

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 7 SEPTEMBER 2022**

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



**Peter Robinson**  
**Executive Manager Development Assessment**

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 7 September 2022

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 3 August 2022	
2.2	Minutes of Extraordinary Northern Beaches Local Planning Panel held 31 August 2022	
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS.....</b>	<b>5</b>
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### **5.0 NON PUBLIC MEETING ITEMS**

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

Nil

## **ACKNOWLEDGEMENT OF COUNTRY**

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

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

Nil

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 3 AUGUST 2022**

#### **2.2 MINUTES OF EXTRAORDINARY NORTHERN BEACHES LOCAL PLANNING PANEL HELD 31 AUGUST 2022**

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### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 3 August 2022 and that the minutes of the Extraordinary Northern Beaches Local Planning Panel held 31 August 2022 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/1039 - 16 WYATT AVENUE, BELROSE - DEMOLITION WORKS AND THE CONSTRUCTION OF A BOARDING HOUSE DEVELOPMENT
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/513548
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plans & Elevations 3 <a href="#">↓</a> Design & Sustainability Advisory Panel Report

### PURPOSE

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

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/1039 for demolition works and the construction of a boarding house development at Lot 2566 DP 752038, 16 Wyatt Avenue, BELROSE, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1039
<b>Responsible Officer:</b>	Steven Layman (Planning Consultant)
<b>Land to be developed (Address):</b>	16 Wyatt Avenue, Belrose Lot 2566, Deposited Plan 752038
<b>Proposed Development:</b>	Demolition works and the construction of a boarding house development
<b>Locality:</b>	Warringah LEP 2000 – C8 Belrose North
<b>Category:</b>	Category 2
<b>Referred to DDP:</b>	No
<b>Referral to NBLPP:</b>	Yes
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Jennifer Mary Patricia Holman John Richard Holman
<b>Applicant:</b>	Northern Beaches Essential Services Accommodation Pty Ltd
<b>Application Lodged:</b>	12 July 2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential – New Multi-Unit
<b>Notified:</b>	16 July 2021 to 11 August 2021; and 17 January 2022 to 31 January 2022 13 July 2022 to 27 July 2022
<b>Advertised:</b>	16 July 2021 and 17 January 2022
<b>Submissions Received:</b>	95
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$7,700,000.00

## EXECUTIVE SUMMARY

On 12 July 2021, DA2021/1037 (the subject of this Assessment Report) was lodged with Council seeking consent for a 62 room boarding house development, across two (2) buildings.

On 17 March 2022, the Applicant filed a Class 1 Appeal on the deemed refusal of DA2021/1037. This Assessment Report has been prepared based on the amended plans and supporting information provided as part of the Class 1 Appeal, which seeks consent for a 55 room boarding house development across two (2) buildings.

The DA was advertised and notified in accordance with the EPA Regulation 2000, and the Northern Beaches Community Participation Plan and a total of 95 submissions were received. The concerns raised in the submissions have been considered and addressed as part of this assessment.

The DA is recommended for refusal for the reasons detailed in this Assessment Report, relating to:

- The lower building's exceedance of the maximum 8.5 metre building height development standard of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
- Non-compliance with the maximum ceiling height built form control of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
- Non-compliance with the front setback control of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000, with the encroachment of the bin storage room.
- The inconsistency of the development with the Desired Future Character of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
- The proximity of the lower building and the bin storage room within the rear portion of the site not providing an adequate landscape transition to the bushland.
- The extent of earthworks required across the site, particularly to facilitate the proposed aboveground on-site detention basin significantly alters the existing landform of the site, which diminishes the transition of the built form with the adjoining bushland to the north.
- Non-compliance with the rear setback at Clause 63A (Rear building setback) of the Warringah Local Environmental Plan 2000. The bin storage room for the lower building encroaches into the required 10 metre rear building setback.

## 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 and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant environmental planning instrument;
- 95 submissions were received in response to the exhibition of the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Agencies on the proposal.

## LOCALITY PLAN (not to scale)



## SITE DESCRIPTION

The site is legally identified as Lot 2566 in Deposited Plan 752038 and is known as 16 Wyatt Avenue, Belrose.

The site is 'L' shaped with a frontage to Wyatt Avenue to the south of 28.74m, a maximum depth of 211.8m and a rear boundary of 59.94m to adjoining bushland. The site has an overall area of 9,345m<sup>2</sup>.

The site presently accommodates a two storey detached dwelling house with swimming pool, stables, equestrian facilities and an informal helicopter landing pad.

The site currently has 47 (forty seven) trees (inclusive of those located on or immediately near to any boundary). The site has a 3-4m tall *cupressus leylandii* hedge along the front boundary.

Topographically the site falls from levels of around RL183 at its southern boundary to between RL167-RL170 or thereabouts around the area of the northernmost extent of the rear building – a fall of around 13m-16m over a distance of around 143 metres. The natural contours of the site have been modified by improvements associated with the existing dwelling house and ancillary development. The north-western corner of the site slopes steeply towards Fireclay Gully and accommodates several large rock outcrops / boulders.

The area in which the development is proposed, is a bush fire prone area under the Northern Beaches Bush Fire Prone Land Map (7th of August 2020).

The site is located on the north-western side of Wyatt Avenue, approximately 380 metres to the south-west of Forest Way and on the northern fringe of the suburb of Belrose (see Figure 2 below). The land to the north of Wyatt Avenue has the general character of a rural-residential area and includes substantial one and two storey residences on large lots, the John Colet School and bushland.

East and west of the site there are currently other large lot residential properties that also fall within the Deferred Lands. The property to the immediate east is 14 Wyatt Avenue upon which there is an approval for a 25 room boarding house pursuant to Land and Environment Court proceedings *Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185*. It is intended to rely on the driveway approved for 14 Wyatt Avenue to serve the proposed northernmost/rear boarding house building.

## SITE HISTORY

The subject site has been used for residential purposes for an extended prior of time, with the last relevant DA being in 2003 for additions to a balcony. In 2015 a Tree Application was approved for the removal of three (3) trees, along the front boundary and within the front setback of the property.

Immediately adjoining the site to the south-east is 14 Wyatt Avenue, Belrose. This site has recently been the subject of a Class 1 Appeal which was upheld to approve DA2018/0401 on 20 January 2021, for the erection of a part two and part three storey boarding house comprising 25 boarding rooms (including one (1) manager's residence),

a single level basement comprising 12 car parking spaces, 8 motorcycle spaces and 11 bicycle parking spaces (*Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185*).

On 6 January 2022, a Section 4.56 modification application to DA2018/0401 was lodged with Council seeking consent for the following amendments:

- Installation of 'cooktops' within each individual boarding room.
- A reduction to the number of car parking spaces by one (1) space; to facilitate the provision of two (2) disabled car parking spaces in the basement; to provide a total of 12 car parking spaces.
- Widening of driveway by up to 400mm in three (3) locations to facilitate access for emergency vehicles.
- Addition of hydrant and sprinkler boosters adjacent to the driveway.
- Addition of a gas bottle filler to the north of the basement.
- Internal adjustments to ensure compliance with the National Construction Code (NCC).

Since the lodgement of the modification application, a Class 1 Appeal has been filed and the plans have been amended to remove the cooktops from individual boarding rooms. This modification application has been referred to the NBLPP, concurrent with this DA, for determination.

## PROPOSED DEVELOPMENT

Development consent is sought for the demolition of all existing improvements on the site, tree removal, excavation works and the construction of two boarding houses, collectively accommodating 55 dual-occupancy rooms with parking for 34 cars, 13 motorcycles and 55 bicycles.

More specifically:

### Upper boarding house building

The upper boarding house addresses Wyatt Avenue and is of an architecture very similar to the approved building at no. 14 Wyatt Avenue. This building necessitates excavation to a maximum depth of 5.4m below existing ground level. A new crossing and driveway run down the eastern edge of the site before looping to the basement entry at the northern edge of the building. The building can generally be described as rectangular, part-two / part-three storeys and broken into three distinct pavilions. This building accommodates a total of 22 boarding rooms, one manager's room, two (2) common rooms, 11 car spaces, 5 motorcycle spaces and 23 bicycle spaces.

Herein this report this building is referred to as the **upper building**.

### Lower boarding house building

The lower boarding house is situated towards the rear of the site, with vehicular access being reliant on the approved driveway on 14 Wyatt Avenue, Belrose. Access to the basement is gained via the northern elevation. The lower building is generally two storeys only. This building accommodates 32 boarding rooms, four (4) common rooms, 19 car



spaces, four (4) at-grade visitor car spaces along the western side of the access driveway, 8 motorcycle spaces and 32 bicycle spaces.

Herein this report this building is referred to as the **lower building**.

None of the individual boarding rooms include cooking facilities, and all meal preparation and cooking is to occur in the common rooms.

Overall, the development comprises of 55 rooms (2 x single and 53 x double) capable of accommodating 108 lodgers (inclusive of the manager's residence) at any one time.

A bin storage room is provided to service each building, as follows:

- The bin room for the upper building is located within the front setback area; 3 metres from site boundary fronting Wyatt Avenue. The bin store room maintains a side setback from the western property boundary of 3 metres. The bin room also includes an area for bulky goods storage.
- The bin store room for the lower building is located within the rear building setback area, to the west of the heavy vehicle turning bay. The bin store room includes an area for bulky goods storage.

#### AMENDMENTS TO THE SUBJECT APPLICATION

On 15 November 2021 Council wrote to the Applicant advising that the development application could not be supported in its current form due to the extent of impact caused by 62 (sixty-two) boarding rooms, impact on the natural landform consequent of excavation, and an unacceptable quality of accommodation for future residents. The following internal sections of Council also raised concern with the proposal:

- a. NECC – Development Engineering
- b. Environmental Health (Unsewered Lands)
- c. Landscape Officer
- d. Design and Sustainability Advisory Panel
- e. Traffic Engineering
- f. Waste Officer

On 20 December 2021 Council received revised plans which included the following modifications:

- a. *“Change the entrance driveway to the Lower (Northern) building so that vehicular access is provided through the driveway at 14 Wyatt Avenue. This will delete the vehicular access ramp to the lower portion of the site.*
- b. *Decrease the number of rooms from 62 (including managers room) to 55 (including managers room).*
- c. *Increase the space available for common cooking facilities.*
- d. *Amend the Waste Management Plan to state that all operational waste will be removed by a private contractor.*
- e. *Show outside clothes lines for both boarding houses.*

- f. *Provide some extra parking (on grade) for the Lower (Northern) boarding house.*
  - g. *Amend Landscape Plan.*
  - h. *Add more communal rooms and a communal terrace.*
  - i. *Reconfigure design to eliminate any situations where privacy and amenity of rooms is compromised by the driveway.*
  - j. Bulky goods storage now provided.
  - k. *Extra motorcycle spaces have been added.*
- [italics where extracted]

On 17 March 2022 Council was notified that the Class 1 appeal was filed with the Land and Environment Court of New South Wales against Council's deemed refusal of the development application.

On 28 June 2022 the Applicant was granted leave to rely on amended plans and supporting documentation providing the following:

- a. Updated Site Analysis Plan to conform with Clause 22, Schedule 8 of the WLEP 2000.
- b. Amendment to the turning bay at the northern end of the lower driveway to ensure compliance for a Council Garbage Truck, a fire truck and an HRV.
- c. Relocation of the bin storage room from within the basement of the lower building to adjacent to the truck turning area.
- d. Removal of 1 x parking bay in the lower building basement to allow for 2 x accessible parking spaces.
- e. Reduction in excavation to the lower building basement where the garbage room used to be.
- f. Addition of an accessible bathroom in the lower building basement.
- g. Amendment to the Ground Floor and First floor northern common area access. The hallways have been modified to ensure accessibility to the two common areas and common area terraces.
- h. Accessible rooms in the Upper building have been amended to ensure no more than two accessible rooms are adjacent to one another.
- i. Accessible rooms in the upper building have been amended to ensure double beds with required circulation are accommodated in each room.
- j. Northwest elevation of the Upper Building has been updated to provide further information regarding the rocky outcrop and the proposed building and driveway in relation to the existing pool structure.
- k. Southeast elevation of turning bay, ramp and bin room added with further detail to confirm relationship to natural ground.

On 7 July 2022 the Applicant was granted leave to rely on an amended Arborist Report and Site Contamination Assessment; prepared to reflect the plans provided in the 28 June 2022 document bundle.

This Assessment Report has been prepared based on the latest plans and documents which the Court granted leave to rely on.



## STATUTORY CONTROLS

- *Environmental Planning and Assessment Act 1979* (EPA Act 1979);
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy No 55 - Remediation of Land;
- State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007; and
- Warringah Local Environmental Plan 2000.

## PUBLIC EXHIBITION

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

The subject application was notified twice from 16 July 2021 to 11 August 2021 and again from 17 January 2022 to 31 January 2022. As a result of the public exhibition, 86 submissions were received, all except for one submission being in objection. The concerns raised are summarised as follows:

Concern	Response
<i>Applicability of SEPP ARH in the Deferred Lands</i>	SEPP ARH does not apply to the land; boarding houses are a Category 2 Land Use and are permitted in the C8 Belrose North locality.
<i>Compliance with the desired future character</i>	The proposal is not consistent with the desired future character described in the C8 Locality Statement contrary to clause 12(3)(b) of WLEP 2000 and does not comply with development standards for the locality contrary to clause 12(2) of WLEP 2000. Further discussion on these matters can be found later in this report.
<i>Building height and setbacks</i>	<p>The C8 Locality Belrose North Locality Statement provides that <i>'The minimum front building setback to all roads is 20 metres...the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences.'</i></p> <p>The proposed southern building meets the numerical standard of 20 metres, however the proposal includes a significant building within that front setback for the purposes of waste holding and bulk store. In this respect, the proposal is inconsistent with the</p>

	<p>requirements of the locality statement and does not comply with cl.70 of WLEP 2000, which provides: <i>'Site facilities including garbage and recycling bin enclosures ... are to have minimal visual impact from public places.'</i></p> <p>The WLEP 2000 C8 Locality Belrose North Locality Statement provides that the minimum side building setback is 10 metres and the rear and side setback areas are to be landscaped and free of any structures, carparking or site facilities other than driveways and fences. The proposed southern building does not comply with the required setbacks on either the west or east side:</p> <ul style="list-style-type: none"> <li>• On the east side the building setback is 9.25 metres.</li> <li>• On the west side the building setback is 6.06 metres.</li> </ul> <p>The non-compliance with the side setback requirements detrimentally affects the ability of the proposal to protect or enhance the natural landscape.</p> <p>The area that is provided as side setback is compromised in terms of its capacity to provide an appropriate landscape setting to offset the significant scale and bulk of built form proposed having regard to:</p> <ul style="list-style-type: none"> <li>• the necessity to maintain the site as an inner protection zone, which precludes achievement of significant, linked tree canopy to soften and screen development;</li> <li>• the fact that the northward slope of the site necessitates a particularly intrusive and inefficient driveway arrangement wherein the driveway runs the full length of the southern building, occupying space that could otherwise be used for landscaping.</li> </ul>
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	<ul style="list-style-type: none"> <li>the remaining space available to the east of the driveway is further impacted by the required pathway to the rear, northern building.</li> </ul> <p>Although the northern building complies with the side setback requirements, the same inefficiency in site design places the driveway in such close proximity to the eastern boundary as to preclude effective landscaping.</p> <p>The lower building includes an exceedance of the maximum 8.5 metre building height, which is not supported. No justification for this variation has been provided.</p>
<i>Construction impacts – noise, traffic, parking and dust</i>	Construction impacts could be managed through standard conditions of consent, however, the application is recommended for refusal.
<i>Availability of infrastructure – parking and sewage</i>	<p>The development proposal has been reviewed by Council's Traffic and Development Engineers and the proposed parking provision is considered acceptable.</p> <p>A Sydney Water Feasibility Study has been provided which demonstrates sewage will be able to enter the Sydney Water sewer via a pump-to-sewer connection. Sydney Water have also raised no objection to the proposal.</p>
<i>Land clearing, landscaping and impacts of biodiversity</i>	Council's Biodiversity and Landscape Officers have reviewed the proposal and noted the proposed removal of trees. The removal of these trees is supported, subject to replacement planting enforced through recommended conditions of consent.
<i>Stormwater and flooding</i>	Council's Development Engineer has reviewed the proposal having regard to stormwater and flooding and support the proposal, subject to recommended conditions of consent.
<i>Increased bushfire risk</i>	The application is supported by NSW Rural Fire Service General Terms of Approval (GTAs).

The DA was subsequently amended as part of the Class 1 Appeal proceedings, with the Court granting the Applicant leave to rely on the amended plans and documentation. The amended DA was re-exhibited from 13 July 2022 to 27 July 2022.

As a result of this public exhibition period Council received nine (9) submissions objecting to the modification application. The submissions reiterated concerns that were previously raised as part of the original notification period.

## REFERRALS

### External Referrals

External Referral Body	Comments
<b>Ausgrid</b>	<b><i>Supported, no conditions</i></b>  The proposal was referred to Ausgrid who raised no objections to the proposal and recommended no conditions.
<b>NSW Rural Fire Service</b>	<b><i>Supported, subject to conditions</i></b>  The proposal was referred to the NSW Rural Fire Service who have recommended conditions of consent in relation to Asset Protection Zones, requiring the entire property to be managed as an inner protection area (IPA), construction standards, property access, water and utility services and landscaping.
<b>Sydney Water</b>	<b><i>Supported, no conditions</i></b>  The proposal was referred to Sydney Water who advised the following:  Potable water servicing should be available via a watermain on Wyatt Avenue, however, amplifications, adjustments and/or minor extensions may be required.  Wastewater servicing is currently unavailable to this property and extensions of Sydney Water assets will be required to service the property. Normal gravity sewer connection will not be possible and the development will need to pump sewer.  Since there are now three (3) developments on the northern side of Wyatt Avenue, all of which need to pump sewer, it is suggested that the Water Servicing Coordinators work together with the Proponents to co-ordinate the design and construction of a low pressure sewer, designed to supply any future developments on the northern side of Wyatt Avenue.
<b>Aboriginal Heritage Office</b>	<b><i>Supported, subject to conditions</i></b>  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.

	<p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the <i>National Parks and Wildlife Act 1974</i> (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.</p>
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#### Internal Referrals

Internal Referral Body	Comments
<b>Design and Sustainability Advisory Panel</b>	<p><b>Not supported</b></p> <p>The Design and Sustainability Advisory Panel do not support the proposal for the following reasons:</p> <p><i>The Panel does not support the proposal and advises that the degree of impacts on the landscape including landforms and vegetation is not consistent with the objectives of the locality.</i></p> <p><i>It is the Panel's view that no structure should be located on the lower part of the site as requirements for vehicular access to that part of the site would have an unacceptable impact on the natural features of the site.</i></p> <p><i>The Panel advises that this is not related to the building typology that would be permissible, but to the impacts due to the site's topography existing vegetation, natural features and context.</i></p> <p><i>The overall site masterplan and site layout must demonstrate a solid understanding of how the site's unique assets including trees, vegetation, fauna, topography have been addressed and incorporated into the planning.</i></p> <p><i>In other words, it is the values and characteristics of the site that should determine the eventual quantum of floor space and arrangement of built form.</i></p> <p><i>The overall site master plan requires extensive redesign and needs to demonstrate how the project responds and accommodates people who will reside, visit and work on the site and how the site design responds to the site's unique landscape and topography.</i></p>

	<p><i>The Panel also notes the inadequacy of the kitchen arrangements, that appear to be solely focused on circumventing the density controls, and the poor social outcomes that will result.</i></p> <p><i>The Panel recommends that the applicant prepare an alternative scheme which minimises impact on the site's landform and takes all above recommendations into consideration supported by a thorough site analysis and analyses of similar accommodation to show how food preparation and common areas will function.</i></p>
<b>Environmental Health (Contaminated Lands)</b>	<p><b><i>Supported, no conditions</i></b></p> <p>There is no evidence of past or present site contamination on this property, therefore no contaminated land conditions are required.</p>
<b>Environmental Health (Industrial)</b>	<p><b><i>Supported, subject to conditions</i></b></p> <p>An Acoustic Report has been provided, which, in conjunction with conditions of consent, is considered adequate.</p>
<b>Environmental Health (unsewered lands)</b>	<p><b><i>Supported, subject to condition</i></b></p> <p>A Sydney Water Feasibility Study has been provided which demonstrates sewage will be able to enter the Sydney Water sewer via a pump-to-sewer connection. A condition requiring a Section 68 Approval under the <i>Local Government Act 1993</i> is recommended.</p>
<b>Landscape Officer</b>	<p><b><i>Supported, subject to conditions</i></b></p>
<b>NECC (Biodiversity)</b>	<p><b><i>Supported, subject to conditions</i></b></p> <p>The submitted Landscape Plan and Bushfire Assessment are supported, subject to conditions relating to replacement tree species and delineation of APZ.</p>
<b>NECC (Riparian Lands)</b>	<p><b><i>Supported, no conditions</i></b></p> <p>There are no watercourses or riparian buffer on the property.</p>
<b>NECC (Water Management)</b>	<p><b><i>Supported, subject to conditions</i></b></p> <p>The proposed stormwater treatment design is supported. Conditions of consent relating to erosion and sediment control measures and stormwater quality are recommended.</p>
<b>Building</b>	<p><b><i>Supported, subject to condition</i></b></p> <p>A condition relating to fire safety has been recommended.</p>
<b>Development Engineer</b>	<p><b><i>Supported, subject to conditions</i></b></p>

<b>Traffic Engineer</b>	<b><i>Supported, subject to conditions</i></b>
<b>Roads and Assets</b>	<p><b><i>Not supported</i></b></p> <p>The development shall be required to provide kerb and guttering, drainage, footpath connections and bus shelters at the bus stops in Contentin Road (numbers 39 and opposite 43). This requirement is to be included in Development Engineer's conditions for a Road Act approval under section 138.</p> <p>It is acknowledged that these requirements have been addressed in the recommended engineering and traffic conditions.</p>
<b>Waste Officer</b>	<b><i>Supported, subject to conditions</i></b>

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

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
<b>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on “Environmental Planning Instruments” in this report.
<b>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	See discussion on “Draft Environmental Planning Instruments” in this report.
<b>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</b>	A Development Control Plan does not apply to the site.
<b>Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement</b>	None applicable.
<b>Section 4.15 (1) (a)(iv) – Provisions of the regulations</b>	<ul style="list-style-type: none"> <li>The EPA Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent.</li> <li>Clause 92 of the EPA Regulation 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent.</li> <li>Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of</li> </ul>

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
	<p>development. This matter can be addressed via a condition of consent.</p> <ul style="list-style-type: none"> <li>• Clause 54 and 109 of the EPA Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations.</li> </ul>
<b>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</b>	The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report.
<b>Section 4.15 (1) (c) – the suitability of the site for the development</b>	<p>The site is not considered suitable for the proposed development as the existing established bushland setting of the site will not be retained as part of the proposed development.</p> <p>The site is not of dimensions that can facilitate compliance of the development with the required minimum front, side and rear building setbacks.</p>
<b>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b>	Submissions received have been considered and addressed in this Assessment Report.
<b>Section 4.15 (1) (e) – the public interest</b>	The proposed development is not in the public interest, because the proposal is not consistent with the Desired Future Character for the locality and will have an adverse impact on the streetscape, owing to the dominance of the built form over landscaping and the inability of the development to retain the existing established bushland setting of the site.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)**

### **State Environmental Planning Policies (SEPPs) – As Applicable**

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

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



(b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

## State Environmental Planning Policy - Infrastructure

### Ausgrid

Clause 45 of the SEPP Infrastructure 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 30 metres of a structure supporting an overhead electricity transmission line and/or within 5 metres of an overhead electricity power line.

### Comment

Ausgrid has raised no objections to the development but notes that the developer should have regard to the proximity of the development to existing electrical network assets, including overhead powerlines.

## Local Environment Plans (LEPs)

### Warringah Local Environmental Plan 2011 (WLEP 2011)

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

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

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

### Warringah Local Environment Plan 2000 (WLEP 2000)

### Desired Future Character (DFC)

<b>Locality:</b>	C8 Belrose North
<b>Development Definition:</b>	<b><i>Boarding house</i></b>  <i>(a) means any premises that—</i>

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

**Desired Future Character Statement:**

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

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

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

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

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

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

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

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

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

Comment

The proposal does not protect the natural landscape. It introduces two large scale buildings, having significant building bulk, requiring significant tree removal and involving

significant disturbance and excavation of the topography. The waste management system relies on the inclusion of a building for holding purposes within the front setback, contrary to the front setback standards under the C8 Belrose North Locality statement. Combined with the hardscape proposed, the built form presents as monolithic and relentless incorporating two buildings of 50 metre to 60 metre length with repetitive fenestration and façade treatment and a dominant driveway hard-scape.

Further, the proposal adopts an architecture similar to that approved on 14 Wyatt Avenue and relies on the driveway of that development to provide vehicular access to the northern building. Realistically, the two developments will read as one development, comprising three large buildings and at total of 80 boarding rooms and a maximum 160 residents, and they will operate interdependently having regard to the shared use of no. 14's driveway to provide access to the northern building.

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

#### Comment

As the proposal is not a conventional detached dwelling house, the development is required to conform as a "low intensity, low impact" use as described in the Land and Environment Court judgement *Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*. The following definition was provided in that judgement:

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

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

#### **Low Intensity Assessment**

The 55 room/108 boarder proposal presents an intensity of housing land use that is inconsistent with the large lot rural and low-density character of land immediately surrounding the site, or even the suburban residential character of land to the south of Wyatt Avenue where, for comparison, the maximum size of boarding house permitted (under SEPP ARH or SEPP Housing) would comprise 12 boarding rooms. A 55 room boarding house would ordinarily be considered a 'large' boarding house and one more associated with locations within or adjacent to Business Centres offering a wide range of shops, restaurants/cafes, entertainment, health and other services as well as transport options to support the physical and social wellbeing of the future residents.

For comparative purposes, were it not for the exclusion of cooking facilities within the proposed boarding rooms, the density control under WLEP 2000 would apply, with the number of boarding rooms being far in excess of the density envisaged for the C8 Belrose North locality.

With 53 rooms all able to accommodate two boarders and two (2) single rooms, a total of 108 boarders, the proposal is over four times the intensity of use of the maximum scale of boarding house development permitted on the R2 zoned land opposite and over double the intensity of use of the approved boarding house on 14 Wyatt Avenue.

Indicative of the inappropriateness of the intensity of land use proposed, the Acoustic Report requires solid 1.8 metre high barriers to be placed around the communal outdoor areas as well as assumptions as to the maximum number of persons using the outdoor areas, maximum hours limiting use of these areas as well as the closure of windows overnight and in the early morning. The proposal is not a low intensity/low impact use, and the proposed physical devices and management regimes to ameliorate anticipated amenity impacts are themselves uncharacteristic of the locality.

The site is not included in Council's Housing Strategy for any intensification of land use. The Strategy explores a 'low-rise housing diversity area' centred on the current Belrose local centre, and 'seniors and boarding houses within 400m of centres.' The site is remote in its relationship to established shops and services, being approximately 740 metres from the nearest local centre – this centre only offering a limited range of shops/outlets.

The site is located within a future MRA [Metropolitan Rural Area] investigation area as identified in the Northern Beaches Local Strategic Planning Statement, March 2020, which states, in this regard:

*Under the North District Plan, further urban development is not consistent with the values of the MRA – this constitutes a clear State-level direction to avoid housing growth in these areas. Parts of Oxford Falls (south), Cromer Heights (west) and Belrose North, are not currently identified as part of the MRA in the Greater Sydney Region Plan but share many of its traits and characteristics. Council has identified this land area as 'Future MRA investigation area', and will work with the Greater Sydney Commission to assess its suitability for inclusion in the MRA when the Greater Sydney Region Plan is reviewed. Using the precautionary principle, Council will apply the principles and actions in this priority to these lands until that review is complete.'*

### **Low Impact Assessment**

The particular circumstances of this site, including the narrow width of the frontage, the northward slope down from the point of vehicular access on Wyatt Avenue, bushfire management and flooding/drainage management constraints as well as the proposed configuration of built form impose significant inefficiencies in site utilisation necessitating design solutions which impact significantly on the natural features of the site, and the capacity to respond successfully to the existing and future character of the locality.

The proposal does not comply with the front and side setback standards of the WLEP 2000 C8 Locality Belrose North, as well as a minor variation to building height, with the side setbacks dominated, in places, by the hardscape of driveways and footpaths. This, in conjunction with the RFS requirements for bushfire protection, preclude the achievement of a significant landscape setting to mitigate the significant bulk of built form proposed.

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

Comment

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

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

Comment

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

**Built Form Controls**

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

Built Form Compliance Table C8 Belrose North Locality Statement				
CONTROL		REQUIREMENT	PROPOSED	COMPLIANCE
Housing Density		1 dwelling per 20ha of site area	Nil* refer to discussion below	N/A
Building Height	Ridge	8.5m	Upper building <8.5m Lower building 8.7m (ridge exceedance)	Yes  No – no justification has been provided for this variation from the control
	Ceiling	7.2m	> 7.2m but < 8.5m	No
Front Setback		20m	Boarding House: 20m Bin room: 3m	Yes  No (but required by Council's Waste Officer)
Side Setback (east)		10m	Min. 9.25m	No
Side Setback (west)		10m	Min. 6.06m	No
Rear Setback		10m	43.08m	Yes
Rear Setback Area		Free except fence and driveway	The bin storage room encroaches on the rear setback area.	No

Built Form Compliance Table C8 Belrose North Locality Statement			
Bushland setting	50% (4,671m <sup>2</sup> )	64% (5,980m <sup>2</sup> )	Yes

\*The applicability of the Housing Density standard was considered in detail in [39] to [46] of the LEC judgement Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185.

The proposed development largely follows the same principles of that approved development, and therefore the relevant extracts of the court judgement are below:

*Does the housing density standard apply to the DA?*

39. The two provisions of the housing density standard indicate an intention that it relates to detached style “housing” with a density measured by reference to the number of “dwelling(s)”. The question, therefore, arises as to whether a boarding house in the configuration of that proposed in the DA is relevantly housing or a dwelling such that the limit has application to the DA.

40. The definitions of these terms in the WLEP provide:

**Housing** means development involving the creation of one or more dwellings whether or not used as a group home.

**Dwelling** means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

41 The proposed boarding house is incapable of being characterised as a group home as the definition of that use is not reflective of the boarding house proposed both in the number of rooms, the nature of occupants and occupancy.

42 The characterisation then turns on whether the boarding house proposed in the DA comprises one or more dwellings. The concept of a dwelling has been the subject of considerable debate over many years. As a general proposition a dwelling must contain the essential components of a domicile for the exclusive use of the occupant, being: sleeping; bathroom and cooking facilities. Each development will be required to be considered on its own facts to determine whether it meets such requirements. In this case, each of the boarding rooms contain sleeping and bathroom facilities for the exclusive use of the occupant. However, none of the boarding rooms, nor the manager’s room, provide facilities that would permit even the most basic cooking facilities required to permit the rooms to operate as a domicile or dwelling.

43 The DA proposes that no room will have a sink, bench, food storage or preparation areas that would permit basic cooking. Further, the DA proposes that the occupants of the rooms will be the subject of a Plan of Management that will bind the occupants of the rooms. That Plan of Management further provides:

## 2.1 Bedroom

...

*All food preparation and cooking is to be done in the communal kitchen or common areas which have cooking facilities. No food preparation or cooking is to be done in rooms.*

...

#### **2.4 House Rules**

...

*c) Lodgers must carry out all food preparation and cooking in the communal kitchen.*

...

*44 The terms of the proposed conditions of development consent require compliance with the Plan of Management by its incorporation into the documents referred to in condition 1.*

*45 The proposed conditions of development consent also expressly acknowledge the physical limitations of the proposed boarding house by requiring compliance with condition 2 that specifies:*

#### **Approved Land Use**

*a) Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a Boarding House.*

*A Boarding house is defined as:*

*boarding house:*

*(a) means any premises that:*

*(i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and*

*(ii) are used and occupied by at least 4 long term unrelated residents, and*

*(iii) include a communal living space used for eating and recreation, and*

*(iv) are not licensed to sell liquor, and*

*(b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises."*

*(development is defined by the Warringah Local Environment Plan 2000 (as amended) Dictionary).*

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

*b) In order that each of the boarding rooms and the manager's residence are not capable of being used as separate self-contained dwellings, each of the boarding rooms and the manager's residence must not contain, or at any time have installed, any cooking or meal preparation facilities. This includes plug-in electrical appliances. All meals must be prepared in the communal kitchens provided separately within the premises.*



*46 With the physical limitations of the boarding house rooms the rooms have not been designed to be used as a dwelling. With the proposed conditions of development consent the rooms will not be able to be altered to be so without the grant of a further approval. For those reasons, the boarding house does not comprise a dwelling or dwellings.*

*47 As the proposed DA does not comprise housing or a dwelling the housing density requirements of the Locality Statement or the development standards in the C8 Locality do not apply to the DA.*

In this instance it is considered that the same position as that described above is reached. None of the proposed boarding rooms are capable of being used as a dwelling by virtue of no private kitchens. Occupants are reliant on several communal kitchens interspersed throughout the building.

On that short basis (without repeating what is detailed in the judgement) it is found that the proposed DA does not comprise housing or a dwelling and therefore the housing density requirements do not apply.

#### General Principles of Development Control

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

General Principles	Applies Y/N	Comments	Complies Y/N
<b>CL38 Glare &amp; reflections</b>	Y	The building is not anticipated to result in any unreasonable glare and reflection. Notwithstanding this, a condition can be recommended restricting the roof of the development to a medium to dark range colour.	<b>Y</b>
<b>CL42 Construction Sites</b>	Y	Conditions can reasonably be imposed on any consent to ensure that development does not unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment. Accordingly, this General Principle can be addressed by way of condition.	<b>Y</b>
<b>CL43 Noise</b>	Y	The DA has been accompanied by an Acoustic Report which has been assessed and considered adequate, subject to conditions.	<b>Y</b>
<b>CL44 Pollutants</b>	Y	The development for the purpose of a boarding house is not anticipated to result in the emission of pollutants that would unreasonably diminish the amenity of adjacent properties, the locality, or waterways.	<b>Y</b>



<b>General Principles</b>	<b>Applies Y/N</b>	<b>Comments</b>	<b>Complies Y/N</b>
<b>CL47 Flood Affected Land</b>	Y	Council's Development Engineer has assessed the proposal and the stormwater design is considered suitable, having regard to flooding.	<b>Y</b>
<b>CL48 Potentially Contaminated Land</b>	Y	The site has been assessed by Council's Environmental Health Officer who advised that the site does not comprise potentially contaminated land, given historic land use. A Contamination Report has also been provided by the Applicant which reaches the same conclusion.	<b>Y</b>
<b>CL49 Remediation of Contaminated Land</b>	N	N/A – no land remediation is required to facilitate the proposed development.	<b>N/A</b>
<b>CL49a Acid Sulfate Soils</b>	N	The site is not identified as being subject to Acid Sulphate Soils.	<b>N/A</b>
<b>CL50 Safety &amp; Security</b>	Y	The proposal is designed in a manner which will provide an acceptable degree of safety and security to future occupants and neighbouring properties. Further details of security measures (CCTV etc.) are resolved at a Construction Certificate phase, not DA.	<b>Y</b>
<b>CL51 Front Fences and Walls</b>	N	The architectural plans do not detail any proposed front fence or wall.	<b>N/A</b>
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	Y	The site is proximate but not adjoining to the Garigal National Park to the north. The two properties to the north are vacant bushland. The proximity of the lower building and the bin storage room within the rear portion of the site does not provide an adequate landscape transition to the bushland.	<b>N</b>
<b>CL54 Provision and Location of Utility Services</b>	Y	The provision of utility services could be addressed through standard conditions of consent.	<b>Y</b>
<b>CL56 Retaining Unique Environmental Features on Site</b>	Y	The extent of earthworks required across the site, particularly to facilitate the proposed aboveground on-site detention basin significantly alters the existing landform of the site. There is an existing rock outcrop in proximity to the proposed	<b>N</b>

General Principles	Applies Y/N	Comments	Complies Y/N
		<p>basin and insufficient information has been provided to determine the likely impacts of the construction and use of the on-site detention basin on this feature.</p> <p>The location of the basin and proposed bin storage room within the rear portion of the site also limits the ability to plant vegetation in these areas, to lessen the transition of the built form with the adjoining bushland to the north.</p>	
<b>CL57 Development on Sloping Land</b>	Y	The DA has been supported by a Geotechnical Investigation.	Y
<b>CL58 Protection of Existing Flora</b>	Y	Tree removal which includes the removal of four (4) local native species is proposed. Council's Biodiversity Officer has raised no objection to the proposed tree removal, subject to conditions of consent requiring replacement planting of suitable species.	Y
<b>CL59 Koala Habitat Protection</b>	Y	<p>Council's Biodiversity Officer has reviewed the proposal and acknowledged that the DA does not provide any assessment of compliance against SEPP (Koala Habitat Protection) which applied to the subject lot as it has an area of at least one (1) hectare (including adjoining land within the same ownership).</p> <p>A lack of recent and/or historical koala, combined with relatively minor tree removal from a peri-urban interface, is not considered to be Core Habitat as defined under the SEPP and therefore no objection is raised, on the condition that adequate tree replacement, including species listed from within Schedule 2 (Central Coast) of the SEPP are imposed on any consent issued.</p>	Y
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	N	There are no watercourses or riparian buffer on the property	N/A
<b>CL61 Views</b>	Y	The development is not considered likely to unreasonably detract from any existing	Y

General Principles	Applies Y/N	Comments	Complies Y/N
		views to or from the public or private domain.	
<b>CL62 Access to sunlight</b>	Y	The development is not considered to unreasonably overshadow nearby land.	<b>Y</b>
<b>CL63 Landscaped Open Space</b>	Y	Compliant.	<b>Y</b>
<b>CL63A Rear Building Setback</b>	Y	Whilst the proposed lower building maintains compliance with the minimum 10 metre numerical requirement (43 metre setback provided), the location of the bin storage room within this setback and the fact that it is located less than 10 metres from the rear property boundary, results in a non-compliance with this requirement.	<b>N</b>
<b>CL64 Private open space</b>	Y	The development provides communal rooms for the use of lodgers. It is unclear from the plans provided how the outdoor spaces across the site could be used by lodgers as private open space.	<b>Y</b>
<b>CL65 Privacy</b>	Y	The development affords a satisfactory provision of privacy and does not cause unreasonable direct overlooking into habitable rooms and principal private open space of other dwellings.	<b>Y</b>
<b>CL66 Building bulk</b>	Y	The development presents a built form which has significant bulk, which is exacerbated by the non-compliant front and side setbacks, which are dominated in places by the hardscape of driveways and footpaths. This, in conjunction with the RFS requirements for bushfire protection, precludes the achievement of a significant landscape setting to mitigate the bulk of the built form.	<b>N</b>
<b>CL67 Roofs</b>	Y	The roof form is acceptable.	<b>Y</b>
<b>CL68 Conservation of Energy and Water</b>	Y	A BASIX Certificate is not required.	<b>N/A</b>
<b>CL70 Site facilities</b>	Y	The location of the proposed waste bin storage rooms within the front and rear	<b>N</b>

General Principles	Applies Y/N	Comments	Complies Y/N
		setbacks of the site are not considered adequate. The bin storage room along Wyatt Avenue will have an adverse impact on the streetscape and the location of the bin storage room within the rear setback is not considered to be adequate.	
<b>CL71 Parking facilities (visual impact)</b>	Y	The proposed parking is provided within basements under each building. There are four (4) at-grade car parking spaces proposed, these are sufficiently removed from the street so as not to have adverse visual impacts.	<b>Y</b>
<b>CL72 Traffic access &amp; safety</b>	Y	The development application (including the proposed vehicle access) has been reviewed by Council's Traffic Engineer who raises no objection to the development in relation to traffic impacts, subject to recommended conditions.	<b>Y</b>
<b>CL74 Provision of Carparking</b>	Y	Council's Traffic Engineer has reviewed the proposed basement car parking spaces for each building as well as the at-grade visitor parking spaces and these are considered suitable, subject to conditions.	<b>Y</b>
<b>CL75 Design of Carparking Areas</b>	Y	Council's Traffic Engineer has assessed the proposed car parking arrangements which are considered suitable, subject to conditions.	<b>Y</b>
<b>CL76 Management of Stormwater</b>	Y	Council's Development Engineer has assessed the proposed stormwater design and it is considered suitable, subject to conditions of consent.	<b>Y</b>
<b>CL 77 Landfill</b>	Y	The development will require minimal landfill adjacent to the areas of excavation, to a scale that would not have adverse impacts upon the visual and natural environment or the amenity of adjoining of surrounding properties.	<b>Y</b>
<b>CL78 Erosion &amp; Sedimentation</b>	Y	Erosion and sediment control measures could be addressed through standard conditions of consent.	<b>Y</b>
<b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks</b>		The Aboriginal Heritage Office has reviewed the proposal and raises no concerns.	

General Principles	Applies Y/N	Comments	Complies Y/N
and Wildlife Service			
<b>CL82 Development in the Vicinity of Heritage Items</b>	N	The development is not within the vicinity of any heritage items.	<b>N/A</b>
<b>CL83 Development of Known or Potential Archaeological Sites</b>	N	The site does not comprise a known or potential archaeological site.	<b>N/A</b>

## SCHEDULES

### Schedule 6 - Preservation of Bushland

The development necessitates the removal of existing vegetation on the site, including four (4) locally native trees and three (3) trees that also require consent (all other trees are identified as exempt species).

Council's Biodiversity Officer has advised that, subject to conditions of consent requiring replacement tree planting, the proposed tree removal to facilitate the proposed development is considered acceptable.

### Schedule 8 - Site analysis

The DA is accompanied by an appropriate site analysis, both in drawing form and in the Statement of Environmental Effects.

### Schedule 9 - Notification requirements for remediation work

No remediation works are required to make the land suitable for the proposed use.

### Schedule 10 - Traffic Generating Development

The proposed development is not traffic generating development.

### Schedule 11 - Koala Feed Tree Species and Plans of Management

Council's Biodiversity Officer has reviewed the proposal and acknowledged that the DA does not provide any assessment of compliance against SEPP (Koala Habitat Protection) which applied to the subject lot as it has an area of at least one (1) hectare (including adjoining land within the same ownership).

A lack of recent and/or historical koala, combined with relatively minor tree removal from a peri-urban interface, is not considered to be Core Habitat as defined under the SEPP and therefore no objection is raised, on the condition that adequate tree replacement, including species listed from within Schedule 2 (Central Coast) of the SEPP are imposed on any consent issued.

#### **Schedule 14 - Guiding Principles for Development near Middle Harbour**

The matters under Schedule 14 are not applicable to the proposed development as there is no foreshore in the vicinity of the site.

#### **POLICY CONTROLS**

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

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

A monetary contribution of **\$77,000** is required for the provision of new and augmented public infrastructure. The contribution is calculated at 1% of the total development cost of \$7,700,000.

#### **CONCLUSION**

- The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the *EP&A Act 1979*. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions. The application received 95 submissions, raising a number of issues with the proposed development, as detailed and addressed within this report.

A summary of the key issues addressed within this report are as follows:

- The proposal exceeds the maximum building height development standard. The application has not demonstrated that the resulting development is consistent with the general principles of development control and the desired future character of the locality as required by Clause 20 of Warringah LEP 2000.
- This report demonstrates that the development is not low intensity and low impact, in accordance with the requirements of Category 2 Development in the C8 Belrose North locality.
- The development results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties

As such, the development application is recommended for refusal.

#### **RECOMMENDATION - REFUSAL**

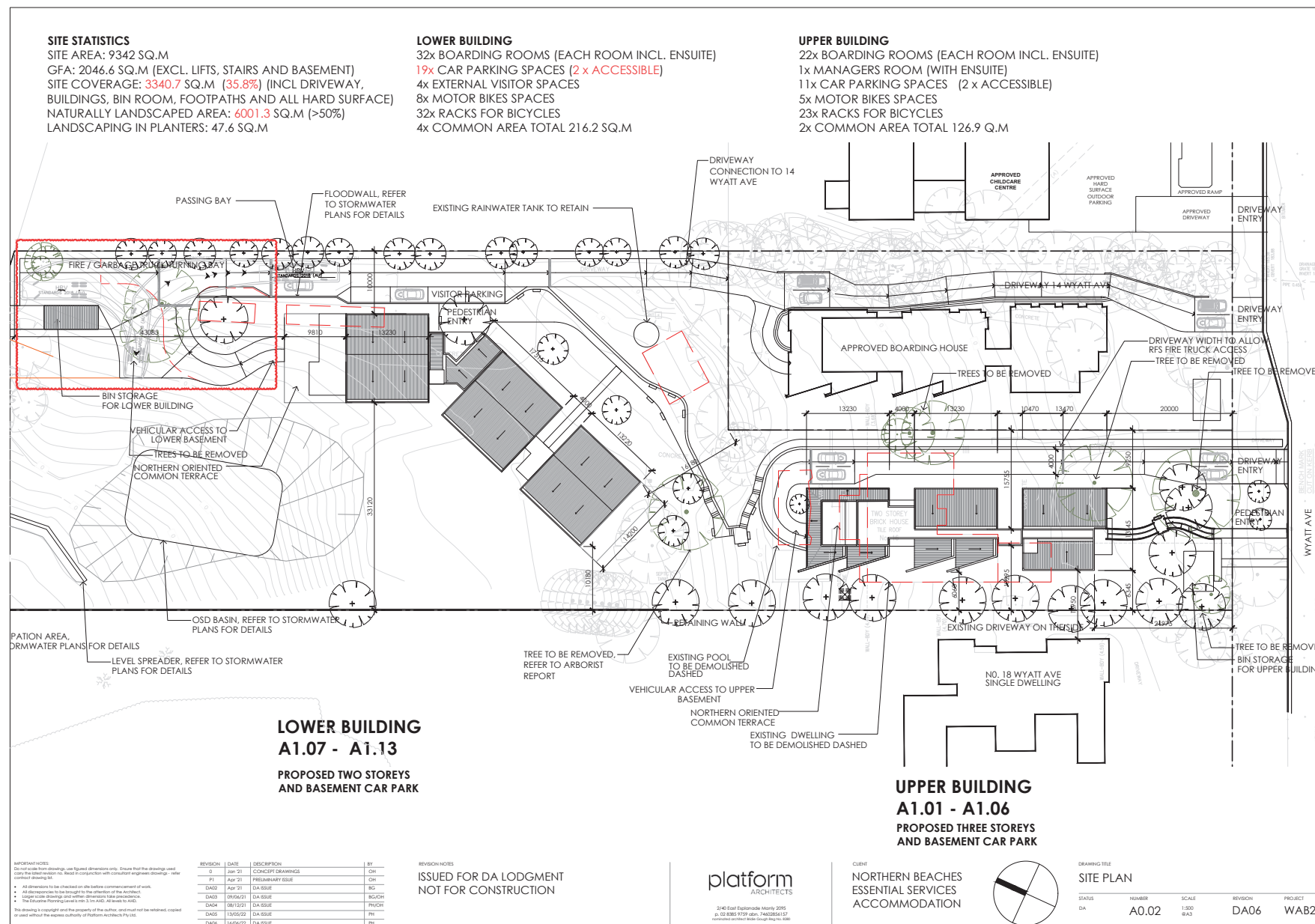
##### **Reasons for Refusal**

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development application has failed to acknowledge and address the lower building's exceedance of the maximum 8.5 metre building height development standard of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000. The provisions of Clause 20 of the Warringah Local Environmental Plan 2000 have not been addressed.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is non-compliant with the maximum ceiling height built form control of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is non-compliant with the front setback control of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000. The bin storage room along the site's Wyatt Avenue frontage is located 3 metres from the front property boundary.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is non-compliant with the 50% bushland setting control of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000..
5. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the Desired Future Character of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
6. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of Clause 52 (Development near parks, bushland reserves and other public open spaces) of the Warringah Local Environmental Plan 2000 as the site directly adjoins bushland to the north. The proximity of the lower building and the bin storage room within the rear portion of the site does not provide an adequate landscape transition to the bushland.
7. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Clause 56 (Retaining distinctive environmental features on the site) of the Warringah Local Environmental Plan 2000. The extent of earthworks required across the site, particularly to facilitate the proposed aboveground on-site detention basin significantly alters the existing landform of the site. There is an existing rock outcrop in proximity to the proposed basin and insufficient information has been provided to determine the likely impacts of the construction and use of the on-site detention basin on this feature. The location of the basin and proposed bin storage room within the rear portion of the site also limits the ability to plant vegetation in these areas, which diminishes the transition of the built form with the adjoining bushland to the north.
8. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with Clause 70 (Site Facilities) of the Warringah Local Environmental Plan 2000. The location of the proposed waste bin storage rooms within the front and rear setbacks of the site are not considered adequate. The bin storage room along Wyatt Avenue will have an adverse impact on

the streetscape and the location of the bin storage room within the rear setback is not considered to be adequate.

9. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is non-compliant with Clause 63A (Rear building setback) of the Warringah Local Environmental Plan 2000. The bin storage room encroaches into the required 10 metre rear building setback.
10. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered to be suitable for the proposed development.
11. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest.



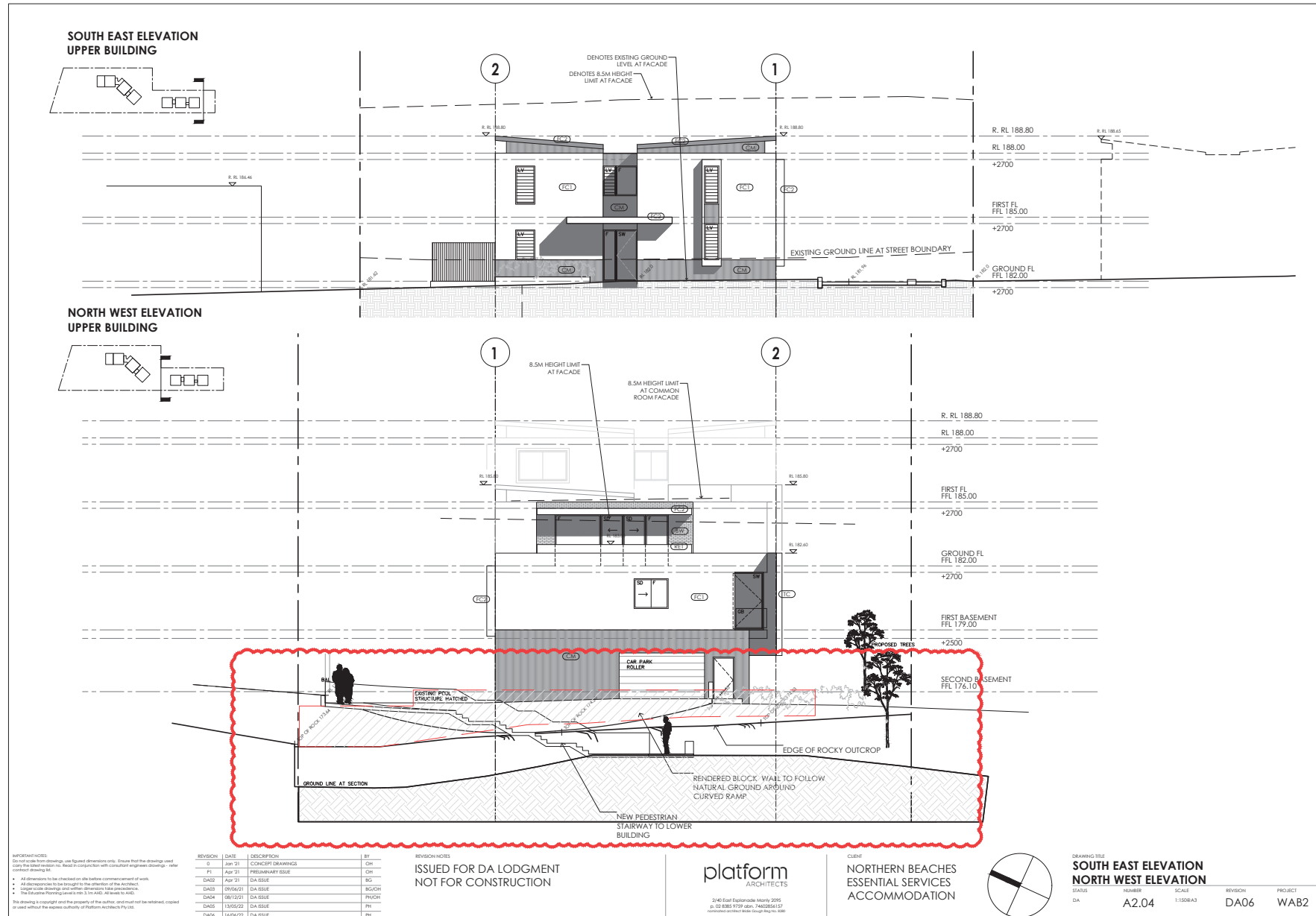


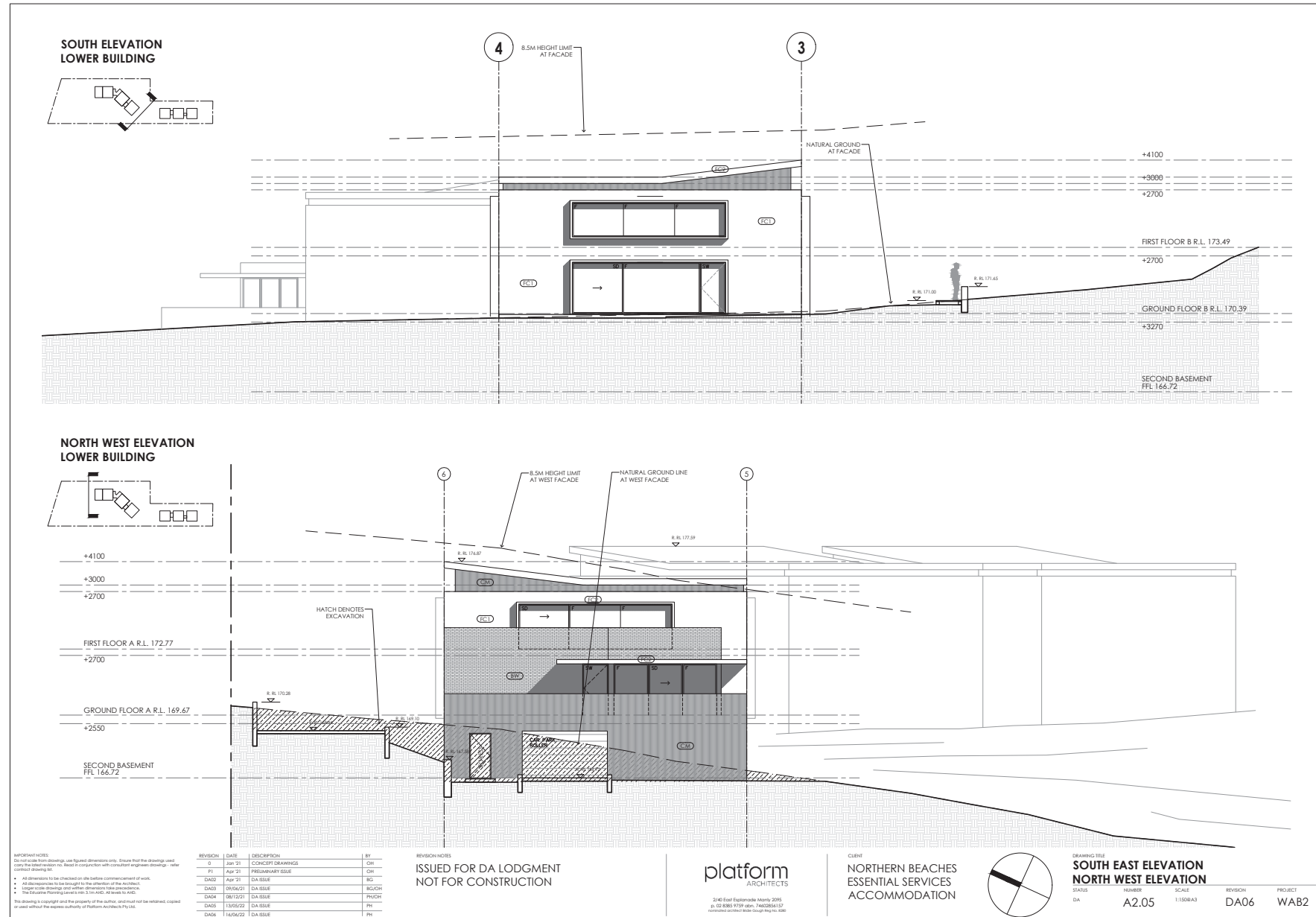


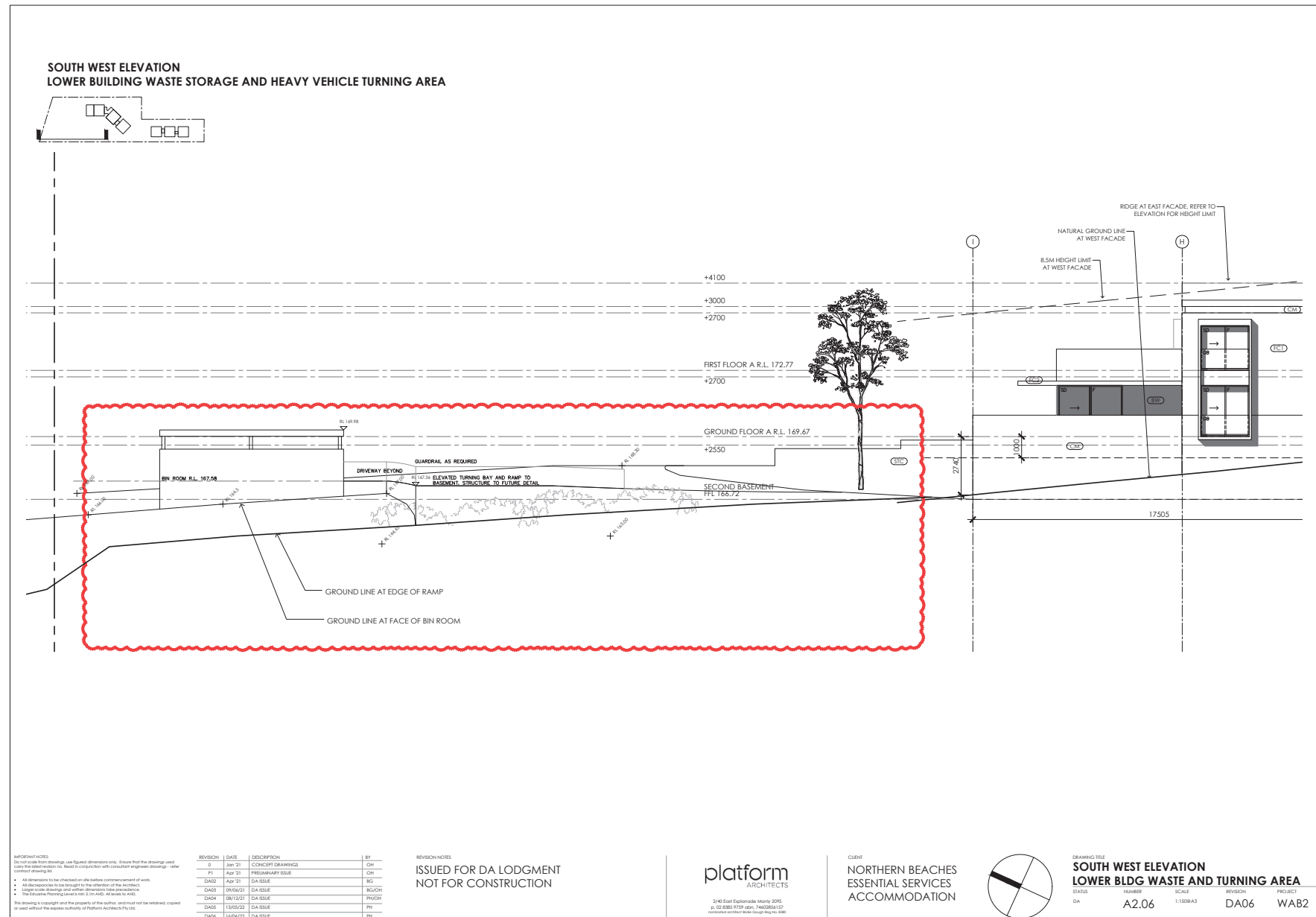














Design + Sustainability Advisory Panel Meeting Report – Date 07 October 2021

## 6. DA2021/1039 - 16 Wyatt Avenue BELROSE

### PANEL COMMENT AND RECOMMENDATIONS

#### **General**

The proposal is for a Boarding house comprising 62 boarding accommodation rooms across two buildings of 2 and 3 storeys in rise, both with basement car parking.

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

The applicant draws comparison of the proposal to LEC approved boarding house on adjoining site (14 Wyatt Avenue). The panel acknowledge that whilst there are clear similarities between the proposed upper building to 14 Wyatt Avenue, the lower (rear) building is subject to significantly different site constraints and as such, any comparison is not relevant, and in no way should the approval for 14 Wyatt be considered to establish a 'precedent' for the lower building.

Notwithstanding, the Panel have considered the proposal as a whole.

The Panel have considered the degree to which the design responds to site conditions and have identified a number of aspects of the design which are incomplete and/or unresolved.

The design requires significant alterations for it to meet a minimum acceptable functional standard for it's intended purpose, let alone achieve positive and socially responsible accommodation.

The Panel also notes that the material lodged was inadequate in that it did not clearly identify key site constraints, did not adequately describe aspects of the proposal including roadway and stormwater infrastructure, and contained several errors, and inconsistencies.

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

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

In other words, the question of whether or not the land use is permissible can be separated from questions of whether the design, built form and arrangement of buildings achieve the planning objectives.

In the Panel's view, development standards are formulated to ensure these objectives are met.

It follows that in considering design quality, the Panel expects a proposal to demonstrate how the planning objectives have been met if it does not comply with the development standards (irrespective of the permissibility of the land-use).

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

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

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





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

The proposal involves significant disturbance of the site. Excavation exceeds 6m depth, site levels are altered significantly and an access driveway is designed to vary from existing site levels by almost 4m, presenting as an overbearing civil structure on the site. Existing rock outcrops would be disturbed, destroyed in part and obscured. Almost all trees on the lot would require to be removed. The proposal clearly does not *protect or enhance the natural vegetation and/or landform* and resulting development could not be considered to have *low impact or low intensity use*.

The proposal comprises two buildings circa 50m and 60m long respectively and which would house up to 124 occupants.

Reading the objectives for the locality, it is the Panel's view that this scale of development (regardless of whether it contains dwellings) was not anticipated by the applicable density control of 1 dwelling per 20 hectares. Likewise, the scale of development is considered inconsistent with the desired future character statement in that it is neither low impact or low intensity in use.

Whilst boarding house development may be permissible on the site, the Panel questions the suitability of the site for such a high density of accommodation in this location given the permissible uses on adjoining and nearby sites such as animal boarding or industries.

Conversely, there will be considerable impacts associated with this number of residents upon neighbouring residents and School operations including comings and goings, waste presentation, privacy etc.

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

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

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

These notes and recommendation should not be interpreted as an acceptance of the current scheme. A comprehensive re-design is required, including the deletion of the entire lower building, but the Panel also notes that there are many detailed aspects that also require resolution in any revised scheme.

#### **Recommendations.**

1. Any development should be limited to the upper plateau at the southern end of the site to protect natural vegetation and landform

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

Two buildings are proposed. The upper building is located at the southern end of the site, adjacent to Wyatt Avenue, is 3 storeys in height and approximately 50m long. The lower building is located centrally on the site, between 100m and 160m from Wyatt Avenue, is 2 storeys in height and approximately 60m long.

Both buildings have basement parking located beneath, partly above ground and partly below ground. In the case of the upper building, the basement is approximately 6m below ground at the southern end.

Each building is articulated into three major volumes and fenestrated with repetitive window bays. En-masse, and combined with the hardscape proposed, the built form presents as monolithic and relentless. This is exacerbated by the similarity of the approved adjacent building.

Despite the size and topography of the site, the buildings are configured in such a way that the pedestrian circulation paths, and boarding rooms do not benefit from the bushland setting and rather, the experience is of a hard, vehicular infrastructure dominated place with compromised privacy.



Proximity of windows to access driveway/walkway compromises privacy and amenity.

The upper building is not compliant with required side setbacks. On the western side, a strategy of angling views is a successful response, however, the eastern setback is compromised by the proximity of windows to the proposed driveway as well as by the resulting minimal landscaping in the side setback zone.

#### **Recommendations.**

2. Layout of buildings and driveways should be configured to maximise landscape opportunities and improve pedestrian amenity and connection with bushland setting
3. Wherever driveway is in close proximity to accommodation rooms, shutter views to eliminate overlooking and glare.

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

#### **Pedestrian Access and Address**

The upper building enjoys direct street access via pathway in the front setback zone.

The only means of pedestrian entry to the lower building is via a narrow, steep pathway located directly adjacent the entry driveway. The path of travel from the boundary to the front door of the building is 'non-accessible' and approximately 145m in length. The Panel considers this to be a particularly undignified access solution, especially as a large proportion of residents have been presumed to enter and exit on foot daily.

Furthermore, this configuration creates ambiguity of address in circumstances such as when food might be delivered to residents.

#### **Egress**

The Panel notes that the design relies upon a large list of fire engineered solutions, which in some areas have been used to good effect in providing natural light to common areas etc. We bring attention to the matter so that confidence can be gained in the safety of the design i.e., the Panel questions whether safe exit from rooms 21-26 in the event of a fire in the central fire compartment of the ground level of the same building.

#### **Vehicular Access and Car Parking**

As mentioned above, driveway is configured to form a significant imposition on the site, requiring a high intensity of civil works including deep cut and fill. The driveway is also positioned adjacent and above room windows, so will subject rooms to overlooking and headlight glare, particularly relevant to shift workers whom have been identified as likely residents.

The Panel questions the driveway configuration and whether vehicular access could be shared with the adjoining lot to minimise vehicular infrastructure.

Acknowledging that parking will be required for many of the residents due to the nature of the location, the panel questions the ratio of parking to residents and makes the suggestion that some parking might be located on grade to reduce excavation of the site.

#### **Recommendations**

4. Following recommendation 1. delete vehicular access ramp to lower portion of the site to minimise imposition of vehicular infrastructure
5. Following recommendation 1. restrict any development to where access may be conveniently and equitably gained from the street
6. Provide any boarding house development on the site with a clear address to street
7. Share vehicular access with adjacent site to maximise opportunities for landscaping on site and reduce imposition of driveway on rooms



8. Consider a reduction in the amount of underground parking and potentially integrate on grade parking to reduce excavation
9. Seek advice prior to re-submission in order to gain confidence in any fire engineered solutions proposed.

### **Landscape**

As much of the site has previously been cleared and so cannot be 'kept as natural bushland', 50% of the site must be landscaped with local species. The landscape plan is not compliant in this respect. Furthermore, the siting of buildings and roadways has resulted in a degree of site level alteration well beyond what could be considered 'minimal'. The Panel considers that the landscape design is not consistent with Appendix C, WLEP2000

The landscape areas provided are overwhelmed by vehicle infrastructure and without clearly identified uses. Pedestrian pathways are narrow and tedious and despite the site's elevation and setting, do not respond to take advantage of these site features.

OSD Detention basin would not be functional in the location indicated without significant (6m) alteration to the land form. Any required land form alteration has not been designed or indicated, so design is not considered to be functional. It may be that no suitable location exists without significant re-planning of the built form.

### **Recommendations.**

Note: these recommendations refer to the upper building and surrounds. The Panel assumes that the lower building should not, and will not proceed.

10. Landscape at least 50% of site with local species - noting the likely requirement for an APZ, select species with manageable fuel load.
11. Utilise more of site for higher amenity, functional landscape spaces and connections which relate to bushland setting
12. Provide design with coordinated, functional OSD solution

### **Amenity**

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

The design of the buildings has resulted in most common areas including corridors and stairs having access to daylight and natural ventilation which is to be commended. Further, common rooms have been located in locations which enjoy high levels of solar access and views which is preferred.

Several rooms are in close proximity and either at or below eye level to entrance driveway and walkway, so will be subject to overlooking and headlight glare.

Outlook of many rooms is dominated by roadway and associated retaining structures.

Laundry facilities are located in basement, outdoor drying areas have not been identified.

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

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

This may be acceptable if adequate communal kitchen facilities were provided, however, only 1 kitchen of 4.7m length has been provided in each building, with no provision for communal refrigeration. In the case of the upper building, potentially 44 residents including the caretaker share 1 cooktop and one sink. In the case of the lower building, potentially 80 residents including the caretaker share 1 cooktop and 1 sink. The Panel consider this a serious flaw of the design and one that would likely be the cause of social, wellbeing, health and safety issues if it were to proceed. In this respect, the design is not



functional and would require significant amendment to meet an acceptable level of amenity. In other words, the current scheme is not realistic.

The Panel refers to similar models of accommodation, such as student accommodation where, even in inner city locations with much greater convenience and access to shops, restaurants and other food outlets, kitchens are typically shared between a maximum of 5 occupants. By extension, this proposal should require to provide in the order of 25 residential sized kitchens for 124 residents.

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

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

#### Recommendation.

13. Maintain access to daylight and natural ventilation to common corridors and stairs wherever possible
14. Maintain communal rooms in preferred locations where sun and views may be accessed at different times of the day
15. Reconfigure design to eliminate any situations where privacy and amenity of rooms is compromised by driveway (ref recommendations 1, 4, 7)
16. Consider locating communal laundry on upper level of building so that laundry space may more readily lend itself to safe incidental social interactions. Locate convenient outdoor drying facilities adjacent to laundry
17. Re-configure some or all rooms to contain kitchens for autonomous meal preparation and/or;
18. Reconfigure design to provide number and size of communal kitchens adequate to provision for rooms without internal kitchens. In other words, provide residential size kitchen per cluster of 2 or 3 rooms to share, or else, purpose designed larger communal kitchens suitable for clusters of 4-6 rooms.

### ***Façade treatment/Aesthetics***

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

With the exception of the angled windows on the western elevation of the upper building, the design does not appear to relate to the site's unique characteristics

#### Recommendation.

19. Fenestration and architectural features should be configured to improve privacy and respond more directly to site features and aspect
20. Materiality and form should derive from and respond to the site conditions and bushland setting

### ***Sustainability***

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

The applicant referred to BASIX certificate not being required, whereas it is the understanding of the Panel that whilst NaTHERS is not required for Class 3 Accommodation, BASIX will be required.

#### Recommendations

21. Increase PV provision
22. Connect the rainwater to toilets
23. Address inconsistency between proposal and BASIX certificate
24. Clarify matter of requirement of BASIX certificate for Class 3 buildings by providing any supporting official advice



## PANEL CONCLUSION

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

In other words, development of the site is possible if the objectives are met.

**The Panel does not support the proposal and advises that the degree of impacts on the landscape including landforms and vegetation is not consistent with the objectives of the locality.**

**It is the Panel's view that no structure should be located on the lower part of the site as requirements for vehicular access to that part of the site would have an unacceptable impact on the natural features of the site.**

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

The overall site masterplan and site layout must demonstrate a solid understanding of how the sites unique assets including trees, vegetation, fauna, topography have been addressed and incorporated into the planning.

In other words, it is the values and characteristics of the site that should determine the eventual quantum of floor space and arrangement of built form.

The overall site master plan requires extensive redesign and needs to demonstrate how the project responds and accommodates people who will reside, visit and work on the site and how the site design responds to the site's unique landscape and topography.

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

**The Panel recommends that the applicant prepare an alternative scheme which minimises impact on the site's landform and takes all above recommendations into consideration supported by a thorough site analysis and analyses of similar accommodation to show how food preparation and common areas will function.**

**ITEM 4.2**

**MOD2021/0996 - 14 WYATT AVENUE, BELROSE -  
MODIFICATION OF DEVELOPMENT CONSENT DA2018/0401  
GRANTED FOR THE ERECTION OF A PART TWO AND PART  
THREE STOREY BOARDING HOUSE.**

**AUTHORISING MANAGER****Steve Findlay****TRIM FILE REF****2022/513556****ATTACHMENTS**

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

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2021/0996 for Modification of Development Consent DA2018/0401 granted for the erection of a part two and part three storey boarding house at Lot 2597 DP 752038, 14 Wyatt Avenue, BELROSE, subject to the conditions set out in the Assessment Report.

## MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	MOD2021/0996
<b>Responsible Officer:</b>	Steven Layman (Planning Consultant)
<b>Land to be developed (Address):</b>	14 Wyatt Avenue, Belrose Lot 2597, Deposited Plan 752038
<b>Proposed Development:</b>	Modification of Development Consent DA2018/0401 granted for the erection of a part two and part three storey boarding house
<b>Locality:</b>	Warringah LEP 2000 – C8 Belrose North
<b>Category:</b>	Category 2
<b>Referred to DDP:</b>	No
<b>Referral to NBLPP:</b>	Yes
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Jennifer Mary Patricia Holman John Richard Holman
<b>Applicant:</b>	Northern Beaches Essential Services Accommodation Pty Ltd
<b>Application Lodged:</b>	6 January 2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential – New Multi-Unit
<b>Notified:</b>	21 January 2022 to 4 February 2022; and 13 July 2022 to 27 July 2022
<b>Advertised:</b>	21 January 2022 and 4 February 2022
<b>Submissions Received:</b>	23
<b>Recommendation:</b>	<b>Approval</b>
<b>Estimated Cost of Works:</b>	\$4,895,000

## EXECUTIVE SUMMARY

On 6 January 2022, a Section 4.56 modification application (the subject of this Assessment Report) was lodged with Council seeking consent for the following:

- Installation of 'cooktops' within each individual boarding room.
- A reduction to the number of car parking spaces by one (1) space; to facilitate the provision of two (2) disabled car parking spaces in the basement; to provide a total of 12 car parking spaces.
- Widening of driveway by up to 400mm in three (3) locations to facilitate access for emergency vehicles.
- Addition of hydrant and sprinkler boosters adjacent to the driveway.
- Addition of a gas bottle filler to the north of the basement.
- Internal adjustments to ensure compliance with the National Construction Code (NCC).

On 16 March 2022, the Applicant filed a Class 1 Appeal on the deemed refusal of MOD2021/0996. On 28 June 2022, the Applicant was granted leave to rely on amended plans and supporting information which removed the cooktops from the individual boarding rooms.

This Assessment Report has been prepared based on the amended plans and supporting information which has deleted the cooktops from the individual boarding rooms.

The modification application was advertised and notified in accordance with the EPA Regulation 2000, and the Northern Beaches Community Participation Plan and a total of 23 submissions were received. The concerns raised in the submissions have been considered and addressed as part of this assessment.

The modification application is recommended for approval, subject to the amendment of Condition no. 1 (Approved Plans and Supporting Documentation) of DA2018/0401.

## 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 and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant environmental planning instrument;
- 23 submissions were received in response to the exhibition of the application;



- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers and State Government Agencies on the proposal.

**LOCALITY PLAN** (not to scale)



**SITE DESCRIPTION**

The subject site is a single allotment located on the north-western side of Wyatt Avenue, Belrose. The site is rectangular in shape and has a width of 28.595 metres and a depth of 80.42 metres, equating to an overall surveyed area of 2,29m<sup>2</sup>.

At present, the site is vacant of structures and accommodates heavy planting of canopy trees of varying species and heights. The majority of the trees are located parallel to the eastern property boundary, with several trees interspersed around the allotment. A hedge approximately 3 metres in height exists parallel to the street frontage. The trees parallel to the eastern boundary are scattered amongst boulders and the like, identified as a 'watercourse' in the provided survey. The site slopes approximately 10 metres from south to north (front to rear) via a gradual slope, and no exceptional topographical features can be found on the site.

The site is bounded by 16 Wyatt Avenue to the west and north. 16 Wyatt Avenue accommodates a multi-storey detached dwelling house and an in-ground swimming pool. The portion of 16 Wyatt Avenue that the driveway on the subject site leads to (to the north) accommodates a tack shed, horse facilities and an informal helicopter landing area. 16 Wyatt Avenue extends approximately 115 metres to the north-west before adjoining bushland. East of the subject site is 12 Wyatt Avenue, which is identical in shape to the subject allotment, and is vacant of structures. South of the site and across

Wyatt Avenue are six detached dwelling houses on allotments far smaller than those on the northern side of Wyatt Avenue.

## SITE HISTORY

On 15 March 2018, DA2018/0401 was lodged with Council seeking approval for a 27 room boarding house (including manager's residence) at the site. Each of the proposed rooms contained a small kitchen bench including cooktop, sink and apparent provision for a fridge.

DA2018/0401 was refused by the Northern Beaches Local Planning Panel (NBLPP) on 26 October 2018 on the following grounds:

1. *The flood risk assessment report submitted with the development application contains insufficient information to allow a proper and thorough assessment to determine if the development would be likely to have adverse flood risk impacts.*
2. *For that reason, the Panel is not satisfied that for the C8 Belrose North Locality the development is consistent with the Warringah Local Environmental Plan 2000 (WLEP 2000) desired future character requirement of protection and, if possible, enhancement of the natural environment.*
3. *The Panel is not satisfied that the development is consistent with the WLEP 2000 desired future character requirement of conformity with the maximum housing development standard of 1 dwelling per 20 hectares. Although the Panel has a discretion to consent notwithstanding this contravention, it does not consent given the extent of the contravention, the smallness of the site relative to 20 hectares, the large size of the development relative to the site size, and the matters referred to in the other reasons for refusal. If the Panel were prepared to consent (which it is not), then the prescribed concurrence of the Director would be required because the contravention is far more than 10%.*
4. *The Panel is not satisfied that the site is suitable given the matters referred to above and the Panel's assessment that it is an overdevelopment of the site because the building footprint and the total built upon area are too large for the site.*
5. *It is not in the public interest to consent given the matters referred to above.*

On 7 December 2018, a Section 8.2 Review of Determination Application was lodged with Council for DA2018/0401. This application was subsequently refused by the NBLPP for the following reasons:

1. *The development application is for a 'boarding house' as defined under WLEP 2000. A 'boarding house' is a form of 'housing'. The housing density standard therefore applies. The proposal does not comply with the housing density standard contained within locality C8 Belrose North, whether considered to be one dwelling or 24 dwellings. Although the Panel has a discretion to consent notwithstanding this contravention, it does not consent given the smallness of the site relative to 20 hectares, the large size of the development relative to the site size, and the inconsistency of the proposal with the C8 desired future character statement, in that:*
  - *The present character will not remain unchanged*

- *The natural landscape, including landform and vegetation, will not be protected or enhanced*
  - *The development will not be limited to 'new detached style housing' or will not be a low intensity or low impact use.*
2. *The flood risk impacts of the proposal remain unresolved and further assessment of the supplementary information would be required.*
  3. *The Panel is not satisfied that the site is suitable given the matters referred to above and the Panel's assessment is that it is an overdevelopment of the site because the building footprint and the total built upon area are too large for the site.*
  4. *It is not in the public interest to consent given the matters referred to above.*

On 26 April 2019, the Applicant filed a Class 1 Appeal against the refusal of DA2018/0401 and the matter proceeded to Hearing on 10 and 11 December 2020. On 20 January 2021, the NSW LEC granted development consent, subject to conditions.

The development application was approved without the provision of any cooking facilities in individual boarding rooms, which negated the application of the housing density provisions of the WLEP 2000.

On 6 January 2022, a Section 4.56 modification application was lodged with Council seeking consent for the following:

- Installation of 'cooktops' within each individual boarding room.
- A reduction to the number of car parking spaces by one (1) space; to facilitate the provision of two (2) disabled car parking spaces in the basement; to provide a total of 12 car parking spaces.
- Widening of driveway by up to 400mm in three (3) locations to facilitate access for emergency vehicles.
- Addition of hydrant and sprinkler boosters adjacent to the driveway.
- Addition of a gas bottle filler to the north of the basement.
- Internal adjustments to ensure compliance with the National Construction Code (NCC).

On 16 March 2022, the Applicant filed a Class 1 Appeal on the deemed refusal of MOD2021/0996. On 3 May 2022 Council's Statement of Fact and Contentions was filed with the NSW LEC, raising the following contentions:

- **Development not 'substantially the same' as the development approved**  
The addition of the cooktops to each individual boarding room altered the characterisation of the development from a 'boarding house' to 'dwellings'; with each individual boarding room now being capable of being used as separate self-contained dwellings.
- **Unacceptable amenity**  
Despite the proposed addition of the two plate cooktops to each individual room, no provision was made for a sink, any nominated area for food storage, waste storage, food preparation or a fridge. Further, no provision for exhaust fans was indicated.

On 28 June 2022, the Applicant was granted leave to rely on amended plans and supporting information which removed the cooktops from the individual boarding rooms.

This Assessment Report has been prepared based on the amended plans and supporting information which has deleted the cooktops from the individual boarding rooms.

## PROPOSED DEVELOPMENT

Consent is sought to modify DA2021/0401 as follows:

- Widening of the driveway by up to 400mm in three (3) locations to facilitate access for emergency vehicles.

The adjusted access driveway is intended to also accommodate vehicular access to a proposed 32 room boarding house (being part of an overall development of 55 boarding rooms) on the adjoining allotment to the west at 16 Wyatt Avenue, Belrose (DA2021/1039).

- A reduction to the number of car parking spaces by one (1) space; to facilitate the provision of two (2) disabled car parking spaces in the basement; to provide a total of 12 car parking spaces.
- Addition of a hydrant and sprinkler boosters adjacent to the driveway.
- Addition of a gas bottle filler to the north of the basement.
- Internal adjustments to ensure compliance with the National Construction Code (NCC).

## STATUTORY CONTROLS

- *Environmental Planning and Assessment Act 1979* (EPA Act 1979);
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy No 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007; and
- Warringah Local Environmental Plan 2000.

## PUBLIC EXHIBITION

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

The initial public exhibition occurred between 21 January 2022 and 4 February 2022 and the application was advertised on 21 January 2022 and a notice was placed on the site.

As a result of the initial public exhibition Council received 14 submissions objecting to the modification application and raising the following concerns:

Concern	Response
<i>Applicability of SEPP ARH in the Deferred Lands</i>	SEPP ARH does not apply to the land; boarding houses are a Category 2 Land

Concern	Response
	Use and are permitted in the C8 Belrose North locality.
<i>Compliance with desired future character</i>	<p>This was considered as part of the assessment of DA2018/0401, which was approved by the NSW Land and Environment Court on 20 January 2021.</p> <p>The proposed modifications are minor in nature and do not substantially alter the appearance of the approved building; with the majority of the changes being internal. The proposed modifications do not change the previous assessed compatibility of the development with the desired future character.</p>
<i>Breach of housing density standard contrary to Court approval</i>	<p>Since the initial public exhibition of the application, the plans were amended as part of the Class 1 Appeal to remove the cooktops from the individual boarding rooms. The removal of the cooktops from the individual rooms means that the rooms are not classified as 'dwellings', consistent with the <i>Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185</i> judgement.</p> <p>As the rooms do not constitute 'dwellings' the housing density standard applicable to land within Locality C8 (Belrose North) does not apply to the boarding house development.</p>
<i>Failure to be 'substantially the same' development</i>	<p>The deletion of the cooktops from the individual rooms results in the development maintaining the definition of a boarding house. The remaining amendments to the development are minor in nature and result in the development, as modified, being substantially the same development for which consent was granted as part of DA2018/0401.</p> <p>The number of boarding rooms and communal rooms does not change, and the external built form of the development remains as approved, with the exception of the widening of the driveway. The internal changes are minor and are required to ensure compliance with the NCC.</p>



Concern	Response
<i>Lack of detail about driveway arrangements</i>	Since the initial public exhibition, the Statement of Environmental Effects was amended to include reference to the adjusted driveway also being intended to accommodate vehicular access to a proposed 32 room boarding house (being part of an overall development of 55 boarding rooms) on the adjoining allotment to the west at 16 Wyatt Avenue, Belrose (DA2021/1039).
<i>Building height and setbacks</i>	The proposed modifications do not alter the building height and setbacks approved under DA2018/0401.
<i>Construction impacts – noise, traffic, parking, dust</i>	The consent for DA2018/0401 includes conditions of consent to manage noise, traffic, parking and dust during the construction phase. The proposed modifications do not alter these conditions.
<i>Availability of infrastructure – parking and sewage</i>	The proposed modifications do not alter the approved sewage arrangement for the development. The modification results in the loss of one (1) car parking space; to facilitate the provision of two (2) disabled car parking spaces. The development remains compliant with the minimum car parking requirement.
<i>Land clearing, landscaping, and impacts on biodiversity</i>	The proposed modifications do not result in the clearing of any additional vegetation from what was approved for removal as part of DA2018/0401.
<i>Increased bushfire risk</i>	The parent Development Application was referred to the NSW Rural Fire Service ('RFS') who raised no objections to the proposal, subject to conditions as recommended. The works sought under this modification application do not alter previous bushfire recommendations or conditions.

The modification application was subsequently amended as part of the Class 1 Appeal proceedings, with the Court granting the Applicant leave to rely on the amended plans and documentation. The amended plans deleted the cooktops from the individual boarding rooms. The amended modification application was re-exhibited from 13 July 2022 to 27 July 2022.

As a result of the second public exhibition Council received nine (9) submissions objecting to the modification application. The submissions included concerns that were

previously raised as part of the original notification period. The following additional concerns have been raised:

Concern	Response
<i>Plans do not include cooking facilities in individual rooms, despite the BASIX certificate referencing the provision of cooktops, fridges, and ovens in every room.</i>	The deletion of the cooktops within the individual boarding rooms negates the requirement for a BASIX Certificate, as established in the previous Court proceedings for DA2018/0401.
<i>24 hour security guard required for the development.</i>	There is an amended Plan of Management provided for the operation of the boarding house which identifies safety and security measures. There is no planning requirement for a security guard to be in place at the premises.
<i>No mention of how the shared driveway arrangement will be legally formalised.</i>	DA2021/1039 which seeks consent for the construction of a 55 room boarding house development, which would require access to the rear building via the driveway of 14 Wyatt Avenue is yet to be determined. It is noted that this application is currently subject to a Class 1 Appeal.

## REFERRALS

### Internal Referrals

Internal Referral Body	Comments
<b>Development Engineer</b>	<p><b>Supported, no conditions</b></p> <p>The proposed modification to the internal driveway width and grade has been reviewed and the proposal does not alter the original assessment of the application by Development Engineering. The approved overland flow path is not altered as a result of the proposal. There is no change to the driveway crossing or pedestrian access to the site.</p> <p>Development Engineering support the proposal with no additional or modified conditions of consent recommended.</p>
<b>Traffic Engineer</b>	<p><b>Supported, no conditions</b></p> <p>The proposed modification does not substantially amend the approved development which will still provide for 25 boarding rooms including two accessible rooms. The driveway will be widened by up to 400mm in three locations to improve access for emergency services vehicles which is supported. The number of parking spaces will be reduced by one but this is to facilitate an additional disabled space with the total number of parking spaces remaining consistent with approvals for</p>



	<p>other similar boarding house developments in the area. Bicycle and Motorcycle parking provisions remain consistent with those under the approved development. There are no traffic engineering objections to approval of the modification. The proposal is therefore supported.</p> <p>Comment:</p> <p>Traffic engineering support the proposed widening of the driveway and note the one (1) car parking space reduction, acknowledging that the total number of parking spaces remains consistent with approvals for other similar boarding house developments in the area. Bicycle and motorcycle parking provisions remain consistent with those approved under DA2018/0401.</p>
<b>Environmental Health (Industrial)</b>	<p><b><i>Supported, no conditions</i></b></p> <p>The proposal is supported with no additional or modified conditions of consent recommended.</p>
<b>Environmental Health (unsewered land)</b>	<p><b><i>Supported, no conditions</i></b></p> <p>The proposed modifications do not alter the number of habitable rooms or allowable persons; therefore no further consideration is required for the wastewater treatment system.</p> <p>The proposal is supported.</p>
<b>Landscape Officer</b>	<p><b><i>Supported, no conditions</i></b></p> <p>The amended Landscape Plans by R+M Landscape Architecture are noted. The amendments to the Landscape Plans are considered minor and no objections are raised with regard to landscape issues. Existing conditions are considered still relevant and adequate. The proposal is therefore supported.</p> <p>Comment:</p> <p>The amendments to the Landscape Plans are considered minor and no objections are raised with regard to landscape issues. The existing conditions remain relevant and adequate.</p> <p>The proposal is supported.</p>
<b>NECC (Biodiversity)</b>	<p><b><i>Supported, no conditions</i></b></p> <p>No objections are raised by the Biodiversity referral team, subject to the biodiversity related conditions provided in the previous consent being retained and the ongoing retention of Trees 30, 31 and 32, per the recommendation of the Arborist Letter) Axiom Arbor 2021).</p>

	The proposal is supported.
<b>NECC (Water Management)</b>	<b>Supported, no conditions</b> The proposal is supported with no additional or modified conditions of consent recommended.
<b>Waste Officer</b>	<b>Supported, with conditions</b> Comment: Council's waste officer has sought to impose conditions of consent that already exist on the parent development consent that need not be repeated.  The waste officer comments also seek to impose new requirements that were not enforced in the parent consent. Given that this development is not changing any waste arrangements there is no nexus that would require the introduction of new waste conditions.  Therefore, no revised or new waste officer conditions are included in the recommendation of this report.
<b>Building Assessment – Fire and Disability</b>	<b>Supported, no conditions</b> No objections are raised having regard to Building Certification and Fire Safety.  The proposal is supported.

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

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

Section 4.15 Matters for Consideration	Comments
<b>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on “Environmental Planning Instruments” in this report.
<b>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	See discussion on “Draft Environmental Planning Instruments” in this report.
<b>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</b>	A Development Control Plan does not apply to the site.
<b>Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement</b>	None applicable.
<b>Section 4.15 (1) (a)(iv) – Provisions of the regulations</b>	The EPA Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This

Section 4.15 Matters for Consideration	Comments
	<p>matter has been addressed through conditions of consent for DA2018/0401. The proposed modifications do not alter these conditions and they remain relevant.</p> <p>Clause 92 of the EPA Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed through a condition of consent imposed on DA2018/0401. The proposed modifications do not alter this condition.</p> <p>Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter has been addressed through a condition of consent imposed on DA2018/0401. The proposed modifications do not alter this condition.</p>
<p><b>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</b></p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this Assessment Report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p><b>Section 4.15 (1) (c) – the suitability of the site for the development</b></p>	<p>The suitability of the site for the boarding house development was considered as part of approved DA2018/0401. The proposed modifications do not alter the established suitability of the site.</p>
<p><b>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b></p>	<p>Submissions received have been considered and addressed in this Assessment Report.</p>
<p><b>Section 4.15 (1) (e) – the public interest</b></p>	<p>The proposed modifications to the approved boarding house development are in the public interest; the widening of the driveway is proposed to facilitate emergency vehicle</p>

Section 4.15 Matters for Consideration	Comments
	access and the internal changes are proposed to ensure compliance with the NCC.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

### State Environmental Planning Policies (SEPPs) – As Applicable

#### State Environmental Planning Policy No 55 – Remediation of Land

Clause 7(1) (Contamination and remediation to be considered in determining a development application) relevantly states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

Contamination was assessed as part of DA2018/0401 which approved the boarding house development. The proposed modifications do not alter the previous contamination findings that informed the approval of DA2018/0401.

#### State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal was amended during the course of this modification application to remove cooktops from the individual boarding rooms, and therefore no changes to BASIX requirements commensurate to that of the parent consent are proposed.

### Local Environment Plans (LEPs)

#### Warringah Local Environmental Plan 2000 (WLEP 2000)

The C8 Belrose North locality (which covers the land subject to this Application) under the WLEP 2000 was deferred from inclusion in Warringah Local Environmental Plan 2011 in 2011.

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

#### Warringah Local Environmental Plan 2000 (WLEP 2000)

### Desired Future Character (DFC)

Locality:	C8 Belrose North
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<b>Development Definition:</b>	<p><b>Boarding house</b></p> <p>(a) means any premises that—</p> <ul style="list-style-type: none"> <li>(i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and</li> <li>(ii) are used and occupied by at least 4 long term unrelated residents, and</li> <li>(iii) include a communal living space used for eating and recreation, and</li> <li>(iv) are not licensed to sell liquor, and</li> </ul> <p>(b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises.</p>
<b>Category of Development:</b>	Category 2

**Desired Future Character Statement:**

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

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

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

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

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

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

The consistency of the boarding house development with the Desired Future Character Statement was determined in *Platform Architects Pty Ltd v Northern Beaches Council* [2020] NSWLEC 185:

61 *For the reasons outlined above, I am satisfied that the DA is consistent with the Desired Future Character Statement and, therefore, meets the requirements of cls 12(2)(b) and 12(3)(b) of the WLEP.*

The proposed modifications are minor in nature and do not change the boarding house characterisation of the development. The consistency of the DA with the DFC Statement

and the Development Standards, established in *Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185*, remain relevant to the modification application.

#### Built Form Controls (Development Standards)

The proposed modifications do not alter the approved building height, front setback, side or rear setbacks, and does not propose any structures in the rear setback area.

As a result of the proposed driveway width increases, there is a reduction to the approved bushland setting area. The revised total landscape area comprises 1,181.5m<sup>2</sup>, which equates to 51.4% of the site area, which maintains compliance with the minimum 50% requirement.

As established in the *Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185* judgement, the Housing Density standard is not applicable to the boarding house development. The proposed modifications do not alter the boarding house characterisation of the development and the Housing Density standard remains not applicable.

#### General Principles of Development Control

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

General Principles	Comments	Complies Y/N
<b>CL38 Glare &amp; reflections</b>	The proposed modifications do not alter the approved building materials and colours.	Y
<b>CL42 Construction Sites</b>	Development consent DA2018/0401 included conditions of consent to manage construction impacts of the development.	Y
<b>CL43 Noise</b>	The proposed modifications do not increase the number of boarding rooms or the maximum number of people occupying the site. The acoustic assessment undertaken as part of the assessment of DA2018/0401 does not change.	Y
<b>CL50 Safety &amp; Security</b>	The proposed modifications do not alter the built form approved under DA2018/0401.	Y
<b>CL54 Provision and Location of Utility Services</b>	Development consent DA2018/0401 included conditions of consent to manage the provision and location of utility services.	Y
<b>CL57 Development on Sloping Land</b>	It is acknowledged that the proposed widening of the driveway at three (3) points will result in a minor increase to the amount of fill required. The driveway	Y

General Principles	Comments	Complies Y/N
	levels and gradients have been adjusted for better heavy vehicle access. The additional fill proposed is considered minor and therefore does not offend the provisions of this clause.	
<b>CL58 Protection of Existing Flora</b>	The proposed modifications do not result in the removal of any additional vegetation from what was approved for clearing as part of DA2018/0401.	<b>Y</b>
<b>CL62 Access to sunlight</b>	The development is not considered to unreasonably overshadowing nearby land.	<b>Y</b>
<b>CL63 Landscaped Open Space</b>	As a result of the proposed driveway width increases, there is a reduction to the approved bushland setting area. The revised total landscape area comprises 1,181.5m <sup>2</sup> , which equates to 51.4% of the site area, which maintains compliance with the minimum 50% bushland setting area requirement.	<b>Y</b>
<b>CL63A Rear Building Setback</b>	The proposed modifications do not alter the rear building setback approved under DA2018/0401.	<b>Y</b>
<b>CL66 Building bulk</b>	The proposed modifications do not alter the building bulk approved under DA2018/0401.	<b>Y</b>
<b>CL67 Roofs</b>	The proposed modifications do not alter the roof form approved under DA2018/0401.	<b>Y</b>
<b>CL68 Conservation of Energy and Water</b>	The proposal was amended during the course of this modification application to remove cooktops from the individual boarding rooms, and therefore no changes to BASIX requirements commensurate to that of the parent consent are proposed.	<b>Y</b>
<b>CL72 Traffic access &amp; safety</b>	The proposed modifications do not alter the approved vehicular access point to the development. The widening of the driveway, to facilitate access for emergency vehicles, enhances the safety of the development.	<b>Y</b>
<b>CL74 Provision of Carparking</b>	In order to provide two (2) accessible car parking spaces within the basement, a reduction of one (1) car parking space is proposed, resulting in the total provision of 12 car parking spaces.	<b>Y</b>

General Principles	Comments	Complies Y/N
	<p>As part of the assessment of DA2018/0401, Council acknowledged that Schedule 17 of the WLEP 2000 does not provide a car parking rate for boarding house development.</p> <p>On this basis, Council adopted the parking rate under Clause 29 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) for boarding house development; noting that SEPP ARH did not strictly apply to the development. Clause 29 relevantly provided that a boarding house development not carried out by or on behalf of a social housing provider cannot be refused on the basis of parking, if at least 0.5 parking spaces are provided for each boarding room, and if not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site (manager). No visitor parking was required.</p> <p>Excluding the Manager's residence, a total of 24 boarding rooms were approved, generating the requirement for 12 car parking spaces.</p> <p>The proposed 12 car parking spaces maintain compliance with the provisions of Clause 26 of SEPP ARH.</p>	
<b>CL75 Design of Carparking Areas</b>	Council's Traffic Engineer has reviewed the amended car parking layout and raised no objection to the modifications.	<b>Y</b>
<b>CL76 Management of Stormwater</b>	The proposed modifications do not alter the stormwater arrangements approved under DA2018/0401.	<b>Y</b>
<b>CL78 Erosion &amp; Sedimentation</b>	Development consent DA2018/0401 included a condition of consent requiring the installation and maintenance of sediment and erosion control. The proposed modifications do not alter this condition.	<b>Y</b>
<b>CL80 Notice to Metropolitan Aboriginal</b>	DA2018/0401 was referred to the Metropolitan Aboriginal Land Council who	<b>Y</b>



General Principles	Comments	Complies Y/N
Land Council and the National Parks and Wildlife Service	raised no objection to the development proposal.	

## SCHEDULES

### Schedule 6 - Preservation of Bushland

DA2018/0401 approved the removal of vegetation on the site to facilitate the construction of the boarding house development. The proposed modifications do not result in any additional vegetation removal to what has previously been approved under DA2019/0401.

### Schedule 8 - Site analysis

DA2018/0401 was accompanied by a Site Analysis Plan and the Statement of Environmental Effects included a written statement explaining the relationship between the design of the development and the site analysis. The modification application includes a Site Analysis Plan and the Statement of Environmental Effects includes a discussion of the proposed modifications and how they relate to the site analysis.

### Schedule 9 - Notification requirements for remediation work

Contamination was assessed as part of DA2018/0401 and no remediation works were required to be undertaken. The proposed modifications do not alter the previous contamination findings.

### Schedule 10 - Traffic Generating Development

The provisions of this schedule were considered as part of the assessment of DA2018/0401 and it was determined that the approved boarding house development is not Traffic Generating Development. The proposed modifications do not alter this conclusion.

### Schedule 11 - Koala Feed Tree Species and Plans of Management

The site is not identified as being in a koala habitat protection area pursuant to Clause 59 as the site area is lesser than 1 hectare.

### Schedule 14 - Guiding Principles for Development near Middle Harbour

The development is not in proximity to Middle Harbour and the provisions of this schedule are therefore not applicable.

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contribution Plan 2021

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the *EP&A Act 1979*. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

A summary of the key issues addressed within this report are as follows:

- The amended proposal is considered substantially the same as the original proposal, as detailed within this report.
- The application received 23 submissions, raising a number of issues with the proposed development, as detailed and addressed within this report.
- This report demonstrates that the proposed modifications result in the development remaining low intensity and low impact, in accordance with the requirements of Category 2 Development in the C8 Belrose North locality, as assessed under DA2018/0401.
- The proposed modifications do not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties, as assessed under DA2018/0401.

As such, the proposed modification application is recommended for approval.

**RECOMMENDATION - APPROVAL****Reasons for Approval**

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification application results in the development maintaining consistency with the Desired Future Character of the C8 Belrose North Locality of the Warringah Local Environmental Plan 2000.
2. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed modification application is in the public interest.

## CONDITIONS

***Modify Condition 1 – Approved Plans and Supporting Documentation to read as follows:***

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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
02 Rev. N	10-December 2020	Platform Architects
03 Rev. N	10-December 2020	Platform Architects
04 Rev. N	10-December 2020	Platform Architects
05A Rev. N	10-December 2020	Platform Architects
05B Rev. N	10-December 2020	Platform Architects
06 Rev. N	10-December 2020	Platform Architects
07 Rev. N	10-December 2020	Platform Architects
08 Rev. N	10-December 2020	Platform Architects
09 Rev. N	10-December 2020	Platform Architects
10 Rev. N	10-December 2020	Platform Architects
11 Rev. N	10-December 2020	Platform Architects
12 Rev. N	10-December 2020	Platform Architects
13 Rev. N	10-December 2020	Platform Architects
14 Rev. N	10-December 2020	Platform Architects
15 Rev. N	10-December 2020	Platform Architects
16 Rev. N	10-December 2020	Platform Architects

Architectural Plans - Endorsed with Council's stamp		
17 Rev N	10 December 2020	Platform Architects
18 Rev N	10 December 2020	Platform Architects
02 Rev 3	14 June 2022	Platform Architects
03 Rev 3	14 June 2022	Platform Architects
04 Rev 3	14 June 2022	Platform Architects
05 Rev 3	14 June 2022	Platform Architects
05A Rev 3	14 June 2022	Platform Architects
05B Rev 3	14 June 2022	Platform Architects
06 Rev 3	14 June 2022	Platform Architects
07 Rev 3	14 June 2022	Platform Architects
08 Rev 3	14 June 2022	Platform Architects
09 Rev 3	14 June 2022	Platform Architects
10 Rev 3	14 June 2022	Platform Architects
11 Rev 3	14 June 2022	Platform Architects
12 Rev 3	14 June 2022	Platform Architects
13 Rev 3	14 June 2022	Platform Architects
14 Rev 3	14 June 2022	Platform Architects
15 Rev 3	14 June 2022	Platform Architects
16 Rev 3	14 June 2022	Platform Architects
17 Rev 3	14 June 2022	Platform Architects
18 Rev 3	14 June 2022	Platform Architects

Architectural Plans - Endorsed with Council's stamp		
Schedule of External Finishes Rev. C	March 2020	Platform Architects

<b>Civil engineering and stormwater plans – Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
C01 Rev J	20 February 2020	NB Consulting Engineers
C02 Rev J	20 February 2020	NB Consulting Engineers
C03 Rev J	20 February 2020	NB Consulting Engineers
C04 Rev J	20 February 2020	NB Consulting Engineers
C05 Rev J	20 February 2020	NB Consulting Engineers
C06 Rev J	20 February 2020	NB Consulting Engineers
C07 Rev J	20 February 2020	NB Consulting Engineers
C08 Rev J	20 February 2020	NB Consulting Engineers
C09 Rev J	20 February 2020	NB Consulting Engineers
C10 Rev J	20 February 2020	NB Consulting Engineers
C11 Rev J	20 February 2020	NB Consulting Engineers
D01 Rev H	21 February 2020	NB Consulting Engineers
D02 Rev H	21 February 2020	NB Consulting Engineers
D03 Rev H	21 February 2020	NB Consulting Engineers
D04 Rev H	21 February 2020	NB Consulting Engineers
D05 Rev H	21 February 2020	NB Consulting Engineers
D06 Rev H	21 February 2020	NB Consulting Engineers
D07 Rev H	21 February 2020	NB Consulting Engineers
D08 Rev H	21 February 2020	NB Consulting Engineers
D09 Rev H	21 February 2020	NB Consulting Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Acoustic Assessment (Response to Council Letter)	17 August 2018	The Acoustic Group
Arboricultural Report (Final Version)	March 2020	Axiom Arbor Tree Services
Carpark Certification of Proposed Boarding House (Version 1B)	February 2018	ML Traffic Engineers
Flood Risk Management Report (Final Report)	10 February 2020	NB Consulting Engineers
Geotechnical Investigation (J1616)	8 March 2018	White Geotechnical Group
Plan of Management Rev. D	4 December 2020	Northern Beaches Essential Services Accommodation
Plan of Management Rev. F	22 June 2022	Northern Beaches Essential Services Accommodation
Section J Report - NCC 2016	March 2018	Efficient Living
Traffic and Parking Impact Assessment (Version 1A)	January 2018	ML Traffic Engineers
Waterways Impacts Statement (Final)	8 March 2018	NB Consulting Engineers

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

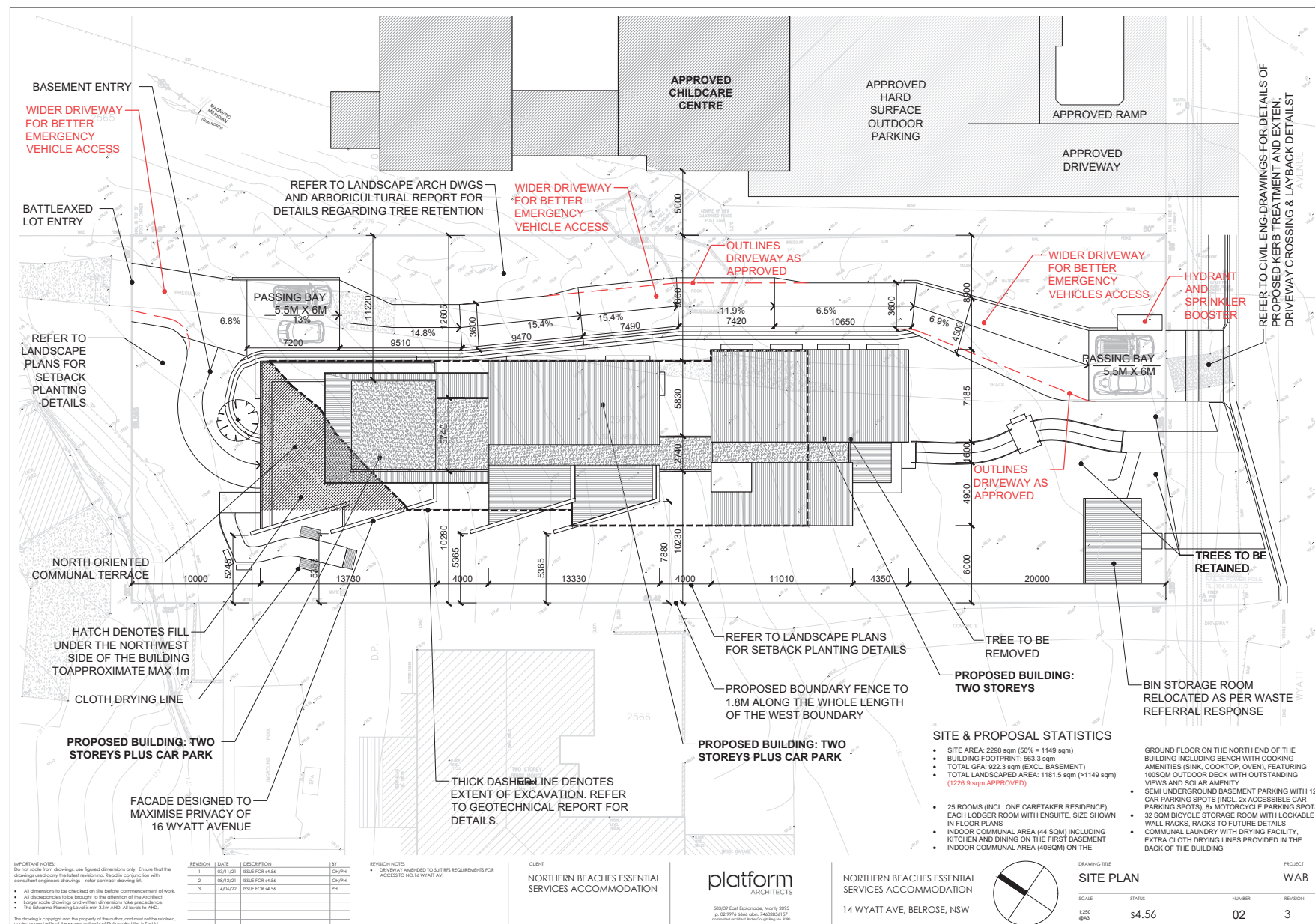


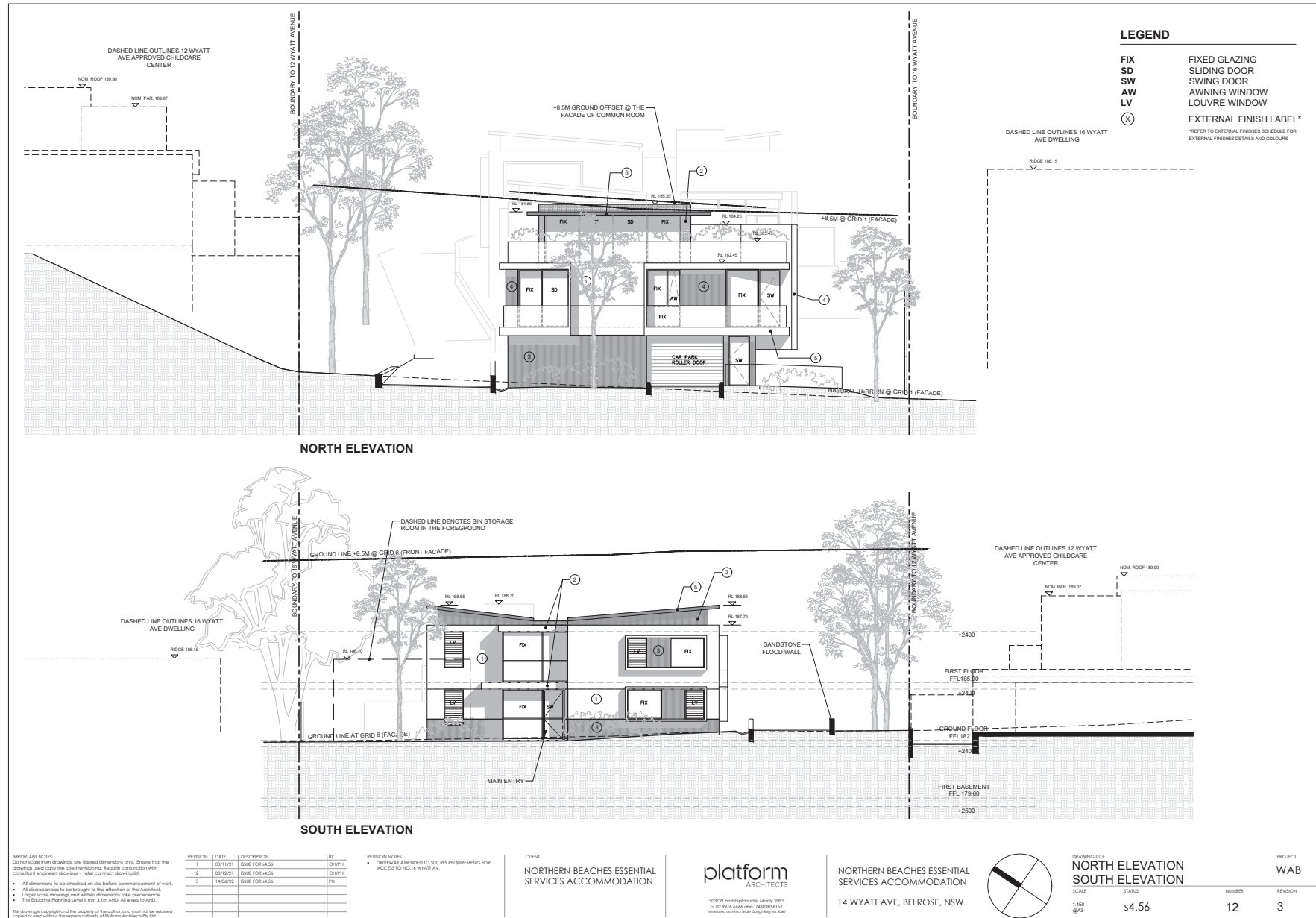
<b>Landscape plans – endorsed with Council's stamp</b>		
<b>Drawing</b>	<b>Dated</b>	<b>Prepared by</b>
LP01 Rev C	7 December 2020	R & M Landscape Architecture
LP02 Rev C	7 December 2020	R & M Landscape Architecture
LP03 Rev C	7 December 2020	R & M Landscape Architecture
LP04 Rev C	7 December 2020	R & M Landscape Architecture
LP05 Rev C	7 December 2020	R & M Landscape Architecture

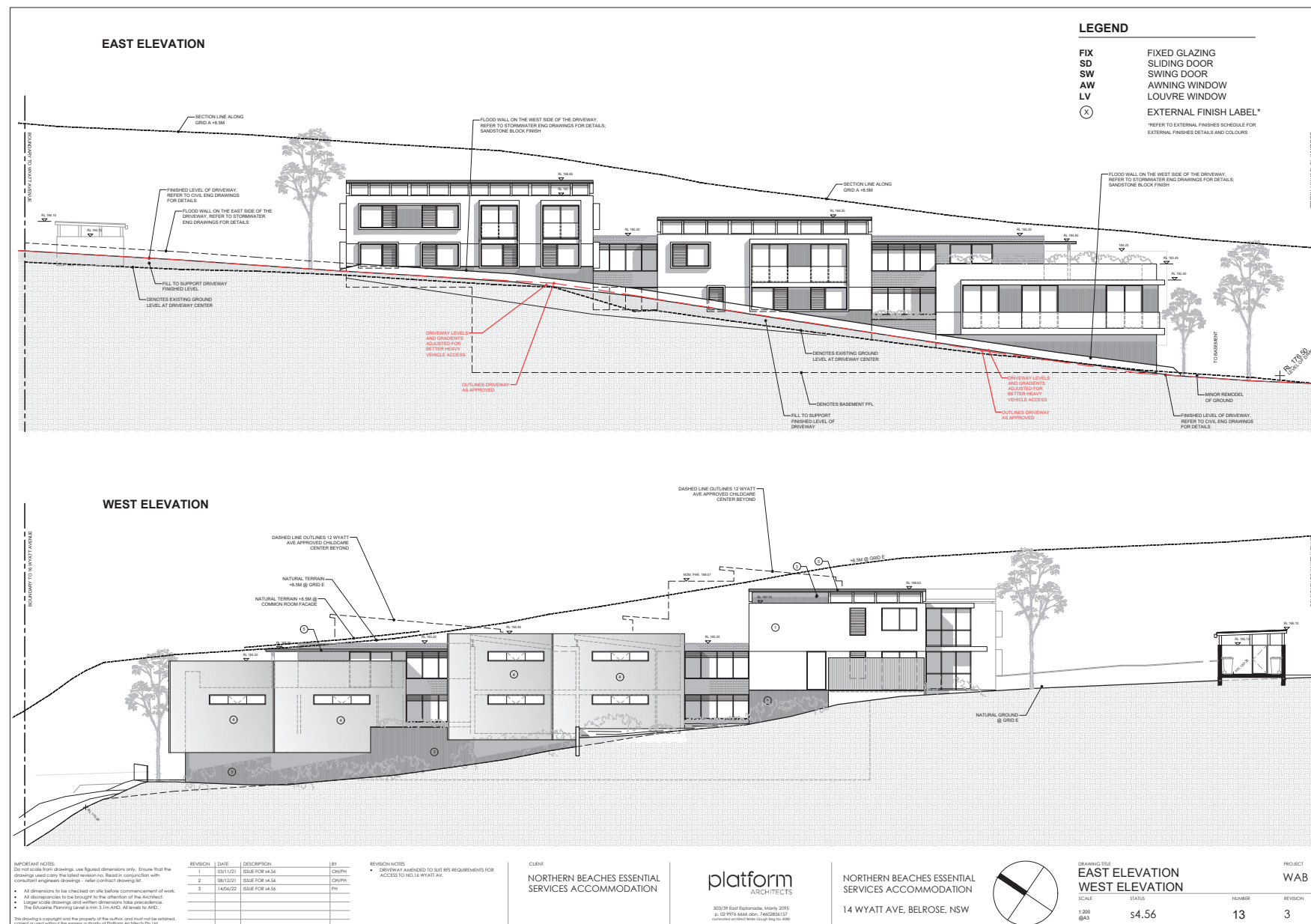
<b>Waste Management Plan</b>		
<b>Report No.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	15 August 2020	Platform Architects

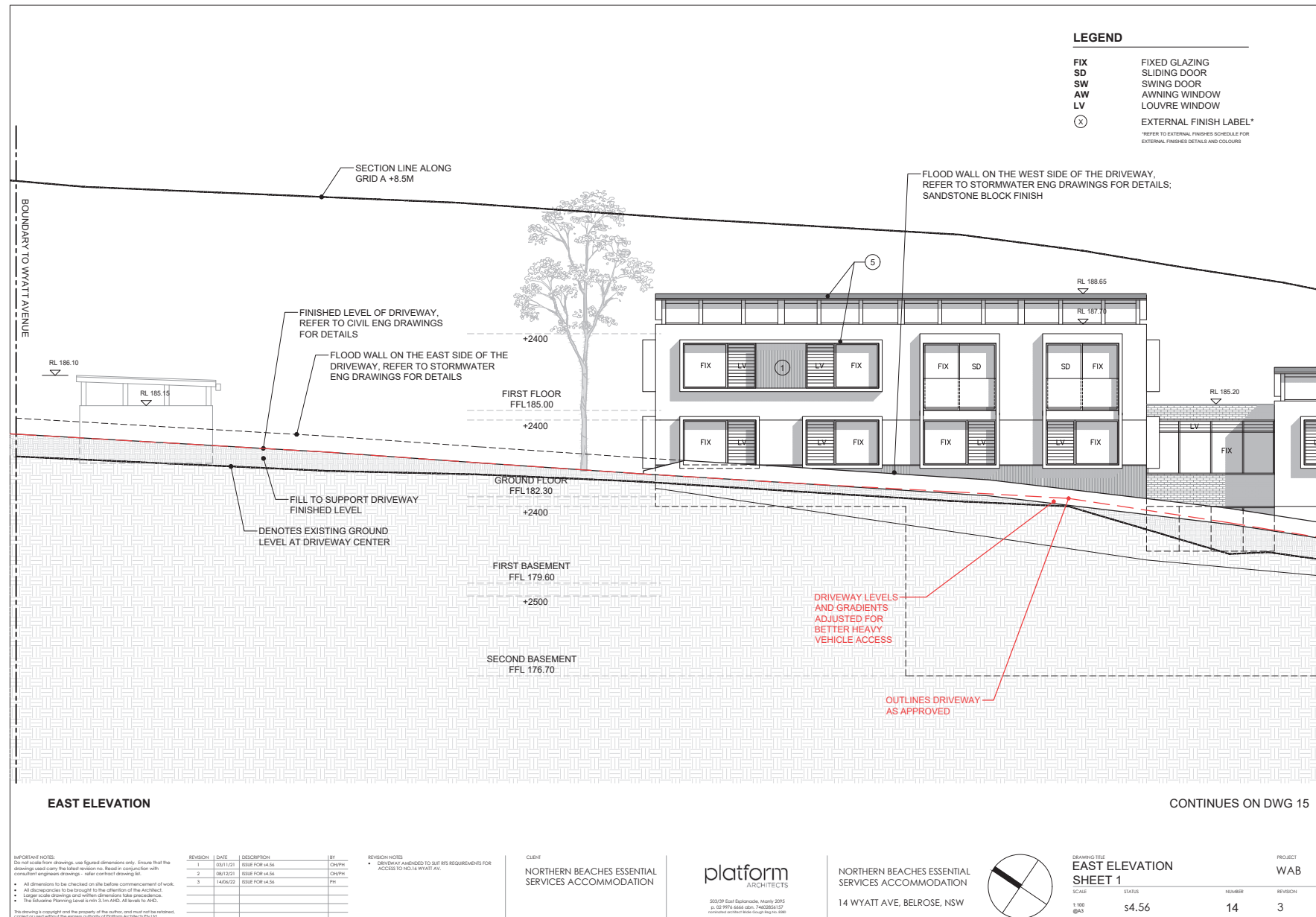
In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

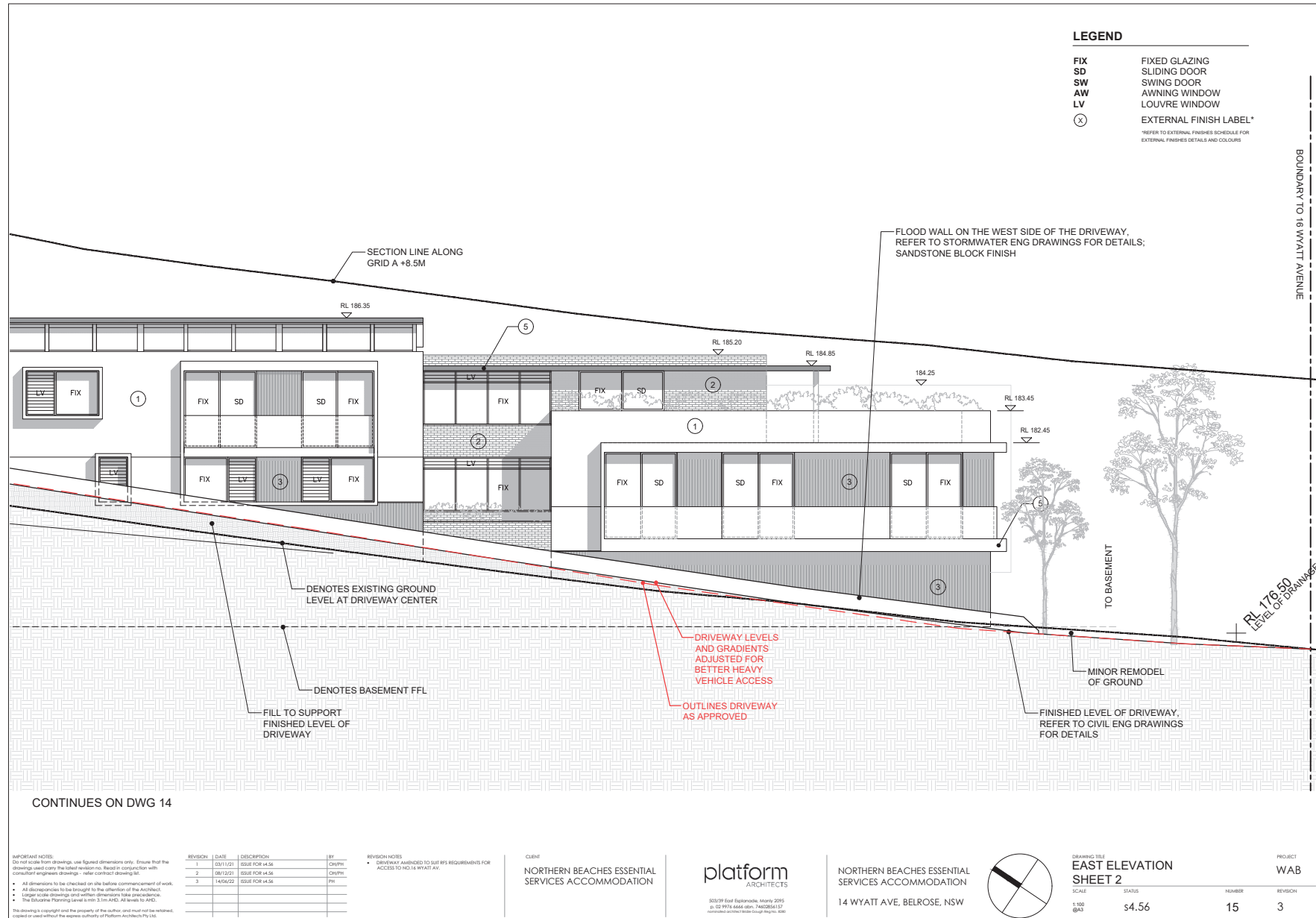


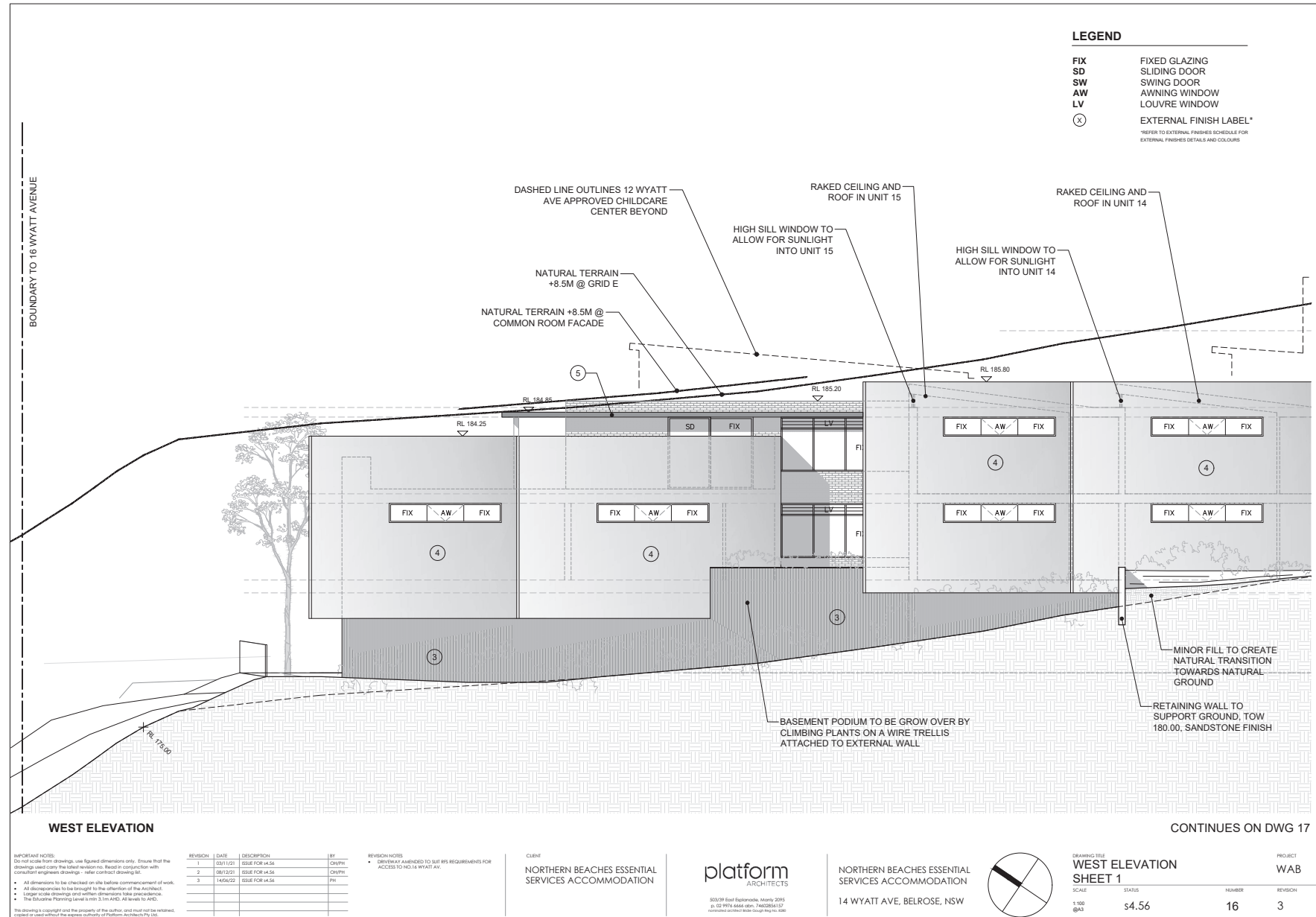


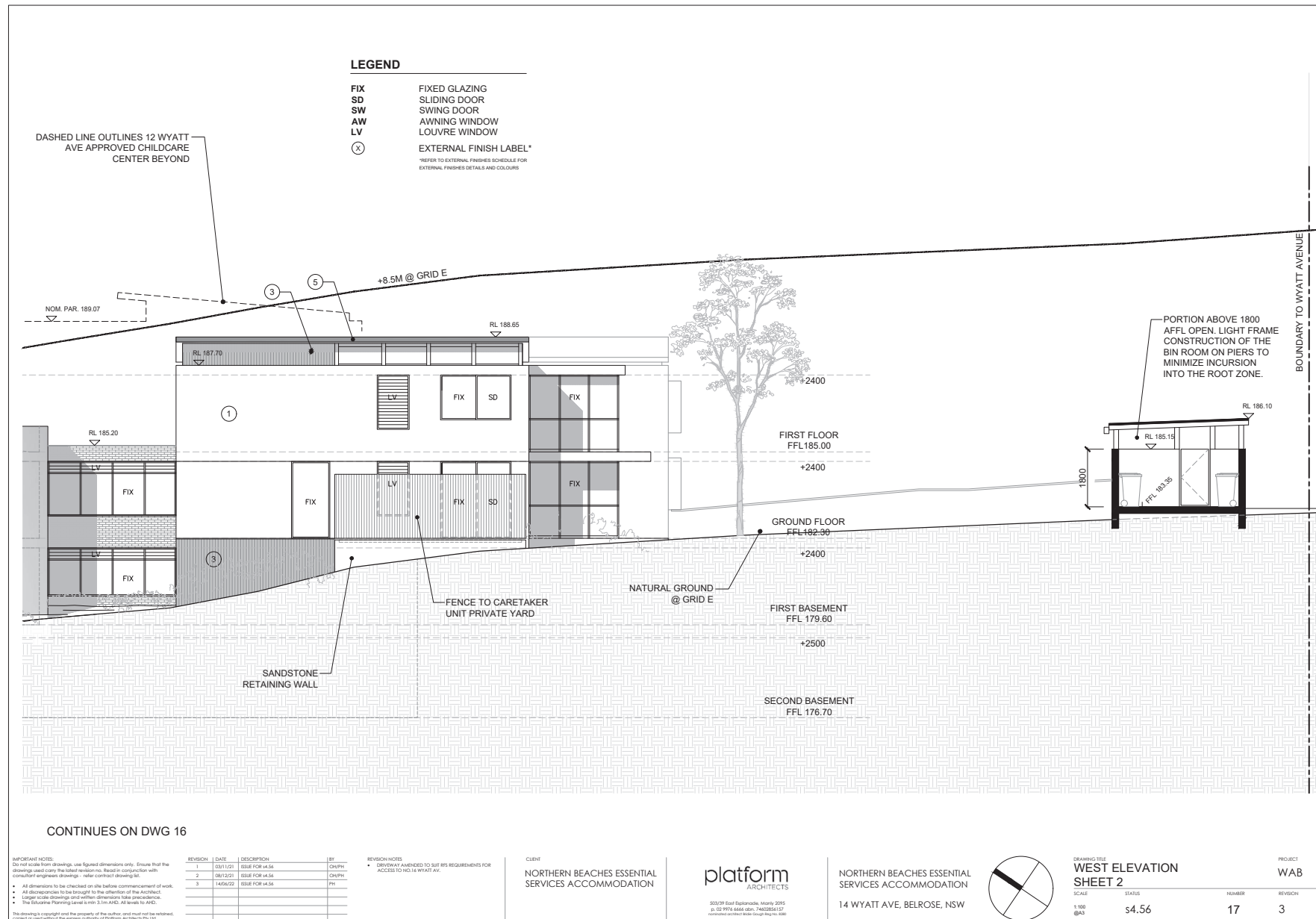




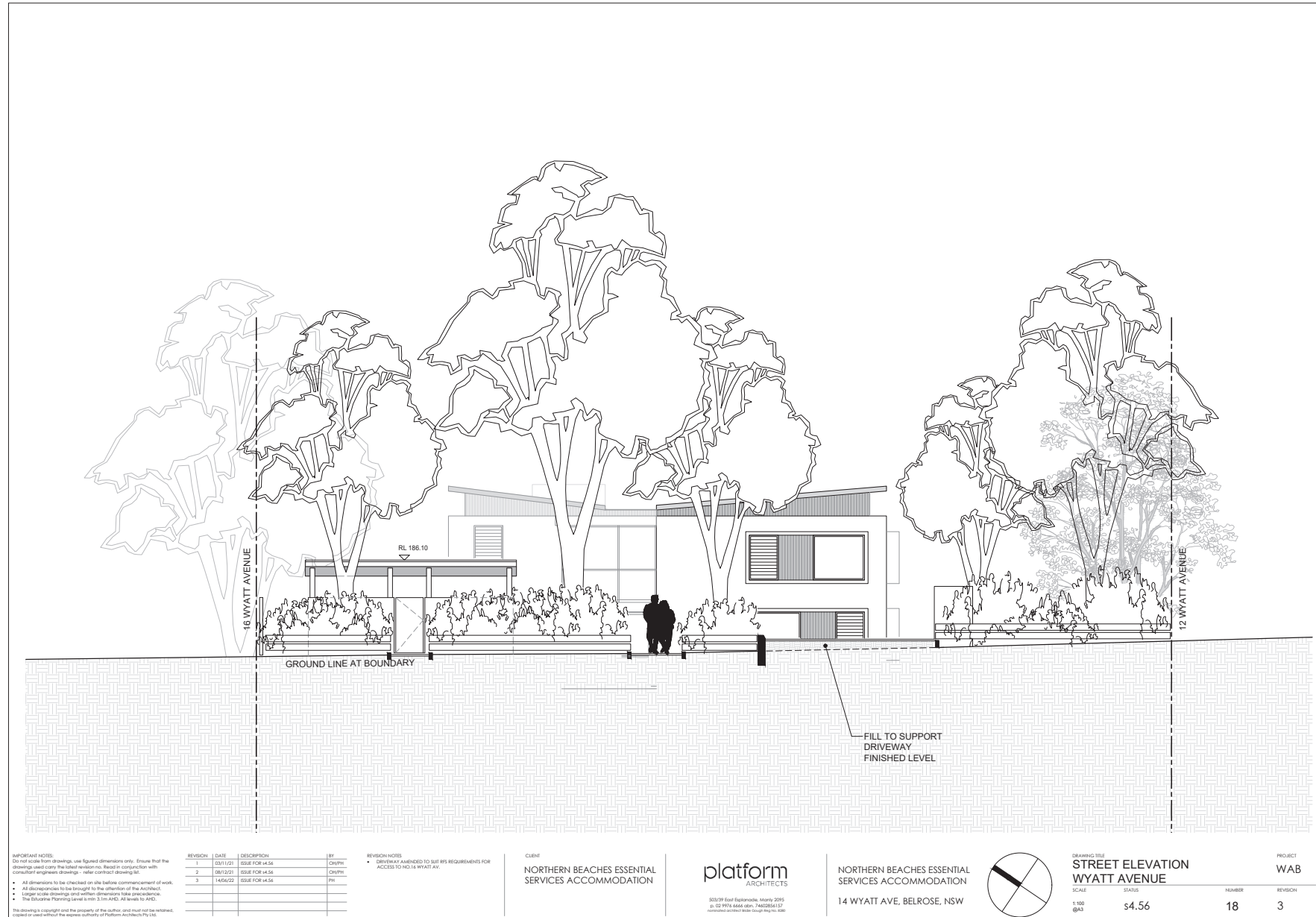












**ITEM 4.3****DA2021/2039 - 70A WILLANDRA ROAD, NARRAWEENA -  
CONSTRUCTION OF A DWELLING HOUSE INCLUDING A  
SWIMMING POOL WITH ANCILLARY SITE WORKS.****AUTHORISING MANAGER****Rodney Piggott****TRIM FILE REF****2022/513560****ATTACHMENTS**

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

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/2039 for construction of a dwelling house with a swimming pool with ancillary site works at Lot 808 DP 752038, No.70A Willandra Road, NARRAWEENA, for the reasons for refusal set out in the Assessment Report.



## DEVELOPMENT ASSESSMENT REPORT

<b>Assessment Officer:</b>	Alex Keller
<b>Address / Property</b>	Lot 808 DP 752038, No.70A Willandra Road, Narraweena
<b>Description:</b>	Construction of a dwelling house and swimming pool with ancillary site works.
<b>Development Application No:</b>	DA2021/2039
<b>Application Lodged:</b>	17/1/2022
<b>Plans Reference:</b>	Dwg 100:01 to Dwg 600:01, Revision A, drawn by <i>Saturday Studio</i>
<b>Amended Plans:</b>	No
<b>Applicant:</b>	Altire Partners Pty Ltd c/o Lei Chen
<b>Owner:</b>	Beacon Hill Retirement Pty Ltd
<b>Locality:</b>	B2 Oxford Falls Valley
<b>Category:</b>	Category 2 – Warringah Local Environmental Plan (WLEP) 2000
<b>Variations to Controls (Cl.20/Cl.18(3)):</b>	Yes – Wall height
<b>Referred to DDP:</b>	No
<b>Referred to NBLPP:</b>	Yes
<b>Land and Environment Court Action:</b>	Yes – Deemed Refusal Proceedings No.2022/213410
<b>SUMMARY</b>	
<b>Submissions:</b>	Yes (12)
<b>Submission Issues:</b>	Desired Future Character, bushland clearing, bushfire hazard, threatened species, water quality visual impact.
<b>Assessment Issues:</b>	'Existing parcel', Desired Future Character, Category 2 use, built form (bulk), landscaping, ecology, traffic, construction impact, bushfire, earthworks, stormwater, General Principles of WLEP 2000
<b>Recommendation:</b>	Refusal
<b>Attachments:</b>	(See plans reference)



## EXECUTIVE SUMMARY

The subject development application (DA) is referred to the NBLPP for determination as more than 10 submissions of objection have been received. The proposal is a "Category 2" housing development (being a dwelling house) within the B2 Oxford Falls Valley Locality of Warringah LEP 2000 and the subject Lot part of an "existing parcel" *being all adjacent and adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 hectares*. The existing "parcel" comprises Lots 808, Lot 809, Lot 812, Lot 813 and Lot 817 DP 752038 and the single dwelling entitlement is shared between these Lots. Therefore, without consolidation of the existing parcels approval of a dwelling on one Lot has potential land use implications on all other Lots in the parcel.

The scheme is not supported as it has not satisfactorily responded to considerations under the Warringah LEP 2000, including requirements of the Desired Future Character Statement and inconsistency with the General Principles of Development Control. Principal concerns relate to site impacts from clearing bushland for asset protection for bushfire protection purposes, drainage management, impact on threatened species habitat, earthworks, ancillary site works, and suitability of the proposed dwelling location. Concerns are also raised regarding impact on the housing density restrictions that apply to the "existing parcel", which affects the site and adjoining land.

In summary, the proposal has not provided sufficient information (including required amendments to the plans / site works and supporting information) to address the requirements of the Warringah LEP 2000.

## SITE DESCRIPTION

The site has a land area of 2.849 hectares being an irregular trapezoid shape and has road frontage to Lady Penrhyn Drive (despite its historically associated address of "Willandra Road"). It is noted that the site is within the "Oxford Falls" postcode boundary on Council's mapping system, but addressed as "Narraweena" suburb, however the street position is accessed from "Beacon Hill" area.

The site has the following maximum dimensions:

- (i) East to West: 222.85 metres (m)
- (ii) North to South: 169 metres

The site is undisturbed native bushland and contains sandstone rock outcrops with escarpment features and areas of Threatened Ecological Community (TEC) of *Coastal Upland Swamp*

To the north and east the site adjoins natural dense bushland and therefore the subject site is subject to bushfire hazard (flame zone).

The land is within an area of high sandstone topography which contains coastal upland swamp, fauna habitat and flora. Exposed rock platforms and sandstone outcrops in the Locality contain aboriginal carvings and apart from past identified sites, other unrecorded sites may also be present on the site.

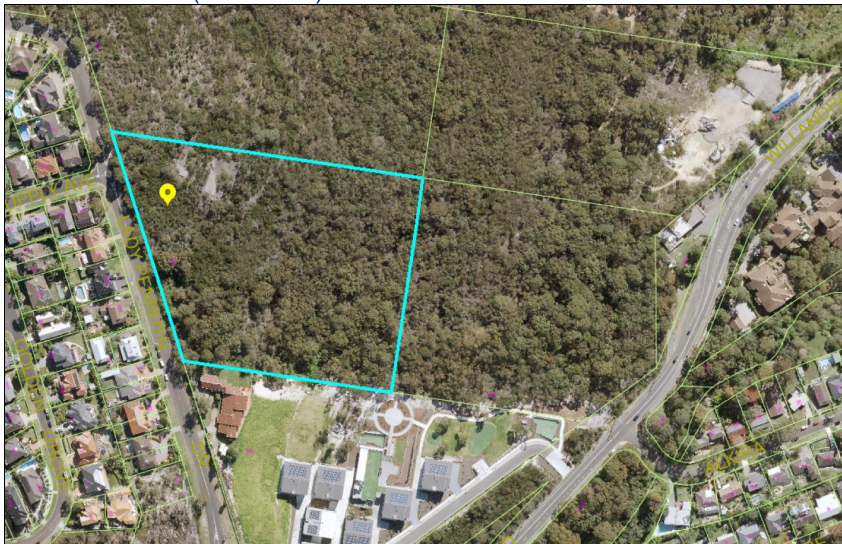


Land uses surrounding the subject site comprise of:

- Bushland, adjacent the site's northern boundary and the eastern boundary.
- Single dwelling occupancy (and approval for a boarding house (near Willandra Road)) on Lot 810 to the north-east of the site.
- "Marsden" retirement complex of 34 Independent Living Units (development partly complete as at August 2022), is located on the adjoining land to the south. This site also contains a detached (original) dwelling house in the north-west corner.
- Residential land (Beacon Hill suburban area) supporting typically one and two storey detached style dwelling houses located to the west of the site which is part of a different Local Environmental Plan (WLEP 2011).

The site has public road access to Lady Penrhyn Drive which is a bitumen and kerbed Council road.

#### LOCALITY PLAN (not to scale)



**Image:** Aerial photo site map (house position proximate to yellow point)

#### RELEVANT BACKGROUND:

Pursuant to Warringah LEP 1985 the land was zoned "Non-Urban 1(a1)" and within that LEP there were dwelling house restrictions for land zoned 1(a1) pursuant to Clause 18 (1) to (8), which included defining that "*existing parcels of land*" being "*all adjacent or adjoining land held in the same ownership on 8 March 1974*". Clause 18 also included an area range of 20 hectares to 2 hectares associated with these defining criteria.

On 5 December 2000, the *Warringah LEP 2000* replaced Warringah LEP 1985 and the subject land was contained within the *B2 Oxford Falls Valley Locality*. The B2 Locality Statement included provision for "existing parcels" being "*all adjacent and adjoining land held in the same ownership on 8 March 1974 and having a combined area of no less than 2*





hectares". A 20-hectare area requirement was also retained as part of the "Housing Density" criteria.

The existing holding map for land holdings as of 8 March 1974 held by Council shows the 'existing parcel' in the image below, with the subject Lot being part of a [single] "existing parcel" was held the name of "Sisters of Good Samaritans". The land holding has a total of 17.336 hectares. The existing parcel comprises Lot 808, Lot 809, Lot 812, Lot 813 and Lot 817 in Deposit Plan 752338.



Image: Existing parcels map extract – site area indicated in blue outline. (Source Northern Beaches Council)

**Development Application No.DA2009/0238** – for construction of a Seniors Living Development comprising sixty six (66) self-contained dwellings, village centre, internal roads, carparking and landscaping was refused by Council on 8 August 2009.

On 19 January 2010, an Appeal against the refusal of DA2009/0238 was dismissed by the *NSW Land and Environment Court* (Proceedings No.10322 of 2009).

This development proposal covered a significant area of the "existing parcel" described above.



**Development Application No.DA2010/1494** for construction of a seniors housing development (made pursuant to SEPP (Housing for Seniors or People with a Disability) 2004), was refused by the *Sydney East Joint Regional Planning Panel* on 9 December 2010.

On 30 June 2011 an Appeal against the refusal of DA2010/1494 was dismissed by the *NSW Land and Environment Court* (Proceedings No.11053 of 2010).

This development proposal covered a significant area of the “existing parcel” described above.

On 16 June 2022, a letter was sent to the applicant advising of concerns with the current DA (DA2021/2039) and requesting substantial additional information or potential design changes to the proposal. Concerns included consistency with the DFC, stormwater engineering, housing density (‘existing parcel’) matters, bushland protection, biodiversity impacts and landscape impacts. The applicant sought more time to respond however not additional information has been received.

## PROPOSED DEVELOPMENT

The Development Application seeks consent for detached dwelling house, swimming pool and ancillary site works.

Details of the development work proposed is as follows:

- (a) Excavation, land fill and associated site preparation works.
- (b) Construction of a detached dwelling house configured as:
  - i) **Lower Ground Floor** (RL126.123 to RL124.354) - parking for 4 cars, bin storage equipment plant & storage, driveway and stair access, subfloor, terrace area, hall connection to lower area that contains guest room, rumpus / bar recreation area, bathroom, pool and pool terrace.
  - ii) **Ground Floor** (RL128.923 to RL127.454) – Entry area, bedrooms (4), bathrooms (5), kitchen / living area, library area, cloak room, sauna, gym, study room, storage.
  - iii) **First Floor** (RL132.123) – master bedroom, wardrobe, study, bathroom, cabana room, hall and stair connection, roof terrace with spa.
  - iv) **Roof Level** (RL131.542 to 135.711)
- (c) Bushfire protection vegetation clearing / management for ongoing bushfire safety.
- (d) Stormwater detention infrastructure, swales and drainage works.
- (e) Connection to *Sydney Water* sewer mains.
- (f) Driveway access for vehicles.





- (g) Swimming pools and pond structures.
- (h) Retaining walls, paths, steps, pond, fencing and landscaping works.

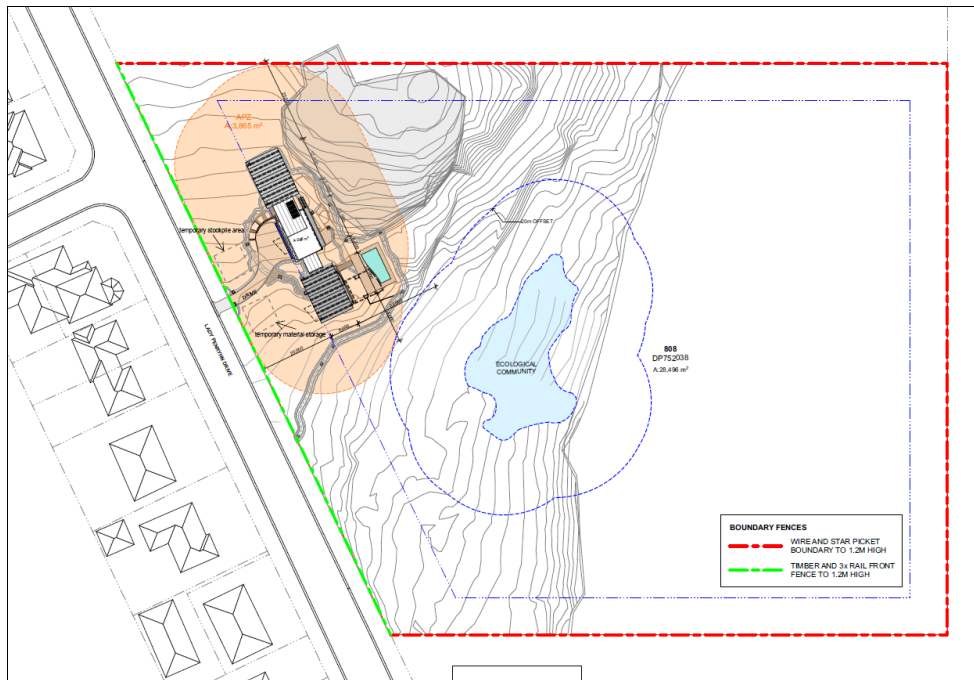


Image: General site plan showing adjacent residential land, part site contours, coastal upland swamp (blue), dwelling house and pool, bushfire APZ (orange), front fence line (green), north/east/south Lot boundaries (red).

## AMENDMENTS TO THE SUBJECT APPLICATION

Nil.

## STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2021. (EPA Regulations)
- c) Biodiversity Conservation Act 2016 & Regulations
- d) State Environmental Planning (Resilience and Hazards) 2021
- e) State Environmental Planning Policy (Transport & Infrastructure) 2021
- f) State Environmental Planning Policy BASIX
- g) Warringah Local Environmental Plan 2000 (WLEP 2000)
- h) Rural Fires Act 1997 (Planning for Bushfire Protection 2019)
- i) Roads Act 1993
- j) Community Participation Plan
- k) Warringah Section 94A Development Contributions Plan (S94A Plan)



## PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment (EPA) Regulation 2021, Warringah Local Environment Plan (LEP) 2000 and Council's *Community Participation Plan*. As a result, the application was notified for a period of 14 days from 24 January 2022 to 11 February 2022, including a sign placed at the front of the site.

The site was referred to the *NSW Rural Fire Service* for comment as the house (without site clearing) is in a flame zone.

Twelve (12) submissions of objection were received from properties listed below.

Matters raised regarding the public interest for the assessment of the proposal is considered in context of the detailed assessment under WLEP 2000 and the development application.

## Submissions Received

A total of twelve (12) submission were received in response to the application. All submissions have been read and considered. Submissions were received from the following properties:

Name:	Address:
Elisa Mugnes	17 Lady Penrhyn Drive BEACON HILL
Mr Jaidip Rana	2 Supply Avenue BEACON HILL
Mr Attilio Del Sal	17 A Lady Penrhyn Drive BEACON HILL
Ms Connie Lai	21 Lady Penrhyn Drive BEACON HILL
Mr Ronald John Patton Mrs Cynthia Joy Patton	19 Wyatt Avenue BELROSE
Friends Of Narrabeen Lagoon Catchment	PO Box 845 NARRABEEN
Mrs Margaret Gladys Woods	42A Elimatta Road MONA VALE
Dr Cornelia J Harris Mr Anthony W F Harris	Lot 2671 Morgan Road BELROSE
Joseph James Earl	87 Wearden Road FRENCHS FOREST
Ann Elizabeth Sharp	77 Brighton Street CURL CURL
Mr David Sydney Palmer	57 Parkland Road MONA VALE
Mrs Marita Ann Macrae	24 Catalina Crescent AVALON BEACH

Collectively, the following issues were raised in the submissions. In summary, each has been considered and addressed below:

1. Property address
2. Landscape impact
3. Visual impact
4. Building bulk
5. Water runoff impacts



6. 'Existing parcel' restrictions
7. Desired Future Character
8. Site Suitability
9. Amenity
10. Bushfire protection
11. Driveway and traffic
12. Ecology impacts
13. Aboriginal heritage
14. Rock removal
15. Views
16. Low intensity / low impact
17. Building division
18. Development precedent

1. **Issue:** *Concern that the property address used for the development application is misleading due to the site frontage being only along Lady Penrhyn Drive.*

Comment:

The address of the land pre-dates the development of Lady Penrhyn Drive for a past urban subdivision. A sign was placed at the front of the site as a visible reference to the land associated with the DA (facing Lady Penrhyn Drive). The site has been subject to previous development applications and the allocated land address would not be changed during a DA process without consultation with the landowner. Review of the DA documents enables clear identification of the subject land concerned. Additional time has been permitted for any persons wishing to make a submission to account for if they initially considered the site was not accessed from Lady Penrhyn Drive. It is noted that the site is within the "Oxford Falls" postcode boundary on Council's mapping system, but addressed as "Narraweena" suburb, however the street position is accessed from "Beacon Hill" area.

Therefore, this issue does not warrant refusal of the application.

2. **Issue:** *Concern that the DA will permanently impact the natural beauty, flora diversity and sandstone bushland landscape.*

Comment:

The application has been provided with a detailed landscape plan that includes a mix of native trees and other plant species to provide potential habitat for wildlife which includes a 20m wide front boundary setback. Retaining landscape open space contributes to the desired future character of the B2 Oxford Falls Valley Locality and in particular the integration of new development into the bushland characterisation. This development impacts a large area of vegetation and rock outcrops on the site consistency of the development with the DFC in order to gain consent. This is addressed under the WLEP 2000 later in the report, under the heading "Desired Future Character" and under "Clause 56", "Clause 58" and "Clause 63" of WLEP 2000 within this report. In summary issue is a reason for refusal of the application due to insufficient information and ancillary impacts / works surrounding the building footprint.



3. **Issue:** *Concern that the DA have an adverse visual impact on the visible natural ridgeline, including when viewed from Lady Penrhyn Drive and Willandra Road area.*

Comment:

The Oxford Falls Valley Locality statement seeks for new buildings to avoided being located along or near ridgelines, where they would be prominent, or due to ancillary impacts such as roads, site clearing and the like that would also have a visual impact. In this case, the applicable elements of the DFC are addressed within this report in terms of visual impact on the landscape. In summary, issue is a reason for refusal of the application due to expansive building footprint and broad area of ancillary impacts / works surrounding the building footprint. Insufficient information is provided with regard to the implications of tree clearing, clear identification of trees to be retained (tagged) on site and options for keeping or replacing canopy trees and long-term protection of the remaining bushland on site.

4. **Issue:** *Concern that building bulk and position will be highly visible when viewed from the surrounding area, including the large bushfire safety clearing required.*

Comment:

The Oxford Falls Valley Locality statement seeks for buildings to be avoided along ridgeline areas. Due to crest in the topography and wide bushland separation of approximately 330m to Willandra Road the ground floor areas are mostly concealed from views along Willandra Road. The location of the building further to the east would expose more the structure due to the easterly slope of the land. The use or conservation of canopy trees will assist to ensure the roof profile, upper storey and natural colours of external materials provide a degree of screening for the upper storey of the building to minimise visual impact. Along Lady Penrhyn Drive the building is more exposed to the elongated building footprint however a 20m front setback is to be retained with landscape screening. However, insufficient information is provided regarding the implications of tree clearing, clear identification of trees to be retained (tagged) on site and options for keeping or replacing canopy trees and long-term protection of the remaining bushland on site, including landscaping / canopy trees within the front setback in unison with bushfire safety.

5. **Issue:** *Concern regarding waterflow runoff and drainage including impact on threatened species habitat of endangered ecological community swamp.*

Comment:

This matter has been assessed by Council's Development Engineer regarding stormwater capacity and Water Management Team (for Water Sensitive Urban Design) within Council. See details under the heading "Internal referrals" within this report and Clause 60, Clause 76, Clause 78 under the heading Warringah LEP 2000 within this report.

In summary, insufficient information has not been provided by the applicant to satisfy this assessment issue.



6. **Issue:** *Concern that the proposal is part of an existing holding and does not protect the housing density control of WLEP 2000.*

Comment:

This issue has been addressed in detail under the headings “Relevant Background” and “Housing Density” within this report. For instance, it should be noted that the B2 Locality has a range of permissible Category 2 and Category 3 uses, however the suitability of those uses must pass through the parts of Clause 12, 14, 15 and 18, as applicable, under WLEP 2000 to be deemed appropriate pursuant to the Locality Statement. In summary, the proposal has not addressed the implications on the housing density control in specific relation to the “existing parcel”.

This issue warrants refusal of the application due to insufficient information.

7. **Issue:** *“Concern that the proposed development is not consistent with the desired future character (DFC) of the locality or General Principles of Development Control for WLEP 2000”*

Comment:

The building and concrete road sections between detracts from the DFC by the bushland clearing development pattern.

This issue has been addressed under the heading ‘Desired Future Character’ and the relevant “General Principles of Development” assessment within this report. In summary, the expansive area to be cleared, additional civil works required, land fill demonstrate the proposal is not consistent with the WLEP 2000.

This issue warrants refusal of the application.

8. **Issue:** *Concern that a site analysis should be done and this would preclude the site from development in this location.*

Comment:

The applicant has provided a site analysis that is sufficiently detailed to address the relevant parts of *Schedule 8 – Site analysis* pursuant to WLEP. A site analysis should influence the design response of a development. However, it is not intended to prevent / prohibit development. Site inspection shows the position of the building seeks to achieve, or keep away from, exposure to the more prominent areas of the land including high cliffs, high points with exposed rock platforms and sandstone (perched) swamp features.

Therefore, this has been addressed and does not warrant refusal of the application.

9. **Issue:** *“Concern that the site coverage and bulk of the building detracts from the tranquillity and amenity of adjacent land and housing”.*

Comment:

This issue is addressed in context with the assessment discussions provided under the heading “Desired Future Character” within this report. In summary, the use of the



land for a single dwelling house is compatible with the use of adjacent land along Lady Penrhyn Drive. Construction impacts can be managed by a construction management plan, sediment / dust controls and including site construction fencing (to limit heavy machinery disturbing areas beyond the APZ as well as tagging / protecting trees with suitable markers).

Therefore, this has been addressed and does not warrant refusal of the application.

- 10. Issue:** *Concern that the site is affected by bushfire hazard and the proposal compromises fire safety requirements for the NSW RFS.*

Comment:

The NSW Rural Fire Service have advised that the building surrounds (including the setback to Lady Penrhyn Drive) is to be managed as part of the inner protection area (IPA), and landscaping is to comply with landscape restrictions under *Planning for Bushfire Protection 2006*. The NSW RFS requirements include long term APZ management, evacuation and fire-fighting access requirements as detailed in the referral response provided (dated 4/3/2022).

This issue has been addressed to meet RFS safety requirements and does not warrant refusal of the application.

- 11. Issue:** *Concern that the development will add traffic impacts and the driveway should not be opposite other houses in Lady Penrhyn Drive.*

Comment:

This issue is considered by Council Traffic Engineer and Development Engineer in terms of traffic generation and road safety. The “intensity” of traffic generation is also discussed under the heading “Desired Future character” within this report. The visual impact of the driveway (including headlights) and traffic access is considered under General Principle 71 and 72 within this report.

In summary, the traffic and carparking impacts with the position of the garage on a 20m setback and curved driveway are not considered to warrant refusal of the application, subject to conditions.

- 12. Issue:** *Concern that proposal reduces landscape values that is potential habitat for wildlife and the impact of clearing that will occur by excavation for drainage, impact on runoff management and pool area excavation.*

Comment:

The application has been provided with a detailed landscape plan that includes a mix of native trees and other plant species to provide potential habitat for wildlife which includes a 20m wide front boundary setback with most of the site to remain undisturbed. Integration of the landscape open space contributes to the DFC of the *B2 Oxford Falls Valley Locality* and in particular the long-term impacts of new development within the native bushland ecology, water quality and displacement / fragmentation of natural habitat in sites such as this. Consideration includes excavation and ancillary structures (pools, driveways, swale drains, paths and the like) in summary is a reason for refusal of the application.



This is addressed under the relevant General Principles within this report and heading “Internal Referral Response” (Biodiversity / Riparian) within this report.

**13. Issue:** *Concern that proposal will impact on Aboriginal heritage.*

Comment:

The application has been provided with a detailed Aboriginal heritage report and Council's *Aboriginal Heritage Office* has reviewed the proposal. A physical inspection of the dwelling location proposed has been carried out and this issue has been addressed by conditions as detailed under the heading “External Referrals” (AHO) within this report. Subject to conditions this issue does not warrant refusal of the application.

**14. Issue:** *Concern that proposal requires rock excavation and removal due to the pool, drainage lines and site works into bushland.*

Comment:

The application has been considered regarding protecting the major rock features of the site. In particular, a substantial cliff line occurs along the 110m elevation contour with smaller sandstone ledges east of the building site along the 127m contour. The highest point on the site is the rock platform in the vicinity and above the 130m contour. Additional information has been sought from the applicant regarding the proposed positioning and shape of surface drains, fill, and the like. However, no changes have been made to the plans at the time of this report preparation. It is noted that the detention system directs drainage toward Lady Penrhyn Drive to link into Council's stormwater. In summary, this issue has been considered within the report pursuant to Clause 42, 56, 57 60, and 63. Additional consideration is also detailed within the “Internal Referrals” section of this report. Due to insufficient information this issue warrants refusal of the application.

**15. Issue:** *Concern that proposal will impact views of the site.*

Comment:

The dwellings to the west of the site along Lady Penrhyn Drive have limited views at their ground floor levels due to the broad and dense bushland expanse within the subject land. However, once site clearing is undertaken views toward the ocean will potentially “open up”. However, the length and height of the subject dwelling structure in place is likely to then block view elements partly toward the east. The new dwelling design transitions down the slope of the land and complies with the building height, setbacks (front, rear and side boundaries). The applicant has not provided a detailed view analysis to determine if the overall height (including the jagged “W” roof shape), and expansive footprint provides a “skilful” design in terms of view impact. It should be noted that this issue has only been given ‘general mention’ in submissions received as it is in-determinative by the elevations and contour plans of the extent of impact the building will have on ocean views for properties opposite the site. During site inspection and consideration of views along Lady Penrhyn Drive it is apparent that the height of the upper storey of the building will impact views due to the position of the house and eastern aspect to ocean views and dwellings opposite the site look directly across this space.

Insufficient information has been provided to address this issue by the applicant.





- 16. Issue:** *Concern that proposal is not consistent with low intensity and low impact development.*

Comment:

This issue has been discussed under the heading “Desired Future Character” within this report. In summary the proposal is low intensity being a single dwelling house and associated impacts of traffic, occupancy and the like are considered. The use of the land for a single residence is consistent with the DFC for low intensity. The impact however associated with the dwelling house are a substantial change to the site, being undeveloped land. Additionally, the impact required to clear a large area for the large building footprint and extensive surrounding site works require additional information, clarification, and adjustment to better address the environmental impacts. This includes view analysis, land fill, tree protection, rock outcrop protection, water quality management and environmental protection measures (such as robust construction management controls) that should be provided by the applicant. Therefore, due to insufficient information this issue warrants refusal of the application.

- 17. Issue:** *Concern that proposal if approved will lead to building division to convert the dwelling into another type of housing or other land use, with this DA as the ‘thin end of the wedge’.*

Comment:

The reasons for granting consent form a fundamental basis of the development assessment and DA approval. Therefore, any change to the site use would be required to follow the same process of assessment (this includes any modification) under WLEP 2000 (or subsequent LEP). The building is presented as a single dwelling in the development application and therefore is assessed on that basis, on its own merits. Standard conditions may be applied to ensure any consent reflects the approved use / development.

- 18. Issue:** *Concern that proposal creates an undesirable precedent for further housing development on all the other lots separately or together within the ‘existing parcel’.*

Comment:

This issue has been discussed under the heading “Desired Future Character” within this report. At present the proposal is using the dwelling entitlement that is shared between 5 Lots in the existing parcel and the density provisions of the WLEP should therefore be considered in terms of the entire parcel to address the competing interest and matters of land use planning in administering the WLEP 2000 in the future (or any replacement instrument). It is considered that the applicant has not addressed this issue in sufficient detail pursuant to Section 4.15(1)(b)(i) and (iii) of the *Environmental Planning and Assessment Act 1979*.

## NSW LAND AND ENVIRONMENT COURT ACTION

Appeal against ‘deemed refusal’ was filed with the NSW LEC on 21 July 2022, as Proceedings No.2022/213410.

## REFERRALS



EXTERNAL REFERRALS	Referral Response / Comments
<b>NSW Rural Fire Service</b>  (NSW RFS)	<p><b>Supported with conditions</b></p> <p>The site is identified as bushfire prone land. In accordance with Section 100B of the <i>Rural Fires Act, 1979</i> the application was referred to the NSW Rural Fire Service (NSW RFS).</p> <p>In their response dated 4/3/2022, the NSW RFS issued conditions which can be included with conditions should the development application be determined for approval. The RFS conditions address Asset Protection Zones, Landscaping within the Inner Protection Area, Construction Standards, Water and Utility Services and General Advice.</p>
<b>Ausgrid</b>	<p><b>Supported with conditions</b></p> <p>The application was referred to Ausgrid service provider under clause 45(2) of <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>.</p> <p><i>Ausgrid</i> did not raise any objection and no referral advice or conditions were recommended as per the response provided on 22/2/2022.</p>
<b>Aboriginal Heritage Office</b>	<p><b>Supported with conditions</b></p> <p>There are known Aboriginal sites in this area.</p> <p>An <i>Aboriginal Heritage Due Diligence Assessment</i> was undertaken by Travers Ecology (15 December 2021) with the following recommendations:</p> <p>"3.2 Recommendations</p> <ol style="list-style-type: none"> <li>1. Disturbances or impacts to exposed rock shelves in the north-eastern parts of the bushfire APZ are to be avoided.</li> <li>2. Rock platform areas are to be protected by a permanent APZ perimeter fence during construction.</li> <li>3. Whilst it is unlikely that aboriginal artefacts will be found within the development and APZ area, a search for aboriginal artifacts is to be undertaken by an archaeologist or representative of the Local Aboriginal Land Council (LALC) immediately after clearing of vegetation.</li> <li>4. If Aboriginal artefacts are exposed, uncovered or found during clearing or construction works, then works in that area will be stopped until an assessment by a suitably qualified archaeologist or representative of the Local Aboriginal Land Council (LALC) is undertaken and the archaeologist or LALC representative gives permission to continue construction works.</li> <li>5. An Aboriginal Heritage Impact Permit (AHIP) is required if impacts to Aboriginal objects and/or places cannot be avoided. Applications for an AHIP must be accompanied by an assessment report conducted in accordance with the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW 2010. Applications must also provide evidence of consultation with the Aboriginal communities. Consultation is required under Part 8A of the NPW</li> </ol>



	<p>Regulation 2009 and is to be conducted in accordance with the Aboriginal Heritage Consultation Requirements for Proponents 2010.”</p> <p>The <i>Aboriginal Heritage Office</i> agrees with the recommendations made in the Aboriginal Heritage Due Diligence Assessment.</p> <p>The following condition is recommended for any approval:</p> <p><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></p>
<b>INTERNAL REFERRALS</b>	<b>Referral Response / Comments</b>
<b>Development Engineering</b>	<p><b>Not supported.</b></p> <p>The submitted stormwater plan proposes to discharge via a swale along the perimeter of the development and a slotted pipe to act as a level spreader. However, it is unclear level of the proposed swale and how the swale is discharging as a level spreader.</p> <p>Additional information including proposed pit levels and indicate the location and direction of discharge from the swale must be shown on the plans.</p> <p>Development Engineers cannot support the application due to insufficient information.</p> <p><u>Planning Assessment comments:</u> Development Engineering requirements have not been submitted or satisfied.</p>
<b>Environmental Health – Unsewered Land</b>	<p><b>Supported without conditions.</b></p> <p>Regarding 'unsewered lands', Environmental Health has no objection to this development. It will be connected directly to Sydney Water infrastructure via a gravity fed sewer.</p> <p><u>Planning assessment comments</u> No comment</p>

Landscape Officer	<p><b>Not supported.</b></p> <p>A number of issues are raised requiring clarification or amendment to enable proper assessment to be undertaken as follows:</p> <p>Proposed landscaping around the dwelling vs RFS requirements. The landscape requirements contained in the approval issued by the RFS appear at odds with the proposed landscape plans with regard to tree and shrub planting adjacent to the building and within the Inner Protection Zone.</p> <p>Exotic species nominated on the landscape plans including Bamboo, Crepe myrtle, etc. are not considered appropriate on this site in consideration of the existing landscape character and the planning controls.</p> <p>Impact of driveway on street trees. A relocated driveway may enable retention of all street trees.</p> <p>Alignment of constructed swales around the building should follow existing contours. Rock excavation and alteration of the natural landscape is to be minimised particularly to the eastern side of the dwelling adjacent to the large rock outcrop. The swales should be located closer to the building. Impact of southern portion of swale on existing trees. Swale should be located to avoid any unnecessary tree removal.</p> <p>Clarification is required regarding the extent and style of proposed front fencing.</p> <p>Location of sewer line connection route for dwelling and pool should be indicated to enable assessment of impacts of such works, the sewer main being located in Lady Penrhyn Drive.</p> <p>Similarly, the location of pool pump equipment should be nominated to assess impacts and connection route to the sewer.</p> <p>Site visit to confirm locations and impacts on rock and other features. A site peg out for the structures would be beneficial in assessing impacts.</p> <p>145m<sup>2</sup> of excavated material proposed for re-use on site. This must be accounted for on a plan indicating where fill is needed or else removed from site.</p> <p>Fill should not be distributed outside of disturbed building zone to protect the natural landscape.</p> <p><u>Planning Assessment comments:</u> Landscape additional information requirements have not been submitted or satisfied.</p>
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<p><b>Natural Environment &amp; Climate Change - Water Management</b></p>	<p><b>Not supported.</b></p> <p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy.</p> <p>The supplied reports, plans and documentation were reviewed, and the submissions considered.</p> <p><u>Water Quality</u> The Biodiversity Management Plan provided indicates the development is near Coastal Upland Swamp Threatened Ecological Community. The nature of water movement in the area is critical to this kind of community, and the applicant must demonstrate a "no impact" on the water cycle.</p> <p>The following objectives are applicable (Table 4 of the water management policy)</p> <ul style="list-style-type: none"> <li>• <i>Stormwater quality (no impact on a pre/post development water quality model assessment)</i></li> <li>• <i>Disturbance to stream and wetland sediments is to be minimised by regulated discharge of stormwater and dissipation of flows at discharge locations. Runoff from the development must be retained at natural discharge rates and sediments controlled at the source.</i></li> <li>• <i>Stormwater and groundwater flow is to mimic natural conditions and ensure a dispersed pattern of flow, avoiding centralised or concentrated discharge points into the wetland or waterway. Natural flow regimes must be retained. The reduction or increase in flows, alteration in seasonality of flows, changes to the frequency, duration, magnitude, timing, predictability and variability of flow events, altering surface and subsurface water levels and changing the rate of rise or fall of water levels must be avoided.</i></li> </ul> <p>The proposed stormwater system is proposing a rainwater tank, vegetated swales and level spreader.</p> <p><u>Dewatering</u> Tailwater (surface water, rainwater, minor seepage): Please contact <a href="mailto:catchment@northernbeaches.nsw.gov.au">catchment@northernbeaches.nsw.gov.au</a> for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A Council dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.</p> <p><u>Sediment management</u> Due to the sensitivity of the downstream environment, it is imperative that an erosion and sediment management strategy is developed and implemented to ensure protection of this area during construction.</p> <p>The APZ treatment is modifying the vegetation structures, the risk of soil erosion in APZ managed area should be addressed.</p> <p>The proposal is not demonstrating that the water quality and quantity management is adequate.</p>
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	<p>A water quality model is to be supplied to Council (refer policy standard of design and Council WSUD/Music guidelines) to demonstrate the Policy objectives are met.</p> <p>Additional details as to how the proposed water management (quality/quantity) measures will mimic the current upper catchment hydrology is required.</p> <p>Additional details on the sediment management of the APZ managed area are to be provided.</p> <p><u>Planning Assessment comments:</u> Water Management requirements have not been submitted or satisfied.</p>
<b>Natural Environment &amp; Climate Change - Biodiversity</b>	<p><b>Not supported.</b></p> <p>The application seeks approval for the construction of a new dwelling, driveway crossing and associated landscaping works. In addition, the application also seeks to establish an Asset Protection Zone (APZ) over a portion, approximately 0.39ha of the site. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <ul style="list-style-type: none"> <li>• Biodiversity Conservation Act 2016 (BC Act)</li> <li>• Biodiversity Conservation Regulation 2017 (BC Reg)</li> <li>• Warringah Local Environmental Plan 2000 - B2 Oxford Falls Valley</li> </ul> <p>On review of the application and supporting documents, concern is raised over inconsistencies between the size, and intensity of vegetation modification required to establish necessary bushfire hazard reduction.</p> <p>The submitted Bushfire Assessment Report (BC&amp;BHS 2021) states: "The proposed Asset Protection Zones (APZs) are 23 metres to the north, 23 metres to the northeast and 13 metres to the east" (p.6), and provides the recommendation; "That all grounds indicated as an APZ on the proposed site plan prepared by Saturday Studio, Project No.18016, Revision A, Dated 12/12/19 are to be maintained as an Asset Protection Zone (Inner Protection Area) as detailed.</p> <p>The outer 25 metres of the APZ to the south may be managed as an Outer Protection Area (OPA) in accordance with Table A1.12.4 of PBP" (p16). On review of the referenced Site Plan (Saturday Studio 2019), the depicted APZ extends for 23m along the entire eastern facade except for a small area in the southeast that measures 13m.</p> <p>It is unclear what portion, if any, would be considered the outer 25m to the south that would be managed as an OPA, a statement which is also contradicted by the submitted Biodiversity Management Plan (Travers 2021) which states that the "site only has an IPA" (p28).</p> <p>It is noted that the Bushfire Assessment Report (BC&amp;BHS 2021) has recommended construction to BAL-FZ. It is therefore unclear why proposed APZs are required to be 23m on the northern and north-eastern aspects with a 20m (unspecified) between the dwelling and Lady Penrhyn Drive (Saturday Studio 2019). These distances appear to far exceed those required under PBP 2019 Table A1.12.5.</p>



	<p>Additional clarification is requested to justify the proposed APZs in the context of avoiding and minimizing impacts to biodiversity. Concern is also raised over the assessment provided in s4.1.2 of the Flora and Fauna Assessment (Travers Bushfire &amp; Ecology 2021), which has not accounted for the future 10/50 eligibility that would apply to the dwelling and must be accounted for.</p> <p>The Biodiversity Referral Team direct the consultant to 'Biodiversity Offsets Scheme Accredited Assessor Update 50' for additional information: <a href="https://www.environment.nsw.gov.au">https://www.environment.nsw.gov.au</a> in applying the 10/50 clearing eligibility to the assessment, the impact to native vegetation exceeds the 0.5ha BOS trigger. Clearing would also overlap with the mapped Coastal Upland Swamp and threatened species habitat which would constitute a significant impact.</p> <p>On this basis the proposal is not supported.</p> <p><u>Planning Assessment comments:</u> Biodiversity requirements have not been submitted or satisfied.</p>
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<p><b>Natural Environment &amp; Climate Change – Riparian</b></p>	<p>The Riparian Team has assessed the development application for construction of a dwelling house including a swimming pool and associated Asset Protection Zone (APZ) against the relevant legislation and policy relating to waterways, riparian areas, and groundwater, including:</p> <ul style="list-style-type: none"> <li>• Warringah Local Environmental Plan 2000 - Oxford Falls Valley</li> <li>• Warringah Protection of Waterway and Riparian Land Policy.</li> </ul> <p>A Coastal Upland Swamp in the Sydney Basin Bioregion (Endangered Ecological Community) is located down slope of the proposed development and AZP on Lot 808 DP 752038, Narraweena. The NSW Office of Environment and Heritage website (<a href="https://www.environment.nsw.gov.au">https://www.environment.nsw.gov.au</a>) describes the habitat as:</p> <p>'Coastal Upland Swamps occur primarily on impermeable sandstone plateaux with shallow groundwater aquifers in the headwaters and impeded drainage lines of streams, and on sandstone benches with abundant seepage moisture.'</p> <p>The Waterway Impact Statement and the Biodiversity Management Plan note a 20 metre buffer from the edge of the APZ to the Coastal Upland Swamp. The Waterway Impact Statement states that the proposed development is located approximately 100 metres from the proposed dwelling.</p> <p>Councils Protection of Waterways and Riparian Land Policy outlines a 100 metre buffer is required around wetlands and APZ's are to be located wholly outside of riparian land. Therefore a 20 metre buffer noted on the Waterway Impact Statement and Biodiversity Management Plan is not adequate and not in accordance with Councils Policy.</p> <p>Proposed development including the APZ are located upslope from the Coastal Upland Swamp, thus affecting the hydrology on the site, as the upper catchment hydrology regime will be altered due to clearing of natural bushland as a result of construction (pre and post development) of the proposed dwelling and AZP, resulting in an increase of hard surfaces and increased run off.</p> <p>The <i>Waterway Impact Statement</i> does not adequately address the impacts the proposed development and APZ will have on upper catchment hydrology on the site, thus changing the hydrology of the Coastal Upland Swamp. The the main discussion in the <i>Waterway Impact Statement</i> on the Coastal Upland Swamp is on page 25 that states:</p> <p>'Figure 2.3 show that the development footprint on lot 808 is literally more than 100m from any identified wetland.</p> <p>The development will therefore have no impact on wetland hydrology.</p> <p><u>Conclusion</u></p> <p>The proposed development and its APZ will have no impact on any wetlands.' The Biodiversity Management Plan does discuss mitigation measures to decrease the impact on the Coastal Upland Swamp but does not go into detail as to how these measures will mimic the current upper catchment hydrology as this information beyond the scope of this plan.</p> <p>Note: There is no Scale noted on the following Drawings by Saturday Studio. These Drawings relate to the location of the proposed development and APZ in relation to the Coastal Upland Swamp.</p>
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	<p>Planning Assessment comments: Riparian requirements have not been submitted or satisfied.</p>
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#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on the relevant heading State Environmental Planning Policies" and "Warringah LEP 2000".
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Nil
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Nil
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Following the completion of the notification period some minor additional information was sought (by letter from Council) in relation to considerations regarding, engineering, landscape impacts, biodiversity, water quality considerations. The information is of a routine nature for assessment consideration and seeks to clarify or reduce environmental impacts. The requested information has not been received at the time of this report preparation.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
<p><b>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</b></p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the “General Principles of Development Control” in this report. The development assessment addresses the proposal relating to DFC and General Principles of Development; including visual amenity, building bulk, flora, stormwater management, excavation, landscaping, and landscape impacts for the <i>B2 Oxford Falls Valley Locality</i> for Warringah LEP 2000.</p> <p>(ii) The development will contribute to the available housing in the local area. WLEP 2000 permits the use of the land to be used for a single dwelling for the “family demographic”, as a category 2 use, pursuant to Clause 12 and Clause 18 of Warringah LEP 2000.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.</p>
<p><b>Section 4.15 (1) (c) – the suitability of the site for the development</b></p>	<p>The site has physical constraints which are influenced by existing buildings, appropriate setbacks to meet the DFC, vehicle access, drainage, and bushfire management. In this regard the proposal seeks to utilise part of the site which is subject to “existing parcel” provisions and therefore housing density is a relevant consideration of suitability.</p> <p>The site is subject to bushfire risk assessment and also contains threatened species habitat which has been considered as part of this assessment. Due to insufficient information concerns are raised to the suitability of the building design and ancillary elements in order to maintain consistency with the DFC and WLEP General Principles.</p>
<p><b>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations</b></p>	<p>See detailed consideration of submissions within this report under the heading “submissions”.</p>
<p><b>Section 4.15 (1) (e) – the public interest</b></p>	<p>The public interest is considered in the context of the proposal, submission issues raised and the provisions applying to the <i>B2 Oxford Falls Valley Locality</i> for “Category 2” development.</p>

**BIODIVERSITY CONSERVATION ACT 2016**

See assessment comments under “Internal Referrals” – NECC (Biodiversity)

**ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)****State Environmental Planning Policies (SEPPs)****State Environmental Planning Policy (Resilience and Hazards) 2021**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site is remnant vacant bushland and has been in private ownership for a significant period, with no substantial other uses (casual occupancy / agriculture / land fill or the like) having been undertaken on the land. Under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is suitable for the residential use for a dwelling house having no identified contamination / potential contamination.

**State Environmental Planning Policy – BASIX (2004)**

The development application was submitted with a BASIX Certificate No.1046218S\_05 dated 7 September 2021 to address the requirements of this SEPP.

The performance rating scores for water (45), thermal comfort (Pass) and energy (100) comply with the target scores required under the SEPP.

**State Environmental Planning Policy (Transport and Infrastructure) 2021**

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.

The proposal is not within or immediately adjacent to any of the above electricity infrastructure mains.

In this regard, the subject application is considered to satisfy the provisions of the SEPP.

The application was referred to *Ausgrid* who did not raise any objection or conditions required as per the response dated 22 February 2022.

The SEPP also requires the Consent Authority to consider any development application for development with frontage to a classified road. Lady Penrhyn Drive or Willandra Road is not listed as a classified road for the purposes of the SEPP.



Any requirements of Sydney Water for water and sewer connections are administered by separate processes directly through Sydney Water.

#### **Local Environment Plans (LEPs)**

##### **Warringah Local Environmental Plan 2011 (WLEP 2011)**

The WLEP 2000, B2 Oxford Falls Valley and C8 Belrose North Localities (which cover the land subject to this application) were deferred from inclusion in Warringah LEP 2011 in 2011.

Accordingly, Warringah LEP 2011 does not apply to this application.

##### **Warringah Local Environment Plan 2000 (WLEP 2000)**

Warringah LEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the *B2 Oxford Falls Valley Locality*.

The Desired Future Character (DFC) statement for the *B2 Oxford Falls Valley Locality* states:

*The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.*

*Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

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

*Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.*

#### **Definition and Category of Development**

The proposal seeks consent for "Housing" in the form a detached dwelling house. The land use is identified as a "Category 2" use and is permissible within the B2 Locality pursuant to criteria described in under heading "Housing Density" control. The maximum housing density is 1 dwelling per 20 hectares of site area. WLEP 2000 provides exceptions and clarification on the "Housing Density". In particular, paragraph (a) is directly relevant to the proposal which states that:



*“(a) where this standard would prevent the erection of on dwelling on an existing parcel of 1a, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of less than 2 ha”*

The subject site (Lot 808) is 2.84 hectares but is part of a larger “existing parcel” as explained under the heading “Relevant Background” within this report. The subject DA does not offer to protect the integrity of the ‘existing parcel’ by consolidation. Therefore, the housing density control is at risk of compromise if one Lot is developed in isolation, without regard to the remaining parts of the “existing holding”. The proposal therefore “forces the hand” of any further development to the only remaining options of category 2 or category 3 uses on the remaining Lots within the ‘existing parcel’ if separated (by existing subdivision or ownership). The intent of the housing density control is not to raise uncertainty regarding an “existing parcel” but it does rely on the parcel being held together for its integrity to remain. The relevance of the existing parcel limitations is fundamental to the DFC which states that *“The present character of Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed”* and furthermore by way of *“future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses”*. Given the natural bushland state of the site, rock areas, aboriginal heritage, threatened species habitat, urban fringe location and visual prominence, the ‘existing parcel’ has many competing values. In summary, the proposal raises uncertainty with respect to the housing density in terms of the remaining parts of the existing parcel, which has not been addressed adequately by the applicant.

The LEP also provides an “explanatory note” on “categories” of development which reads:

*“To assist with understanding: Category One development is development that is generally consistent with the desired future character of the locality, Category Two development is development that may be consistent with the desired future character of the locality, and Category Three development is development that is generally inconsistent with the desired future character of the locality.”*

#### **Consideration of the development against the Desired Future Character**

Before granting consent to the proposal, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement. As the proposal is a ‘Category 2’ use it must maintain consistency with the Desired Future Character (DFC) Statement and General Principles of development control. As such, the following provides consideration of the development when tested against the various parts of the above DFC statement:

- ***The present character of Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.***

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

#### **Comment:**

The new dwelling covers a large building footprint which is in 3 ‘pavilions’ or connected ‘modules’. similar in appearance in terms of external materials, parking location, height, roof



form and window and balcony style. Development for the purposes of large, dwelling footprint should allow for components of the dwelling to be integrated and create an overall smaller impact than for example if a detached garage / detached studio / pool cabana and other ancillary buildings were proposed as part of the house. In this case, with the exception of the pool, the house is spacious but self-contained in one rectangular footprint.

The DFC requires that all “*future development be limited to detached style housing*” and conforming with the housing density standards. In addition to “detached style” housing, development in general terms must also demonstrate characteristics of “low intensity, low impact” as housing is a Category 2 use which must be tested against the DFC. The dwelling is a single detached house and any space that could be converted to a “granny flat” should be integrated into the main dwelling structure otherwise, as a separate structure a granny flat would impact the housing density control.

The area of the rectangular building footprint is consistent with other new large rural dwellings in the wider Locality. In terms of its immediate surroundings, the development to the west of the site along Lady Penrhyn Drive is dominated by large 2 storey dwellings in a conventional urban subdivision pattern. Clearing of the bushfire buffer area around the house will expose the western elevation of proposed dwelling to the outlook of the closest houses at No.15 to No.21 Lady Penrhyn Drive and to a lesser extent to houses that overlook or have a more diagonal view across the site. The proposal includes spacious internal elements and ancillary elements such as “guest”, gym, rumpus room areas. Concern is however raised regarding engineering impacts around the perimeter of the site and not being “low impact” due to the additional civil engineering required, trenching, clearing, and “spreading” impacts across a wide area around the house, including tree or rock-ledge removal. This includes the perimeter drainage cut across the contour lines and the effectiveness of being able to effectively screen the house by positioning it on the south-western side of the natural high point on the site (RL131.49).

As the proposed development is not a conventional sized single detached dwelling house, and it is required to conform being a “low intensity, low impact” use, as described in the Land and Environment judgement “*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*”. The following definition was provided in the judgement:

- **Intensity** - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore “low intensity” would constitute a development which has a low level of activities associated with it.
- **Impact** - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore ‘low impact’ would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

#### **Low Intensity assessment**

##### **Occupation Intensity:**

The proposal may be assumed to have a single-family occupancy suitable for 4 bedrooms plus casual capacity for “family guests” in the “guest room” area. The use is satisfactory in this regard as per the DFC.



***Traffic Intensity:***

The proposal raises the threshold of traffic intensity generated by the existing development on the site. Traffic to and from the site is intensified by fact that no development currently exists on the land however the use of the land for a single dwelling house is considered to be low intensity traffic generation.

***Density:***

In terms of density, the requirement for the B2 Oxford Falls Valley Locality is 1 dwelling per 20 hectares (ha) and the subject property is part of an existing holding. There is no other development in other parts of the holding and therefore the proposal is consistent with the density provision, noting that the dwelling is wholly contained on its own registered Land Title Lot within DP 752038 (of 2.849ha with the 'existing parcel' 17.336 hectares).

**Low Impact assessment**

The relevant potential impacts of the proposed development are addressed as follows:

***Built Form Impact:***

The physical impacts of the building form on the natural landscape is of relevance to the appearance of the buildings visual impact on the ridge line area.

While the DFC covers an expansive area of Oxford Falls Valley, the DFC applies to each property within it and specifically, the particulars of all new development to maintain a "low impact". Therefore, the immediate impact on the dwelling footprint, height and massing, landscaped areas, infrastructure, pool, and ancillary elements are relevant to the values of the immediate surrounding environment. Sufficient information has not been provided to address low impact approach in ameliorating impacts on sediment runoff, civil site works, tree retention and bushfire management, view impact, streetscape impact and construction management.

***Noise Impact:***

The proposal does not require a noise assessment, and conditions may address civil works for excavation and construction hours. Internal building plant, such as air conditioners, pool pumps, garage door mechanisms and the like are subject to NSW noise impact regulations and addressed within this report under *General Principle 43 Noise*.

***Traffic Impact:***

The proposal is not considered to adversely impact on the performance of the surrounding road network. The assessment concludes that car parking is within a 4 car garage and vehicles can enter and leave in a forward direction from the driveway. The driveway is curved in shape which allows landscaping along the front setback to offset the view of the house (rather than a straight line entry).

- ***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

**Comment:**

The DFC seeks to exclude development from ridgetops as these higher areas are much more visibly exposed in the broader bushland setting and landscape surrounding of the Locality. Buildings and associated development like tree clearing should be assisted by low profile buildings set low against a natural backdrop. The existence of other development along Lady





Penrhyn Drive is not in itself sufficient to achieve the DFC by reference to the adjacent R2 Residential Zone. The visual impact when viewed from surrounding urban land and near the site (such as Macintosh Road, Willandra Road, Cousins Road and Cormack Road) should be taken into account with the more long-distance views from Narrabeen Lagoon. The site is visible in part from Narrabeen Lagoon, however the natural high point on the site assists to conceal exposure of the building envelope proposed from the north-west. The preservation of existing canopy trees is critical to breaking up the silhouette of the house and ensuring consistency with the DFC. This however is difficult to achieve due to bushfire protection requirements and therefore requires precise mapping / images, identification (tagging) and robust comprehensive protection measures during site works to ensure a balanced outcome. The proposal does not include a construction management outline to ensure clear tagging of protected canopy trees or pegging out of main elements (outer limits of the building, outer drainage excavation line, outer APZ or ancillary structures (pool / drive / retaining walls).

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

Comment:

***Vegetation and Landform:***

The Asset Protection Zone (APZ) for bushfire protection purposes limits vegetation planting and therefore compromises the ability to “protect” and where possible, “enhance” the natural landscape. The landscape buffer to the road is retained at the 20m line for the dwelling house and allows for opportunities for non-interlocking trees within the APZ (or as many existing canopy trees to be retained as possible). The density of landscape planting on the site is required to address the desired landscape character in balance with bushfire safety.

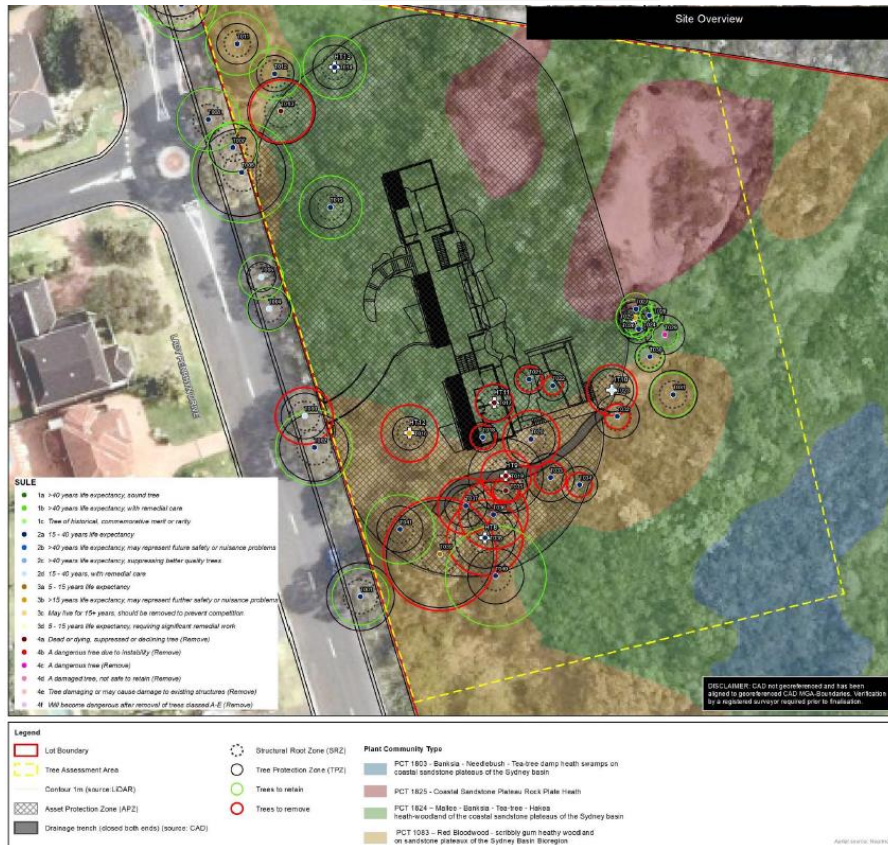


Image: Extract plan image of tree removal (red) and APZ clearing (black hatched) with flora plant communities – exposed rocky areas (pink), dry heath (green), wet sandstone heath (blue) and woodland (brown). (See Arboriculture Impact report for details).

**Amenity:** The DFC prescribes an overall density of “1 dwelling per 20 hectares” (noting the existing parcel provisions) and the proposal is considered to maintain adequate privacy and solar access to adjacent land. The resultant amenity should therefore demonstrate a response to building position, shape and scale in balance with views, compliance with the built form controls and the site characteristics.

The transition to the bushland amenity is retained for the southern interface where the site maintains a bushland section to the southern boundary separation (No.8 Lady Penrhyn Drive).

**Visual Materials:** The proposed dwelling presents as a part 2 / part 3 storey building when finished but is generally 2 storeys above natural ground level. The bulk and scale is articulated and broken up by the stepped arrangement of the building in 3 main inter-connected sections. The chosen colours and materials are suitable for the surroundings.

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



The site does not front Forest Way or Wakehurst Parkway, therefore specific issues relating to these road corridors as Main Roads (MR) do not apply the site.

Rural Fire Service requirements affect the landscape plan in so far as fire protection will partly limit tree planting along the frontages of the building, including areas of the Inner Protection Area (IPA) asset protection zone. Therefore, the proposal maintains 20m setback for landscaping to the street to assist in screening the building and reducing the visual impact of the proposal on the surrounding landscape.

Boundary fencing for the majority of the western frontage along Lady Penrhyn Drive is not consistent with the DFC. A change to the boundary fencing style is recommended. Details should also be included as the intent to define or fence-off any other areas of the site (such as pool perimeter, outer property boundary and the like) due to clearing that would be required for this, including casual safety of occupants.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

Comment:

Subject to effective erosion control during construction, the risk of further erosion and sedimentation impacts on waterways and riparian land should be 'low', including water quality impacts on Narrabeen Lagoon. The subject DA has not been provided with suitable details to demonstrate water quality protection for the site.

**Conclusion on the DFC**

Based upon the above considerations, the development, as a "Category 2" use, is considered inconsistent with the DFC statement for the *B2 Oxford Falls Valley* locality for the elements outlined above and requires design changes and additional information to satisfy the WLEP. Overall, the proposal detracts from the characteristic of "low impact" by way of the scale of works that will impact unnecessarily on the natural environmental values of the site.

Clause 12 of the WLEP 2000 requires that before consent is granted the consent authority must be satisfied that the development is consistent with the DFC. This is a pre-condition to ensure that future development complies with Part 2 and 3 of the WLEP and the applicable development standards set out in the applicable Locality Statement. Further to this, before granting consent any Category 2 development must be consistent with the DFC. In this case the proposal is not satisfactory.

**Built Form Controls for Locality B2 Oxford Falls Valley**

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Control	Required	Proposed Development	Compliance
Housing Density	1 dwelling per 20ha	1 dwelling on Lot 808 (2.84ha) that is part of existing holding (17.33ha). Due to other lots in the 'existing parcel' being	Yes* *See issues and considerations

Built Form Control	Required	Proposed Development	Compliance
		undeveloped (with no housing approval), the proposal complies.	raised regarding "existing parcels".
Building Height	8.5m	8.4m Measured from Natural Ground Level	Yes
	7.2m	7.9m A roofed / part walled terrace has been provided to the Level 1 roof top central (cabana) area.	No. (See 'Clause 20')
Front Building Setback	20m (All roads)	Lady Penrhyn Drive 20m to building façade / wall line  (No frontage to Willandra Road)	Yes
Rear Building Setback	10m	159m to 178m to eastern boundary line.	Yes
Side Setback	10m	23.0 (North boundary)	Yes
		92.0m (South boundary)	Yes
Landscape Open Space	30% of site to be landscaped (Site is 2.849ha)	96% (2.7575 hectares)  Note: The above calculation includes all landscaped areas of the site including the APZ.	Yes



**Clause 20(1) stipulates:**

*“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy.”*

The proposal makes a variation to LEP ‘wall height’ built form control of the Locality Statement.

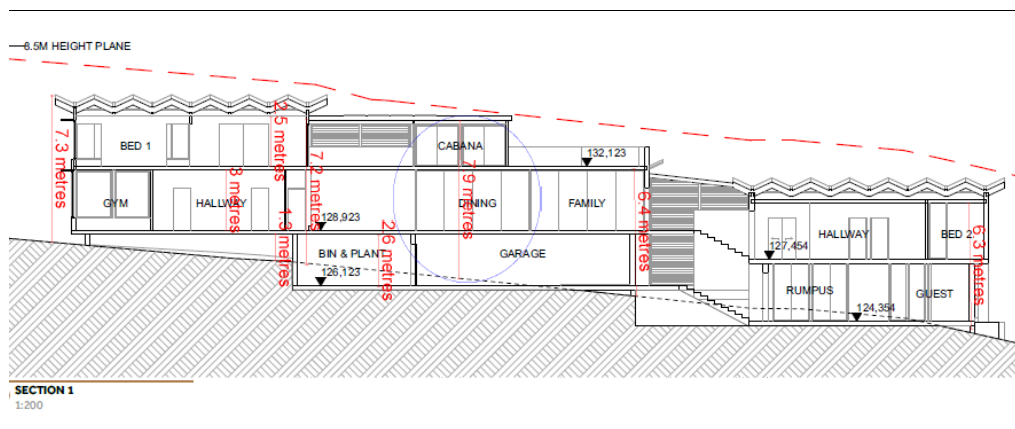


Image: Section of dwelling showing windows / wall structures associated with cabana 7.9m.

**Consideration of ‘Clause 20’ Variation (Wall height)**

- Variation consistency with General Principles

The ‘cabana’ includes glazed wall / window element to the part solid roof area and therefore does not strictly comply with wall height measured to natural ground level below as demonstrated in the image above. Landscape planters and changes in the wall alignment are included at this upper level to break up building bulk pursuant to General Principle for building bulk (Clause 66).

(The overall building bulk is however considered separately within this report in terms of “Buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces). (See comments also regarding views within this report in terms of the overall height)

The wall height is limited to a minor section in the mid part of the dwelling and overall transitions in 3 main sections along the cross slope of the land. In this regard the specific wall height variation is consistent with the General Principle of development on sloping land (Clause 57).

- Variation consistency with Desired Future Character

The section of the wall height, if suitably screen by being able to retain canopy trees within the front setback will enable the variation to be less distinguishable due to the stepped floor



plate and 20m wide landscape buffer retained to the street boundary. In this regard the limited wall height variation is acceptable against the desired future character requirements. The variation is consistent with the DFC in terms of minor variations permitted by way of Clause 20 where appropriate.

- Variation consistency with any relevant State Environmental Planning Policies

The variation with the wall height does not raise any inconsistency with the applicable SEPPs.

### **Conclusion on Clause 20**

The variation to the wall height is limited to a minor part of the building and retains overall compliance with the building height control. The mid-section of the building transitions with the slope of the land and the terrace area is included with weather protection for the seating and BBQ space with operable louvres, glazed doors and landscape planter box elements. The variation pursuant to clause 20 of WLEP 2000 is therefore acceptable in the circumstances of the case and does not create unreasonable impacts on the surrounding environment.

### **WLEP 2000 General Principles of Development Control**

The following General Principles of Development Control as contained in Part 4 of *WLEP 2000* are applicable to the proposed development:

General Principles	Applies	Comments	Complies
<b>CL38 Glare &amp; reflections</b>	Yes	<p>This General Principle seeks to ensure that development does not result in excessive glare and solar reflections.</p> <p>The roof finish will be within the medium dark colour range ('colorbond') to blend with the bushland setting for the roof and external colours generally of low reflective colours and colours to suit the environment.</p> <p>Accordingly, the development proposed is considered to satisfy this General Principle.</p>	Yes
<b>CL42 Construction Sites</b>	Yes	<p>The site provides adequate area for the handling and storage of building materials and will not unreasonably impact on the amenity of the locality subject to draft construction management details to identify canopy trees, tree protection methods, excavation lines and rock / landscape protection. It is recommended that a detailed draft construction management plan (CMP) be prepared prior to works commencing to co-ordinate internal traffic, dust and construction related matters during site works.</p>	<p>No.</p> <p>Insufficient information</p>



General Principles	Applies	Comments	Complies
		Accordingly, the development proposed is considered to not satisfy this General Principle due to insufficient information.	
<b>CL43 Noise</b>	Yes	<p>Clause 43 of LEP 2000 provides  <i>"Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants"</i>.</p> <p>There will be construction noise generated from the site works during the construction phase and this is able to be addressed by conditions for standard industry hours and a construction management plan. The level of noise is appropriately managed by conditions to ensure that there is no unreasonable impacts on the amenity of nearby dwellings (within the site and fronting Lady Penrhyn Drive).</p> <p>For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43.</p>	Yes
<b>CL44 Pollutants</b>	Yes	<p>The proposal is located within the headwater catchment to South Creek (Narrabeen Lagoon) and will be connected to a new sewer line (domestic) to the Sydney Water domestic connection link Lady Penrhyn Drive for houses opposite the site.</p> <p>Therefore, the development proposed is satisfactory against the requirements of this clause to manage domestic sewerage disposal by connection of the pool and house to the urban sewer network along Lady Penrhyn Drive.</p>	Yes
<b>CL45 Hazardous Uses</b>	No	No comment	N/A
<b>CL46 Radiation Emission Levels</b>	No	No comment	N/A
<b>CL47 Flood Affected Land</b>	No	No comment	N/A
<b>CL48 Potentially Contaminated Land</b>	Yes	No contamination has been identified on the site. See assessment details provided under the heading 'SEPP Resilience and Hazards' within this report.	Yes



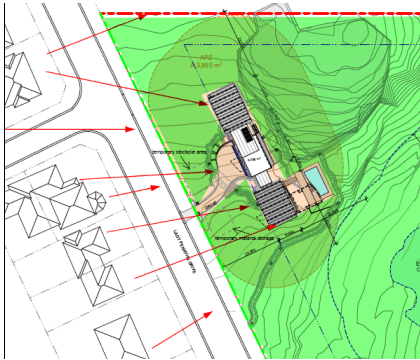
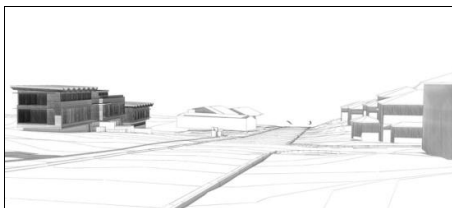
General Principles	Applies	Comments	Complies
CL49 Remediation of Contaminated Land	No	No comment	N/A
CL49a Acid Sulfate Soils	No	No comment	N/A
CL50 Safety & Security	Yes	<p>Assessment of the proposal with regard to clause 50 is provided as follows:</p> <ul style="list-style-type: none"> <li>Entrance to the building is clearly defined accessible from the driveway and parking is contained with a basement area.</li> <li>Consideration for site fencing during construction can be addressed by conditions.</li> </ul> <p>Accordingly, the development proposed is considered to satisfy this General Principle.</p>	<p>Yes</p> <p>Subject to condition</p>
CL51 Front Fences and Walls	Yes	<p><i>"Fences, including side fences, located within the street setback area (as identified in the Locality Statement) are to be compatible with the existing streetscape character unless the applicable Locality Statement provides otherwise.</i></p> <p><i>Fences are to be constructed so as to allow for casual surveillance except on main roads where it can be demonstrated that a solid fence is consistent with the existing streetscape and is required to mitigate traffic noise.</i></p> <p><i>Where solid fences are required they are to be articulated to provide visual interest or set back to allow for landscaping to adequately soften and screen the appearance of such fences."</i></p> <p>The front boundary fencing is inconsistent with the DFC and inconsistent with this general principle.</p> <p>This issue may be addressed by condition but as it relates to DFC (<i>"Fencing is not to detract from the landscaped vista of the streetscape"</i>) the style of fencing should be shown on the DA plans to ensure appropriate design included for construction.</p> <p>Revised fencing style (post and rail or similar rural style fencing) should be detailed</p>	<p>No.</p> <p>Does not comply with DFC or Clause 51</p>

General Principles	Applies	Comments	Complies
		on the plans.	
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	No	No comment – Site does not have a common boundary with a Council Park or Reserve.	N/A
<b>CL53 Signs</b>	Yes	No advertising signs are proposed.	Yes
<b>CL54 Provision and Location of Utility Services</b>	Yes	<p>The site has access to electrical and water services with connections to be managed by the relevant service provider.</p> <p><i>Sydney Water</i> connection is administered separately by Sydney Water for water and sewer. Service connection is available to the site due urban development opposite the site in Lady Penrhyn Drive.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL55 Site Consolidation in 'Medium Density Areas'</b>	No	No comment. Not within a medium density locality.	N/A
<b>CL56 Retaining Unique Environmental Features on Site</b>	Yes	<p>This General Principle seeks to ensure that development is responsive to the existing environmental features on the site and on adjoining land.</p> <p>The subject site has been extensively modified such that there are no significant rock outcrops or trees in the location of the proposed building footprint.</p> <p>Insufficient information has been provided to address the site works that have covered backfilled the edge of the rock cliff, unique rock ledges and similar natural features inside the site and how they may be protected. High areas of open flat rock are known to have been used for aboriginal carving and the house is close to broad rock platform. Excluding heavy machinery or works from crossing over or reshaping / impacting this wider area, and downslope areas has not been addressed to satisfy this clause.</p>	No. Insufficient information

General Principles	Applies	Comments	Complies
		Accordingly, the proposal is not considered to satisfy this General Principle.	
<b>CL57 Development on Sloping Land</b>	Yes	<p>This General Principle seeks to reduce the impact of development on sloping land by minimising the visual impact of development and the extent of excavation by requiring development to step down the site.</p> <p>The subject site has a variable and works proposed are clear of the larger cliff line band that exists along the mid contour (110m) of the site. A smaller rock ledge line exists near the upper contours and high feature of the site.</p> <p>Generally, the area for the house platform is gently sloping and near the road area with no indication of instability. The ancillary works around the house show cutting and trenching upward into the rock platform on the eastern side of the house. Additionally, it is uncertain as to the wider impacts of the pool structure as it protruded far out to the east of the building and against a natural ledge area.</p> <p>The site is not identified on the Landslip Hazard Map. Accordingly, the proposal is no considered to satisfy this General Principle due to insufficient information.</p>	No.  Insufficient information
<b>CL58 Protection of Existing Flora</b>	Yes	<p>This general principle requires that development be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation and on remnant native ground cover species. The landscape plan provides for a mix of trees, shrub and native plant that are endemic to the area as well as other suitable plants. However, the proposed dwelling will remove the capacity to re-vegetate parts of the site due to the additional ongoing restrictions of bushfire protection.</p> <p>In this regard, insufficient information has been provided to demonstrate that the integrity of the protection of flora has been maintained on balance with the loss of landscape area for driveway and hard surface zones.</p>	No.  Insufficient information



General Principles	Applies	Comments	Complies
		Accordingly, the proposal is not considered to satisfy this General Principle.	
<b>CL59 Koala Habitat Protection</b>	No	Site is not identified as Koala habitat.	N/A
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	Yes	<p>The site has access to drainage infrastructure along Lady Penrhyn Drive. Runoff water is required to be directed to this system which manages all runoff from the adjacent buildings and will better protect the water catchment habitat, reduce weed infestation, assist to retail a natural water balance to the perched swamp ecology on the site, maintain water quality to South Creek and Narrabeen lagoon. Insufficient information has been provided to address this general principle as per consideration by Council's Riparian land assessment (See "Internal referrals" heading within this report)</p> <p>Accordingly, the proposal does not satisfy this General Principle due to insufficient information.</p>	No.  Insufficient information
<b>CL61 Views</b>	Yes	<p>There are coastal and district views across the site. The site is overlooked from other houses that are much higher in elevation above the site. Once site clearing is undertaken views toward the ocean will potentially "open up" until the subject dwelling structure is in place.</p> <p>The building transitions down the slope of the land and complies with the building height, setbacks (front, rear and side boundaries). However, the applicant has not provided a detailed view analysis to determine if expansive floor plate, elongated western facade and high ceiling levels provide a "skillful" design in terms of consequential view impacts. It should be noted that this issue has only been given 'general mention' in submissions received as it is in-determinative by analysing the drawing elevations and contour plans as to the true extent of impact for other close dwellings and the extent of ocean views for properties opposite the site given the proposed dwelling itself will be afforded broad ocean views due to the APZ clearing.</p> <p>Site inspection and at vantage points</p>	No.  Insufficient information

General Principles	Applies	Comments	Complies
		<p>considered at No's 17 to 21 Lady Penrhyn Drive it is apparent that the true impact of the upper storey of the building is difficult to determine due to the existing thick vegetation. Clearing required however will likely achieve broad ocean views for the proposed house due to the floor height position and APZ around the dwelling.</p>  <p>Image: View lines toward the building and easterly direction.</p> <p>Drawing number "600:01" assists to show the 3D position of the building but the applicant has not sufficiently addressed this issue considering the accessibility to ocean views that characterises the site. Positioning the dwelling toward the eastern portion of the site is likely to raise more detailed concerns with regard to threatened species habitat, existing cliff lines, engineering works and greater overall environmental impact. Lots to the north of the site (within the "Existing Parcel") appear to be more exposed than this dwelling location, due to the small high feature at the 131m contour. A lowering of the floor to ceiling plates by 1.0m (overall height) is likely to gain better view sharing.</p>  <p>Image: Extract from Dwg 600:01 in 3D representing a streetscape view. The roof</p>	

General Principles	Applies	Comments	Complies
		<p>area of the dwelling is 47.6m long x 9.4m wide and split is sections.</p> <p>Accordingly, the proposal does not satisfy this General Principle due to insufficient information.</p>	
<b>CL62 Access to sunlight</b>	Yes	<p>The proposed has insufficient details to demonstrate compliant sunlight and private open space for no less than 2 hours of sunlight retained between 9am and 3pm on 21st June.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL63 Landscaped Open Space</b>	Yes	<p>This General Principle seeks to ensure that development provides landscaped open space that contributes to the amenity of the area. The majority of the site is subject to NSW RFS requirements that can override the amount of tree cover need to achieve the DFC. Therefore, the opportunities to provide effective landscape screening, commensurate the size and scale of the dwelling house proposed, is subject to RFS considerations and requires close field identification and ground proofing, particularly for large / significant tree retention that have amenity and fauna habitat value.</p> <p>Further details are provided under the Referral Response by Council's Landscape Officer.</p> <p>Due to RFS requirements, the establishment of appropriate planting to maintain and enhance the streetscape and the desired future character of the locality is diminished. Insufficient information is provided to address the objectives of this clause.</p> <p>Accordingly, the proposal does not satisfy this General Principle due to insufficient information.</p>	No.  Insufficient information
<b>CL63A Rear Building Setback</b>	Yes	<p>Natural bushland areas adjacent the eastern boundary will remain unchanged as this is away from the APZ. The development complies with the rear building setback control.</p>	Yes

General Principles	Applies	Comments	Complies
<b>CL64 Private open space</b>	Yes	<p>This General Principle seeks to ensure that housing is provided with an area of private open space that can be used as an extension of the living area for dining or the outdoor enjoyment of occupants for the house. The house includes a spacious pool area at ground level adjacent the 'Rumpus' and upper (roof) terrace on the centre section of the dwelling.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL65 Privacy</b>	Yes	<p>Adequate separation distance is available to the closest neighbours to ensure privacy to adjacent dwelling houses in Lady Penrhyn Drive. Balcony and terraces for the building proposed generally look toward the east (ocean).</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	Yes
<b>CL66 Building bulk</b>	Yes	<p><i>This General Principle of Development Controls seeks that:</i></p> <ul style="list-style-type: none"> <li><i>side and rear setbacks are to be progressively increased as wall height increases,</i></li> <li><i>large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and</i></li> <li><i>appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</i></li> </ul> <p>The size and appearance of the proposed development articulated into 3 modules. These modules transition down the site along an elongated building footprint aligned to the 20m front setback on the west side and positioned against the edge of a natural rock feature on the eastern side. Each module / pavilion section is connected by a narrower halls / stairway to provide an articulated eastern and western elevation. The southern and northern elevations are therefore relatively narrow (8.0m).</p> <p>Accordingly, the proposal is considered to satisfy this General Principle</p>	Yes



General Principles	Applies	Comments	Complies
<b>CL67 Roofs</b>	Yes	<p>This General Principle seeks to ensure that development provides a roof form that complements the local skyline and integrates with the built form of the development and lift overruns do not protrude.</p> <p>The building has a "W" style pitched roof from 2 of the roof spans. This is not similar to any other buildings in the vicinity but provides a unique appearance to the building with the stepped design between the upper and lower ends of the house.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle, subject to condition.</p>	<p>Yes.</p> <p>Subject to condition</p>
<b>CL68 Conservation of Energy and Water</b>	Yes	<p>As the proposed development is classified as is required to meet Building Code of Australia (BCA) and SEPP BASIX. The Basix report shows the proposal has a high standard of energy and water conservation.</p> <p>Conditions requiring compliance with the BASIX are contained within the recommended conditions.</p>	<p>Yes.</p> <p>Subject to conditions</p>
<b>CL69 Accessibility – Public and Semi-Public Buildings</b>	No	Not applicable	N/A
<b>CL70 Site facilities</b>	Yes	<p>The site facilities include bin storage in the basement laundry, private open space and service / utility rooms.</p> <p>The site facilities proposed are adequate to satisfy this general principle.</p>	Yes
<b>CL71 Parking facilities (visual impact)</b>	Yes	<p>This General Principle seeks to ensure that parking facilities are sited and designed so as not to dominate the street frontage.</p> <p>The garage entry is located facing west and does not create an unreasonable visual impact on Lady Penrhyn Drive due to the angled drive (curved) that allow for landscaping to offset the view of the garage area (including headlight glare impacts).</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes



General Principles	Applies	Comments	Complies
<b>CL72 Traffic, access &amp; safety</b>	Yes	<p>This General Principle seeks to ensure that vehicle movements to and from a development do not interfere with the flow of traffic or compromise pedestrian safety.</p> <p>Council's Development Engineers raised no objections to the proposed access works, subject to conditions for the house.</p> <p>Council's Traffic Engineers raise no objection to the development with respect to traffic, access and safety.</p> <p>Considerations has been made in accordance with Hussey C in "<i>Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128</i>" for the proposal with regard to <i>low intensity low impact</i> development</p> <p>Therefore, the proposal is satisfactory against the requirements of this clause.</p>	<p>Yes.</p> <p>Subject to conditions</p>
<b>CL73 On-site Loading and Unloading</b>	No	Not applicable	N/A
<b>CL74 Provision of Carparking</b>	Yes	The proposal is considered to comply with Clause 21, Clause 74 and Schedule 16 and Schedule 17.	Yes
<b>CL75 Design of Carparking Areas</b>	Yes	<p>Council's Traffic Engineer has reviewed the proposed parking and traffic safety sight lines.</p> <p>Accordingly, subject to conditions the proposal satisfies this General Principle.</p>	Yes
<b>CL76 Management of Stormwater</b>	Yes	<p>This General Principal seeks to ensure that adequate provision is made for the management of stormwater volume</p> <p>The application has been assessed by Council's Development Engineers and all stormwater will be connected to a new on-site detention system and drainage which links to Lady Penrhyn drive. Insufficient details are provided to address the additional runoff design details, including <i>Water Sensitive Urban Design</i>.</p>	<p>No.</p> <p>Insufficient information</p>

General Principles	Applies	Comments	Complies
		Accordingly, the proposal does not satisfy this General Principle due to insufficient information.	
<b>CL77 Landfill</b>	Yes	<p>Landfill, if necessary, will utilise existing material on site sourced from excavation for building footprint, driveway and ancillary works. Concerns are raised with regard to the extent and placement of fill and control of fill depth such as ease to "push-out" fill during civil works into the outer perimeter of the building and APZ disturbance area.</p> <p>No new fill material is proposed to be brought from outside the site.</p> <p>Accordingly, the proposal does not satisfy this General Principle due to insufficient information.</p>	No.  Insufficient information
<b>CL78 Erosion &amp; Sedimentation</b>	Yes	<p>Appropriate management of erosion and sedimentation works on the site have not been provided that are satisfactory for the scale of civil works required considering the steep slope and potential impact of drainage infrastructure (or during its construction) on threatened species habitat. A detailed draft construction management plan will be required.</p> <p>Accordingly, the proposal does not satisfy this General Principle due to insufficient information.</p>	No.  Insufficient information
<b>CL79 Heritage Control</b>	No	No comment	N/A
<b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b>	Yes	<p>Previously aboriginal relics have been identified and were inspected to identify the details as outlined in the report provided. Conditions are suitable to address the appropriate action should any potential relics be uncovered.</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	Yes
<b>CL81 Notice to Heritage Council</b>	No	No comment	N/A



General Principles	Applies	Comments	Complies
<b>CL82 Development in the Vicinity of Heritage Items</b>	Yes	The proposal is not within close proximity to any urban heritage or trees that are heritage items identified in the Warringah LEP 2000 or Warringah LEP 2011. (Aboriginal heritage is addressed above and within the Aboriginal Heritage Referral comments)	Yes
<b>CL83 Development of Known or Potential Archaeological Sites</b>	Yes	The work is located within an area may contain known aboriginal sites recorded on the site and therefore a report / study of those sites known has been submitted. Additional comments are also provided with the <i>Aboriginal Heritage Office</i> Referral response.	Yes

## SCHEDULES

### Schedule 8 - Site analysis

The Site Analysis dated on drawing No.820:01 to drawing No.820:03 has been provided pursuant to meeting the minimum requirements of Schedule 8.

### Schedule 17 - Carparking Provision

See assessment under Clause 74 of the General Principles of this report which demonstrates the proposal's ability to satisfy the requirements of this Schedule (and any associated concerns).

## POLICY CONTROLS

### Northern Beaches 'Section 7.12' Contributions Plan.

The monetary contribution is based on the development cost of \$2,535,000.

A monetary contribution of **\$25,350.00** is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to 'section 7.12' of the *Environmental Planning & Assessment Act 1979* and the *Northern Beaches Section 7.12 Contributions Plan*.

This may be addressed by a condition of consent.

## OTHER MATTERS FOR CONSIDERATION

### Department of Planning Concurrence

The proposal does not require concurrence from the Director of the *NSW Department of Planning* for variation to housing density pursuant to WLEP 2000 for the reasons stated in "paragraph C" of the B2 Locality statement, detailed previously in this report. An additional dwelling house on anywhere else within the 'existing parcel' would trigger this consideration (except where the housing density provides certain exceptions as stated).



## CONCLUSION

This report provides a comprehensive assessment of the proposal for a dwelling house in the site. Particulars of the development require that a large APZ has to be created which will impact existing natural bushland and the landscape character of the land.

All development proposal however is subject to demonstrating consistency with the DFC Statement, Built Form Controls and General Principles. The proposal does not comply with Clause 12(2) whereby the proposal is not satisfactory in terms of meeting the “low impact” development characterisation, fails particular elements of the DFC where the Locality Statement is seeking particular outcomes. These include ensuring landscape setting, non-urban fencing styles, protecting and enhancing vegetation, protecting water quality, and minimising visual impacts on prominent rural landscapes. Generally, the proposal has insufficient information to comply with Clause 12(3) of the WLEP 2000 to meet the General Principles and DFC.

The B2 Oxford Falls Valley Locality states that, ‘*future development will be limited to new detached style housing conforming with the housing density standard*’. In this case, the housing density standard applies to an “existing parcel” and therefore the proposal cannot be considered in isolation of the remaining parts of the parcel because this is fundamental element in maintaining the integrity of the housing density standard.

Public submission issues raised in objection to the proposal have been addressed and where appropriate, are supported as reasons for refusal as relevant to the WLEP 2000.

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 20.
- Community Participation Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

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

- Insufficient in information to satisfy the requirements of the *General Principles* of Warringah LEP 2000, as specified.
- Inconsistent with the requirements to demonstrate consistency with the DFC for ‘Category 2’ development of Warringah LEP 2000 – B2 Oxford Falls Valley Locality.
- Inconsistent with the objects specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979.

It is considered that the appropriate controls and assessments procedures have been satisfactorily addressed to enable determination of the development application.

THAT Development Application No.2021/2039 for a dwelling house with a swimming pool



and ancillary site works at No.70A Willandra Road, Narraweena, be REFUSED for the reasons outlined as follows:

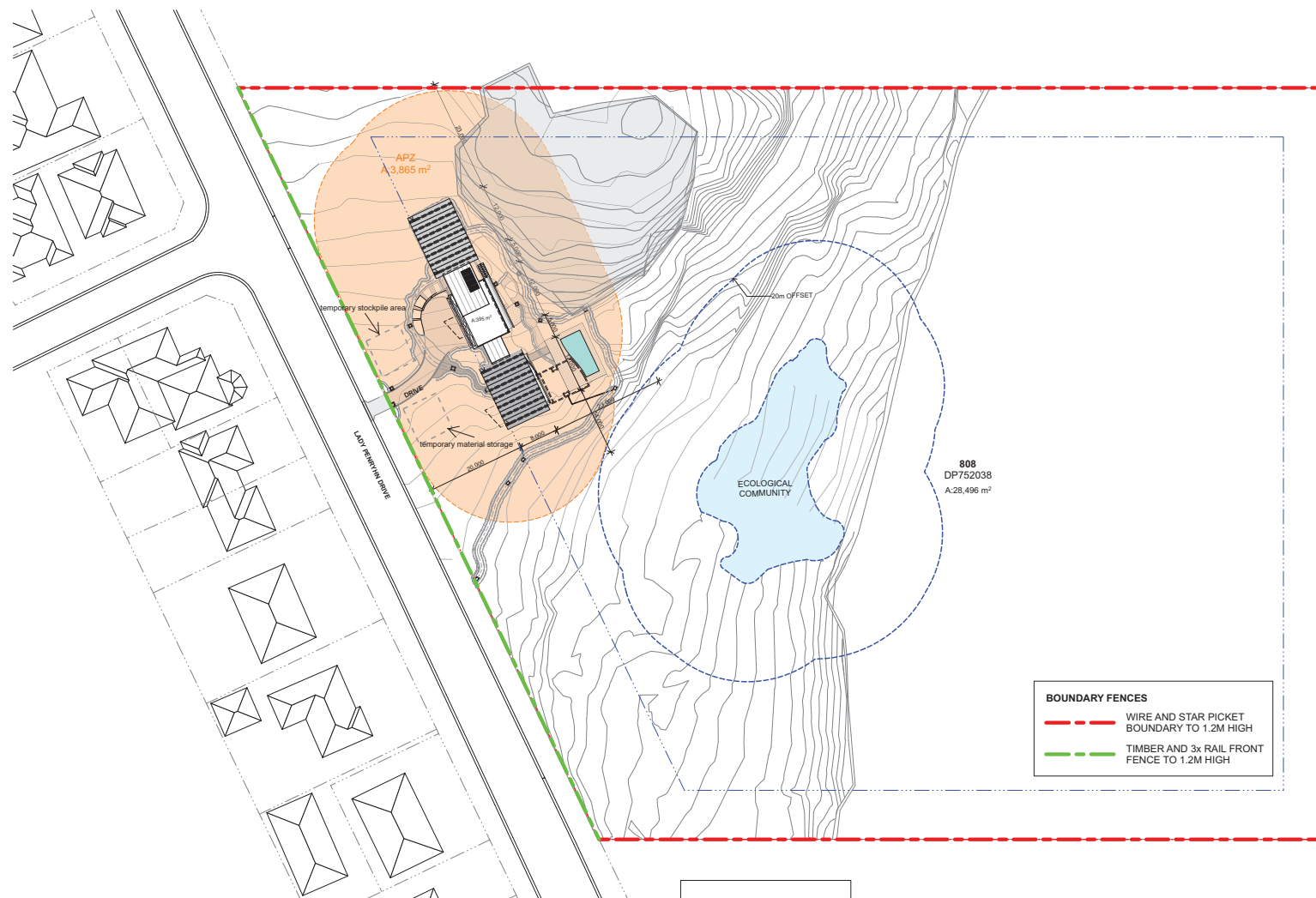
1. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* the proposed development application has insufficient information to address the WLEP 2000 with respect to being part of an “existing parcel” and the likely impact and consequences of granting approval to the subject Lot 808 whereby the single dwelling entitlement is shared with other adjacent and adjoining lots. Given the natural characteristics of the site and housing density limitations the proposal has not comprehensively addressed the housing density and development implications on the whole of the “existing parcel”.
2. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 12 of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the Desired Future Character (DFC) Statement of the B2 Oxford Falls Valley Locality. In particular, the proposal does not satisfy DFC requirements for a “Category 2” development to conform with:
  - i. *Low impact characteristics;*
  - ii. *Protecting and enhancing natural landforms;*
  - iii. *Protecting and enhancing the natural vegetation;*
  - iv. *Fencing that does not detract from landscape vistas; and*
  - v. *Ensuring ecological values of natural watercourse are maintained.*
3. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the ‘General Principles of Development Control’. In particular, the proposal does not satisfy the requirements by sufficient information to comply with:
  - i. *Clause 42 Construction sites.*
  - ii. *Clause 51 Front fences and walls.*
  - iii. *Clause 56 Retaining unique environmental features on sites.*
  - iv. *Clause 57 Development on sloping land.*
  - v. *Clause 58 Protection of existing flora.*
  - vi. *Clause 63 Landscape open space.*



- vii. *Clause 60 Watercourses and aquatic habitat.*
- viii. *Clause 61 Views.*
- ix. *Clause 63 Landscaped open space.*
- x. *Clause 76 Management of stormwater.*
- xi. *Clause 77 Landfill.*
- xii. *Clause 78 Erosion and sedimentation*

4. Pursuant to Section 4.15 (1) (e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not in the public interest. In particular, the proposal does not meet the provisions of the relevant local environmental planning instrument for the creation of a better environment and maintaining the Desired Future Character of the B2 Oxford Falls Valley Locality.





<b>Saturday Studio</b> Suite 6, 38 East Esplanade MANLY NSW 2095 PO BOX 1171 MANLY NSW 2095 T + 61 2 9612 5322 info@saturdaystudio.com.au	SATURDAY STUDIO PTY LTD ABN 85 107 789 022 Urban Design   Architecture NOMINATED ARCHITECT: NICOLAS KARL RICHTER NSWARB REGISTRATION NO# 6676	<b>NOTE</b> Notify any errors, discrepancies or omissions to the architect. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes until issued for construction. All documents here within are subject to Australian Copyright Laws.	<b>ISSUE</b> DA	<b>REVISION</b> A	<b>DESCRIPTION</b> FOR DA	<b>DATE</b> 12/12/19		<b>SCALE</b> PRINT SIZE: A3 PRINT DATE: 26/2/20	<b>PROJECT NO.</b> 18016	<b>DRAWING TITLE :</b> PLANS SITE PLAN	<b>ISSUE:</b> DA <b>DRAWING NO.</b> 100:01 <b>REVISION NO.</b> A
	 Member Australian Institute of Architects  						<b>CLIENT:</b> ALTRE 70A WILLANDRA ROAD NARRAWEENA NSW	<b>SITE:</b>		<b>PROJECT NAME :</b> BEACON HILL 808	



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ISSUE	REVISION	DESCRIPTION	DATE
DA	A	FOR DA	30/3/20



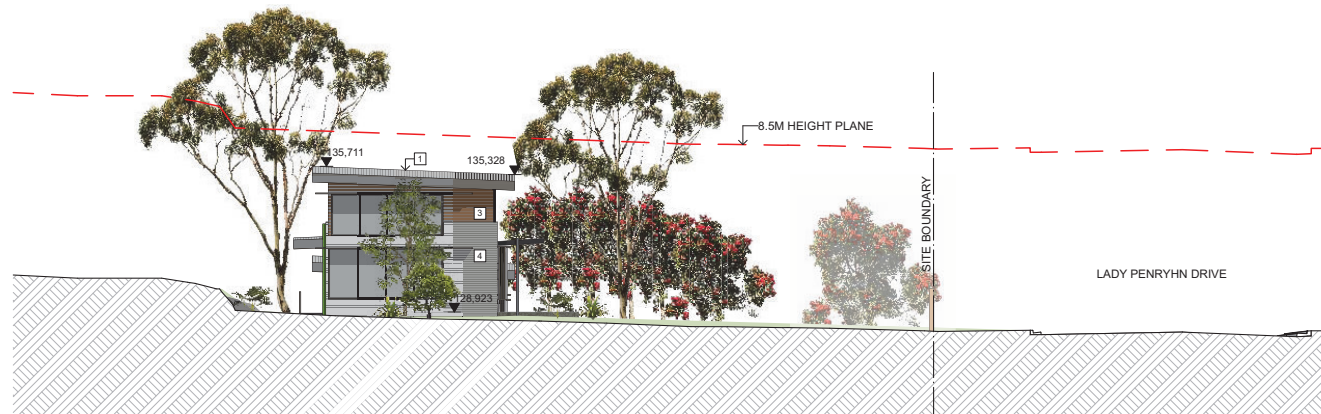
SCALE: 1:200  
PRINT SIZE: A3  
PRINT DATE: 30/03/20  
CLIENT: ALTRE  
SITE: 70A WILLANDRA ROAD  
NARRAWEENA NSW

PROJECT NO.  
**18016**

DRAWING TITLE:  
**ELEVATIONS  
EAST & WEST**

PROJECT NAME:  
**BEACON HILL 808**

ISSUE:  
**DA**  
DRAWING NO.  
**200:01**  
REVISION NO.  
**A**



**1 NORTH ELEVATION**  
1:200



**2 SOUTH ELEVATION**  
1:200

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ISSUE	REVISION	DESCRIPTION	DATE
DA	A	FOR DA	12/12/19



SCALE:  
PRINT SIZE: A3  
PRINT DATE: 16/12/19  
CLIENT: ALTRE  
SITE: 70A WILLANDRA ROAD  
NARRAWEENA NSW

PROJECT NO.  
**18016**

DRAWING TITLE:  
**ELEVATIONS  
NORTH & SOUTH**

PROJECT NAME:  
**BEACON HILL 808**

ISSUE:  
**DA**  
DRAWING NO.  
**200:02**  
REVISION NO.  
**A**



**1 STREET ELEVATION**  
1:200

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ISSUE	REVISION	DESCRIPTION	DATE
DA	A	FOR DA	30/3/20



SCALE:  
PRINT SIZE: **A3**  
PRINT DATE: **30/03/20**  
CLIENT: **ALTRE**  
SITE: **70A WILLANDRA ROAD  
NARRAWEENA NSW**

PROJECT NO.  
**18016**

DRAWING TITLE:  
**ELEVATIONS  
STREET ELEVATION**

PROJECT NAME:  
**BEACON HILL 808**

ISSUE:  
**DA**  
DRAWING NO.  
**200:03**  
REVISION NO.  
**A**