, landscaping and at-grade parking, as described and illustrated in the Reports and Plans. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. The application is assessed by Landscape Referral against the requirements of the childcare provisions of: a) State Environmental Planning Policy (Transport and Infrastructure) 2021, including Chapter 3 Educational establishments and child care facilities, Division 5, clause 2.22, clause 3.18, clause 3.20 and clause 5.29 relative to the protection of trees and vegetation; b) the controls and objectives in the Childcare Planning Guidelines, including Principle 5 - Landscape, and sections 3.2 Local character, streetscape and the public domain interface, and 3.4 Landscaping; c) the Warringah Local Environmental Plan 2011, and d) the following Warringah Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation, and E2 Prescribed Vegetation. The provisions of the Child Care Planning Guideline will generally take precedence over a DCP, other than building height, side and rear setbacks and car parking rates. An Arborist Report prepared by Rain Tree Consulting is submitted and identifies all trees located on and adjacent to the site. In total, 36 trees and palms are located on the site. As identified in the Arborist Report, nine existing trees within the property are proposed to be removed, identified as tree numbers 5, 7, 8, 10, 12, 32, 33, 34 and 36, of which five trees are prescribed trees (ie. protected by the DCP and requiring Council consent) and four trees are exempt species. No design alternative is available to retain the five prescribed trees under this development proposal. In review of the proposal, existing tree identified as tree 14 Brushbox shall be retained and the addition of the proposed carpark bay is not supported in the vicinity of tree 14. The Landscape Plan submitted includes appropriate replacement tree and vegetation. Planting is proposed throughout the site including

Internal Referral Body	Comments
	enhancement of existing landscape areas. The children outdoor play areas are designed to achieve the objectives of providing growth experiences for the children, and shade areas are provided, and Landscape Referral raise no concerns. The development is acceptable in regard to the State Environmental Planning Policy (Transport and Infrastructure) 2021, and satisfies Warringah LEP and DCP objectives and controls.
NECC (Development Engineering)	Supported with Conditions The subject site is for alterations to the existing parking area and building with no increase in the proposed impervious area. The submitted stormwater management plan indicates the collection and connection of stormwater to the existing system which is acceptable. The existing driveway crossing off James St is to remain which is acceptable. Transport for NSW have provided conditions for the reinstatement of the existing crossing off Condamine St. Development Engineering support the proposal, subject o conditions as recommended.
NECC (Water Management)	Supported with Conditions. The application seeks development consent for alterations and additions to an existing two-storey building to provide a centre-based childcare facility with associated earthworks, landscaping and at-grade parking. NECC Water management raise no objections, subject to conditions.
Strategic and Place Planning (Urban Design)	Supported without conditions.
Traffic Engineer	Supported with conditions. The development proposal is for refurbishment of the existing golf club building and a change of use to a childcare centre. The childcare centre is proposed to cater for 150 children and 35 staff and will incorporate offstreet parking for 38 vehicles including one accessible parking space. Parking for 3 bicycles and a motorcycle will also be available in the carpark and a loading bay catering for deliveries/servicing by trucks up to a medium rigid vehicle will be provided. <u>Parking:</u> Under DCP requirements the development is required to provide parking at a rate of 1 space for each 4 children. This would equate to

Internal Referral Body	Comments
	37.5 spaces (rounded up to 38). The development has provided parking for 38 vehicles which meets requirements. <u>Traffic Generation:</u> The Traffic Impact assessment has advised, based upon accepted rates in the TfNSW Guide to Traffic Generating Developments, that the childcare centre is likely to generate traffic volumes of 120 vehicles per hour in the weekday AM peak hour and 105 trips in the weekday PM peak hour. These rates are accepted as appropriate. The report then goes on to say that the Golf Club which previously operated from the site would typically have generated between 80 and 120 trips in the evening peak hours and on weekends. No data has been provided to support this estimate of traffic generation from the existing site however is considered likely to be an over-estimation with a traffic generation. The operation of a 150 place childcare centre will however increase traffic generation from the site with the peak traffic times from generated traffic likely to coincide with general morning and afternoon peak periods and at times when traffic movements will be at their highest from surrounding residential premises. The golf club by comparison, would tend to generate traffic at off peak times. It is also noted that traffic survey data used to support the Traffic Impact Assessment was collected in November 2021. Although NSW was no longer under lockdown restrictions on that date (they were lifted on 11 October 2021), clubs were still operating under capacity restrictions and there was a degree of nervousness among many about visiting such venues and many people were still working from home. Given the above, the traffic data collected is likely to have underestimated the background traffic using the surrounding road network. The background information presented in the Traffic Impact Assessment relating to the surrounding road network is incorrect in terms of the quoted road widths. James Street is 11m in width, narrower than the 11.5m quoted, Pozieres Pde is of variable width being approx. 8.5m at its southern end and narrowing to only 6.5m near its junction with Fishbourne Road (much narrower than the 11.5m suggested in the report). Condamine Street by comparison is quoted as being only 12.0m in width when it is in fact much wider at 21m in width. The narrow widths of Pozieres Pde and Fishbourne Road (which is only 7.3m in width) are of concern as they are too narrow to accommodate two way traffic plus parking on both sides of the road. In both of these streets the addition of up to 60 additional vehicles per hour in peak periods is likely to lead to increased levels of congestion and localised parking restrictions may be required to allow traffic to

Internal Referral Body	Comments
	pass. It is also anticipated that there will be increased delays for traffic seeking to exit James Street and Fishbourne Road. As has been alluded to in the traffic report, turning right out of these streets can take some time with cars having to await a break in the northbound traffic stream often utilising gaps created by the interphase period from the Kentwell Road traffic signals. As this gap is only of short duration only one or two vehicles can turn right at a time and it would not take much additional right turning traffic demand to create queuing and delay issues. Gaps are also required in the southbound traffic stream which, at times, may not allow any vehicles to exit. It is noted that Fishbourne Road is used by quite high volumes of traffic as a rat run between Kentwell Road and Condamine Street. Resident submissions highlight that vehicles waiting to turn right out of Fishbourne Road are often the cause of frustration for the much higher volumes of motorists trying to exit via a left turn. As right turns into Fishbourne Road are permitted this means that vehicles seeking to exit via a right turn must wait for a break in both the Condamine Street north/south traffic flow <u>and</u> an absence of vehicles turning right turn into Fishbourne Road before exiting right. As a result, residents seeking to exit via a right turn mostly use James Street (were a right turn IN is not permitted). The modelling undertaken by the applicant's traffic consultant, although it has taken account of the right turn movement issues outlined above to the limits that can be effectively modelled, has shown that queue lengths are likely to increase by only 2 vehicles in the AM peak period in James Street. In practice, it is suspected that queue lengths will, at times, increase by more. The increase in queue lengths is not likely to create significant queuing issues and would not warrant interventions such as banning right turns or introducing One Way traffic flows as such measures would act to concentrate traffic at other intersections exacerbating queuing issues there. It is however considered that some parking restrictions should be introduced on Pozieres Parade on approach to Fishbourne Road, on James Street west of Condamine Street and on the inside radius of the 90 degree bend where James Street meets Pozieres Pde. This will be conditioned. <u>Servicing:</u> The development has also made provision for a Loading Bay capable of accommodating a medium rigid vehicle (MRV). This would be sufficient to accommodate garbage trucks and delivery vehicles. It is however noted that a MRV parking in the loading bay would impede

Internal Referral Body	Comments
	access via clockwise circulation through the carpark however anticlockwise circulation would be still be feasible. Servicing and deliveries should therefore be conditioned to occur outside of peak arrival and departure times. Given the long rear overhang of a delivery vehicle that there is potential for a parked truck to completely block the pedestrian access path from James Street to the childcare centre or to reverse into the play area. To prevent such an occurrence a safety barrier has been proposed. The safety barrier should be positioned where it does not limit the width of the footpath. This will also be conditioned. <u>Pedestrian Access:</u> There is no pedestrian access into the site from Condamine Street with pedestrian access to be gained via James Street. This approach is supported given the high volume of traffic on that road. Pedestrians accessing the site between Condamine Street and the driveway off James Street currently do not have the benefit of a footpath connection as there is no pedestrian footpath on either side of James Street. There is also no footpath connection between the steps leading between from Peronne Ave and James Street which might also form a pedestrian link to the site. To maximise the potential for the site to be accessed by foot it will be conditioned that a footpath be provided on the south side of James Street between Condamine Street and the steps to Peronne Ave. The plans suggest that a 1.1m wide pedestrian walkway will be provided along the eastern edge of the driveway to the site. The existing driveway serving the site is approximately 6.6m in width with kerbs on either side. In order to maximise the available width for the path and provide for separation between pedestrians and vehicles a raised footpath should be constructed adjacent to rather than just a kerb which has been suggested on the plans. It is also noted on the plans that a kerb ramp will be provided at the southern end of this pedestrian walkway however it is unclear from the plans how pedestrians would safely negotiate a path of travel from the end of the walkway into the childcare centre. Further information will need to be submitted prior to release of the construction certificate. This will be conditioned.
Waste Officer	Supported without conditions. <u>Waste Management Assessment</u> Recommendation - Acceptable, without conditions. No residential component contained within this proposal. Waste referral not required.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to <i>Ausgrid</i> who provided a response on 20.5.2022 stating that the proposal does not require a response from Ausgrid for the extent of the works / change of use proposed. Therefore no conditions are recommended from Ausgrid.

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 Educational Establishments and Child Care Facilities 2017

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

As previously outlined this application is for the establishment of a centre-based child-care facility.

As per the provisions of Clause 23, the provisions of the SEPP (EECCF) 2017 and the *Child Care Planning Guideline* are applicable.

DESIGN QUALITY PRINCIPLES

Principle 1: Context

Good design responds and contributes to its context, including 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.

Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.

Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.

Comment:

The proposal involves a change of use to the "Warringah Golf Club" building that was constructed as a

large clubhouse for the golf course opposite the site. The building is therefore part of the existing streetscape and is not a new purpose built childcare centre. In this regard, areas of the site will be converted from carparking to outdoor playground, however most of the overall appearance of the main building, its height and scale will remain consistent. The site has access to public transport along Condamine Street as as a 150 place childcare centre provide a significant input to available childcare options to the Warringah / Manly area.

The centre needs to provide a more reasonable amenity buffer to adjacent land by the use of landscaping, as recommended. This includes a 2m separation distance along the side setbacks to ensure noise from the side of the Centre is not projected toward No.395 or No.399 Condamine Street, which are detached dwelling houses on either side of the building. The proposal is not consistent with this design quality Principle it terms of creating a "good design response".

Principle 2: Built Form

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

Good design 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. Good design also uses a variety of materials, colours and textures.

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.

Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Comment:

The general building form remains consistent with the existing appearance of the main building as constructed. Renovation work internally is necessary to reconfigure and partition parts of the building for the different child care groups based on their age, and the overall Centre management. Parts of the external areas of the site will be converted from carparking to outdoor playground, however most of the overall appearance of the main building, external walls, building height and scale will be retained.

Conditions are recommended to provide more reasonable amenity buffer to adjacent land by the use of landscaping conditions, as recommended.

Principle 3: Adaptive Learning Spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.

Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.

Comment:

The proposal includes extensive play areas with comprehensive details regarding learning group (child age groups) areas, facilities, adaptable learning areas, playground layout and landscape treatment. The proposal is satisfactory in this regard.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight 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.

Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

Comment:

The proposal includes details regarding general building construction and renovation work required including suitable materials, replacement of ramps, doors and windows where appropriate and new landscaping works. The proposal is satisfactory to address this principle.

Principle 5: Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity.

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.

Comment:

Overall the landscaping on the site will be substantially increased from the existing site conditions. This involves changes to the carparking area, new landscaping in the front setback and by way of conditions recommended for wider landscape buffers to adjacent residential land along the common boundaries with the outdoor playground spaces

Principle 6: Amenity

Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.

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

Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.

Comment:

The site is a large lot by comparison to the adjacent residential land holdings and therefore is able to provide spacious internal play rooms and outdoor playground areas with design variety in the "theme" or intent of those spaces. The playgrounds have some natural elements but are mostly durable porous surfaces and the applicant has provided an acoustic report to address noise disturbance considerations from Condamine Street traffic and also the impact of noise generated within the childcare centre during operational hours. However, insufficient information is provided regarding the location and specifications for new motorised plant equipment such as air-conditioners and no Plan of Management is submitted to address how noise will be managed on a daily basis or if complaints arise about noise amenity issues. Therefore the proposal does not address this Principle.

Conditions are recommended to provide more reasonable amenity buffer to adjacent land by the use of landscaping conditions, as recommended. The centre requires wider separation distance along the side setbacks of the building (outdoor covered areas and side play areas) to ensure noise from the side rooms and spaces of the Centre is not projected toward No.395 or No.399 Condamine Street, which are detached dwelling houses on either side of the building. At present side rooms open out toward this outdoor space and noise amenity is directed along the side setback to the adjacent dwellings in these outdoor spaces.

Principle 7: Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.

Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).

Comment:

The proposal is designed to ensure safety to Condamine Street (new fencing) and within the parking area. The building will be renovated to meet the required safety standards in terms of its layout building works and the like. However, there is currently insufficient information to address the presence of Asbestos material and therefore the proposal does not meet this Principle.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 To ensure that appropriate zone considerations are	For proposed developments in or adjacent to a residential zone, consider: the acoustic and privacy impacts of the	Unsatisfactory. Insufficient information is provided regarding the

assessed when selecting a site	proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity.	location and specifications for new motorised plant equipment such as air-conditioners and no Plan of Management is submitted to address how noise will be managed on a daily basis or if complaints arise about noise amenity issues.
C2 To ensure that the site selected for a proposed child care facility is suitable for the use	When selecting a site, ensure that: • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.	Unsatisfactory. Insufficient information is provided to address land contamination (in the form of buried asbestos on the site) and noise considerations regarding motorised plant (new installations). The interior and exterior spaces are satisfactory for a retrofitted building, subject to conditions.
C3 To ensure that sites for child care facilities are appropriately located	A child care facility should be located: • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town	Satisfactory The centre has good access to public transport, pedestrian links and traffic access from the existing carpark. TfNSW has provided concurrence.

	centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.	
C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard	A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from: • proximity to: - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses	Unsatisfactory See detailed comments regarding SEPP 55 (now SEPP Resilience / Hazards).
3.2 Local character, streetscape and the public domain		
C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape	The proposed development should: • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas.	Satisfactory, subject to conditions. See detailed comments above regarding the character of the area and existing built form.
C6, C7, C8 To ensure clear delineation between the child care facility and public spaces	Create a threshold with a clear transition between public and private realms, including: • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing.	Satisfactory. A clear definition is provided and new driveway, landscaping and fencing works will improve the existing delineation.
	On sites with multiple buildings and/or entries, pedestrian entries and spaces	Satisfactory Entry points have been

	associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	upgraded / redefined / altered for improved safety as part of the proposed works.
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions: • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences.	Satisfactory subject to conditions.
C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	Satisfactory subject to conditions
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	Satisfactory subject to conditions. It is recommended fencing be limited to 2m (not 2.4 and a 2m natural landscape buffer provided on the northern and southern uncovered outdoor areas (old carpark area to be converted) to improve the amenity buffer to adjacent land.
3.3 Building orientation, envelope and design		
C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade	Orient a development on a site and design the building layout to: • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties	Unsatisfactory. Doors and windows are facing private open space, living rooms and bedrooms in adjoining residential properties. Play equipment located on North and South boundaries with residential properties.

	• minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.	
C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised	The following matters may be considered to minimise the impacts of the proposal on local character: • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character.	Satisfactory
C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context	Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.	Satisfactory.
	On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	Satisfactory subject to conditions. It is recommended a natural landscape buffer provided on the northern and southern uncovered outdoor area edge (old carpark area to be converted) to improve the amenity buffer to adjacent land.
C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character	The built form of the development should contribute to the character of the local area, including how it: • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage	Satisfactory subject to conditions.

	items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place.	
C16 To ensure that buildings are designed to create safe environments for all users	Entry to the facility should be limited to one secure point which is: • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building.	Satisfactory subject to conditions.
C17 To ensure that child care facilities are designed to be accessible by all potential users	Accessible design can be achieved by: • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. NOTE: The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.	Satisfactory subject to conditions.
3.4 Landscaping		
C18, C19 To provide landscape design that contributes to the streetscape and amenity	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by: • reflecting and reinforcing the local context • incorporating natural features of the site,	Satisfactory subject to conditions.

	such as trees, rocky outcrops and vegetation communities into landscaping.	
	Incorporate car parking into the landscape design of the site by: • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas.	Satisfactory, subject to Traffic Engineering conditions as some minor details to be addressed with CC.
3.5 Visual and acoustic privacy		
C20, C21 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	Satisfactory.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design.	Satisfactory subject to conditions.
C22 To minimise impacts on privacy of adjoining properties	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening.	Satisfactory subject to conditions.
C23, C24 To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.	Satisfactory subject to conditions.
	A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: • identify an appropriate noise level for a child care facility located in residential and other zones	Satisfactory subject to conditions.

	• determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met.	
3.6 Noise and air pollution		
C25, C26	Adopt design solutions to minimise the impacts of noise, such as: • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources	Satisfactory subject to conditions for internal areas of the Centre. (See comments from Council Environmental Health team.
	An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations: • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise.	Satisfactory subject to conditions. The proposal had been designed to be fitted out in the renovation work to the building to address this clause.
C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development	Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	Satisfactory The proposal had been designed to be fitted out in the renovation work to the building to address this clause.
	A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child	The proposal had been designed to be fitted out in the renovation work to the

	care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as: • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility.	building to address this clause.
3.7 Hours of operation		
C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	The proposal had been designed to be fitted out in the renovation work to the building to address this clause.
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Satisfactory subject to conditions.
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre	Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates: Within 400 metres of a metropolitan train station: • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space.	Satisfactory subject to conditions.

	In other areas: • 1 space per 4 children. A reduction in car parking rates may be considered where: • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site.	
	A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network.	Detailed traffic report has been provided. Satisfactory subject to conditions.
C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows	Alternate vehicular access should be provided where child care facilities are on sites fronting: • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. The alternate access must have regard to: • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic.	Satisfactory subject to conditions.
	Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	Satisfactory subject to conditions.
C36, C37, C38 To provide a safe and connected	The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:	Satisfactory subject to conditions.

environment for pedestrians both on and around the site	• separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction. Car parking design should: • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking.	Satisfactory subject to conditions, including compliance with Australian Standards.
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APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
Regulation 107 Education and Care Services National Regulation Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.	The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child. Verandahs as indoor space For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space. Storage Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage	Satisfactory subject to conditions.

Unencumbered indoor space excludes any of the following: • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set aside for the use or storage of cots • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children. When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.	areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide: • a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently. Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance. Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.	
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Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs. Development applications should indicate how these needs will be accommodated. Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.		
4.2 Laundry and hygiene facilities		
Regulation 106 Education and Care Services National Regulation There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children. Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.	<i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i> Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated. On site laundry On site laundry facilities should contain: • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. External laundry service	Satisfactory.

	A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.	
4.3 Toilet and hygiene facilities		
Regulation 109 Education and Care Services National Regulation A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.	<i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i> Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include: • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries	Satisfactory.
4.4 Ventilation and natural light		
Regulation 110 Education and Care Services National Regulation Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height	<i>The proposed development includes indoor spaces to be used by children that:</i> • <i>will be well ventilated; and</i> • <i>will have adequate natural light; and</i> • <i>can be maintained at a temperature that ensures the safety and well-being of children.</i> Ventilation Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a	Satisfactory.

requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.	facility. To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room. Natural light Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to: • providing windows facing different orientations • using skylights as appropriate • ceiling heights. Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.	
4.5 Administrative space		
Regulation 110 Education and Care Services National Regulation A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents	<i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i> Design considerations could include closing doors for privacy and glass partitions to ensure supervision. When designing administrative spaces,	Satisfactory.

of children and conducting private conversations.	consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel. Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.	
4.6 Nappy change facilities		
Regulation 112 Education and Care Services National Regulations Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.	<i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i> <i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i> In circumstances where nappy change facilities must be provided, design considerations could include: • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas.	Satisfactory.
4.7 Premises designed to facilitate supervision		
Regulation 115 Education and Care Services National Regulations A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor	<i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i> Design considerations should include: • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision	Satisfactory.

and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity. Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.	• locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities	
4.8 Emergency and evacuation procedures		
Regulations 97 and 168 Education and Care Services National Regulations Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service.	Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency. Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example: • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. An emergency and evaluation plan should be submitted with a DA and should consider: • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-	Satisfactory.

	staff ratios.	
4.9 Outdoor space requirements		
Regulation 108 Education and Care Services National Regulations An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered outdoor space excludes any of the following: • pathway or thoroughfare, except where used by children as part of the education and care program • car parking area • storage shed or other storage area • laundry • other space that is not suitable for children. When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5)	<i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i> Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play. When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered. Verandahs as outdoor space Where a covered space such as a verandah is to be included in outdoor space it should: • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements Simulated outdoor environments Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications. A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment. Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas. Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during	Satisfactory.

and (6) of the National Regulations. Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required. A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.	outdoor play. Simulated outdoor environments should have: • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs.	
4.10 Natural Environment		
Regulation 113 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	<i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i> Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space. Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which: • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches The outdoor space should be designed to: • provide a variety of experiences that facilitate the development of cognitive and	Satisfactory.

	physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.	
4.11 Shade		
Regulation 114 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	<i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i> Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option. Solar access Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should: • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. Natural shade Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended.	Satisfactory.

	Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by: • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter. Built shade structures Built structures providing effective shade include: • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.	
4.12 Fencing		
Regulation 104 Education and Care Services National Regulations Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and	<i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i> Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should: • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence	Satisfactory.

care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code	• not create a sense of enclosure. Design considerations for side and rear boundary fences could include: • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.	
4.13 Soil Assessment		
Regulation 25 Education and Care Services National Regulations Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by	To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process. Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where: • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment. An assessment of soil for a children's service approval application may require three levels of investigation: • Stage 1 - Preliminary investigation (with or	Satisfactory.

the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children	without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment.	
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Overall the proposal is subject to maintaining compliance with the regulatory authority with regard to operating the childcare service in accordance with Education and Care Services National Regulations. (Note: The applicant is already operating a similar size (capacity) child care Centre at No.81 Griffith Street Balgowlah and is therefore familiar with the applicable Childcare regulations and standards.)

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 (noting that the SEPP is now named State Environmental Planning Policy (Resilience and Hazards) 2021), the applicant has submitted a Preliminary Environmental Site Investigation (ESI) dated 7.10.2021 (Report # E34356BDrpt) and prepared by JK Environments (JKE) with additional / supplementary ESI report information received dated . In its conclusion, the investigation states:

"Based on the findings of the investigation, JKE are of the opinion that the site can be made suitable for the proposed development described in Section 1.1, provided that the following recommendations are implemented once the proposed development details have been confirmed:

- *An Acid Sulfate Soil (ASS) assessment should be undertaken to establish the potential for actual or potential ASS to be present. Should actual or potential ASS be identified an ASS management plan (ASSMP) should be prepared for the proposed development;*
- *Undertake a Detailed Site Investigation (DSI) to address the data gaps identified in Section 10.4 and inform the remedial approach and extent for the required Remediation Action Plan (RAP);*
- *Prepare and implement an Asbestos Management Plan (AMP);*
- *Prepare and implement an RAP to document the remediation works; and*
- *Undertake validation of the remediation works and prepare of a Validation Assessment report at the completion of remediation".*

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.

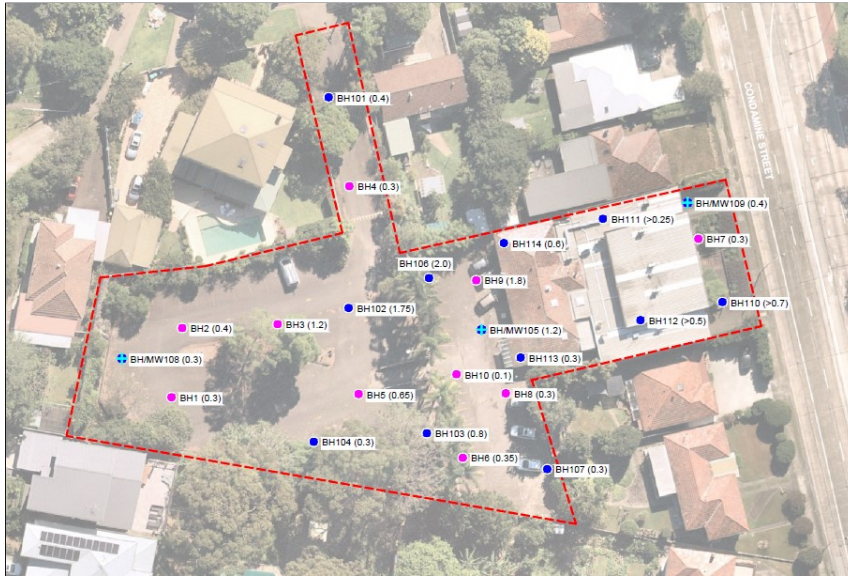


Image: Borehole sampling used by JKE as per "Sample Location Plan" report E34356BDrpt2.

Additional information supplied by the applicant dated 10.6.2022 provided the following additional conclusion with Report # E34356BDrpt2.

"The DSI included a review of site information, site inspection, soil sampling from 14 boreholes, and groundwater sampling from three monitoring wells. Fill material, use of pesticides beneath buildings, and hazardous building materials in existing buildings onsite were identified previously during the PSI as potential contamination sources at the site.

- *Fill material (i.e. historically imported soils) was encountered across the site to depths of approximately 0.3mBGL to 2mBGL. The fill was generally underlain by bedrock, however natural alluvial sandy and clayey soils was encountered in the eastern areas of the site. The fill typically comprised silty sand, silty clayey sand, sand, gravelly sand and gravel with inclusions of igneous, siltstone, ironstone, sandstone and quartz gravel, sand, glass, steel, clay fines, mulch root fibres ash, slag, building rubble (brick and concrete fragments), and slag.*
- *The PSI and DSI encountered asbestos (in bonded ACM and AF/FA form) in fill and the occurrence of asbestos was assessed to pose a potential risk during construction and in the context of the proposed land use. Groundwater contaminant concentrations were low and were assessed not to pose a risk.*

Remediation is required in relation to asbestos in soil. JKE is of the opinion that the site can be made suitable for the proposed development via remediation. We recommend the following:

- 1. Preparation of a RAP;*
- 2. Preparation of a remediation/construction-phase AMP;*
- 3. Remediation and validation of the site in accordance with the RAP.*

- *At this stage, JKE consider that, provided that the above recommendations are addressed, there is no requirement to report site contamination to the NSW EPA under the NSW EPA Guidelines on the Duty to Report Contamination under Section 60 of the CLM Act 1997 (2015) 18. JKE consider that the report objectives outlined in Section 1.2 have been addressed."*

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.

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"*.

The extent of any potential remediation of the site is uncertain due to the lack of a Phase 2 Environmental Site Assessment. Therefore, before any remediation of the site could be recommended and undertaken, a Phase 2 Environmental Site Assessment would be required in accordance with the SEPP and the *Contaminated Lands Management Act 1997* to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination. At this stage due to the methodology used in association with asbestos being present on site and the future childcare use further investigation of a more comprehensive site work is required to establish the likely true extent of buried asbestos. Once that information is presented and subject to conditions, Council may be 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. At this stage additional information is required and the proposal has not accorded the information that is required to satisfy Council's Environmental Health section pursuant to the SEPP.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP (noting that the SEPP is now named / revised as State Environmental Planning Policy (Transport and Infrastructure) 2021) requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to *Ausgrid* who provided a response on 20.5.2022 stating that the proposal does not require a response from *Ausgrid* for the extent of the works / change of use proposed. Therefore no conditions are recommended from *Ausgrid*.

Transport for NSW (TfNSW) / Roads and Maritime Service (RMS)

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:

TfNSW has reviewed the submitted application and provided a detailed referral response dated 16.5.2022 including concurrence under Section 138 of the Roads Act 1993, for the removal of the existing vehicular crossing on Condamine Street, and subject to Council's approval, included recommended conditions.

Clause 102 - Impact of road noise or vibration on non-road development states:

- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
 - (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment:

The application was referred to the TfNSW / RMS who did not raise any objection to the proposal.

Other Service Infrastructure Authorities

No other service infrastructure referral issues are raised pursuant to the SEPP. *Sydney Water* requirements are addressed by separate administrative processes managed directly through Sydney Water.

See heading SEPP (Educational Establishments and Childcare) 2017 regarding Section 3.23 of Chapter 3 SEPP (Transport and Infrastructure) 2021

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m (Existing)	14.1% (No change)	No (As approved)

The maximum height of the existing building is 9.7m (RL 16.670) to the top of the roof ridge at the front (east) of the building. As this is an existing non-compliance and no new works are proposed above 9.5m, no Clause 4.6 variation is necessary.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.4m (Existing building)	2.7% (No change)	No (As approved)
		4.7m (Bin store)	N/A	Yes
B3 Side Boundary Envelope	45 degrees at 4m (North)	2.9m (Existing)	59% (No change)	No (As approved)
	45 degrees at 4m (South)	2.3m (Existing)	53% (No change)	No (As approved)
B5 Side Boundary Setbacks	0.9m (North)	0.0m	100% (No change)	No* (As approved)
	0.9m (South)	0.0m (Existing main)	100% (No change)	No* (As approved)

		building) Ancillary works: storage	change) 100% (No change)	approved) No*
B7 Front Boundary Setbacks	6.5m	8.6m	N/A	Yes
B9 Rear Boundary Setbacks (Boundary furthest from Pittwater Road)	6.0m	1.9m to 4.7m (at grade parking as approved) 25.8m (Waste bin store) 33.8m (Main building)	N/A N/A N/A	Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting Site area 4071sqm (See landscape definition in WDCP)	40% 1,628sqm	24% 994sqm	39%	No*

* See detailed merit assessment within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	No
D4 Electromagnetic Radiation	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	No	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The non-compliance with the side boundary envelope and change of use renovation work the building is considered as follows:

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposal does not seek to increase to lengthen the area of wall for the Warringah Golf Club building as part of the renovation works to change the use of the site and building to a childcare centre. The existing building will retain its appearance in terms of height and bulk and the materials schedule is similar to the existing building.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposed works to the building will not create additional building bulk and therefore the overshadowing of the main building will remain consistent. No reduction in spatial separation of

the habitable spaces within the building is proposed that would reduce setbacks to adjacent land.

- *To ensure that development responds to the topography of the site.*

Comment:

The existing non-compliance of the side boundary envelope as approved and constructed for the Warringah Golf Club building is not proposed to be altered.

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

B5 Side Boundary Setbacks

Description of non-compliance

The proposal includes some elements of the Childcare Centre facilities within the side setbacks. This includes surfaced play areas, roller shutter storage sheds, and minor works to change building / ground elements such as the northern wall between "W04" and "W21", and elements near the southern wall adjacent "W06" and "D09".

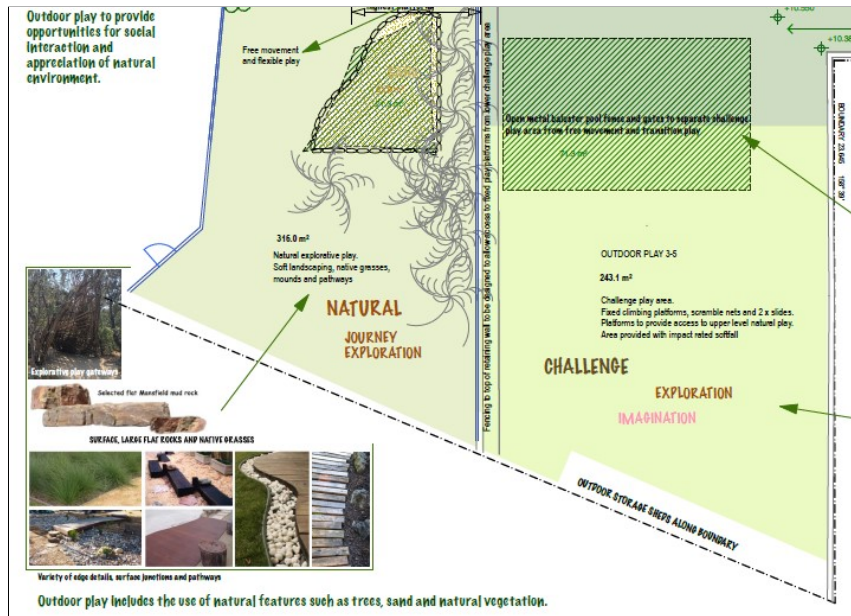
Merit consideration

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

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

Comment:

The proposal will require a substantial change to the ground level areas in the central part of the site to create new interactive outdoor play areas of a high quality and durable materials. The placement of roller shutter sheds, and artificial surface covering against the side setback does not create opportunities for deep soil landscaped In this regard, a 2.0m setback for landscape buffer along the eastern and southern edge of the 3-5 play area is recommended.



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

Comment:

The large area of the site and existing building with the terraces area between the main carpark and the building ensures that the use of the land for a Childcare Centre will not become visually dominant and will generally retain a similar appearance. No signage is proposed at this stage and the main encroachments along the side setback are minor structures and new ground level surfaces. The inclusion of landscape buffers will assist to ensure visual screening in the long term and is addressable by conditions.

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

Comment:

The general building bulk and scale will remain consistent in terms of the overall appearance of the existing building. The existing building has a width that extends in part between the north and south side boundary at its widest point which include walls on a nil side setback at ground level and upper level. Generally the childcare centre will reconfigure and fit-out the internal space with most internal walls remaining and minor partitions being used.

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

Comment:

Potential issues arising for overheight 'acoustic' fencing can increase dampness to adjacent land due to less sunlight and alternative measures such as keeping a minor buffer along the fencelines (not extending durable / synthetic surfaces to the boundary) and including landscape buffers assist to maintain amenity, privacy and solar access.

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

Comment:

The proposal does not create an unreasonable impact on any coastal or district views.

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

C2 Traffic, Access and Safety

Merit consideration

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

- *To minimise traffic hazards.*

Comment:

The proposal has been provided with a Transport Impact Assessment to address traffic safety and ensure the design of the carpark minimises hazards. The report addresses surrounding street traffic environment including, the transport network, intersections, public transport, walking and cycling access, car & bike parking, site layout and overall traffic impacts. Council's Traffic Engineering team have reviewed the proposal in context of the change of use for parking, traffic access and safety. The proposal is considered to be satisfactory subject to conditions.

- *To minimise vehicles queuing on public roads.*

Comment:

The carpark access is sufficiently large enough due to its long driveway and internal circulation to ensure car queuing is minimised.

- *To minimise the number of vehicle crossings in a street.*

Comment:

The vehicle crossing on Condamine Street is to be removed (as per Transport for NSW / TfNSW) requirements. The entry for vehicles from James Street will be retained for deliveries, staff and all other vehicles to / from the childcare centre.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The principal vehicle access will be via James Street entry and Council's traffic engineer and TfNSW have reviewed the proposal. It is considered that the proposal will maintain satisfactory pedestrian access and the proposed carpark access and layout provides safe drop off and pick up areas wholly contained within the site.

- *To minimise interference with public transport facilities.*

Comment:

The site has frontage to Condamine Street and has convenient access to the "B-line" bus route and regular bus schedule for staff or other access via public transport. The removal of the existing (redundant) layback / crossover to Condamine Street minimises interference with public transport facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The proposal has 38 parking spaces plus a loading dock / bay within the upper level parking area to be retained and remarked. This includes minor works within the upper existing main carpark area for some new kerb sections and change to landscaping elements. Traffic access is via the main entry from James Street along the established dual driveway area and the proposal included the required number of parking spaces with no proposed reduction to kerbside parking (such as by new layback / crossovers).

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

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Childcare Centre	1 per 4 enrollments	27.5 car space + loading + bike parking	28 car spaced including 1 disabled persons space + bike parking + 1 loading / delivery	0 (Complies)

			space.	
Total	150 enrollment	27.5 car spaces	28	0

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

All parking is at grade within the existing carpark area. The existing 'lower' outdoor carpark will be converted to landscape area for playground. The landscaped surroundings / edge planting area will remain consistent with the current layout. The carpark is not readily visible from James Street and is not visible from Condamine Street.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposal includes (by TfNSW conditions) the removal of the existing access to Condamine Street therefore allowing this concrete apron to be landscaping and therefore improving the landscape setback to Condamine Street. No significant change to the James Street carpark access is required. No change to major signage is proposed at this stage for the DA. The new bin loading dock is positioned near the central part of the site with ease of access to upper level carparking area and is not abutting any side boundary or road frontage.

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

C4 Stormwater

Merit consideration

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

- *To ensure the appropriate management of stormwater.*

Comment:

This issue has been considered in detail for the site including by way of site inspection and Council's stormwater engineering. Management of stormwater including LEP considerations under Clause 6.2 and Clause 6.4 of the Warringah LEP 2011 in that stormwater from earthworks and for sloping land should ensure no unreasonable impact on adjacent land or the surrounding environment. The existing site has broad areas of hard paved surfaces and stormwater infrastructure for drainage toward Condamine Street and James Street. The overland flow will be managed as per the stormwater details prepared by NITMA Consulting Engineers.

- *To minimise the quantity of stormwater run-off.*

Comment:

The proposal does not require OSD since landscaped space is increasing and the site already has a drainage network, with the total hard surface area to be reduced. Minor new works are proposed to connect to the existing drainage system as per the plan details prepared by NITMA Consulting Engineers.

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*

Comment:

An erosion and sediment control plan has been provided to ensure water quality is not unreasonably affected during construction and Council's development Engineers are satisfied that the proposal meets council's technical specifications subject to conditions.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

Comment:

The preproposal is satisfactory for the PSD due to considerations made by Council's Development Engineers and subject to conditions. See detailed response under the heading 'Internal Referrals' within this report.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The site requires 40% landscaped open space (LOS) and the proposal will provide 24% due to changes to carparking and new landscaped areas which is an increase from the existing 12% (459sqm) of LOS on site.

Merit consideration

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

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

Comment:

The principal frontage / street presentation of the building is toward Condamine Street however large sections of concrete apron have been used to provide past vehicle access. These areas are now redundant with the new work to the carparking area off James Street and ensuring all

vehicles access by James Street. TfNSW required the removal of the redundant layback area and therefore new landscaping can be provided to enable planting to enhance the streetscape. This is addressable by conditions.

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

Comment:

New native plants will be used where appropriate with a mix of other suitable plants for the change of use (childcare) and site works. The proposal achieves this objective subject to conditions as recommended by Council's Landscape Officer (see referral details).

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

Comment:

The majority of existing canopy trees on site (established mainly within the parking area) will be retained. The inclusion of a street tree at the front for the streetscape will assist to enhance the building presentation with a suitable canopy tree in the available setback area. This is addressable by conditions.

- *To enhance privacy between buildings.*

Comment:

The boundary landscaping is maintained around the perimeter of the carpark and playground areas and childcare rooms to prevent unreasonable loss of landscaping or unreasonably reduce privacy.

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

Comment:

Outdoor space for the childcare Centre is proposed to be suitably designed for safe play and interactive movement in a semi-natural environment. Durable but porous surface treatment is required and selected plants used as per the landscape plan for the recreational outdoor areas.

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

Comment:

Suitable space is available for service functions including storage, bin facilities, drainage works and the like.

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

Comment:

The proposal has been provided with engineering drainage details to demonstrate appropriate management of stormwater and prevent nuisance to adjacent land from any concentrated

stormwater flow.

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

D3 Noise

Merit consideration

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

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

Comment:

The proposal has been submitted with an Acoustic report to address noise impacts. The report has been considered in context with the plans, childcare operations, submission and surrounding environment. It is considered that the use of over height fencing is not always appropriate for residential areas in that it creates additional shadowing (and associated dampness) and walls-in neighbours. Alternative means of managing noise by operational supervision, staggered use of outdoor space, activity area use and design or location of equipment provides more appropriate residential amenity.

Renzo Tonin & Associates have completed a noise impact assessment for the proposed childcare centre at 397 Condamine Street, North Manly. The key findings of this assessment are summarised as follows:

- i) Noise impacts from outdoor play areas to the nearest residential receivers are predicted to comply with the set noise criteria with implementation of noise mitigation and management measures. The
 - ii) Acoustic screens as described in Section 5.1.2 and [to be] presented in the *Operational Management Plan* (to be prepared and submitted) to specify that any windows to indoor playrooms shall remain closed during noise activities such as singing and music.
 - iii) Target noise levels for road traffic noise intrusion to outdoor areas are achieved based on the proposed layout of play areas and the proposed glazed infill walls facing Condamine Street as shown on the plans.
 - iii) Target noise levels for road traffic noise intrusion to indoor areas are achieved with the recommended glazing selections outlined in Table 10 of the report.
 - iv) Vehicle noise emissions from car park and driveway are predicted to comply and 1.8m high fencing where existing fencing is to be replaced (e.g No.7 James Street). The car park is expected to be used by 120 car movements per hour in peak pick up drop off times. This equals 15 vehicles entering and exiting the car park (30 movements) in a 15-minute period travelling at 10km per hour at 79 dBA engine noise level.
 - v) Criteria has been set for noise emissions from mechanical plant is subject to selection and testing during CC stage.
- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The replacement or new location of air conditioner units is required to ensure they are acoustically shielded or positioned so that they do not cause any unreasonable noise intrusion to adjacent residential land. Further details on this issue are addressed by Council Environmental Health referral within this report. Provided the motorised plant items are carefully selected and located away from receivers, mechanical plant is unlikely to adversely affect nearby noise sensitive receivers. Additionally in order to address this objective a Plan of Management (PoM) is required but has not been submitted. The PoM would address noise management and other relevant matters.

The PoM must include, but not be limited to:

- Measures implemented to minimise noise impacts on surrounding residential premises (including management/supervision of external play areas);
- How the new play area will be restricted to passive play only;
- Measures to maintain compliance with any relevant conditions within this consent and within the existing consent (DA 112/2016);
- Operational procedures of the child care facility; and
- Method of recording and actioning complaints received directly from affected residents.

The Plan of Management (PoM) is to be submitted to Council for review by Councils Environmental Health Team.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance due to insufficient information regarding the PoM.

D8 Privacy

Merit consideration

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

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

Comment:

The *Plan of Management* for the centre, is not yet submitted but the Acoustic Report recommends that Centre shall require that any windows to indoor playrooms of the centre shall remain closed during active recreational times like singing and dancing sessions. This measure would reduce the risk of noise privacy impacts from indoor activities. The predicted noise levels include the proposed implementation of the mitigation measures described in Section 5.1.2. of the Acoustic Report. With the inclusion of these measures, predicted noise levels from outdoor play comply with all surrounding receivers. No restriction on play hours is necessary as per the Acoustic Report however it is considered that such an approach does not account for other DCP

objectives such as whether extra high fencing would not create other problems for neighbouring land such as permanent dampness from constant shade. The use of managed activity areas, supervision, landscape buffers (rather than surfaced play areas on a zero setback with no landscape buffer) and different fencing materials / or play equipment (no moving metal parts) has not been addressed by the Acoustic Report.

The centre needs to provide a more reasonable amenity protection to adjacent land. This includes a 2.0m separation distance along the side setbacks to ensure noise from the sides of the Centre and play areas is not projected toward No.395 or No.399 Condamine Street, which are detached dwelling houses on either side of the building. The proposal is not consistent with providing a high level acoustic privacy for neighbours.

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

Comment:

In terms of acoustic privacy, no restriction on play hours is necessary as per the Acoustic Report however it is considered that such an approach does not account for other DCP objectives such as whether extra high fencing would not create other problems for neighbouring land such as permanent dampness from constant shade. The use of managed activity areas, supervision, landscape buffers (rather than surfaced play areas on a zero setback with no landscape buffer) and different fencing materials / or play equipment (no moving metal parts) has not been addressed by the Acoustic Report.

In terms of visual privacy the use of 2.0m high lapped and capped timber fencing provides a strong solid visual barrier for all ground level areas. The upper floor of the childcare does not have any major windows for the indoor childrens areas facing side boundaries. Existing corridor staff rooms and the like have windows that provide glazing protection and will be fitted with louvres also as shown on the plans. The centre will not be occupied at night time and therefore reasonable privacy is maintained to adjacent land for the overnight period.

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

Comment:

The proposal will have new arrangements for access and entry path / gates as detailed on the plans to ensure a high level of security and safety.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D13 Front Fences and Front Walls

Merit consideration

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

- *To ensure that fencing, terracing and retaining walls are compatible with the existing*

streetscape character while creating visual interest in the public domain.

Comment:

The site currently has low retaining walls and terraced gardens to define the front boundary and fenced setback area. Conditions from *Transport for NSW* require the removal of the layback. Access for vehicles is limited to the principal dual width driveway entry from James Street. The pedestrian egress is on the south side (this is not a dedicated driveway) with the original driveway on the northern side, adjacent No.399 Condamine Street. Works to the building are substantial and therefore the removal of the redundant driveway and concrete aprons within the front setback should be undertaken with the new 1.2m high front fencing. This is addressable by conditions.

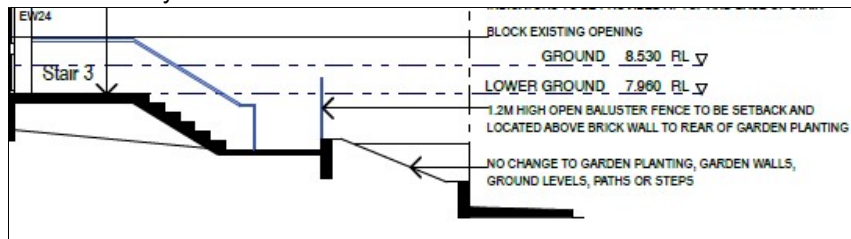


Image: Existing front setback area and new fencing.

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

Comment:

Fencing off the front setback is not consistent with improving the urban environment. Removing the redundant concrete apron areas for landscaping with path access only and low fencing achieves this objective. This consideration is addressed by the TfNSW conditions and recommended conditions to provide landscaping to enhance the front setback and use 1.2m high fencing.

- *To avoid a 'walled in' streetscape.*

Comment:

The reinstatement of the wide concrete apron areas in the front setback with the pedestrian access retained will avoid a walled in streetscape as the high gates will not be required and standard 1.2m fencing with garden areas can be provided to suit the R2 Low Density Residential Zone streetscape. This is addressable by conditions.

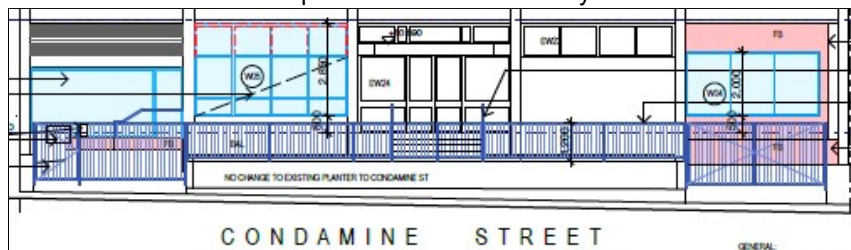


Image: Concrete apron areas on left and right hand side of the front setback replaced with landscaping and 1.2m fencing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives, subject to conditions, of WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions in this particular circumstance.

D15 Side and Rear Fences

Merit consideration

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

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

Comment:

Various side and rear fencing options are shown on the plans in association with the Acoustic Report that seeks 2.4m high 'acoustic fencing' in situations where this is on top of a 1.4m block wall or there is an existing fence structure. Generally, a maximum height of 2.0m is satisfactory for a solid style (lapped and capped timber) fence. The increased height to 2.4m or more created limited acoustic gain but substantially increases overshadowing (and associated dampness) from such a high fence which is not a balanced amenity improvement for the urban environments. The use of operational management, design / use of play space / landscape areas, appropriate enrollment (intensity), play / activity time supervision, sound-proofing air conditioner motor installations and the like to address noise within the child care centre is more effective than using extra high fencing to 'wall-out' neighbours. In this regard, it is recommended that all changes to the side and rear boundary fencing be limited to a maximum of 2.0m and be 'lapped and capped' timber where replacement is required. Notwithstanding other concerns raised regarding acoustic privacy and outdoor areas along the side boundaries, visual lattice screens affixed to the top of the fence should be limited a maximum of 300mm height above where appropriate to use due to differences in ground levels have created potential overlooking. This is addressable by conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP, subject to conditions 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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$37,523 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,752,311.

CONCLUSION

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

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

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

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

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

Overall the change of use is considered satisfactory in terms of carparking arrangements, vehicle access, drainage, landscaping works, intensity of use, building alterations and additions. Subject to conditions regarding landscaping, fencing and the location of minor storage structures the design response including to the Warringah built form controls is and development standards is satisfactory. Generally the appearance of the building from Condamine Street will remain substantially the same and *Transport for NSW* concurrence has been provided subject to conditions. Council's Engineering, Landscape, Traffic and Waste sections are also satisfied with the proposal, subject to conditions. The majority of building works required is associated with site preparation, internal fit-out, renovation work and conversion of part the existing carpark for the new playground areas.

Submission issues raised are addressable by conditions where appropriate and overall amenity impacts are considered to not create unreasonable environmental impacts on surrounding land including traffic, parking, safety, dilapidation, land use activity, stormwater, privacy (visual), stormwater, bulk or scale and waste management. However, exception to this is raised regarding acoustic privacy impacts to adjacent dwelling to the immediate north and south of the site along the side boundaries and inadequate separation buffer / side setback / design treatment for noise activity from play areas.

The capacity of the childcare centre, being for up to 150 children ,requires a detailed Plan of Management to ensure ongoing noise issues are appropriately manageable and that the extent of

asbestos material on site is adequately investigated for safe treatment / removal. However, due to insufficient information to address asbestos contamination pursuant to the SEPP and insufficient detail for operational noise management buffers along the side boundaries and no detailed procedures for noise management this childcare Centre DA is recommended for refusal.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0492 for the Alterations and additions to existing two storey building to provide a centre-based child care facility with associated earthworks, landscaping and at-grade parking. on land at Lot 1 DP 624845,397 Condamine Street, ALLAMBIE HEIGHTS, for the reasons outlined as follows:

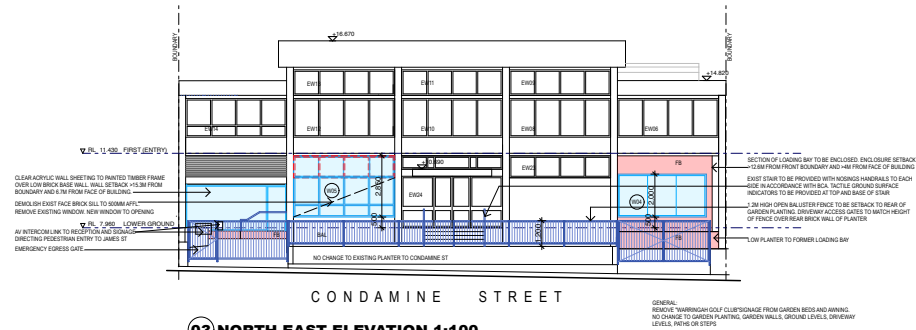
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy - Educational Establishments and Child Care Facilities 2017 (now known / revised as State Environmental Planning Policy (Transport and Infrastructure) 2021).
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 55 - Remediation of land (now known as State Environmental Planning Policy (Resilience and Hazards) 2021)
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D3 Noise of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy (acoustic) of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest for the reasons of information requirements and details to address public health, safety and amenity associated with potential contamination and noise management.



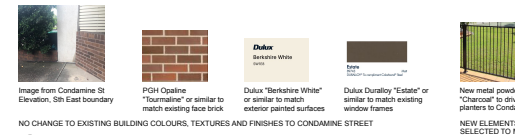
01 LOCALITY PLAN



02 LOCATION PLAN 1:500



03 NORTH EAST ELEVATION 1:100



04 EXTERNAL COLOURS & MATERIALS

Drawing List	No	Name	Status	Published
01	LOCATION PLAN, STREET ELEVATION, NOTES			☐
02	CARPARK & SITE PLAN			☐
03	FIRST FLOOR (ENTRY)			☐
04	GROUND FLOOR			☐
05	ELEVATIONS & SECTIONS			☐
06	AREA DIAGRAM & CALCULATIONS			☐
07	OUTDOOR PLAY CONCEPT			☐
08	SECTIONS, MATERIALS SCHEDULE			☐

Referenced Consultant Drawings and Reports

Survey	Drawing 53478	S J Dixon Surveyors
Acoustic	Noise Impact Assessment	Renzo Tonin & Associates
Traffic	Transport Impact Assessment	Stantec
Landscape	L01-L02	Pamela Fletcher Landscape Architect

GENERAL NOTES, CHILD CARE & ACCESSIBILITY

ALL OPENINGS REQUIRED TO BE ACCESSIBLE UNDER THE BCA TO MEET AS1428.1:2009. ALL ACCESSIBLE PATHS OF TRAVEL TO COMPLY WITH AS1428.1. HANDRAILS AND STAIRS TO BE UPGRADED TO COMPLY WITH AS1428.1:2009 AS REQUIRED. LUMINANCE CONTRAST 30% TO BE PROVIDED IN ADJACENT SURFACES IN ACCESSIBLE WC AND STAIRS, DOORS, GLAZING, SIGNAGE AND TACTILE GROUND SURFACE INDICATORS AS PER AS1428.

CHILDREN'S TOILETS AND NAPPY CHANGE AREAS TO HAVE MECHANICAL VENTILATION TO AS1686.0. MECHANICAL VENTILATION SYSTEM SHOULD HAVE AUTOMATIC SHUTDOWN IN ACCORDANCE WITH CLAUSE E2.26 NSW PROVISIONS.

EXIST FLOOR SURFACES TO BE REMOVED AND REPLACED.

PROPOSED INTERNAL STUD PARTITION WALLS TO HAVE PB LINING AND ACOUSTIC MATERIAL AS REQUIRED.

EXIST CEILING AND LIGHTING TO BE UPGRADED AND/OR AMENDED AS REQUIRED TO SUIT INTERNAL LAYOUT. EMERGENCY LIGHTING REQUIRED IN ACCORDANCE WITH E4.2 OF BCA AND AS2293.1.

NEW HWS WITH GREENHOUSE SCORE OF 4 OR GREATER AND TEMPERATURE REGULATOR TO REQUIREMENTS TO ALL CHILDREN'S ABILUTION AREAS. SEPARATE HWS TO LAUNDRY & KITCHEN FOR OPERATION OF DISHWASHER AND WASHING MACHINE.

FENCING TO OUTDOOR AREAS TO MEET G1.3 BCA. ALL NEW FENCES GLASS POOL FENCE. FENCE HEIGHT 1.8M ABOVE EXISTING GROUND LEVEL INSTALLED IN ACCORDANCE WITH 1806.1. NEW ENTRY GATES IN PROPOSED FENCE TO MEET AS1428.1 ACCESSIBILITY CODES. ALL METAL GATES FITTED WITH SELF CLOSING HINGES AND VERTICAL CHILD PROOF PULL LATCHES IN ACCORDANCE WITH AS1926.1 PART 2.4 GATES, GATE UNITS AND LATCH FITTINGS.

OUTDOOR DESIGN TO MEET SEPP REQUIREMENTS FOR NATURAL VEGETATION AND SHADE.

LIFT TO MEET AS1428 AND SECTION E BCA.

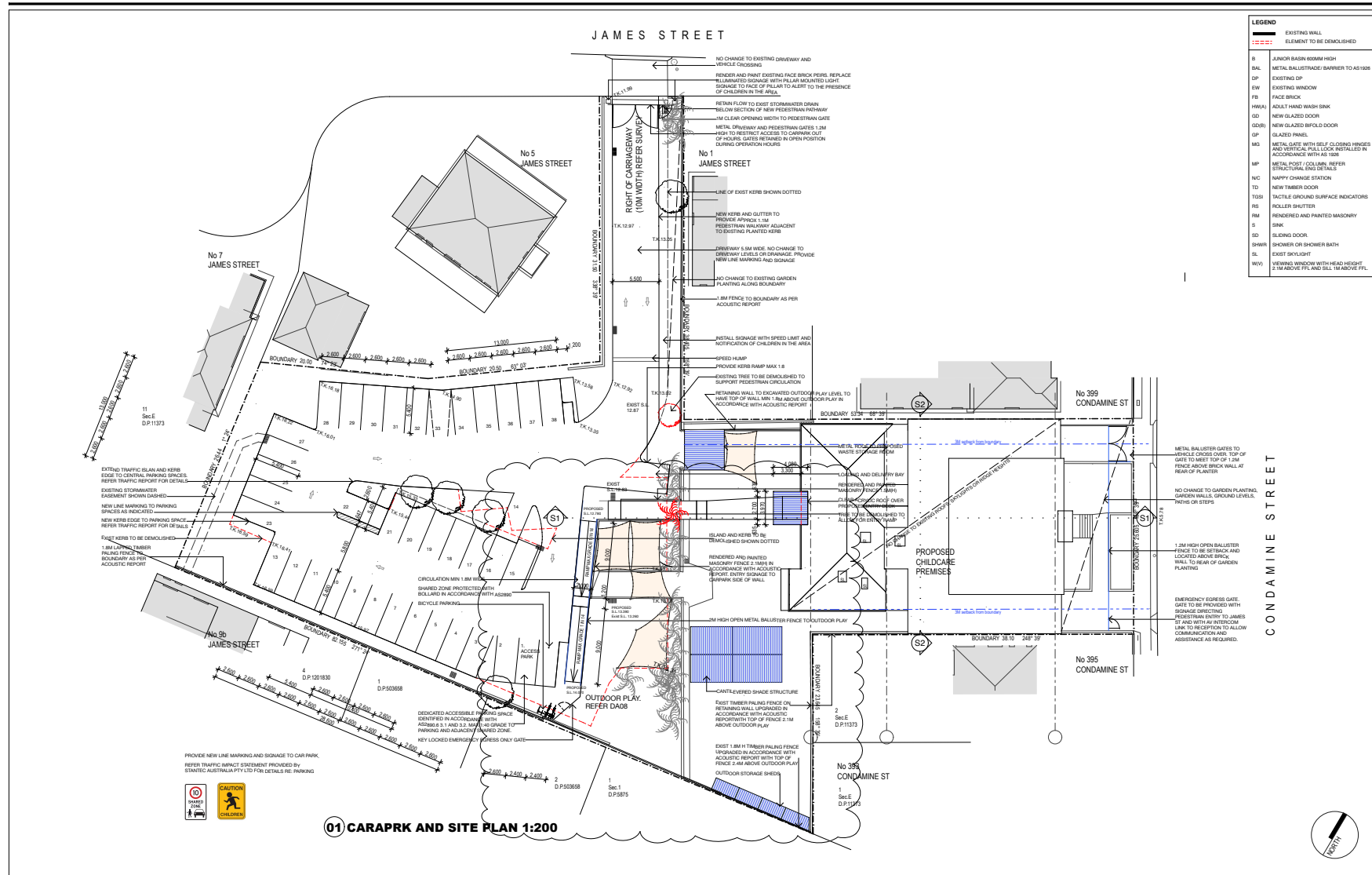
WINDOWS TO BE FITTED WITH GRADE A SAFETY GLASS WHERE GLAZING <1M AFFL. ALL NEW WINDOWS & DOORS TO COMPLY WITH BCA SECTION J.

NEW KITCHEN TO MEET FOOD PREMISES ACT, AS4874 AND RELEVANT STANDARDS. EMERGENCY LIGHTING TO BE PROVIDED IN ACCORDANCE WITH E4.2 OF BCA AND AS2293.1.

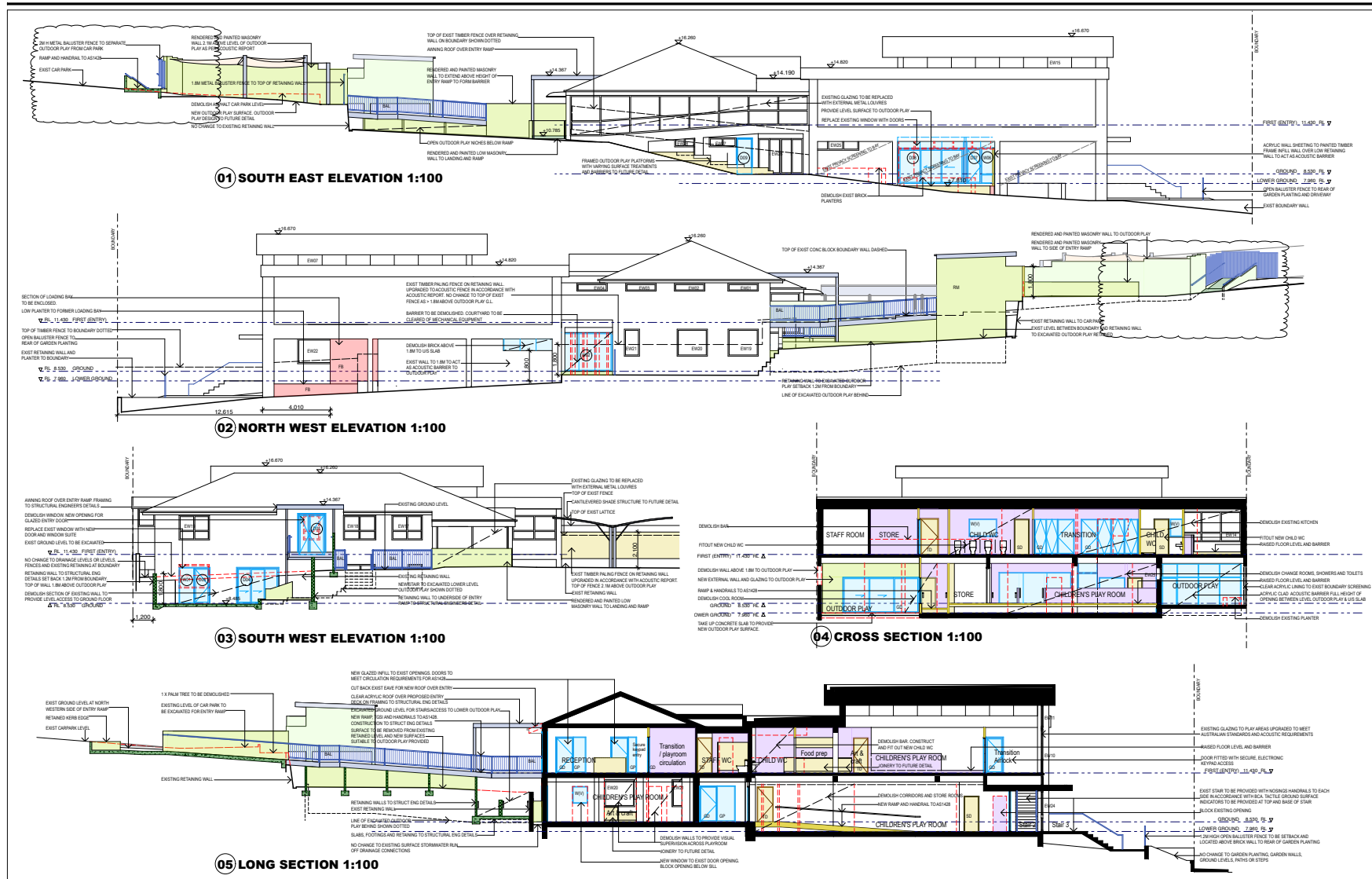
AUTOMATIC SMOKE DETECTION AND ALARM SYSTEM COMPLYING WITH SPEC E2.24 PORTABLE EXTINGUISHERS TO BE PROVIDED IN ACCORDANCE WITH AS2444. ALL OPENINGS CLOSER THAN 3M TO THE BOUNDARY TO BE PROTECTED IN ACCORDANCE WITH BCA PART C3.2.

DRAWINGS TO BE READ IN CONJUNCTION WITH DRAWINGS AND REPORTS PREPARED BY THE FOLLOWING CONSULTANTS: TRAFFIC, FIRE, ACCESS AND ACOUSTIC CONSULTANTS.

Amendments A Preliminary drawing set issue 1/2/21 B External materials to Condamine St added 18/2/22	Architect 1/1, Suite 3 1/2, 100 Bayswater Road, 2000 north, Sydney, NSW 2000 north, sydney, NSW 2000 north, sydney, NSW 2000	Project Details GIRAFFE CHILDCARE 397 CONDMINE ST NORTH MANLY 2100	Drawing name LOCATION PLAN, STREET ELEVATION, NOTES Drawing Number DA-01 Amendment B
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Amendments A Preliminary issued for comment 28/12/21 B Preliminary issued for comment 17/02/22 C Final issued with DA culture shown 16/02/22	Amendments A Preliminary issued for comment 28/12/21 B Preliminary issued for comment 17/02/22 C Final issued with DA culture shown 16/02/22	Architect  11/11/21 11/11/21 11/11/21 11/11/21 11/11/21 11/11/21	Project Details GIRAFFE CHILDCARE 397 CONDOMINE ST NORTH MANLY 2100 Job Number 2141 Date 18/02/22 As shown @ A1	Drawing name CARPARK & SITE PLAN DA-02 Drawing Number Amendment C
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Amendments A. Preliminary issued for comment B. Amendments to planning and outdoor play sections added to drawings C. Re-issued with DA colours shown 28/1/21 17/2/21 18/2/21	Architect Foley & Grant Architecture 11 Lankford Road, Sydney NSW 2000 02 9291 0200 info@foleyandgrant.com.au www.foleyandgrant.com.au	Project Details GIRAFFE CHILDCARE 397 CONDOMINE ST NORTH MANLY 2100	ELEVATIONS & SECTIONS Drawing Number DA-05 Scale As shown @ A1
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ITEM 3.4

**REV2022/0007 - 40 MILDRED AVENUE MANLY VALE -
REVIEW OF DETERMINATION OF MODIFICATION OF
DEVELOPMENT CONSENT DA2018/0074 GRANTED FOR
ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
INCLUDING A FIRST FLOOR ADDITION, NEW GARAGE,
FRONT FENCE AND GATE**

REPORTING MANAGER Steve Findlay

TRIM FILE REF 2022/500237

ATTACHMENTS

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

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2022/0007 for Review of Determination of Modification of Development Consent DA2018/0074 granted for alterations and additions to an existing dwelling including a first floor addition, new garage, front fence and gate on land at Lot 1 DP 1203547, 40 Mildred Avenue MANLY VALE, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2022/0007
Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 1 DP 1203547, 40 Mildred Avenue MANLY VALE NSW 2093
Proposed Development:	Review of Determination of Modification of Development Consent DA2018/0074 granted for Alterations and Additions to an existing dwelling including a first floor addition, new garage, front fence and gate.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Hecham Danoun Layal Danoun
Applicant:	Hecham Danoun
Application Lodged:	19/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/07/2022 to 26/07/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 500,000.00

EXECUTIVE SUMMARY

This application is for the review of determination of a modification of Development Consent No. DA2018/0074, which was originally granted for alterations and additions to an existing dwelling including a first floor addition, new garage, front fence and gate.

Specifically, the application seeks to review the conditions imposed on the approval of MOD2022/0013, namely to remove Condition 12 - Privacy Screen and Condition 19B - Opaque Glazing. The

modification application was determined on 17 March 2022.

This application is referred to the Development Determination Panel (DDP) as any Review of Determination under Section 8.2 is to be determined by the DDP. The determination of the review will be carried out within the 6 month time period imposed under Section 8.3(2) of the EPA Act, 1979.

Concerns raised in the objections predominantly relate to privacy and overlooking issues.

Critical assessment issues in this review include privacy and views. A detailed assessment under Clause D8 Privacy of this report finds that there is insufficient cause for installing privacy screens on the lower ground floor and ground floor decks on the south side and rear of the dwelling, hence it is recommended that the condition be modified accordingly. It is also considered that there are not the potential privacy impacts to sustain the condition requiring windows W1, W2 and W4 to be opaque glazed, hence the recommendation that this condition be deleted.

The application was notified from 30 May 2022 to 13 June 2022. The application was then re-notified from 19 July 2022 to 26 July 2022 as an adequate Statement of Review letter was not originally lodged by the applicant and hence was not publicly available during the initial notification period.

This report concludes with a recommendation that the DDP grant approval to the review, subject to deleted and modified conditions.

PROPOSED DEVELOPMENT IN DETAIL

This application proposes a review of Conditions 12 and 19B of Mod2022/0013.

Specifically, this review seeks to remove the following conditions:

1. **Condition 12 - Privacy Screen:**
A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of:
 - the deck located at lower ground level (RL60.730) off of the entry foyer;
 - the deck located at lower ground floor (RL60.630) off the storage room;
 - the deck located at ground floor level (RL63.600) off of the living room; and
 - the deck located at ground floor level (RL63.650) off the sunroom/office
2. **Condition 19B - Opaque Glazing:**
Windows W1, W2 & W4 are to be opaque glazed to a minimum height of 1.5m above the finished floor level.

Re-notification

The applicant did not provide an adequate "*Statement of Review*" letter during the initial notification period from 30 May 2022 to 13 June 2022. In this regard, the Statement of Environmental Effects from the previous Mod2022/0013 was accompanying the application, which did not accurately represent the review application. The applicant then provided a Statement of Review letter and the application was re-notified from 19 July 2022 to 26 July 2022.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 96AB - Environmental Planning and Assessment Act 1979 - Section 96AB

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 1203547 , 40 Mildred Avenue MANLY VALE NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Mildred Avenue and the western side of Horning Parade. The site is irregular in shape with a primary frontage of 9.8m to Mildred Avenue and a secondary frontage of 19.5m to Horning Parade. The site has an area of 727.7m². The site slopes from the primary western frontage down towards the secondary eastern frontage. The site is currently occupied by a dwelling house and detached garage. The surrounding development is characterised by residential dwelling houses of varying styles and sizes. A public pathway adjoins the site to the north connected Mildred Avenue to Horning Parade.

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:

- **DA2018/0074** - Development Application for Alterations and Additions to an existing dwelling including a first floor addition, new garage, front fence and gate. Approved on 9 April 2018.
- **CC2019/0358** - Construction Certificate for Alterations and Additions to an existing dwelling including a first floor addition, new garage, front fence and gate.
- **Mod2022/0013** - Modification of Development Consent DA2018/0074 granted for Alterations and Additions to an existing dwelling including a first floor addition, new garage, front fence and gate. Approved on 17 March 2022.
- **REV2022/0007** - This is the current application which seeks a review of the Conditions imposed on Mod2022/0013.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 8.3 of the Act

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination

of a modification of consent application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The modification application does not fall into any of these categories, therefore the applicant may request a review.

Section 8.3(2) of the Act

In accordance with Section 8.3(2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the modification application. The application was determined on 17 March 2022 and the review application was lodged on 19 May 2022, hence it must be determined by 17 September 2022, which is within 6 months of the date of determination. The application is scheduled to go to the Development Determination Panel prior to 17 September 2022.

Section 8.3(3) of the Act

Section 8.3(3) provides that the Council may review a determination and if in the event that the applicant has made amendments to the development described in the original application, the consent authority is to be satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans accompanying this review of determination application, has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same.

Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3(3) of the Act.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/07/2022 to 26/07/2022 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:
Withheld	MANLY VALE NSW 2093

In response to the initial notification period, one (1) submission was received. No submissions were received in response to the re-notification of the application.

The following issues were raised in the submissions:

- **Privacy**
- **Building Height**

- **Floor Space**

The above issues are addressed as follows:

- **Privacy**

The submission raised concerns that the proposal would impact on privacy and the ability to use the bedrooms freely in the dwelling at at No. 19 Mildred Avenue. Specifically, the concern is that the west facing windows of the first floor level provide opportunities for overlooking.

Comment:

The first floor addition was granted approved under DA2018/0074 and was assessed according to the Warringah DCP 2011. Clause D8 Privacy requires the windows of one dwelling to be located so they do not provide direct or close views (i.e. from less than 9.0 metres away) into the windows of other dwellings. The windows in question are located further than 9.0 metres away from the windows of other dwellings and therefore satisfy the requirements of this control. Moreover, these issues do not relate to the modification or review application.

- **Building Height**

The submission raised concerns that the proposed first floor does not meet the 8.5m height requirement.

Comment:

The approved development has a height of 7.2m measured from the top of the building to existing ground level. As such, the proposal complies with the height controls and the modification and current review application do not seek to change the building height.

- **Floor Space**

The submission raised concerns that the review application proposed additional floorspace and should be the subject of a separate DA.

Comment:

The applicant did not provide an adequate Statement of Review letter during the initial notification period. As such, the Statement of Environmental Effects from the previous Mod2022/0013 was provided and did not accurately represent the review application and appeared to propose additional floor space. The applicant then provided a Statement of Review letter, which confirms that the application does not include any additional floorspace, and the application was re-notified accordingly.

REFERRALS

No referrals were sent in relation to this application

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. A445488 dated 12 January 2022).

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

SEPP (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.

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

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
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
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

No changes are proposed to the approved wall height.

B3 Side Boundary Envelope

No changes are proposed to the approved side boundary envelope.

B7 Front Boundary Setbacks

No changes are proposed to the approved front boundary setbacks.

D7 Views

The subject site enjoys views of the ocean to the east and district views of Balgowlah and the Sydney CBD to the south. The installation of privacy screens to the southern edge of the decks imposed by conditions would unreasonably and unnecessarily obstruct the views that can be enjoyed by the residents of the approved dwelling.

It is considered that incorporating glass balustrades with obscure glazing to the balconies will achieve an appropriate level of privacy while also retaining reasonable view sharing.

D8 Privacy

The resident submission received was from the adjoining property to the west (19 Mildred Avenue) and raised concerns regarding privacy issues from the west facing windows of the first floor addition. Clause D8 Privacy requires windows of one dwelling to be located so they do not provide direct or close views from less than 9.0 metres away into the windows of other dwellings.

The two west facing windows are located further than 9.0 metres from the windows of other dwellings are therefore satisfy the requirements of this control. These windows are also to bedrooms on the first floor level and are therefore not the main private open space of the dwelling. As such, these rooms are not considered to be of high use rooms in comparison to the principal living areas and private open space areas at the rear of the dwelling.

The conditions which are the subject of this review were imposed for the purpose of maintaining privacy to the adjoining property to the immediate south (26 Horning Parade).

A thorough site inspection of the subject property was conducted to view and assess the potential privacy impacts generated by the approved development. The site inspection revealed that the proposed development does not overlook any windows of the adjoining southern property. The northern edge of the eastern portion of the adjoining property does not contain windows where the proposed development aligns, and a privacy screen is attached to the northern edge of their upper floor balcony.



Figure 1 - View from ground floor balcony of subject site looking south west to No 26 Horning Parade

The south facing windows of the approved development do not provide close views into the windows of other dwellings. Therefore, it cannot be substantiated to require that W1, W2 and W4 to be fitted with obscure glazing. Additionally, the boundary fence between the properties is of a significant height, which effectively screens privacy from the lower ground floor. It is considered that window W4 will not cause unreasonable privacy impacts due to the height of the boundary fence.

Planning Principle for Privacy

Furthermore, the Planning Principle established in *Meriton v Sydney City Council* [2004] NSWLEC 313 stipulates that privacy should be considered according to density, separation, use and design.

The planning principle states that, at low-densities, there is a reasonable expectation that a dwelling and some of its private open space will remain private. The main private open space of No. 26 Horning Parade is contained in their rear yard, which is in the north-west portion of their property. The proposed balconies at the lower ground floor and ground floor are located in the south-east portion of the subject site. These balconies adjoin a deck on the ground floor and upper floor of No. 26 Horning Parade, however as this property has a primary frontage to Horning Parade, these decks are in their front yard.

Therefore, these areas are not considered to be their main private open space and do not require significant privacy protection. Rather, the private open space in the rear yard of No. 26 Horning Parade is the important area to be protected.

Additionally, the proposed balconies have generous setbacks to the southern side boundary. Clause B5 of the WDCP requires a minimum setback of 0.9m to both side boundaries. The lower ground floor balcony is setback 2.0m-2.2m and the ground floor balcony is setback 1.9m-2.1m from the southern side boundary. The existing deck at the eastern rear of the site is setback 4.5m from the southern side boundary. As such, the balconies and decks provide ample spatial separation between the southern side boundary and adjoining dwelling.

The use of a space determines the importance of its privacy and overlooking from living areas and rooms where people spend more time are more likely to pose privacy impacts. The proposed balcony on the lower ground floor is off a storage area and is to be used to connect the proposed stairs from the backyard to the lower ground floor. The proposed balcony on the ground floor is off a sunroom/office and is again used to connect the proposed stairs from the rear yard to the dwelling. It is noted that both of these balconies are of a small size and are to be used for access and thoroughfare to the backyard. As such, it is considered that the proposed balconies are not "high-use" areas where the occupants would spend time in, like they would in a living area entertaining area or child's play area.

As above the balconies have been designed to be of a small size that would not permit the areas to be used for an extended period of time. Essentially, the balconies have been designed to connect the proposed stairs from the backyard to the lower ground floor and ground floor of the dwelling.

Conclusions on Planning Principle

The above assessment against the Planning Principle established in *Meriton v Sydney City Council* [2004] NSWLEC 313 has assessed the privacy of the proposal in regards to density, separation, use and design. It is considered that the privacy screens on the decks located at lower ground floor off the storage room, ground floor off the living room and ground floor off the sunroom/office are not required. It is recommended that the balustrades of these balconies be opaque glazed to provide some level of privacy to the occupants of the subject site and adjoining southern property, whilst also maintaining

views.

Merit consideration

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

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

Comment:

The proposed development has been sited well by providing generous setbacks to the southern side boundary ensuring adequate separation for visual and acoustic privacy. Additionally, the proposed south-facing balconies have been designed to be of a small size and used for accessing the stairs down to the rear yard. As such, the proposed development has been sited and designed to provide a high level of visual and acoustic privacy for occupants and neighbours.

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

Comment:

The subject site enjoys views to the south east which would be obstructed by the installation of privacy screens. It is considered that incorporating glass balustrades with obscure glazing to the balconies will achieve an appropriate level of privacy while also retaining the existing views. Therefore, subject to the recommended conditions, the proposal provides innovative design solutions to improve the urban environment.

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

Comment:

The proposal provides an appropriate level of surveillance to ensure personal and property security for occupants and visitors.

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.

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 2022

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

The critical assessment issue in this review application relates to privacy protection. The reasons why the conditions were imposed on the modification application have been the subject of review, including an assessment against the privacy provisions under the WDCP 2011 and the LEP Planning Principle, and onsite inspections were carried out.

The review has determined that the conditions imposed on the modified development cannot entirely be justified, and so some amendments to those conditions is warranted.

In this regard, there are some privacy protection measures that are still deemed necessary and they are included in the modified conditions attached to this report.

The review is scheduled to be carried out by the Development Determination Panel prior to 17 September 2022, which satisfies the requirements of Section 8.3 of the EPA Act, 1979.

Therefore, it is recommended that subject to the amended conditions, the review application be approved.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2022/0007 for Review of Determination of Modification of Development Consent DA2018/0074 granted for Alterations and Additions to an existing dwelling including a first floor addition, new garage, front fence and gate. on land at Lot 1 DP 1203547, 40 Mildred Avenue, MANLY VALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Proposed Site Plan - 7	3 March 2022	8 Squared
Proposed Lower Ground Floor - 8	3 March 2022	8 Squared
Proposed Ground Floor - 9	3 March 2022	8 Squared
Proposed First Floor - 10	3 March 2022	8 Squared
Elevations (1 & 2) - 12	3 March 2022	8 Squared
Elevation 3 - 13	3 March 2022	8 Squared
Elevation 4 - 14	3 March 2022	8 Squared
Section 1 & 3 - 15	3 March 2022	8 Squared
Section 2 - 16	3 March 2022	8 Squared

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A445488	12 January 2022	8 Squared

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:

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

B. Modify Condition 12 Privacy Screen to read as follows:

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of:

- the deck located at lower ground level (RL60.730) off of the entry foyer.

The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of

20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

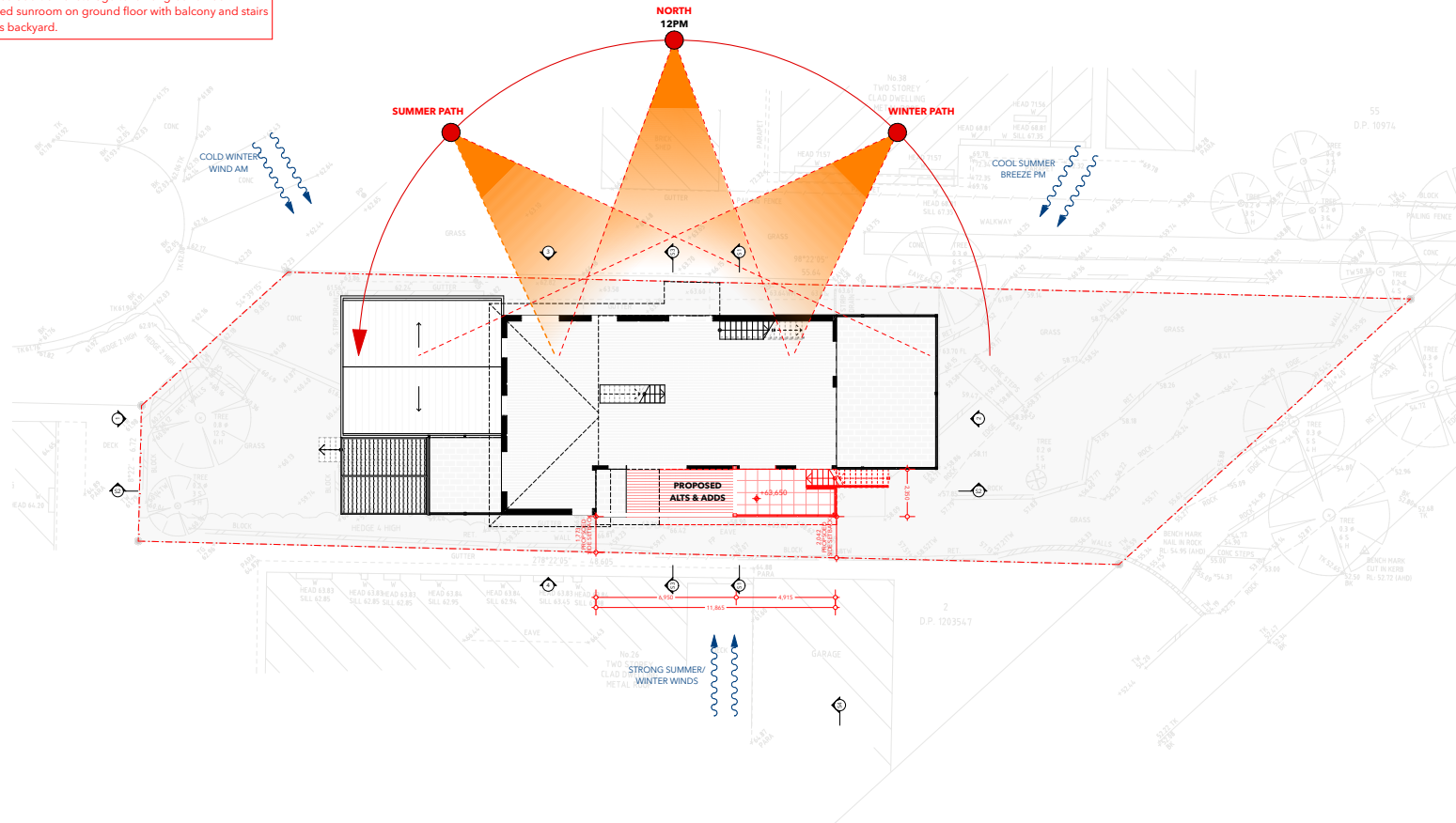
C. Modify Condition 19B Opaque Glazing to read as follows:

The balustrades of the following balconies are to be treated with opaque glazing:

- the deck located at lower ground floor (RL60.630) off the storage room
- the deck located at ground floor level (RL63.650) off the sunroom/office

Reason: In order to maintain privacy to the adjoining / nearby property.

**PROPOSED SECTION 4.55
MODIFICATION TO DA18/0074**
- Proposed addition of storage to lower ground floor.
- Proposed sunroom on ground floor with balcony and stairs to access backyard.



**Proposed Site Plan
1:200**

PROPOSED NEW
ELEMENTS/STRUCTURES

Notes

All dimensions and levels shall be checked by Contractor and verified on site prior to commencement of works. Use figured dimensions only. Do not scale from drawing. All work to comply with Australian Standards, Building Code of Australia and local authority requirements. The information contained in this document is the copyright of 8 SQUARED. Use or duplication of this document in part or in full without the written permission of 8 SQUARED constitutes an infringement of copyright.

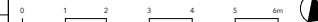


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ABN 26 159 310 693
Nominated Architect - Joshua Allen (NSW ARB 8035)

Stage	Transmittal Set Date	Transmitted By	Approved by
NOT FOR CONSTRUCTION			

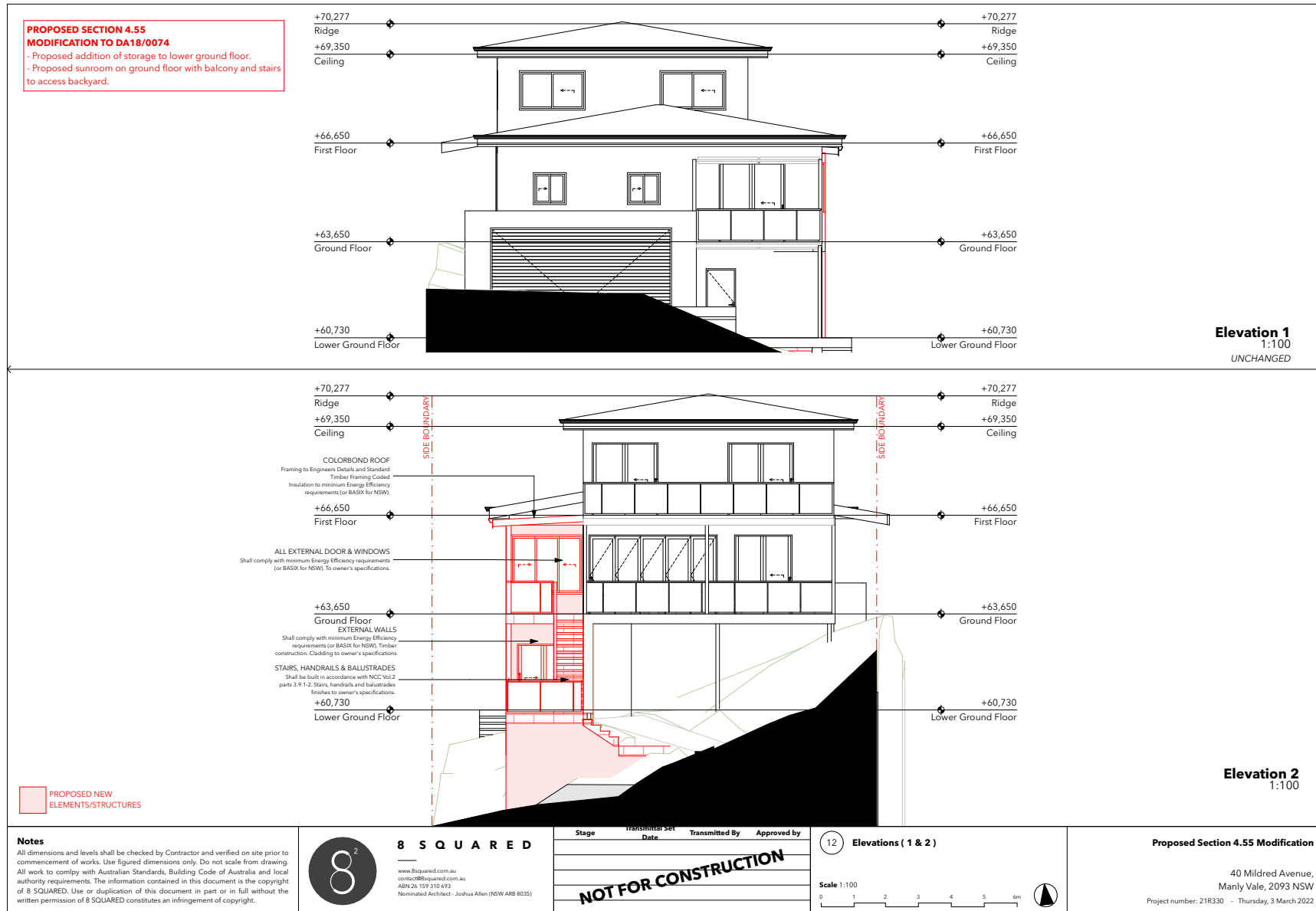
7 Proposed Site Plan

Scale 1:100



Proposed Section 4.55 Modification

40 Mildred Avenue,
Manly Vale, 2093 NSW
Project number: 21R330 - Thursday, 3 March 2022



**PROPOSED SECTION 4.55
MODIFICATION TO DA18/0074**
- Proposed addition of storage to lower ground floor.
- Proposed sunroom on ground floor with balcony and stairs
to access backyard.



Elevation 3
1:100
UNCHANGED

Notes

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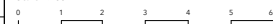
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Nominated Architect - Joshua Allen (NSW AIB 8035)

Stage	Transmittal Set Date	Transmitted By	Approved by

NOT FOR CONSTRUCTION

13 Elevation 3

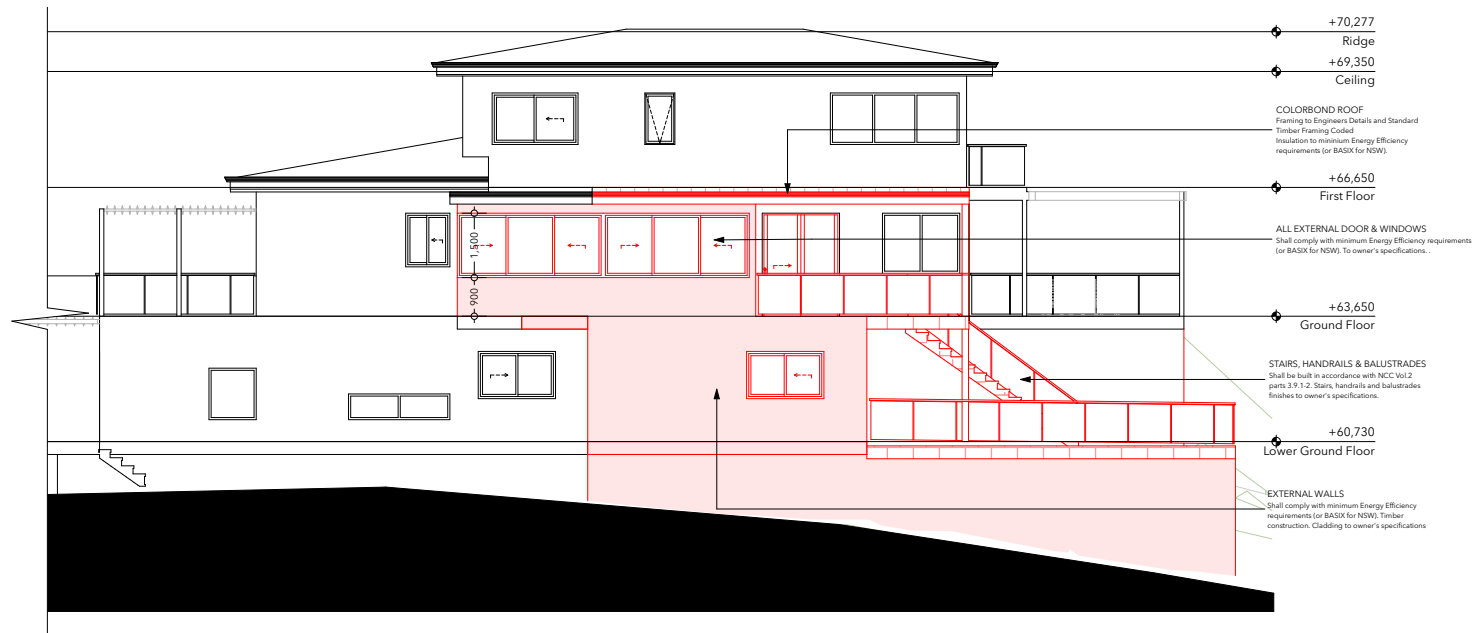
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Proposed Section 4.55 Modification

40 Mildred Avenue,
Manly Vale, 2093 NSW
Project number: 21R330 - Thursday, 3 March 2022

**PROPOSED SECTION 4.55
MODIFICATION TO DA18/0074**
- Proposed addition of storage to lower ground floor.
- Proposed sunroom on ground floor with balcony and stairs
to access backyard.



Elevation 4
1:100

Notes

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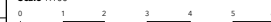


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Stage	Transmittal Set Date	Transmitted By	Approved by
NOT FOR CONSTRUCTION			

14 Elevation 4

Scale 1:100



Proposed Section 4.55 Modification

40 Mildred Avenue,
Manly Vale, 2093 NSW
Project number: 21R330 - Thursday, 3 March 2022

ITEM 3.5	DA2022/0471 - 61-63 DOUGLASS ESTATE MCCARRS CREEK - DEMOLITION WORKS AND CONSTRUCTION OF A BOAT SHED AND SKID RAMP
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2022/499852
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That 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 Council as the consent authority **approves** Development Consent to DA2022/0471 for demolition works and construction of a boat shed and skid ramp on land at Lot 2 DP 871065 and Lot LIC 409388, 61-63 Douglass Estate MCCARRS CREEK, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0471
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 2 DP 871065, 61 - 63 Douglass Estate MCCARRS CREEK NSW 2105 Lot LIC 409388, 61 - 63 Douglass Estate MCCARRS CREEK NSW 2105
Proposed Development:	Demolition works and construction of a boat shed and skid ramp
Zoning:	C3 Environmental Management W1 Natural Waterways
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Georgiana Jane Hartzer
Applicant:	Stephen Crosby & Associates Pty Ltd
Application Lodged:	01/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/04/2022 to 25/04/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 21%
Recommendation:	Approval
Estimated Cost of Works:	\$ 192,874.00

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the demolition of an existing boat house and the partial demolition of the decking on an existing jetty (waterways recreation structure), and the following new works:

- new boatshed, 23m² in area and approximately 5.1 metres in height*;
- replacement decking area on part of existing jetty adjoining the proposed boat house; and
- a new timber skid ramp over the existing concrete boat ramp.

The purpose of the application is to counteract the potential for a combination of rising sea levels, peak tide and storm events to damage the existing boatshed, jetty and ramp facilities on the site.

In numerical terms, the total height of the boatshed will increase by approximately 2.13 metres. However, the floor level of the boatshed will only increase by 0.36 metres from the existing boatshed floor level.

* as measured from the Highest Astronomical Tide (HAT).

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 - 2.5 Additional permitted uses for particular land
Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - B3.9 Estuarine Hazard - Business, Light Industrial and Other Development
Pittwater 21 Development Control Plan - D15.3 Building colours and materials
Pittwater 21 Development Control Plan - D15.11 Waterfront lighting
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 2 DP 871065 , 61 - 63 Douglass Estate MCCARRS CREEK NSW 2105 Lot LIC 409388 , 61 - 63 Douglass Estate MCCARRS CREEK NSW 2105
Detailed Site Description:	The application is subject to both one (1) allotment and an adjoining Crown lands licence on the Pittwater foreshore. The private allotment is located on the north-east facing foreshore of Elvina Bay, legally described as Lot 2 in Deposited Plan 871065, and generally known as No.61-63 Douglass Estate, McCarrs Creek. This allotment has an approximate area of 2,319m² and is currently occupied by a dwelling house and associated outbuildings. The allotment is zoned C3 Environmental Management under Pittwater Local Environmental Plan 2014 (PLEP 2014). On the north-east boundary of this allotment is the adjoining Crown Lands license no.409388, occupied by an existing boat ramp, boat shed, jetty and pontoon. These structures are ancillary to the dwelling house at No.61-63 Douglass Estate and have a total approximate area of 185m². The licence area is zoned W1 Natural Waterways under PLEP 2014 and the proposed works are entirely located within this zone. Adjoining and surrounding development is generally characterised by dwelling houses and associated waterway structures along the foreshore. Directly adjoining the site to the north-west and south-east is National Park reserve. A boatshed to the west of the subject site is located approximately 12 metres from the existing boatshed on the subject site, which is for the use of the adjoining dwelling at No.77 Douglass Estate.

Map:



SITE HISTORY

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

The subject site at No.61-63 Douglas Estate has been used for residential purposes for an extended period of time. The associated boatshed and ramp on the adjoining waterfront area (Crown Lands licence no.409388) has similarly been used for a significant period of time for this purpose.

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	There are no current draft environmental planning instruments.
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)(iia) – 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)	<u>Clause 88</u> of the EP&A Regulation 2021 requires the consent authority to consider certain "prescribed conditions" of development consent. These relevant matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development

Section 4.15 Matters for Consideration	Comments
	application. This clause is not relevant to this application. <u>Clause 36</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> 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. <u>Clause 69</u> 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. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 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

Section 4.15 Matters for Consideration	Comments
	interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Risk Assessment report was submitted with the application that included a certificate (prepared by Bushfire Planning & Design, dated 28 December 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/04/2022 to 25/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	General Comments Boat ramp piles and retaining wall to be constructed in Class 1 Acid Sulfate Soils. Geotech report states that the underlying geology is not one which supports the production of acid sulfate soils, and minimal excavation will occur, therefore no need for intrusive testing or a management plan. In part we agree with this rationale, however, because no testing has been done, a condition has been provided below as a precautionary measure.
Environmental Health (unsewered lands)	General Comments Construction of a boat shed and ramp will not impact sewage infrastructure on the property. No further investigation warranted.
NECC (Bushland and Biodiversity)	Council's Biodiversity referral team have reviewed the application for consistency against the relevant planning controls, including; - <i>Biodiversity Conservation Act 2016,</i> - <i>Biodiversity Conservation Regulation 2017,</i> - SEPP (Coastal Management) 2018, - Pittwater LEP 2014 Part 7.6 Biodiversity Protection,

Internal Referral Body	Comments
	- Pittwater DCP Part B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community, - Bush Fire Prone Land - Vegetation Category 1. Portions of the proposal site, including along the foreshore where the alterations to the existing boat shed and skid ramp are proposed, are located on the NSW Government's Biodiversity Values (BV) Map. Any impacts to native vegetation within the BV mapped area, including those that occur as part of construction works, will trigger entry into the Biodiversity Offset Scheme (BOS). There are no trees located within 5m of the proposed boat shed, decking or skid ramp. The nearest tree of any species is over 6m from the proposed boat shed and it is accepted that no Arborist's report has been prepared for this application. Therefore the BOS is not triggered. With regard to the area being on bush fire prone land; as the proposed boat shed is more than 6m from the existing dwelling no bush fire specific performance requirements apply, therefore no APZ, or associated vegetation modification which would trigger the BOS, is required. Conditions have been applied to ensure consistency with the controls above, including the protection of wildlife and natural landscape features on site, which are to remain undisturbed during the construction works. All storage, stockpiling and parking of vehicles must be within the existing hard stand area or designated area outside of any Tree Protection Zones.
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. The application has been assessed in consideration approval/support of: - Consent to lodge DA from the Department of Crown Lands under the NSW Planning, Industries & Environment dated 21 December 2021. - No Objection from the DPI-Fisheries under the Department of Primary Industries dated 1 May 2021. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the

Internal Referral Body	Comments
	proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Coastal Management) 2018 The proposed development site 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. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 3 March 2022, 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 Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.71m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. The Estuarine Hazard Controls do not apply to Jetties, Bridging

Internal Referral Body	Comments
	Ramps or Pontoons located on the seaward side of the foreshore edge. On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 4 March 2022, the ground floor level for the proposed boatshed is below the derived EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A large 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. However, development works proposed are located on the seaward side of the foreshore edge on crown lands, below the Mean High Water Mark (MHW). Therefore, the proposed development is not required to satisfy the relevant Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives. Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. Subject to conditions, the proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater estuary.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	The Aboriginal Heritage Office has provided the following advice: <i>"Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i> <i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted."</i>

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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.

- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 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 proposed works comprise of the re-building and embellishment of existing structures on the foreshore. As such, there is not considered to be any significant impact on any established environmental, heritage or cultural values within the coastal foreshore area that adjoins the site. The proposed works are therefore consistent with Clause 2.11 of the SEPP.

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 works are relatively minor and in effect are in response to the increased likelihood of coastal inundation on the site during peak tide / storm events. Council's Coast and Catchments Team has reviewed the proposal and have no objection to the proposed development. Therefore, the development is not considered likely to result in the increase in any coastal hazards on the site.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Land below Mean High Water Mark: 4m (measured from Highest Astronomical Tide, estimated at 1.17m AHD)	5.05m	21	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes

Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes
23 Use of certain land in the W1 Natural Waterways Zone	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The proposed works are located within "Area 23 - Use of certain land in Zone W1 Natural Waterways " of Schedule 1 Additional Permitted Uses of PLEP 2014.

Development for the purposes of boat sheds, jetties or water recreation structures are permitted through the operation of this schedule and therefore the proposed works are permissible with consent.

Zone W1 Natural Waterways

Whilst the proposed works, defined under PLEP 2014 as "waterways recreation structures" are prohibited in the W1 zone, the works are located in "Area 23" of Schedule 1 Additional Permitted Uses of PLEP 2014, therefore the use is permissible with consent.

4.3 Height of buildings

The proposed height of the boatshed has been measured using an estimate of the Highest Astronomical Tide (HAT) for Pittwater.

The HAT is the highest high tide, defined as the highest level which can be predicted to occur under average meteorological conditions and any combination of astronomical conditions. In Australia HAT is calculated as the highest level from tide predictions over the tidal datum epoch (TDE), this is currently set to 1992 to 2011.

Past applications for development forward of the mean high water mark in the Pittwater foreshores have used the 1.17 metres AHD estimate of the HAT, to estimate overall height.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4 metres
Proposed:	5.05 metres
Percentage variation to requirement:	21%

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:

A written request, prepared by Stephen Crosby & Associates (dated 18 February 2022) has been provided with the application. 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 there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- the proposed boat shed is consistent with the Pittwater 21 DCP requirements for boat sheds, specifically the height control of 4.5 metres measured from the slab or structure that the boatshed will be situated on;
- the boatshed is similar in built form and scale with other existing boatsheds and water borne structures within Elvina Bay;
- there will be negligible amenity impact on other adjoining properties in the vicinity;
- the bulk and scale of the proposed boatshed will respond adequately to the surrounding topography of the adjoining foreshore and not dominate these surroundings; and

- represent a typical form of discrete waterway development on the foreshore that supports and adds character to the existing foreshore and is consistent with the desired future character of the western foreshores of Pittwater / Elvina Bay.

The arguments put forward by the applicant are considered valid and relevant to the objectives of the PLEP 2014, specifically those objectives relating to building height and the W1 Natural Waterways zone.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the W1 Natural Waterways zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: The desired character for the W1 Natural Waterways, as stated within the accompanying P21 DCP "Waterway Locality", references that future development "will maintain a building height limit below the tree canopy and minimise bulk and scale". With the proposal at 5 metres above the highest sea level, the proposed boatshed is readily considered as being of a minimal bulk and scale. Further, a 5 metres high structure is will below the tree canopy of the adjoining Pittwater Spotted Gum ecological community, where mature Spotted Gums can achieve a mature height of up to 45 metres. In this regard the proposed development is considered to

achieve this objective.

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

Comment: An existing boatshed adjoins the proposed boatshed, approximately 12 metres to the west. At an estimated RL of 6.2 metres AHD, the proposed boatshed will be 0.6 metres above this existing boatshed (shown on survey to be RL 5.63 metres AHD). In this context, the proposed total height of the boatshed is considered to be consistent with the height and scale of surrounding and nearby development. Hence, the proposed development is considered to be consistent with this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment: There will be no overshadowing to any adjoining habitable floor space or dwellings as a consequence of the proposed works and more specifically, as result of the proposed non-compliance. Hence, the non-compliance does not hinder in any way the achievement of this objective.

d) to allow for the reasonable sharing of views,

Comment: There will be no loss of views currently enjoyed from adjoining properties as a consequence of the proposed works and more specifically, as a result of the proposed non-compliance. Hence, the non-compliance does not hinder in any way the achievement of this objective.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The surrounding topography rises up steeply from the foreshore, with the ridge line / escarpment directly above the site estimated to be at least 90 metres above the coastline where the proposed works are situated. In this context, the proposed works are considered to respond adequately to the surrounding topography and in turn, this objective.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment: The proposed works are not located within a heritage conservation area, nor in close proximity to a heritage item. As elaborated upon previously in this report, the proposed works have been sensitively designed to respond positively to the surrounding natural environment. Hence, this objective is achieved.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone are:

- *To protect the ecological and scenic values of natural waterways.*

Comment: The proposed boatshed is a form of development atypical to waterways. In real or numerical terms, the proposed boatshed will replace an existing boatshed by increasing the floor level by 0.36 metres and the overall height by 2.13 metres. The extent of the variation to the development standard is in effect, an exceedance of the 4 metres height limit by 1.05 metres. The part of the structure that exceeds the standard is a pitched roof, very typical with

other boatsheds in the vicinity. as a result the visual bulk and scale of the proposed works will not adversely effect the scenic values of the surrounding The proposed works are located upon existing structures, requiring no dredging or further site disturbance, resulting in negligible impact on ecological values. Therefore, this objective is satisfied.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment: The site is surrounded by National Park reserve, which makes the surroundings a significantly natural foreshore, free of development. As the proposed works are located on an existing groyne and jetty, the visual impact is limited and the surrounding natural values are adequately respected.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment: As the proposed works relate to structures ancillary to a dwelling house, this objective is not considered relevant to the proposed development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways 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, and in accordance with correspondence from the Deputy Secretary on 2 March 2022, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a uninhabitable building and other minor structures (Class 10 building).

5.21 Flood planning

Sub-clause 3(d) of Clause 5.21 states that:

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

...

(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The purpose of the application is to specifically reduce the potential for the existing boatshed to be inundated during significant storm and peak tide events. Hence, the proposed development is consistent with this Clause.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment: The application has been assessed by Council's Biodiversity Team, who have raised no objections. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment: The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Conditions have been recommended, to ensure consistency with recommended bushfire risk conditions and minimise any disturbance to the natural environment during construction.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: The proposed development is supported by a geotechnical risk assessment report, prepared by suitably qualified professionals (Ascent Geo) dated 18 March 2022, that demonstrate all geotechnical risks have been taken into account and that the proposed works are appropriate in the context of the existing constraints of the site. The findings of this report are recommended to be incorporated as recommended conditions of development 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 information provided with the application has adequately demonstrated that waste water, stormwater and drainage can be suitably managed on site, as part of the proposed development. The application has been reviewed by both Council's Coasts and Catchments and Riparian Lands and Creeks teams, who are supportive of the proposal, subject to recommended 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: As stated previously, a detailed geotechnical risk report has been provided with the application. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for a new boat shed and the partial re-building of an existing slipway and jetty. These are permitted ancillary structures that are forward of the foreshore building line on 61-63 Douglass Estate.

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:*
 - i *pollution or siltation of the waterway, or*
 - i *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - i *an adverse effect on drainage patterns, or*
 - i *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the W1 Natural Waterways zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains the limited public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain the limited public access that exists along the foreshore in the vicinity of the site. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

7.10 Essential services

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

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

Comment:

The site is adequately serviced by utilities infrastructure to satisfy the requirements of this clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Merit assessment	N/A	N/A	N/A
Rear building line	N/A (foreshore building line)	N/A	N/A	N/A
Side building line	N/A	N/A	N/A	N/A
Lateral limits for waterfront development	2 metres	6.7 metres (at closest point)	N/A	Yes
Minimum frontage for waterfront development	15 metres	58 metres	N/A	Yes
Waterfront Development (Jetties)	1 metres above MHW	0.55 metres	N/A	Yes
Waterfront Development (Boatsheds)	4.5 metres (height) 6 metres (length) 4 metres (width)	4.5 metres 6.2 metres 3.9 metres	N/A 3% N/A	Yes No Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	No	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	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
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	No	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

B3.9 Estuarine Hazard - Business, Light Industrial and Other Development

The application was referred to Council's Coasts and Catchments Team for comment.

It was noted that site would be subject to an Estuarine Planning Level (EPL) of 2.71 metres AHD.

The jetty and ramp works are not subject to the EPL, however the proposed boatshed is subject to the policy and has a floor level 1.72 metres AHD, which is approximately 1 metres below the minimum level. Notwithstanding, the Coasts and Catchments Team supports the proposal, subject to recommended conditions that the boatshed ensure:

- All structural elements below 2.71 metres AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.71 metres AHD or waterproofed to this level;
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.71 metres AHD; and
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.71 metres AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.71 metres AHD to avoid the likelihood of contact with splashing waves and spray.

Therefore, subject to the recommended condition, the proposal will achieve the Outcomes of this control.

D15.3 Building colours and materials

The schedule of exterior finishes provided in the application specify a colour for the external walls as "Portland Stone", which is similar in tone to a colour which is restricted for new waterfront development in the DCP, specifically "beige". The roof is also proposed to be light colour. The purpose of this restriction is to limit the prominence of new structures on the waterfront. Hence, a condition of consent is recommended to restrict the colour of the external walls and roofing of the proposed boatshed are to be only those specified in the DCP.

D15.11 Waterfront lighting

No lighting is proposed as part of the application, hence the requirements of this clause are not considered applicable to the proposal.

D15.12 Development seaward of mean high water mark

A consideration of the application against the Controls of this part of the DCP is provided below:

All new buildings are to be located landward of mean high water mark.

Comment: Whilst the proposed boatshed is seaward of the mean high water mark, it is a structure that is permitted in this location, as discussed below.

Only structures associated either with the accommodation, servicing or provision of access to boats shall be permitted seaward of mean high water mark.

Comment: The proposed boatshed is for the accommodation, servicing or provision of access of boats and other watercraft. Hence the application is consistent with this control.

In instances where it is proposed to alter, extend or rebuild existing buildings seaward of mean high water mark, any further encroachment of such buildings onto the waterway is to be minimised. Where development seaward of mean high water mark is proposed to occur, especially during the refurbishment of existing structures, proponents need to ensure that the structure will not harm marine vegetation, and must consult with the Department of Primary Industries.

Comment: The proposed boatshed will be located in the same position as the existing boatshed, which is to be demolished. The boatshed is located on an existing sandstone groyne, hence no disturbance to marine vegetation will be caused. Therefore, the development is consistent with this control.

Developments are required to ensure that public access is maintained and provided for along the foreshore.

Comment: Limited public access is provided along the foreshore adjoining 61-63 Douglass Estate. The proposed development will result in no further diminishment in public access, hence this Control is achieved.

D15.13 Lateral limits to development seaward of mean high water mark

The proposed boatshed is located at least 6.7 metres at its closest point from the adjoining north-west boundary and 38 metres from the south-east boundary, well within the minimum 2 metres lateral limit specified under the DCP.

D15.14 Minimum frontage for waterfront development

The property associated with the proposed boatshed has a frontage along the foreshore of at least 51 metres, consistent with this control.

D15.15 Waterfront development

The controls within Part D15.15 that are relevant to the proposed development include:

- a) Jetties, Ramps and Pontoons;
- c) Boatsheds; and
- d) Slipways and Launching Ramps

The proposed development will represent a minor variation with the width requirements for boatsheds in (c)(ii), specified at 4m. The proposed boatshed will have a width of 4.2m. In regard to d) Slipways and Launching Ramps, a new timber surface over the existing concrete ramp is proposed - the DCP specifies that these structures are generally not favoured.

These non-compliances are considered against the Outcomes of the controls below:

Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater. (En)

Comment: The proposed works are in effect a replacement and upgrade of existing facilities. Hence, there is unlikely to be any adverse loss of water quality as a result of the proposed development.

Public access along the foreshore is not restricted. (S)

Comment: There is limited public access currently along the foreshore adjoining the site and the proposed works will not in any way diminish what existing public access already exists on the site.

Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners. (S, Ec)

Comment: The proposed works will not extend beyond the dimensions of the existing seaward structures on the site and therefore no encroachment on navigation channels are likely.

Structures blend with the natural environment. (S)

Comment: The proposed works are modest in size and in effect replace the existing structures, with their bulk and scale being consistent with the surrounding natural environment. The extent of the variation to the maximum width is very minor, in effect 0.2m or a 3% variation with the control. Further, a condition of consent is recommended to ensure that the colours used in the external cladding and roofing boatshed are consistent with the surrounding natural environment.

Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway. (En, S)

Comment: As stated above, the proposed works are generally considered to be of a bulk and scale that will not adversely effect the visual quality of the surrounding natural environment. The proposed works will have a negligible impact on water quality and estuarine habitats.

To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development. (Ec)

Comment: Not relevant to the proposed development.

Waterfront development which does not comply with the outcomes of this clause are removed. (En, S, Ec)

Comment: The existing structures on the site are generally consistent with the control and the Outcomes of the DCP, hence removal of these structures are not considered necessary.

In summary, despite the non-compliances, the proposed development can readily achieve the Outcomes of the control. Therefore, strict compliance with the controls are not considered necessary under the circumstances.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$ 964 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 192,874.

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 proposal, for demolition of an existing boat house and the partial demolition of the decking on an existing jetty construction of a new boatshed, skid ramp and partial renovation of a jetty has been referred to the Development Determination Panel (DDP) due to a greater than 10% variation with the Height of Buildings development standard.

No submissions were received during the notification period.

The critical assessment issues relate to:

- Greater than 10% variation to the Height of Buildings development standard in the W1 Natural Waterways zone;
- Estuarine Planning Levels;
- Biodiversity;
- Coastal environments; and
- Aboriginal Heritage.

In regard to Height of Buildings, the variation sought to the development standard is considered under the circumstances to be acceptable. The other matters are supported through referral and commentary to/from the relevant agencies and subject to condition, no objection is raised.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the

objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0471 for Demolition works and construction of a boat shed and skid ramp on land at Lot 2 DP 871065, 61 - 63 Douglass Estate, MCCARRS CREEK, Lot LIC 409388, 61 - 63 Douglass Estate, MCCARRS CREEK, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2210 DA01	December 2020	Stephen Crosby & Associates
2210 DA02	December 2020	Stephen Crosby & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
Geotechnical Assessment AG 22005	18 March 2022	AscentGeo
Estuarine Risk Management Report	4 March 2022	Salients
Bushfire Risk Assessment	28 December 2021	Bushfire Planning & Design

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
-	1 March 2022	Stephen Crosby

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	5 May 2022
Aboriginal Heritage Office	Aboriginal Heritage Office - Referral Response	20 April 2022

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

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 \$964.37 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 \$192,874.00.

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 \$5,000 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. 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.

8. Estuarine Hazard Design Requirements

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

9. Estuarine Planning Level Requirements

An Estuarine Planning Level (EPL) of 2.71m AHD has been adopted by Council for the subject

site and shall be applied to all development proposed below this level as follows:

- i All structural elements below 2.71m AHD shall be of flood compatible materials;
- i All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.71m AHD or waterproofed to this level;
- i The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.71 m AHD; and
- i All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.71m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.71m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

10. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 4 March 2022 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

11. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (25 years justified in a report and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 4 March 2022.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

12. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

13. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards.

14. **External Colours and Materials**

(a) External Glazing - The reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20% (expressed as a per centum of the reflected light falling upon any surface).

(b) External Roofing - The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

(c) Wall Cladding - The external finishes to the walls adjoining the waterway must be finished in dark, earthy tones ranging between the specified colours in Pittwater 21 DCP including: black; dark grey; dark green; dark brown; mid-grey; green; brown; and dark blue.

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 from glazing does not occur as a result of the development. (DACPLC04)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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

16. **Wildlife Protection**

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

Reason: To protect native wildlife.

17. **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) 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.

18. **Aquatic sediment management**

Environmental safeguards (e.g. silt curtains) are to be used during construction to prevent the

escape of turbid plumes into the aquatic environment. The silt curtains must be carefully placed and secured to ensure they do not drag over any nearby seagrass beds.

The safeguards must be regularly maintained and removed once the works are completed.

Reason: Protection of seagrass.

19. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

20. **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:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i 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.

21. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

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. **Acid Sulfate Soil Management Plan**

The following Pile Removal and Placement Plan must be implemented during works:

1. Pile removal and placement works are to be enclosed using a floating silt curtain to facilitate rapid dispersal of disturbed sediments back to the seabed.

2. All seabed sedimental material on demolished piles is to be hosed off piles prior to piles leaving the silt curtain area, preferably as each pile is being pulled.
 3. Piles or demolition material with adhered sub-surface seabed sediment that cannot be cleaned immediately but needs to be stored exposed to air prior to cleaning must be washed and hosed off into estuarine waters contained by the floating silt curtain as soon as practicable with a maximum exposure time of 18 hours.
 4. For any pile or other demolition material with adhered sediment that cannot be cleaned immediately, the operator/contractor must keep a log book entry of the time of extraction out of the water, the manner and place of storage of the material and the time, manner and placement of hosed off material (in accordance with point 3 above).
- Reason: prevent environmental harm from Acid Sulfate Soil.

24. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

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

25. **Protection of Trees and Habitat Features**

All natural landscape features, including any rock outcrops and native vegetation not included in any landscape plan are to remain undisturbed during the construction works.

All storage, stockpiling and parking of vehicles must be within the existing hard stand area or designated area outside Tree Protection Zones. Tree protection measures are to be in place should construction works impinge on canopy trees or their Structural Root Zones.

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

Reason: To protect wildlife, and their habitat, and ensure compliance with State and local planning controls.

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

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

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

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

27. **Removal of Sediment and Erosion Controls**

Before demobilising from the site and once vegetation cover has been re-established across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into the revegetated area. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

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

Reason: Protection of the receiving environment

28. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

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

29. **Protection of Trees and Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed on the site, portions of which are located on the NSW Government's Biodiversity Values Map.

Any impacts or disturbances to the habitat features above may trigger entry into the Biodiversity Offsets Scheme and must be assessed by an Accredited Assessor under the Biodiversity Assessment Method and a Biodiversity Development Assessment Report (BDAR) submitted to the Principal Certifying Authority as part of a Development Assessment.

Reason: To protect wildlife, and their habitat, and ensure compliance with State and local planning controls.

30. **Boatshed Not for Habitation**

At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed

must not be used for any other purpose than the storage of small boats, light watercraft and boating

and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or

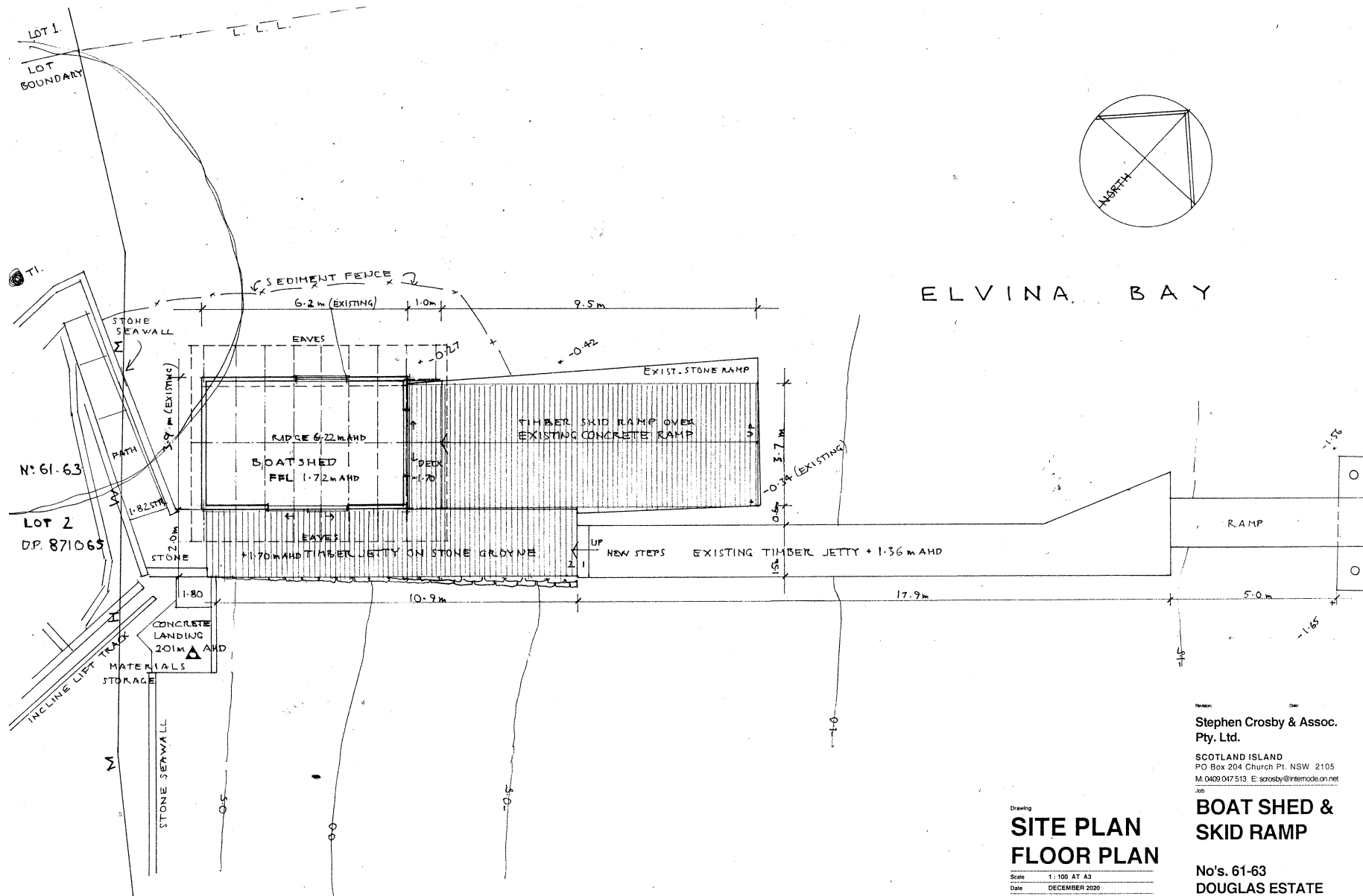
toilet facilities is not permitted.

Reason: To ensure compliance with Pittwater Estuarine Risk Management Policy.

31. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd dated 4 March 2022 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment



Drawing
**SITE PLAN
FLOOR PLAN**

Scale 1:100 AT A3
Date DECEMBER 2020
Drawn S.C.
Drawing Number

2210 - DA 01

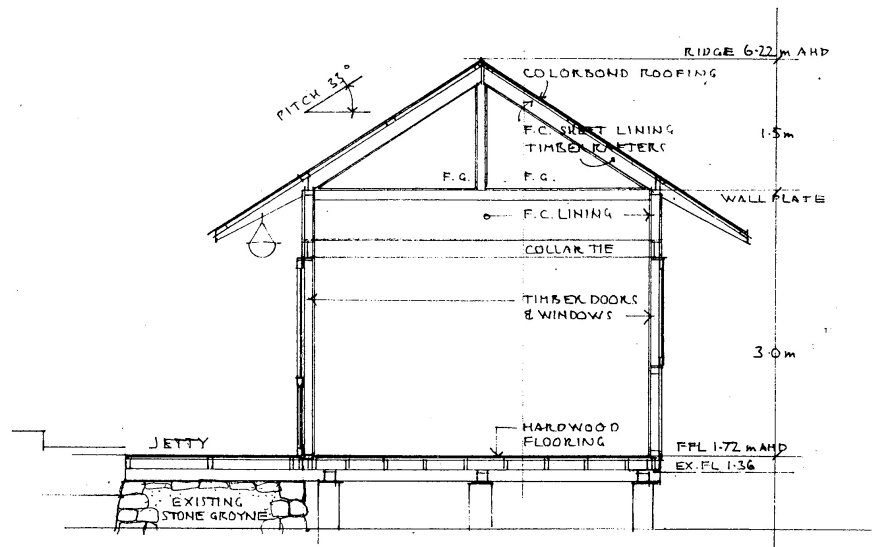
Stephen Crosby & Assoc.
Pty. Ltd.

SCOTLAND ISLAND
PO Box 204 Church Pt. NSW 2105
M 0409 047 513 E scrosby@internode.on.net
Job

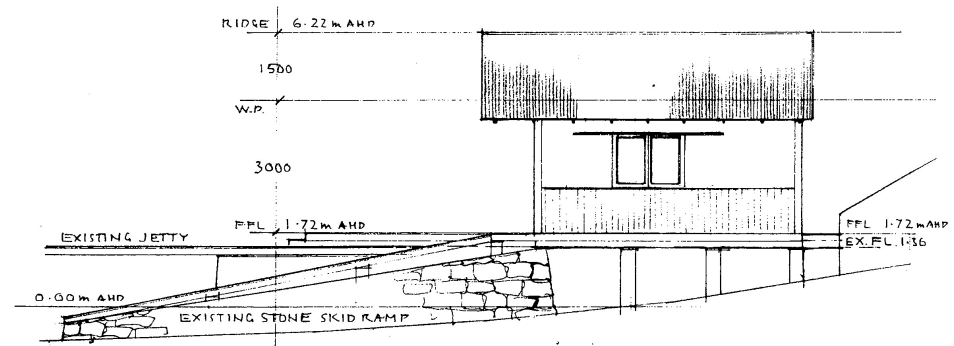
**BOAT SHED &
SKID RAMP**

No's. 61-63
DOUGLAS ESTATE
ELVINA BAY
Lot 2 DP 871065

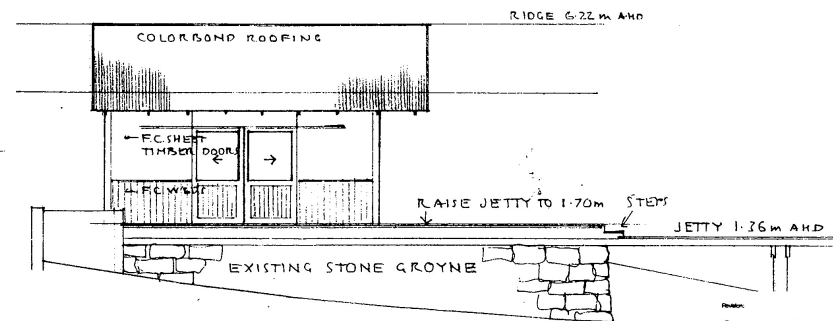
For B. & G. HARTZER



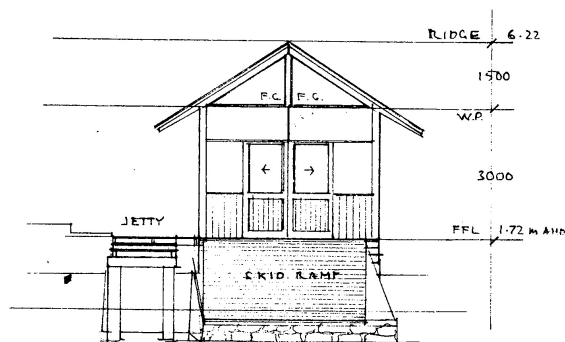
SECTION 1:50



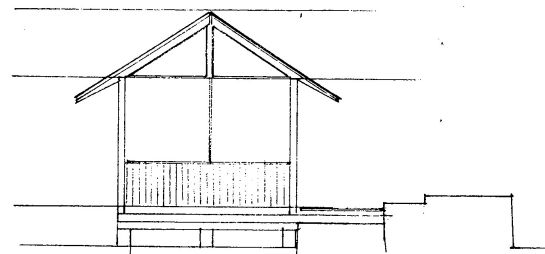
NORTH - WEST



SOUTH - EAST 1:100



NORTH - EAST



SOUTH - WEST

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**BOAT SHED &
SKID RAMP**

No's. 61-63
DOUGLAS ESTATE
ELVINA BAY
Lot 2 DP 871065

For B. & G. HARTZER
Drawing

**SECTION &
ELEVATIONS**

Scale 1:50 & 1:100 AT A3
Date DECEMBER 2020
Drawn S.C.
Drawing Number

2210 - DA 02

Clause 4.6 Variation Request Clause 4.3 Height of Buildings

**61-63 DOUGLAS ESTATE, McCARRS CREEK, 2105
Lot 2 DP 871065**

Date: 18th February 2022

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: G. & B. Hartzer

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 1.72m AHD and the ridge is 6.22m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 1.05m.

The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section

D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHWL on freehold land, **where practicable.**" The form of the land and the existing stone skid ramp make it practical to locate the replacement boat shed in its current location.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. The Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

Clause 4.6(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 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) there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard.
The objectives of the standard are:

- (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.

Objective (a): to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 20 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds in Elvina bay and McCarrs Creek, and remains consistent with the desired character of the Pittwater waterway.

Objective (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Many of the boat sheds in McCarrs Creek, Elvina and Lovett Bays, as well as on Scotland Island, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area straddling the Mean High Water Mark.

The building sits lightly on the existing terrain.

Objective (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,
- (b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed modification to the existing development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect public access along the waterfront.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the McCarrs Creek-Elvina Bay locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and

- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY