

# AGENDA

## **NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL MEETING**

Notice is hereby given that a Meeting of the Northern Beaches Independent Assessment Panel will be held in the Manly Town Hall, 1 Belgrave Street Manly on

**WEDNESDAY 9 AUGUST 2017**

Beginning at 1 p.m. for the purpose of considering and determining matters included in this agenda.



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

**Panel Members**

|                  |                          |
|------------------|--------------------------|
| Paul Vergotis    | Chair (Lawyer)           |
| Steve Kennedy    | Urban Design Expert      |
| Marcus Sainsbury | Environmental Expert     |
| Peter Cotton     | Community Representative |

**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 a Meeting of the Northern Beaches Independent  
Assessment Panel**

**to be held on Wednesday 9 August 2017**

**in the Manly Town Hall, 1 Belgrave Street Manly**

**Commencing at 1 p.m.**

|            |  |            |
|------------|--|------------|
| <b>1.0</b> | <b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>                        |            |
| <b>2.0</b> | <b>MINUTES OF PREVIOUS MEETING</b>   |            |
| 2.1        | Minutes of Northern Beaches Independent Assessment Panel held 26 July 2017 ..... | 2          |
| <b>3.0</b> | <b>NORTHERN BEACHES INDEPENDENT ASSESMENT PANEL REPORTS .....</b>                | <b>2</b>   |
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| 3.2        | 129 Lagoon Street, Narrabeen - DA2017/0335.....                                  | 58         |
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| 3.4        | 21 Iluka Avenue, Manly - DA17/2017.....  | 196        |
| <b>4.0</b> | <b>REVIEW OF DETERMINATIONS.....</b>   | <b>223</b> |
| 4.1        | 571-575 Sydney Road, Seaforth - DA373/2016 .....                                 | 223        |
| <b>5.0</b> | <b>PLANNING PROPOSALS</b>  |            |
|            | Nil  |            |



## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL HELD 26 JULY 2017**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Independent Assessment Panel held 26 July 2017 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 NORTHERN BEACHES INDEPENDENT ASSESMENT PANEL REPORTS

|                   |   |
|-------------------|---|
| ITEM 3.1          | 62 & 85 HILLSIDE ROAD, NEWPORT - N0371/16   |
| REPORTING OFFICER | Tyson Ek-Moller   |
| TRIM FILE REF     | 2017/259469   |
| ATTACHMENTS       | 1 <a href="#">↓</a> Assessment Report (1)<br>2 <a href="#">↓</a> Assessment Report (2)<br>3 <a href="#">↓</a> Site Plan |

#### PURPOSE

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

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That Council (Northern Beaches Independent Assessment Panel) as the consent authority **approve** Development Consent No. N0317/16 Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works on land at Lot 1 DP 408800 and Lot 2 DP 1036400, 62 and 85 Hillside Road, Newport, for the reasons outlined in the report.

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**SUBJECT:** N0317/16 – 62 and 85 Hillside Road, NEWPORT NSW 2107 (Lot 1, DP 408800 and Lot 2, DP 1036400) Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision

**Determination Level:** Northern Beaches Independent Assessment Panel

| SUMMARY OF RECOMMENDATION        | CONSENT WITH CONDITIONS   |
|----------------------------------|---|
| <b>REPORT PREPARED BY:</b>       | Tyson Ek-Moller   |
| <b>APPLICATION SUBMITTED ON:</b> | 25 July 2016  |
| <b>APPLICATION SUBMITTED BY:</b> | Peter Roach<br>Cariste Pty Ltd<br>PO Box 7099<br>MCMAHONS POINT NSW 2060        |
| <b>OWNER(S):</b>                 | 62 Hillside Road: Cariste Pty Ltd<br>85 Hillside Road: Amelia Anne Gordon Roach |
| <b>NUMBER OF SUBMISSIONS</b>     | Twenty Three (23)   |
| <b>COST OF WORKS</b>             | \$90,000  |

#### 1.0 ISSUES:

##### Pittwater Local Environment Plan 2014

- Clause 7.2 Earthworks
- Clause 7.6 Biodiversity
- Clause 7.7 Geotechnical Hazards

##### Pittwater 21 Development Control Plan

- A4.10 Newport Locality
- B2.2 Subdivision - Low Density Residential Areas
- B3.1 Landslip Hazard
- B3.2 Bushfire Hazard
- B4.17 Littoral Rainforest - Endangered Ecological Community
- B4.22 Preservation of Trees or Bushland Vegetation
- B5.1 Water Management Plan
- B5.10 Stormwater Discharge into Public Drainage System
- B5.12 Stormwater Drainage Systems and Natural Watercourses
- B6.2 Internal Driveways
- B6.3 Off-Street Vehicle Parking Requirements
- B6.7 Transport, Traffic Management
- B8.2 Construction and Demolition - Erosion and Sediment Management
- C1.3 View Sharing
- C1.13 Pollution Control
- C4.1 Subdivision - Protection from Hazards
- C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
- C4.5 Subdivision - Utility Services
- C4.6 Service and delivery vehicle access in subdivisions
- C4.7 Subdivision - Amenity and Design
- D10.1 Character as viewed from a public place

## 2.0 SITE DETAILS

The subject site consists of two allotments identified as 62 and 85 Hillside Road, Newport (Lot 2, DP 1036400 and Lot 1, DP 408800 respectively). Both allotments are irregularly-shaped and surround 87 Hillside Road; the primary boundaries are oriented towards the south and adjoin the Hillside Road road reserve. The combined area of the allotments is approximately 10,633m<sup>2</sup> (based on Council records) and are steeply sloped, with an elevational change of approximately 51 metres between their highest and lowest points.



**Figure 1:** An aerial photograph of the subject and the immediate surroundings. 62 Hillside Road is outlined by the yellow border, and 85 Hillside Road is outlined by the green border.



**Figure 2:** A panoramic streetscape photo of the subject site; the existing driveway entrance is located on the left side of 87 Hillside Road, which is located in the centre of the photo.



Both sites are heavily vegetated and an ephemeral creekline/natural watercourse runs in a northwest-to-southeast direction through the site. Development on the subject site includes a driveway (approved by Development Application No. N0274/09) that is partially constructed; 62 Hillside Road contains a small detached dwelling within the southeast portion of the site and 85 Hillside Road contains a larger two storey residential dwelling.

The subject site is within an E4 Environmental Living zone. The eastern boundary adjoins an E2 Environmental Conservation zone (commonly known as "Attunga Reserve") while all other boundaries adjoin E4-zoned residential allotments. There are also a number of other zone boundaries within the surrounding area that are as follows:

- RE1 Public Recreation zones are located approximately 80m southwest, 100m southeast and 110m north of the subject site at their nearest respective points;
- An SP2 Infrastructure (Water Supply System) zone is located approximately 60m east of the site;
- An SP2 Infrastructure (Public Utility Undertaking) zone is located approximately 90m southeast of the site;
- An SP2 Infrastructure (Community Facility) zone is located approximately 190m southeast of the site;
- Other E4 Environmental Living zones are located approximately 190m southeast, 240m southeast and 300m southwest of the site at their nearest respective points;
- Other E2 Environmental Conservation zones are located approximately 120m north and 280m southwest of the subject site; and
- R2 Low Density Residential zones are located approximately 160m west, 300m southeast and 300m south of the subject site.

Both allotments within the subject site are bushfire prone and are affected by a geotechnical hazard. Both allotments are also affected by Class 5 Acid Sulphate Soils and biodiversity mapping (Littoral Rainforest). A variable width watercourse runs through the site. The subject site is not within a heritage conservation area nor does it contain a heritage item, and there are no heritage items within the immediate vicinity.

Development within surrounding residential-zoned sites and areas consists predominately of low-density residential development.

Inspections of the subject site were undertaken by the assessing officer on 29 August 2016, 12 December 2016, 21 April 2017 and 6 June 2017.

### **3.0 PROPOSAL IN DETAIL**

The subject development application seeks consent for the following:

- A four (4) lot subdivision. While civil and landscaping works would affect both allotments within the subject site, the four proposed allotments would be located within the existing boundaries of 62 Hillside Road. The details of the four proposed allotments are as follows:
  - Lot 1a: 1372m<sup>2</sup>
  - Lot 1b: 2049m<sup>2</sup>
  - Lot 1c: 1277m<sup>2</sup>
  - Lot 1d: 1276m<sup>2</sup>
- Minor modifications to the driveway previously approved by Development Application No. N0274/09. Changes include:
  - Minor increases to the driveway width;
  - A 20m passing bay to compensate for a 3.5m "pinch point" adjacent to Lot 1c;
  - Provision of a turning Bay for service vehicles;
  - Redesign of the turning "Y" bay to reallocate two off-street car visitor parking spaces

- Stormwater works to service the proposed allotments;
- Clearing of vegetation for Asset Protection Zones (APZs) and building footprints within the proposed allotments; and
- Demolition of the dwelling within 85 Hillside Road (Lot 1, DP 408800).

Apart from works associated with the subdivision, new dwellings are not proposed.

#### **4.0 BACKGROUND**

##### **4.1 Site background:**

| <b>Date</b> | <b>Affected site(s)</b>                                | <b>Comments</b>  |
|-------------|--|--|
| 12/02/2001  | 85 Hillside Road, Newport                              | Development Application No. N1235/99 refused. The application proposed a residential subdivision comprising of one lot into three allotments. An appeal of the refusal before the NSW Land and Environment Court was discontinued on 10 September 2002.  |
| 12/02/2001  | 85 Hillside Road, Newport                              | Development Application No. N1236/99 refused. The application proposed the construction of a dwelling house on an allotment within the subdivision proposed by Development Application No. N1235/99.   |
| 12/02/2001  | 85 Hillside Road, Newport                              | Development Application No. N1237/99 refused. The application proposed the construction of a dwelling house on an allotment within the subdivision proposed by Development Application No. N1235/99.   |
| 20/03/2006  | 62 Hillside Road, Newport<br>85 Hillside Road, Newport | Development Application No. N0401/03 refused. The application proposed a residential subdivision comprising of eight allotments. An appeal of the refusal before the NSW Land and Environment Court was dismissed on 24 September 2007.  |
| 14/07/2010  | 62 Hillside Road, Newport<br>85 Hillside Road, Newport | Development Application No. N0274/09 approved for the construction of a driveway.<br><br><b>Note:</b> The subject development application proposes modifications to this driveway. Despite the age of the original approval, the consent is not deemed to have lapsed due to the amount of work undertaken to date.  |
| 06/05/2011  | 85 Hillside Road, Newport                              | Development Application No. N0730/10 approved for the residential subdivision of one allotment into two allotments.<br><br><b>Note:</b> This subdivision has not been registered, as completion of the driveway approved by Development Consent N0274/09 is required before the provision of services/utilities to the approved allotments can be completed. The registration of this approval would not affect the subject development application. |
| 25/07/2016  | 62 Hillside Road, Newport<br>85 Hillside Road, Newport | Subject Development Application lodged.  |

A prelodgement meeting was conducted by the former Pittwater Council for the site in June 2015. At this time, the applicant was proposing creating 5 lots on the land. Council's advice indicated that a proposal resulting in 3 lots would be preferred given the constraints of the site. Importantly, the advice also included the following:

*"..This site is significantly constrained as it contains the littoral rainforest EEC community, the topography is very steep and the entire site is bushfire prone land. Such constraints bring a degree of risk to the likely success of the Application. A 3 lot subdivision is more likely to be supported in such circumstances....."*



*All building footprints should be located as close as practicable to the internal road to minimize the impact on the remaining littoral rainforest...."*

The applicant has reduced the new lots to be created from 5 previously proposed to four, and has located building footprints in the area of least adverse disturbance.

## **5.0 NOTIFICATION**

### **5.1 Notification**

The subject development application was advertised and notified in accordance with Council's DCP requirements. Despite objections to the contrary, inspections by the assessing officer noted that the notification sign was appropriately located and erected. The gate upon which the sign was erected was open during one of the inspections, however the notification sign was visible from the road reserve.

The subject development application was initially notified for a fourteen (14) day period from 2 August 2016 to 16 August 2016. In response, Council received twenty one (21) submissions containing twenty nine (29) signatures. Following the submission of additional information, the subject application was notified for a further thirty five (35) day period and Council received a further eleven (11) submissions. Ten of these were submitted by persons who had lodged a submission within the previous notification period.

It was later identified that the subject application constituted "threatened species development" and was advertised for a 30 day period from 6 June 2017 to 6 July 2017. In response, Council received four (4) submissions however three of these were submitted by persons who had lodged a submission within the previous notification period.

In total, Council received a total of twenty three (23) submissions containing thirty two (32) signatures. All submissions objected to the proposal.

### **5.2 Addresses of objectors**

The physical addresses of objectors (where identified) are as follows:

3 Kanimbla Crescent, Newport  
11 Kanimbla Crescent, Newport  
23 Kanimbla Crescent, Newport  
38 Kanimbla Crescent, Newport  
53 Kanimbla Crescent, Newport  
25 Hillside Road, Newport  
40 Hillside Road, Newport  
42 Hillside Road, Newport  
45-47 Hillside Road, Newport  
52 Hillside Road, Newport  
55 Hillside Road, Newport  
58 Hillside Road, Newport  
60 Hillside Road, Newport  
69 Hillside Road, Newport  
73 Hillside Road, Newport  
79 Hillside Road, Newport  
81 Hillside Road, Newport  
87 Hillside Road, Newport  
6 Hillslope Road, Newport



**Figure 3:** The location of the subject site (outlined by the yellow border) in relation to addresses from which submissions were received (identified by red dots).

### **5.3 Issues raised by objections**

Due to the number of submissions received and the range of matters raised within them, the issues identified by the submissions have been broadly categorised and summarised below.

- Lack of detail about dwellings that would be situated on the proposed allotments
  - Visual impacts associated future residential development are unclear;
  - The visual impacts of four dwellings and fireproof fences would be significant;
  - Council should request design details about residential development on the allotments;
  - Approving a subdivision but later refusing dwellings on the lots would pointlessly sacrifice flora and fauna lost to subdivision works;
- Impacts on fauna/wildlife
  - The proposed development would have significant detrimental impacts on remaining native wildlife as the site adjoins Attunga Reserve;
  - There are no alternative locations for wildlife displaced by the proposed development. Affected wildlife would need to compete for habitat in the adjoining Attunga Reserve;
  - Changes to the vegetation canopy would be unsuitable for foraging animals;
  - The proposed development would disrupt the powerful owl, possum populations, bush hen, osprey, bats and flying foxes;
- Inadequate assessment of fauna/wildlife
  - Relevant animals are highly mobile and may be limited to occasional passage through the site, however such conclusions disregard that such animals may return to the site;
  - The fauna surveys were inadequate as they were undertaken in winter. A more comprehensive survey in different seasons would detect a greater number of species;
  - The findings of the flora and fauna report is at odds with the experiences of local residents, and a Species Impact Statement would require full community consultation;

- Impacts on flora
  - The proposed development would require the clearance of littoral rainforest, which is an endangered ecological community. The approval of any damage to such endangered communities would be inappropriate;
  - Submitted information does not identify the likely effectiveness of the temporary three year vegetation management plan;
  - Removal of dead wood and rocks would further degrade the area;
  - Areas outside of the proposed building footprints would still be exposed/vulnerable to people moving around and storing items within "conservation areas";
  - The vegetation management plan does not cover a sufficient period of time; after five years there are no assurances that vegetation management would continue, leading to further degradation of the natural environment;
  - The vegetation management plan should be implemented indefinitely;
  - The felling of trees would create visual, noise and traffic impacts;
  - Impacts on the environment are more important in 2016 than in 2006 due to storm damage and clearing associated with the 10/50 vegetation clearing code;
- Parking and traffic
  - Hillside road is congested. An additional four dwellings and eight vehicles would have an unacceptable impact on the road;
  - Parking in Hillside Road is constrained, and there would be no parking for visitors. At least four spaces per allotment should be provided for residents and visitors to the site;
  - Parked cars within Hillside Road reduces the road to single lane traffic flows, prevents emergency vehicle and garbage truck access;
  - Parked cars within the cul-de-sac turning head restricts vehicular manoeuvring. If garbage trucks cannot enter the site, twelve additional bins would be placed with the turning head at the time of collection, further reducing manoeuvring space;
- Geological hazards
  - The site is geologically sensitive and subject to landslip, soil creep and loose boulders;
  - There would be a significant risk to property and life if a boulder became dislodged;
  - New development that could further destabilise the area;
  - Development above Hillside Road properties has affected lower sites through increased flooding, rock falls and falling trees. The proposed development would put residents at risk;
  - Heavy engineering works could worsen such issues and put residents at risk;
- Bush fire hazard:
  - Most of the proposed site disturbance is associated with bushfire mitigation works;
  - Future dwellings may attract a higher Bushfire Attack Level (BAL) rating, which could worsen land clearing and disturbance;
  - Rural Fire Service requirements may prevent the retention and protection of bushland;
  - A bushfire assessment report should accompany the application;
- Impacts on water flows and creeklines
  - The drainage line is an ephemeral creek and should be preserved as it affects water flowing from Bilgola Plateau into reserves below;
  - The site is within an upper catchment and contains numerous ephemeral rivulet waterways which vary in size and depth. The proposal only addresses the primary creekline and does not consider smaller onsite waterways, some of which are within proposed building footprints and bushfire Asset Protection Zones;
  - Disturbance of the creek would affect aquatic fauna;
  - Alterations to local hydrology, urban runoff/pollution, increases in nutrient loads and weed control have not been adequately considered;
  - Stormwater runoff from the site currently affects properties on Hillside Road. Proposed drainage arrangements would direct rainwater into the creek; existing issues would be worsened through land-clearing, increased stormwater volumes and water velocities;



- Noise:
  - The shape of the valley forms an amphitheatre that would enhance noise from the proposed dwellings;
  - Garbage trucks make a lot of noise if unable to pass parked vehicles in Hillside Road;
- There would be no means by which to enforce ongoing management of the site (i.e. stormwater facilities and vegetation management);
- The slope of the proposed allotments exceeds the 30% requirement within Pittwater 21 DCP;
- Approval of the subdivision should not be justified by better weed control, as the *Noxious Weeds Act 1993* enables Council to clear noxious weeds from the land and recover costs;
- The proposed development would not address the provisions of SEPP No. 19;
- The proposed development would contravene planning controls within the *Environmental Planning and Assessment Act 1979*;
- The allotments would not comply with minimum 1,200m<sup>2</sup> lot size requirements;
- The subject development application and associated environmental impacts has not significantly changed from earlier proposals;
- One dwelling per allotment within the locality is indicative of the topographical and environmental constraints. The size of 62 and 85 Hillside Road reflects the difficult topography of the area further subdivision should not be permitted; increased density and subdivisions of existing allotments should not be permitted;
- The site was subject to an agreement by the "first council" to be a "gentleman's property" that was not to be subdivided due to environmental and topographic constraints;
- The size of the development is too large and should be limited to two new lots to minimise impacts on the natural environment;
- The proposed development is not consistent with Council policy, as the subdivision would not create allotments that would be safe from hazards and that are appropriately serviced;
- Visual impact of streetlights and electricity wires has not been addressed;
- The location of the driveway adjacent to 85 Hillside Road could facilitate additional residential subdivision/development;
- It is unclear whether the future position and size of the allotments could be changed or incrementally expanded. The current submitted information may therefore be misleading;
- Earlier onsite sediment/erosion control measures have not been appropriately managed;
- Council should purchase the site and limit development to areas where the two existing dwellings are located;
- The Hornsby-based consulting engineers do not appreciate local requirements;
- The notification sign has not been appropriately located;
- Information was received by a resident(s) the day before the notification period closed;
- The integrity of Northern Beaches Council would be compromised by allowing the destruction of the small rainforest gully;
- The "matter" has already been determined by the Land and Environment Court; is the Council's authority above that of the court?

#### **5.4 Response to objector issues**

Matters raised within received submissions have been considered as part of this assessment, with most issues considered as part of the detailed assessments within Parts 5 and 7 of this report. Where not specifically addressed, issues capable of being considered are discussed within the following table:

| Issue   | Response  |
|---|---|
| <b>Lack of detail about dwellings that would be situated on the proposed allotments</b> | There is no requirement for design details to be provided if dwellings are to be subject to separate applications. Submitted plans and information are however required to consider any applicable constraints and demonstrate that the proposed allotments could sufficiently accommodate suitably-sized building platforms. |

|  |  |
|--|--|
|  | If approved, the footprints of future dwellings would be limited to the proposed building envelopes as part of restrictions on title, though the design of any future dwelling on the allotments would however be subject to a separate assessment and determined accordingly.   |
| <b>Noise</b>   | It is not possible to assess the impacts of any additional noise associated with future development until a future application(s) is lodged for development on the proposed allotments; it is however likely that the proposed lots would accommodate residential development, and such land uses are not typically associated with significant noise generating activities. Construction activity (e.g. hours of construction) is subject to recommended conditions.                        |
| <b>There is scope for further allotments to be created. The layout of the site/driveway may facilitate further subdivision and/or development. The applicant may modify the proposal at a later stage.</b> | Any change to a development consent would require approval by the consent authority. While resident concerns are noted, there is no prohibition preventing the applicant from submitting a proposal: <ul style="list-style-type: none"> <li>• To subdivide the site; and/or</li> <li>• To modify a development consent.</li> </ul> Any such application(s) would be subject to an assessment in accordance with applicable legislation and regulations, and would be determined accordingly. |
| <b>The findings of the flora and fauna report is at odds with the experiences of local residents (i.e. in terms of observations of animals, etc.).</b>   | While the experiences of local residents are noted, such observations are anecdotal and no formal reporting and/or documented evidence has been submitted to contradict the observations and findings of the submitted Species Impacts Assessment.   |

## 6.0 Referrals:

### 6.1 Internal referrals:

**Note:** Detailed comments from Council officers are contained within Part 7 of this report.

| Officer                   | Comments  |
|---------------------------|---|
| Development Engineer      | <b>Recommendation:</b><br>Supported, subject to conditions.         |
| Natural Environment       | <b>Recommendation:</b><br>Supported, subject to conditions.         |
| S94 Contributions officer | <b>Recommendation:</b><br>Supported, subject to conditions.         |
| Property and Commercial   | <b>Recommendation:</b><br>No objections, no conditions recommended. |

### 6.2 External referrals:

| External body                          | Comments   |
|--|--|
| NSW Rural Fire Service (RFS)           | The subject application was referred to the NSW Rural Fire Service (RFS) on 1 August 2016. Final comments were received on 8 March 2017; these indicated that the application was supportable, subject to conditions of consent. |
| Electricity supply authority (Ausgrid) | The subject application was referred to the relevant Electricity supply authority. No response was received.   |

## 7.0 STATUTORY AND POLICY CONSIDERATIONS

### Applicable instruments and policies:

Where applicable, the following relevant state, regional and local instruments and policies apply:

- Environmental Planning and Assessment Act 1979 (the Act)
- Coastal Management Act 2016
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan (P21 DCP)

### Tables of Compliance:

|   |                           |
|---|---------------------------|
| T - Can the proposal satisfy the technical requirements of the control? | Y – Yes                   |
| O - Can the proposal achieve the control outcomes?                      | N – No                    |
| N - Is the control free from objection?                                 | N/A or – – Not applicable |

## 7.1 Environmental Planning and Assessment Act 1979

| Environmental Planning and Assessment Act No. 203 |   |   |   |   |
|---|---|---|---|---|
| Clause  | Assessment and Comment  | T | O | N |
| 80 Determination                                  | Submissions queried whether Council could act as the consent authority on the "matter". While it did not elaborate, it is assumed that the submission was referring to the dismissal of the appeal for Development Application No. N0401/03 (See Part 4 of this report). The subject development application is unrelated to earlier development proposals and is not subject to an appeal, therefore Council would be the Consent Authority. | Y | - | N |
| 147 Disclosure of political donations and gifts   |   | Y | Y | Y |

| Noxious Weeds Act 1993   |  |   |   |   |
|--|--|---|---|---|
| A submission made reference to the <i>Noxious Weeds Act 1993</i> , however such legislation has been repealed and replaced with the <i>Biosecurity Act 2015</i> ; the provisions of this Act are not applicable to the proposal. |  | - | - | N |

## 7.2 State Environmental Planning Policies

The following SEPPs would be applicable to the proposed development and have been assessed as follows:

| State Environmental Planning Policies (SEPPs) |  |   |   |   |
|---|--|---|---|---|
| SEPP  | Assessment and Comment   | T | O | N |
| SEPP (Infrastructure) 2007                    | <b>Division 5 – Electricity transmission or distribution</b><br>Pursuant to Cl. 45(2) and as noted within Part 6 of this report, the subject application was notified to the relevant electricity authority; no response was received.   | Y | - | N |
|   | <b>Division 17 – Roads and traffic</b><br>Division 17 of the SEPP is not applicable. The site does not have immediate access to part of the Classified Road Network, and the proposal is not considered to be "Traffic Generating Development" by Schedule 3 of the SEPP; a referral to RMS is not required. | - | - | - |

|                                       |   |   |   |   |
|---------------------------------------|---|---|---|---|
| Coastal Management SEPP (DRAFT)       | The Coastal Management SEPP is currently in draft form. The site is within an area to which current local planning directions apply; such directions only apply however when a relevant planning authority prepares a planning proposal within affected areas. The draft SEPP is therefore not currently applicable to the subject development application.   | - | - | - |
| SEPP No. 19 – Bushland in Urban Areas | Submissions indicate that the proposed development would not comply with the provisions of this SEPP. The SEPP does not reflect recent amalgamations, however under Schedule 1 the former Pittwater Local Government Area (LGA) is/was not an area to which the policy applies. The SEPP is subsequently not applicable.  | - | - | N |
| SEPP No. 26 – Littoral Rainforest     | While the Draft NSW Coastal Management State Environmental Planning Policy Maps indicates that Littoral Rainforest is present on the subject site, Council's Land Information Officer has confirmed that there is no land within the former Pittwater LGA to which SEPP No. 26 applies; the SEPP is therefore not applicable. The draft Coastal Management SEPP will replace SEPP 26, however it is not currently applicable (see above).   | - | - | N |
| SEPP No. 55 – Remediation of Land     | A review of the site history indicates that the subject site has been used for residential purposes for an extended period of time; apart from the shed and fibro dwelling, such uses and/or development are not typically associated with activities that would result in the contamination of the site. Submitted information, site inspections and this assessment did not identify evidence of contamination. With consideration to the above, and assuming that recommended conditions are satisfied, it is unlikely that the site is significantly contaminated and would be suitable for the proposed development. | Y | Y | Y |

### **7.3 Pittwater Local Environment Plan (PLEP) 2014**

#### **7.3A Permissibility:**

The subject site is located within an E4 Environmental Living zone under Pittwater Local Environment Plan (PLEP) 2014. While subdivisions are not identified within the land use table as being a permissible form of development within the E4 zone, Clause 2.6(1) of PLEP 2014 permits the subdivision of land, subject to development consent.

#### **7.4B Zone objectives**

An assessment of the objectives of the E4 zone is as follows:

| <b>Objective</b>   | <b>Assessment and Comment</b>   |
|--|---|
| <i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i> | The proposed subdivision would facilitate future construction of residential development within an area that is affected by ecological and aesthetic values.  |
| <i>To ensure that residential development does not have an adverse effect on those values.</i>                             | An assessment of the proposal indicates that the proposed development would have an acceptable level of impact on the natural environment; refer to detailed comments within Part 7 of this report.   |
| <i>To provide for residential development of a low density and scale integrated with the landform and landscape.</i>       | As residential development is not proposed, the visual impacts of any future residential development would be subject to the assessment of a future application(s). The proposed allotments would however provide suitable areas for residential development; the size and slope of such areas would be capable accommodating development of a density, scale and design that would likely be similar to that of surrounding development and which could be integrated with the landform and landscape. |

|   |   |
|---|---|
| <i>To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.</i> | <p>Assessments by Council officers (refer to Part 7 of this report) concludes that, subject to conditions, the proposed subdivision would be capable of being developed in a manner that would promote the retention and enhancement of most riparian vegetation and local wildlife corridors.</p> <p>Foreshore vegetation considerations are not applicable.</p> |
|---|---|

In summary, the proposed development is permissible with consent in the E4 Environmental Living zone and would be consistent with the objectives of the zone.

#### **7.4C Assessment of LEP standards and requirements**

Refer below to a table of compliance for applicable controls under the LEP.

| Clause  | Numerical Standard   | Numerical Proposal  | T | O | N |
|---|--|---|---|---|---|
| <b>Pittwater Local Environmental Plan 2014</b>                    |  |   |   |   |   |
| 1.9A Suspension of covenants, agreements and instruments          |  |   | - | - | - |
| 4.1 Minimum subdivision lot size                                  | <p>Minimum lot size: 700m<sup>2</sup></p> <p><b>Note:</b> A number of submissions refer to a minimum lot size requirement of 1200m<sup>2</sup></p> | <p>Proposed lot sizes:</p> <ul style="list-style-type: none"> <li>Lot 1a: 1372m<sup>2</sup></li> <li>Lot 1b: 2049m<sup>2</sup></li> <li>Lot 1c: 1277m<sup>2</sup></li> <li>Lot 1d: 1276m<sup>2</sup></li> </ul> | Y | Y | N |
| 4.2 Rural subdivision   |  |   | - | - | - |
| 4.3 Building Height   | Maximum allowable height: 8.5m   |   | - | - | - |
| 4.4 Floor Space Ratio   |  |   | - | - | - |
| 4.6 Exceptions to development standards                           |  |   | - | - | N |
| 5.4 Controls relating to miscellaneous permissible uses           |  |   | - | - | - |
| 5.5 Development within the coastal zone                           |  |   | - | - | - |
| 5.6 Architectural roof features                                   |  |   | - | - | - |
| 5.7 Development below mean high water mark                        |  |   | - | - | - |
| 5.8 Conversion of fire alarms                                     |  |   | - | - | - |
| 5.9 Preservation of trees and vegetation                          |  |   | Y | Y | N |
| 5.10 Heritage conservation  |  |   | - | - | - |
| 7.1 Acid Sulphate Soils   |  | Natural Environment officer comments: "Acid Sulphate Region 5."   | Y | Y | Y |
| 7.2 Earthworks  |  |   | Y | Y | N |
| 7.3 Flood planning  |  |   | - | - | - |
| 7.4 Floodplain risk management                                    |  |   | - | - | - |
| 7.5 Coastal risk planning   |  |   | - | - | - |
| 7.6 Biodiversity  |  |   | Y | Y | N |
| 7.7 Geotechnical hazards  |  |   | Y | Y | N |
| 7.8 Limited development on foreshore area                         |  |   | - | - | - |
| 7.9 Residual lots   |  |   | - | - | - |
| 7.10 Essential services   |  |   | Y | Y | N |
| 7.11 Converting serviced apartments to residential flat buildings |  |   | - | - | - |
| 7.12 Location of sex services premises                            |  |   | - | - | - |



**7.4D Detailed assessments of relevant provisions within (PLEP) 2014**

7.6 Biodiversity (includes comments associated with the assessment of Part B4.17 (Littoral Rainforest - Endangered Ecological Community) and B4.22 (Preservation of Trees or Bushland Vegetation) of Pittwater 21 Development Control Plan)

**Planner comments:**

**Clause 7.6 Biodiversity**

As the subject site is subject to biodiversity mapping, Clause 7.6 is applicable to the proposal pursuant to Cl. 7.6(2) of PLEP 2014. More detailed comments addressing specific biodiversity issues are contained within comments by Council's Natural Environment officer (below), however a planning assessment of Clause 7.6 is as follows:

| Clause   | Comment   | Compliance |
|--|---|------------|
| (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:<br>(a) whether the development is likely to have:<br>(i.) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and<br>(ii.) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and<br>(iii.) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and<br>(iv.) any adverse impact on the habitat elements providing connectivity on the land, and<br>(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. | Council as the consent authority have considered matters required to be assessed pursuant to Cl 7.6(3)(a) and (b).<br><br>Relevant assessments have identified that the site contains Littoral Rainforest and may contain some foraging habitat for certain species of fauna. While the proposal includes tree removal and some land clearing, large proportions of the proposed development are located within areas of the site that are of relatively poor environmental quality due to previous works/land clearing within those areas. Building envelopes are within these disturbed areas, which would likely minimise adverse ecological impacts. As a result, the proposed development would have adverse effects on a relatively small proportion of the area consisting of good quality Littoral Rainforest.<br><br>Ongoing management of remaining Littoral Rainforest within the subject site would (if approved and undertaken in accordance with recommended conditions) likely maintain and improve the quality of such areas. With regard to the above, it is unlikely that the proposed development would significantly fragment, disperse and/or reduce foraging habitats of fauna within the locality. Any impacts on threatened and local fauna are therefore unlikely to be significant. | YES        |
| (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:<br>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or<br>(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or<br>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.   | Appropriate measures to mitigate impacts of the development on the environment would be subject to recommended conditions; these include restrictions of the proposed allotments with regard to the placement of future development and ongoing vegetation management. Any future development on the proposed allotments would be subject to applicable planning provisions (including those within Cl. 7.6 of PLEP 2014) and title restrictions on the individual allotments (included as part of recommendations for the approval of the subject application).  | YES        |

In summary, the proposed development would satisfy both the objectives and provisions of the clause, subject to recommended consent conditions.

**B4.17 Littoral Rainforest - Endangered Ecological Community**

More detailed comments addressing specific biodiversity issues are contained within comments by Council's Natural Environment officer (below), however a planning assessment of Part B4.17 (Littoral Rainforest - Endangered Ecological Community) of Pittwater 21 DCP is as follows:

| <b>Control</b>   | <b>Comment</b>  | <b>Compliance</b> |
|--|---|-------------------|
| Development shall retain, enhance and regenerate areas of Littoral Rainforest and its habitat.   | The proposed development would be largely situated within disturbed parts of the site. While the proposal would remove approximately 6% of areas identified as "good quality Littoral Rainforest", ongoing vegetation maintenance (if undertaken in accordance with recommended consent conditions) should retain and enhance areas of Littoral Rainforest within the site.   | <b>YES</b>        |
| Development shall not result in an onsite loss of canopy cover or a net loss in native canopy trees or Littoral Rainforest   | As indicated within the assessment by Council's Natural Environment officer, any proposed canopy loss would be classified as marginal since impacts associated with the proposed development would be mitigated by additional planting and management strategies that would improve the quality of the remaining Littoral Rainforest.   | <b>NO</b>         |
| Development shall retain and enhance habitat and wildlife corridors for locally native species, threatened species and endangered populations.   | As indicated within Part 7.4 of this report, assessments indicate that the subject site contains suboptimal foraging and roosting habitats for most fauna species likely to be affected by the proposed development. In the event of an approval, it is likely that the development would be capable of retaining and enhancing habitats and wildlife corridors due to ongoing vegetation management works combined with maintained connectivity to adjoining reserves (which contains habitats of similar and/or better quality).  | <b>YES</b>        |
| Caretakers of domestic animals shall prevent them from entering bushland.  | Subject to recommended conditions.  | <b>YES</b>        |
| Fencing, where permitted, shall allow the safe passage of native wildlife.   | Subject to recommended conditions.  | <b>YES</b>        |
| Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Littoral Rainforest Endangered Ecological Community). | Subject to recommended conditions.  | <b>YES</b>        |
| Development shall ensure any landscaping works are outside areas of existing Littoral Rainforest Endangered Ecological Community and do not include environmental weeds.                           | Any future development and likely landscaping works within the proposed allotment would be restricted by the locations of respective building envelopes and individual vegetation management plans.<br><br>Any new planting associated with the subject application (if approved) would be subject to recommended conditions that would prohibit environmental weeds/exotic species. Approval of residential development is commonly subject to conditions that stipulate similar requirements; it is likely that such requirements would be imposed on any such future development within the proposed allotments. | <b>YES</b>        |

In summary, the proposed development would mostly comply with the development controls within Part B4.17 of Pittwater 21 DCP.

**Natural Environment officer comments:**

*"The properties contain two dwelling houses, a natural watercourse and native vegetation of which is a majority remnant Littoral Rainforest. There has been approval for a driveway to be built into both properties under N0274/09 and the land has been cleared for this already. The proposed works include subdivision of one lot into four lots and with building envelopes and establishment of APZs.*

*A previous development application was refused for this property (N0401/03). The main reason for refusal as stated by the court was the following:*

*'The outcome of this subdivision is undoubtedly the loss of an important littoral rainforest endangered ecological community that would be contrary to B4.15.'*

*The current application is significantly different from the previous in that the (application proposes) four lots. This has reduced the proposed encroachment into the Littoral Rainforest Endangered Ecological Community although not taken it away completely. A further reduction in proposed lots (for example the northern two lots being merged into one) would not significantly reduce the overall impacts of the development and is considered unnecessary.*

**Arboricultural Report**

*An arborist report has been submitted (Footprint Green, 22 June 2016) which assesses 111 trees which are within close proximity to the proposed subdivision works, building envelopes or APZs. Fifty seven (57) trees are proposed for removal. Nine (9) of those are exempt species and will not be discussed further. Nineteen (19) have been given short SULE and low to moderate landscape significance.*

*Removal is proposed due to either location within the set building envelopes or establishment of the APZ. The following trees are not impacted by the building envelopes and should be considered for retention or transplantation if possible: T33 (retention), T138 (retention), T43, 44, 45 and 46 (transplantation).*

*Tree 76 has been noted for retention in the tree impact table however it was marked for removal on the tree removal plan. This tree is not within the building envelope and therefore should be retained.*

*The southern side of the driveway is highly disturbed and requires only a small number of trees to be removed to accommodate the proposed subdivision. The northern side of the driveway requires numerous native trees to be removed to accommodate the proposed subdivision and building envelopes however reduction from two to one lot would not significantly reduce the number of trees which require removal. It is also noted the majority of those trees proposed for removal are of low to moderate significance. In regards to impacts on trees only (excluding impacts to Littoral Rainforest or fauna) the proposed building envelopes appear to be located in the most suitable spots with the least impact.*

**SPECIES IMPACT STATEMENT**

*A species impact statement (SIS) has been submitted (Cumberland Ecology, June 2016).*

**Observations/Recordings**

*Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions Endangered Ecological Community has been identified in the subject site.*

*Littoral Rainforest and Coastal Vine Thickets of Eastern Australia is listed as Critically Endangered Ecological Community and parts of the vegetation mapped in the subject site comply with this listing.*



*Flora and fauna surveys, including targeted threatened species surveys within the subject site were carried out from March 2015 to June 2015. Data from previous studies was also analysed and helped supplement the survey data.*

*Limitations for the fauna surveys were acknowledged in that early winter (June 2015) is not the ideal season to detect the majority of fauna seasons. This was justified with the reasoning that the surveys were targeting the Powerful Owl and also that previous studies over several years on the subject site can supplement the survey data. It was noted that accessibility was limited in parts of the subject site due to ground conditions being boggy in June 2015.*

*Littoral Rainforest – Closed native canopy with native dominated understorey and closed native canopy with exotic dominated understorey was found throughout the subject site. The vegetation conforms to the TSC Act (Threatened Species Conservation Act 1995) listing however does not meet the conditioned threshold for the listed community under the EPBC Act (Environment Protection and Biodiversity Conservation Act 1999).*

*These communities along with two others was mapped and displayed in Figure 4.2. This map indicates the entire area north of the approved driveway is Littoral Rainforest closed native canopy with native dominated understorey and south of the driveway is a mixture of Littoral rainforest closed native canopy with exotic dominated understorey and urban native/exotic vegetation.*

*No threatened flora species was identified within the subject site.*

*Potential habitat for fauna species was found throughout the site and included rainforest habitat (dense canopy for foraging and roosting of passerine birds and the Powerful Owl and understorey for foraging and nesting for small mammals), drainage line (foraging and breeding for amphibians), rock outcrops (habitat for reptiles and potential roost sites for microchiropteran bats), leaf litter and ground stratum (cover for amphibians, reptiles and small mammals) and old shed (possible roosting habitat for microchiropteran bats).*

*No threatened bird species were recorded during diurnal bird surveys. A list of recorded bird species from the surveys is provided in Table 4.6 and a full list of bird species identified between 1999 and 2015 has been provided in Appendix C.*

*Two (2) threatened microchiropteran bats were recorded in the targeted survey. These are the Eastern Bentwing-bat and Little Bentwing-bat. Both listed as Vulnerable under the TSC Act.*

*Other surveys resulted in some common fauna species being identified including the Common Ringtail Possum, Common Brushtail Possum, Tawny Frogmouth and Common Eastern Froglet. A list of potentially occurring threatened fauna species have been listed and are mostly avifauna and bats.*

### **Impacts**

*The primary and direct impact from the proposed works is the loss of vegetation and associated habitat with the subject site. The establishment of proposed building envelopes and APZs will result in complete removal of 6% of all Littoral Rainforest which is a majority good quality. A further 17% will be modified as part of an APZ and other purposes which is a majority good quality.*

*Three key threatening processes are applicable to the habitat to be removed including: clearing of native vegetation, bushrock removal, removal of dead wood and dead trees. The majority of the habitat which would be utilised by threatened species is within the Littoral Rainforest. It was noted that the habitat to be removed is relatively small and suitable habitat was being retained within the subject site along with connectivity to the adjacent reserve.*

*Habitat for threatened species will be removed however with the exception of microchiropteran bats it was stated that the majority of threatened species would only use the subject site as part of a broader foraging range. The suitable roosting habitat for microchiropteran bats is likely utilised for breeding and nursing. The report states that removal of this habitat is unlikely to be important in the long-term survival of the local population.*

*It is acknowledged that the development would result in habitat fragmentation however the retained vegetation will not be completely isolated as connectivity to the offsite reserve will remain. Similarly, the 'edge effects' are likely to increase however flora and fauna on site are already experiencing these effects therefore the increase will only have a minor impact. Increased light penetration will occur at the margins which may reduce some habitat in these areas however like the 'edge effects' the additional area will only result in a minor impact. The existing drainage depression is going to be maintained and additional run-off from new dwellings will be managed as detailed in the Stormwater Management Plan and therefore will only minimally impact the hydrological regimes.*

*An assessment of species likely to be affected has been carried out and included in Section 5.2 of the SIS. The following is a summary:*

- Superb Fruit-Dove: no breeding habitat present as is it now known to breed in the Pittwater CMA sub-region. Only a small area of potential sub-optimal, foraging habitat is to be removed which is not considered significant within the local context as larger areas of higher quality habitat remain within the locality. Connectivity between the subject site and offsite reserves will also be maintained.*
- Barking Owl: no records within the study area and the species has a large foraging range up to 6000ha. Little to no roosting habitat is present. Some potential foraging habitat is present however it is not preferred due to the lack of hollows. Only a small amount of habitat to be removed however higher quality habitat is present in the local area and connectivity to this will remain.*
- Powerful Owl: Records exist for the subject site and it has been determined by previous studies that the Powerful Owl both nests and forages in the locality. No nesting sites are recorded in the subject site and although it contains suitable foraging habitat it is not ideal as it lacks hollows suitable for the preferred prey.*
- Eastern Bentwing-bat: Records exist for the subject site and in the locality. The subject site provides both potential foraging and roosting habitat for the Eastern Bentwing-bat. The proposal will remove a small area of both potential foraging and roosting habitat for this species. The report states that this removal is unlikely to be significant in the long-term due to presence of suitable habitat in nearby reserves and the retention of some habitat on site. The report concludes that due to the ability of the species to be highly mobile and able to access habitat both connected and not connected the removal of the habitat is not considered likely to affect habitat connectivity.*
- Large-eared Pied Bat: There are no records within the site however there are some records for the locality. The site provides potential roosting habitat with sandstone boulders along existing drainage line. No foraging habitat is present. Habitat will be removed from the site however some will be retained and connectivity will remain to habitat off-site. The species is also capable of moving to unconnected habitat therefore the report concludes the proposal is not likely to affect habitat connectivity for the Large-eared Pied Bat within the site or locality.*
- Little Bentwing-bat: Records exist for the site and the locality. The site provides suitable roosting and foraging habitat. The proposal will result in a loss of suitable foraging and sub-optimal roosting habitat. This is not considered significant due to the presence of larger areas of the same or better quality habitat nearby. For the same reasons as the other bats the proposal is not considered likely to affect habitat connectivity.*

- *Squirrel Glider: There are no records for the site but they have been recorded in the locality. Some suitable foraging habitat is present however the site is lacking suitable hollows to support a local population. As better foraging habitat exists nearby in a reserve it is unlikely a local population would be solely dependent on the site for long-term survival. Retention of suitable foraging habitat and connectivity are the reasons given for the proposal not having a significant impact on the population.*
- *Grey-headed Flying Fox: Records exist in the locality however the site does not contain a roosting camp but suitable foraging habitat is present. It is unlikely the known roosting camps are solely dependent on the site foraging. Due to the retention of foraging habitat on site and in connected reserves the report concludes the removal of habitat is unlikely to be significant to the survival of the species in the locality in the long term.*

**Consideration of alternatives**

- *Original proposal was 8 lots and was refused.*
- *Proposal at pre-lodgement stage was 5 lots and after discussion with Council this has been reduced to 4 lots.*
- *A reduced scale from the proposed 4 would result in the proposed development being financially unviable.*
- *The design has been done in conjunction with the RFS and has included avoidance of significant rock outcrops, boulders and mature trees.*
- *There is limited scope for redesign due to the approved driveway position.*
- *The building footprints are located in areas which have the greatest disturbed area and will reduce ecological impacts.*
- *Larger lots and set building envelopes reduces the impact on the Littoral Rainforest. They are also tightly clustered to avoid edge effects.*
- *Canopy loss will be offset by supplementary planting with the quality of Littoral Rainforest improved by management.*
- *The loss of canopy cover is considered marginal.*

**Impacts on EEC – Littoral Rainforest**

- *A total of 0.61ha of good quality Littoral Rainforest is present on the subject site. A total of 0.23ha of low quality Littoral Rainforest is present on the site.*
- *Generally, the upslope portions of the site contain high quality Littoral Rainforest.*
- *Without management a number of 'transformer' weeds would spread in the future and cause a decline in the condition of the Littoral Rainforest on site. Development will help fund the removal of those weeds.*
- *If left without management the Littoral Rainforest will likely degrade over time however with management actions it will be able to regenerate.*
- *The area of Littoral Rainforest on the Subject Site, a total of 0.84ha, contributes significantly to the local extent of this community.*
- *Only 0.05ha (6%) out of the 0.61ha of good quality Littoral Rainforest will be removed. A further 0.15ha (17%) of Littoral Rainforest will be modified as part of an APZ and other purposes.*
- *Littoral Rainforest retained on the site is to be actively managed under a Vegetation Management Plan (VMP) to restore the degraded areas and maintain the integrity of the Littoral Rainforest patch present in the Study Area.*
- *The proposed development will not reduce the width of the local corridor.*
- *Mitigation measures named under the VMP are aimed to reduce the impact of the threatening processes which the development will exacerbate and improve the condition of the Littoral Rainforest overall.*



**Ameliorative Measures**

- These include during construction measures and long-term management strategies. Pre-construction measures are also required.
- Impacts during construction include runoff, sedimentation, erosion and pollution. Stormwater and Sediment and Erosion plans have been prepared by Martens and Associates (2016) to address those issues. A Waste Management Plan will be developed to mitigate waste and pollution entering the surrounding environment.
- Long-term Management: Vegetation Management Plan (VMP) has been prepared. It is for 3 years to start from the date of land subdivision. A trust is to be established to pay for implementation of the VMP which will be funded by a portion of the sale from each lot with limited future maintenance works.
- Additional measures include installation of nestboxes.
- Ongoing monitoring is proposed.

**Assessments of Significance**

- These were completed for Littoral Rainforest, Superb Fruit-dove, Barking Owl, Powerful Owl, Microchiropteran bats (Eastern Freetail-bat, Greater Broad-nosed Bat) and Squirrel Glider.
- The impact on the Littoral Rainforest was not considered to be significant due to the implementation of the VMP.
- The proposal is not considered to significantly impact on the other assessed species.

**Conclusion**

- When considered in terms of the improvements in condition that can be achieved through implementation of the VMP, and prescribed mitigation measures to improve the water quality and control flow of run-off on the site, no significant impact is expected to occur to any species, populations or communities, as listed under the TSC Act and EPBC Act.
- Furthermore, the long term security of the Littoral Rainforest present on the Subject Site will be confirmed by the establishment of a protective covenant (S88B) placed on each of the new lots under the proposed subdivision.

**VEGETATION MANAGEMENT PLAN**

A Vegetation Management Plan (VMP) has been submitted (Cumberland Ecology, June 2016) which was referenced in the Species Impact Statement.

The VMP addresses conservation requirements for the Littoral Rainforest across Lot 1, 21 and 22. The management period should apply for five (5) years. After this a review is proposed.

Three Management Zones have been created – Intact Littoral Rainforest (Zone 1), Degraded Littoral Rainforest (Zone 2) and Asset Protection Zones and Development Setbacks (Zone 3).

Section 4.2 provides flora and fauna management actions to be adopted pre and during construction.

Section 5.2 outlines weed management actions for the site with a timeline for the first 6 months and then the remaining 4 ½ years of the VMP. Site visit frequency is outlined specifically however there is scope for change if site weed loads are lower.

Section 8.1 indicates a monitoring program will be carried out for the duration of the VMP with the intention that if the regeneration and weeding works are not performing as they should then changes will be made to the program. A yearly report will be produced and given to Council for approval for the duration of the VMP. A final report at the end of 5 years will certify completion of works.

A letter from Cumberland Ecology was submitted (25/11/16) which addresses previously requested information.

The implementation phase will include the primary weeding program of 6 months.

- (1) Four sub-plans have been provided so that each proposed lot has a management plan (identified as Lot 1a, 1b, 1c and 1d) that can be independently funded by the property owner and which refers back to the master Vegetation Management Plan that has already been provided.
- (2) A draft example of the S88B has been provided with an outline of the details which are included. The creation of these covenants for each lot must be finalised prior to issue of the Subdivision Certificate. In summary the covenant notes the registered proprietor must at their own expense sufficiently maintain the lot according to the VMP. If this does not occur even after requests from Council then they must pay for Council to carry out the necessary works. Only the Northern Beaches Council has the power to alter the covenant. This is acceptable.
- (3) The 'indicative' wording has been removed from the subdivision plan and the letter confirms the building envelopes on the subdivision plan represent the maximum building footprint and no additional structures will be permitted outside of the footprint.
- (4) The letter confirms that the reviews of each VMP sub-plan and implementation of the master VMP will be carried out by an appropriately qualified ecologist or bush-regeneration contractor appointed by the landowner of each lot. Council will be provided a brief report at years 3, 5 and 10 of the program. This is acceptable."

7.2 Earthworks, 7.7 Geotechnical hazards (includes comments associated with the assessment of P21 DCP Part B3.1 Landslip Hazard and C4.1 Subdivision - Protection from Hazards)

As indicated within Part 2 of this report and noted within numerous submissions, the subject site is affected by a geotechnical hazard; the provisions of Clause 7.7 and Parts B3.1 and C4.1 of the DCP are applicable to the proposal.

Information submitted with the subject application was provided in accordance with Council's Geotechnical Risk Management Policy, and was twice referred to Council's Development Engineers for assessment; these assessments considered Cl. 7.7(3) of the LEP and applicable matters to which the clause applies. As a result of these assessments and in accordance with Cl. 7.7(4) of the LEP, Council (as the Consent Authority) is satisfied that the proposed subdivision would be appropriately designed and sited to minimise adverse impacts on the site. In accordance with Part B3.1 of the DCP, the design and proposed methods of construction would (if undertaken in accordance with consent conditions) reduce risks associated with geotechnical hazards to an acceptable level. Ongoing management of the proposed subdivision would be subject to recommended conditions to also minimise risks associated with the proposed development. In addition to addressing applicable provisions within the LEP, both the outcomes and controls within Parts B3.1 and C4.1 of Pittwater 21 DCP would be satisfied.

If the proposed subdivision were approved, any future residential development on the proposed lots would be subject to planning provisions (including Clauses 7.2 and 7.7 of the LEP and applicable parts of the DCP) to ensure that any such future development minimises risks on both the subject site and surrounding sites.

While broader concerns raised by submissions have been addressed above and elsewhere within Parts 5, 6 and 7 of this report, a number of submissions have expressed specific concern about increased geotechnical and associated flooding risks to surrounding properties and the dislodgment of boulders during construction. In response to such concerns, Council's development engineer indicated that:

- The proposed subdivision is in accordance with controls and policies relating to stormwater management and both geotechnical and vegetation management requirements;
- Any future development on the proposed allotments would need to be designed in accordance with the same policies and specific requirements associated with any approval of the proposed subdivision ;and



- Any work that is conditioned to comply with the recommendations of the submitted geotechnical hazard assessment would need to be completed under the supervision of the Consulting Geotechnical Engineer.

If the proposed subdivision and future residential development were undertaken in accordance with such measures, disturbance and risk to surrounding properties would be minimised.

In summary, the proposed development (if approved and undertaken in accordance with recommended conditions) would minimise risks associated with geotechnical hazards that affect the site. Any future development on the proposed allotments would also be subject to further assessments to ensure that such development is both suitable for the site and would minimise risks associated with relevant site hazards.

## **7.5 Pittwater 21 Development Control Plan**

### **7.5A Assessment of DCP controls**

Refer below to a table of compliance for applicable controls under the DCP; more detailed assessments and elements of noncompliance are also assessed/discussed in depth below.

| Clause  | Numerical Standard | Numerical Proposal  | T | O | N |
|---|--------------------|---|---|---|---|
| <b>Preliminary</b>  |                    |   |   |   |   |
| 3.1 Submission of a Development Application and payment of appropriate fee                    |                    |   | Y | Y | Y |
| 3.2 Submission of a Statement of Environmental Effects  |                    |   | Y | Y | N |
| 3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings   |                    |   | Y | Y | Y |
| 3.4 Notification  |                    | Refer to Part 5 of this report.                                 | Y | Y | N |
| 3.5 Building code of Australia  |                    |   | Y | Y | Y |
| 3.6 State Environmental Planning Policies   |                    | Refer to individual assessments within Part 7.2 of this report. | Y | Y | N |
| 3.7 Designated development  |                    |   | - | - | - |
| 4.1 Integrated Development: Water Supply, Water Use and Water Activity                        |                    |   | - | - | - |
| 4.2 Integrated Development: Rivers, Streams and Foreshores                                    |                    |   | - | - | - |
| 4.3 Integrated Development: Fisheries Management  |                    |   | - | - | - |
| 4.5 Integrated Development: Bushfire  |                    |   | Y | Y | Y |
| 4.6 Integrated Development: Aboriginal Places of Heritage Significance and Aboriginal Objects |                    |   | - | - | - |
| 4.7 Integrated Development - Protection of the Environment                                    |                    |   | - | - | - |
| 4.8 Integrated Development - Roads  |                    |   | - | - | - |
| 5.1 Referral to RMS under SEPP (Infrastructure) 2007  |                    |   | - | - | - |
| 5.2 Referral to the NSW Police Service  |                    |   | - | - | - |
| 5.3 Referral to NSW Office of Environment and Heritage  |                    |   | - | - | - |
| <b>Section A Shaping Development in Pittwater</b>   |                    |   |   |   |   |
| <b>A1 Introduction</b>  |                    |   |   |   |   |
| A1.7 Considerations before consent is granted   |                    |   | Y | Y | Y |
| <b>A4 Localities</b>  |                    |   |   |   |   |
| A4.10 Newport Locality  |                    |   | Y | Y | N |

| <b>Section B General Controls</b>  |  |  |   |   |   |
|--|--|--|---|---|---|
| B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014            |  |  | - | - | - |
| B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological site |  |  | - | - | - |
| B1.3 Heritage Conservation - General   |  |  | - | - | - |
| B1.4 Aboriginal Heritage Significance  |  | <b>Natural Environment comment:</b><br><i>"No apparent issues."</i><br><b>Assessing officer comment:</b><br>Subject to recommended conditions. | Y | Y | Y |
| B2.2 Subdivision - Low Density Residential Areas   |  |  | N | Y | N |
| B3.1 Landslip Hazard   |  | Refer to assessment within Part 7.4 of this report   | Y | Y | N |
| B3.2 Bushfire Hazard   |  |  | Y | Y | N |
| B3.3 Coastline (Beach) Hazard  |  |  | - | - | - |
| B3.4 Coastline (Bluff) Hazard  |  |  | - | - | - |
| B3.6 Contaminated Land and Potentially Contaminated Land   |  | Refer to SEPP 55 assessment within Part 7.2 of this report.  | Y | Y | Y |
| B3.13 Flood Hazard - Flood Category 1 - Low Hazard - Shop Top Housing, Business and Industrial Development   |  |  | - | - | - |
| B3.19 Flood Hazard - Flood Category 1 - High Hazard - Other Development  |  |  | - | - | - |
| B3.22 Flood Hazard - Flood Category 3 - Overland Flow Path - Major   |  |  | - | - | - |
| B3.23 Climate Change (Sea Level Rise and Increased Rainfall Volume)  |  |  | - | - | - |
| B3.25 Flood Hazard - Flood Emergency Response planning   |  |  | - | - | - |
| B4.17 Littoral Rainforest - Endangered Ecological Community  |  | Refer to the assessment within Part 7.4 of this report.  | N | Y | N |
| B4.22 Preservation of Trees or Bushland Vegetation   |  | Refer to the assessment within Part 7.4 of this report.  | Y | Y | N |
| B5.1 Water Management Plan   |  |  | Y | Y | N |
| B5.3 Greywater reuse   |  |  | - | - | - |
| B5.4 Stormwater Harvesting   |  |  | - | - | - |
| B5.5 Rainwater Tanks - Business, Light Industrial and Other Development  |  |  | - | - | - |
| B5.9 Stormwater Management - Water Quality - Other than Low Density Residential  |  |  | - | - | - |
| B5.10 Stormwater Discharge into Public Drainage System   |  |  | Y | Y | N |
| B5.11 Stormwater Discharge into Waterways and Coastal Areas  |  |  | - | - | - |
| B5.12 Stormwater Drainage Systems and Natural Watercourses   |  |  | Y | Y | N |
| B5.13 Development on Waterfront Land   |  |  | - | - | - |
| B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)  |  |  | - | - | - |
| B6.1 Access driveways and Works on the Public Road Reserve   |  |  | Y | Y | N |
| B6.2 Internal Driveways  |  |  | Y | Y | N |

|  |  |   |   |   |   |
|--|--|---|---|---|---|
| B6.3 Off-Street Vehicle Parking Requirements   | <b>Required number of car-parking spaces:</b> None (individual parking provisions are subject to future applications for residential development on approved lots) | <b>Proposed number of car-parking spaces:</b> Two (2) visitor car parking spaces proposed within the eastern side of the modified driveway<br><br>Residential parking would be subject to future assessment(s). | Y | Y | N |
| B6.6 On-Street Parking Facilities  |  |   | - | - | - |
| B6.7 Transport and Traffic Management  |  |   | Y | Y | N |
| B8.1 Construction and Demolition - Excavation and Landfill   |  |   | Y | Y | Y |
| B8.2 Construction and Demolition - Erosion and Sediment Management   |  | Subject to standard conditions irrespective of submissions.   | Y | Y | N |
| B8.3 Construction and Demolition - Waste Minimisation  |  |   | Y | Y | Y |
| B8.4 Construction and Demolition - Site Fencing and Security   |  |   | Y | Y | Y |
| B8.5 Construction and Demolition - Works in the Public Domain  |  |   | Y | Y | Y |
| B8.6 Construction and Demolition - Traffic Management Plan   |  | Not deemed to be applicable by the applicant but addressed by recommended conditions in the event that 100m <sup>3</sup> + of material requires importation and/or removal/ to/from the site.                   | Y | Y | Y |
| <b>Section C Development Type Controls – C1 Design Criteria for Residential Development</b>                  |  |   |   |   |   |
| C1.3 View Sharing  |  | Not applicable, however issues within submissions are discussed within Part 5 of this report.   | - | - | N |
| C1.13 Pollution Control  |  |   | - | - | N |
| <b>Section C Development Type Controls – C4 Design Criteria for Subdivision</b>                              |  |   |   |   |   |
| C4.1 Subdivision - Protection from Hazards   |  |   | Y | Y | N |
| C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities  |  |   | Y | Y | N |
| C4.3 Subdivision - Transport and Traffic Management  |  |   | Y | Y | N |
| C4.4 Subdivision - Public Roads, Footpath and Streetscape  |  |   | - | - | - |
| C4.5 Subdivision - Utility Services  |  |   | Y | Y | N |
| C4.6 Service and delivery vehicle access in subdivisions   |  |   | Y | Y | N |
| C4.7 Subdivision - Amenity and Design  |  |   | Y | Y | N |
| C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots |  |   | - | - | - |
| <b>Section D Locality Specific Development Controls – D10 Newport Locality</b>                               |  |   |   |   |   |
| D10.1 Character as viewed from a public place  |  |   | Y | Y | N |

**7.5B - Detailed assessments of relevant provisions within Pittwater 21 DCP**

**NOTE:** Sections of the DCP relating to biodiversity and geotechnical hazards are assessed within Part 7.4D of this report.

#### A4.10 Newport Locality

Most desired character requirements relate to residential development that is not proposed by the subject application. The proposed development would satisfy relevant character requirements as follows:

- Ensuring that future allotments would be serviced by adequate infrastructure;
- Designing allotments that would be safe from hazards; and
- Siting residential allotments in a location that would allow future designs to be integrated with the landscape.



**Figure 4:** A photograph of the subject site and surrounding area as viewed from the eastern side of Burke Street, Newport. For reference, the dwelling at 87 Hillside Road is outlined by the red box.

It is unlikely that proposed and/or future development would have a significant visual impact on the area, despite concerns within numerous submissions. The proposed development and/or future residential development would not be visible from existing public areas above the site (i.e. along Kanimbla Crescent and Wollombi Road). Further, while the designs of future dwellings would be subject to future assessments, the proposed subdivision would not front any public road reserve; visual impacts from surrounding public areas would likely be mitigated by the following:

- The large dwelling and associated landscaping at 87 Hillside Road would largely screen proposed/future development from the Hillside Road road reserve (refer to Figure 2); and
- Vegetation both on and around the subject site would at least partially screen future development from public areas downhill and towards the southeast (i.e. Porter Reserve and Newport Rugby Club; refer to figure 4).

Anticipating impacts of the completed dwelling construction on the site (together with tree loss attributable to APZ maintenance) is relevant to the assessment of this subdivision application. The proposed subdivision and subsequent dwelling construction will disrupt the existing amphitheatre of vegetation that is appreciated in the locality surrounding Hillside Road and Porters Reserve.

In the above photo, a number of leafless coral trees can be depicted in the area to the right of the existing dwelling at 87 Hillside Road. The location of these coral trees (planted just below the level of the driveway), provide a guide to the understanding the areas of canopy that will be impacted as viewed from Porters Reserve.



Based on an understanding of the APZ locations, it is anticipated that some canopy marginally below and above the level at which these coral trees are viewed will be impacted. New dwellings will be visible in this area. Significant bands of canopy will be maintained above, below and to the west of the disturbed area, and will be protected and enhanced through the implementation of the vegetation management plan.

Relevantly, the expression of the desired future character within the locality statement of Pittwater DCP 21 includes as follows:

*“Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of the land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment...”*

The anticipated development of the land is for sensitively designed residential purposes under the E4 zoning. Lot and building envelope sizes proposed are significantly greater than required, which assists in providing greater scope for appropriate development in the area of the site that is largely already disturbed, and as close as possible to the approved driveway.

The balance required by the locality statement is achieved. Whilst the development of the site in the manner proposed comes with impact, it also represents an opportunity to rehabilitate parts of the site already degraded, and to establish a management plan to sustain and improve the remaining high quality environment into the future.

#### B2.2 Subdivision - Low Density Residential Areas

The areas of each allotment have been assessed within Part 7.4C of this report. Subdivision controls within Part B2.2 of the DCP that apply to the proposal are assessed within the following table:

| Control  | Comment   | Compliance |
|--|---|------------|
| Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.   | All allotments would have proposed depths of at least 35m.  | YES        |
| Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.  | All allotments would have proposed width at respective front building lines of at least 24m   | YES        |
| Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 2 or 3 on the Landscaped Area Map shall have a minimum lot width at the building line of 15 metres.   | Not applicable; the site is within Landscaped Area 1.   | N/A        |
| Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot width at the building line of 9 metres at the waterfrontage.  | Not applicable.   | N/A        |
| Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services. | As assessed within Part 7.4 of this report, the proposed subdivision would not propose unreasonable impacts on the natural environment and would be designed to be safe from hazards. | YES        |

|   |  |            |
|---|--|------------|
|   | Further, the proposed subdivision would provide adequate access and services to all proposed allotments. Aboriginal heritage considerations would be subject to recommended conditions.  |            |
| A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s). | Variation proposed; refer to assessment below.   | <b>NO</b>  |
| The minimum area for building shall be 175m <sup>2</sup>  | All proposed allotments contain 200m <sup>2</sup> building envelopes; development within such areas would contain side and rear setbacks that would comply with P21 DCP Part D controls. | <b>YES</b> |

As indicated above, the proposed development would satisfy most development controls, however the applicant proposes a variation to requirements which seek to limit the slope of new allotments to 16.7 degrees (30%), as measured between the highest and lowest points of the slope. Justifications provided by the applicant are summarised as follows:

- The slope within proposed development footprint are less than 30%;
- All proposed allotments are consistent with both the desired character of the Newport locality and the subdivision layout of the surrounding area;
- The geotechnical assessment concludes that associated risks are acceptable;
- Adequate bushfire measures can be implemented to mitigate bushfire risks;
- The slopes would not be an impediment to stormwater drainage and disposal;
- Despite the slope, the proposed subdivision would be capable of providing adequate services and access to the proposed allotments; and
- A sloping site could enhance visual amenity from public areas, as retained vegetation and rock outcrops could enhance landforms and environmental features

The proposed noncompliance is associated with the heavily sloped topography of the area; while the applicant acknowledges that the slope of the proposed allotments would exceed 30%, they indicate the proposed building envelopes (i.e. allocated areas that would accommodate any future dwellings) would contain a slope of less than 30%. Each of these 200m<sup>2</sup> building envelopes would account for a relatively small area (i.e. between 9.8%-15.7%) of each allotment, therefore the majority of the area to be subdivided (i.e. areas containing the largest/most significant slopes) would not contain residential development.

An assessment of the slopes for each allotment and respective building envelopes is as follows:

| Allotment | Maximum proposed slope of each allotment (measured between the highest and lowest points of each lot, rounded to one decimal place) |                 | Average gradient under the building footprint of each allotment (rounded to one decimal place) |                 |
|-----------|---|-----------------|--|-----------------|
|           | Grade (degrees)   | Grade (percent) | Grade (degrees)  | Grade (percent) |
| <b>1a</b> | 27.2 degrees  | 51.4%           | 17.9 degrees   | 32.5%           |
| <b>1b</b> | 23.5 degrees  | 43.6%           | 15.5 degrees   | 27.9%           |
| <b>1c</b> | 17.1 degrees  | 30.8%           | 15.3 degrees   | 27.4%           |
| <b>1d</b> | 21.4 degrees  | 39.1%           | 15.4 degrees   | 27.6%           |

This assessment largely concurs with the applicant's claims, finding that three of the four proposed building envelopes would contain an average slope of less than 30%; while the average 32.5% envelope within proposed allotment 1a would not comply, it is considered to be a relatively minor (i.e. 8.3%) variation to the 30% slope requirement.

With regard to the above, the proposed development would still be capable of satisfying the outcomes of Part B2.2 as follows:

- Where applicable, the proposal would be consistent with desired locality characteristics;
- The existing natural environment would be largely maintained;
- Due to the locations of the proposed building envelopes in relation to the locations/heights of surrounding allotments, the proposed subdivision and future development would not obstruct views nor significantly affect vistas from public areas and/or residential sites;
- The built form (as currently proposed) would not dominate the natural setting; and
- The proposed subdivision would not significantly increase local population density in a manner that would exceed the capacity of local infrastructure and services.

Further, assessments by Council staff and the RFS have indicated that the proposed development would be capable of addressing site hazards (i.e. geotechnical and bushfire issues) irrespective of the noncomplying slopes. Comments from Council's Development Engineer also indicate that slopes of the allotments would not be an impediment to future development, as there are locations on the proposed allotments that would permit the construction of residential development, subject to consent.

Numerous submissions object to a lack of information about future residential development in relation to the slope of the site, specifically:

- Dwelling design and construction that would appropriately address applicable hazards;
- The influence that the slope of the site may have upon the design and appearance of future residential development and the subsequent impacts (i.e. character, height/bulk/scale, view loss, etc.) associated with such development.

Future proposals(s) for such development would be required to satisfy Council requirements. The height standard for residential areas within the locality is 8.5m; noting this and the very substantial elevation change (i.e. 25+m) between the proposed building envelopes and adjoining properties along Kanimbla Crescent and Wollombi Road, it is highly unlikely that future residential development on the allotments would adversely affect views from surrounding areas on Bilgola Plateau towards the ocean and Newport locality.

In summary, the proposed development would broadly comply with applicable development controls within Part B2.2 of the DCP. While the proposed slopes of the allotments would not comply with the DCP, the development would still be capable of satisfying the outcomes of Part B2.2 and would be unlikely to facilitate future residential development that would adversely affect the surrounding locality. For such reasons, the noncompliance is considered to be supportable.

### B3.2 Bushfire Hazard

Contrary to issues raised within submissions, a bushfire protection assessment (Report Ref. A15164, prepared by Travers Bushfire & Ecology, dated 18 May 2016) was submitted with the subject application. As indicated within Part 6 of this report, the subject application was referred to the NSW RFS; comments from this organisation confirmed that the proposal is satisfactory, subject to recommended conditions; Council's Natural Environment Officer has confirmed that such conditions are consistent with those recommended by Council staff. Recommended conditions would include title restrictions, and any future development proposal on the proposed allotments would need to consider such restrictions in addition to other relevant controls.



B5.1 Water Management Plan, B5.10 Stormwater Discharge into Public Drainage System and B5.12 Stormwater Drainage Systems and Natural Watercourses

The subject application proposes that stormwater would be discharged from the driveway<sup>1</sup> and proposed allotments to the main drainage depression via energy dissipating outlets. An assessment of this proposal by Council's Development Engineers indicates that such an arrangement is satisfactory, subject to recommended conditions.

Numerous submissions have raised concerns regarding the proposed stormwater management plan and impacts associated with future development. The design and specifications of stormwater systems within each allotment would depend on the final design of future dwellings, therefore it is not possible for onsite stormwater systems to be designed and constructed at the subdivision stage. Council's Development Engineer has advised that that design of stormwater systems for residential development would be subject to more onerous requirements, as the design of such systems would require appropriately designed reuse tanks and Onsite Stormwater Detention (OSD) systems. Future development on the allotments would require OSD systems to capture and release larger volumes of water into the drainage depression, however this would be mitigated by:

- Progressive releases of water over longer durations;
- Measures that would reduce runoff velocities during future residential construction; and
- Measures to maintain the quality of water for the life of the development.

In summary, the proposed development would be capable of satisfying the controls and outcomes of Parts B5.1, B5.10 and B5.12 of the DCP. It is not possible for residential stormwater systems to be designed at the subdivision stage, however the future design of such systems would be subject to more onerous requirements

B6.2 Internal Driveways, B6.3 Off-Street Vehicle Parking Requirements, B6.7 Transport, Traffic Management, C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities and C4.6 Service and delivery vehicle access in subdivisions

Submissions have objected to the proposal on the following parking and traffic-related grounds;

- There is insufficient parking within Hillside Road;
- Hillside Road does not have the ability to carry additional traffic;
- There would be issues with vehicles entering/exiting the driveway; and
- Parked vehicles within the Hillside Road road reserve would prevent service/emergency vehicles from obtaining access to the proposed subdivision.

An assessment by Council's Development Engineers has not identified any traffic-related issues associated with the proposed subdivision; further, trip data indicates that the development would have minimal impacts on travel.

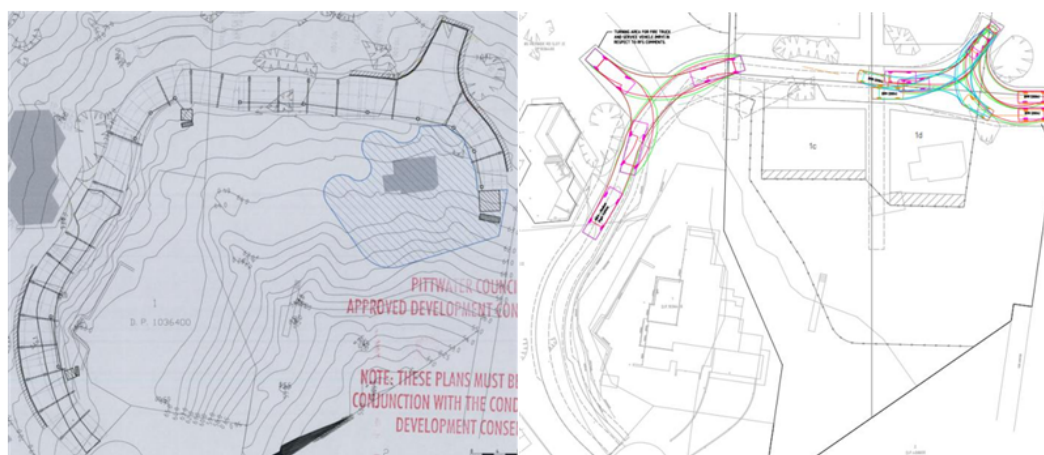
It is noted that submissions refer to issues with large vehicles accessing Hillside Road due to parked vehicles, however such an issue is associated with existing parking arrangements in Hillside Road and is not an issue that would be created by development within the subject site. The parking circumstances in Hillside Road are highly constrained, however this of itself will not prevent the development from being carried out utilising appropriately sized trade vehicles.

Off-street parking facilities are not required as no residential development is proposed, however two off-street visitor car parking spaces are proposed within the "Y" turning head at the end of the driveway. On-site car parking facilities associated with future dwellings would need to be in accordance with the DCP<sup>2</sup>, though the size of the building envelopes suggests that there would be sufficient space for such facilities to be provided by future development proposals.

<sup>1</sup> Drainage points from some sections of the driveway would remain unchanged from those approved by Development Consent No. N0274/09 and the associated construction certificate(s).

<sup>2</sup> Part B6.3 of Pittwater 21 DCP requires at least two (2) off-street parking spaces per dwelling.





**Figure 5:** Extracts of the approved plans from Development Consent No. N0274/09 (left) and proposed driveway plans (right) comparing the differences between the approved driveway and proposed modifications.

In response to concerns about road safety, the individual actions and movements of drivers and vehicles within public road reserves is not a matter that is capable of being assessed within the scope of the subject application. The driveway crossover's location remains unchanged from that approved by Development Consent No. N0274/09. The addition of new/modified internal turning bays (refer to figure 5) have been designed to permit manoeuvring of vehicles (including Medium Rigid Vehicles (MRVs)) within the subject site, thereby allowing the forward entry/exit of such vehicles without the need to manoeuvre within the cul-de-sac turning head; recommended conditions would also require that:

- The driveway be capable of accommodating the weight of MRVs, including fully loaded fire-fighting vehicles; and
- The applicant enter into a waste service agreement with Council allowing for Council's waste collection contractor to collect bins within the proposed subdivision. This requirement would address concerns raised by residents about the placement of bins from future dwellings within the cul-de-sac turning head.

Further, to address concerns regarding parking and associated manoeuvring/safety issues within the cul-de-sac turning head, Council's Development Engineer has recommended a condition requiring that:

- "No Parking" zones be imposed between the driveways at 81 and 87 Hillside Road; and
- Kerbs and gutters (with sealed pavements) be constructed between the driveways at 81 and 87 Hillside Road

The proposed development otherwise addresses applicable development controls and outcomes within Parts B6.2, B6.3 and B6.7 of the DCP and is considered to be satisfactory.

### C1.3 View Sharing

Part C1.3 of the DCP is not applicable to residential subdivisions, however view impacts associated with future residential development on the proposed allotments were raised within submissions. Future residential development would be subject to future assessments, however due to the 8.5m height standard, and the significant elevational changes between the proposed building envelopes and properties along Kanimbla Crescent and Wollombi Road, it is highly unlikely that future residential development would obstruct views from surrounding areas on Bilgola Plateau towards the ocean, foreshore areas and the Newport locality.

### C1.13 Pollution Control

Part C1.13 of the DCP is not applicable to the subject application, however pollution associated with runoff from any future gardens within the proposed allotments was raised within submissions. Conditions regarding air/land/water pollution are recommended regardless, and it is expected that similar such conditions would be recommended should future residential development be approved on the lots.

### C4.5 Subdivision - Utility Services

All proposed utility services are to be situated underground in accordance with the development controls. There are no overhead utility services within the road reserve in front of the site, therefore the requirement to underground such services is not applicable. A condition is recommended that would require the design of any driveway lighting to minimise impacts on surrounding residences and environmentally sensitive areas.

### C4.7 Subdivision - Amenity and Design

In addition to the controls within Part B2.2 of the DCP, development controls within Part C4.7 of the DCP also apply to the proposal and have been assessed within the following table:

| Control   | Comment  | Compliance |
|---|--|------------|
| <b>Subdivision design</b>   |  |            |
| Subdivision should be designed to ensure that:  |  |            |
| a) all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;  | As indicated within the assessments of Parts A4.10 and A10.1 of the DCP, the proposed design of the subdivision would be consistent with development in the surrounding area.  | <b>YES</b> |
| b) the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.   | As assessed elsewhere within this report, any impacts on the natural environment by the proposed works are considered to be acceptable.  | <b>YES</b> |
| <p>A comprehensive site analysis taking into account the following characteristics is to be carried out as part of the subdivision design process. This analysis should take into account the final development which will occur on the site as a result of the subdivision. The analysis and resultant subdivision design should address the following issues:-</p> <ul style="list-style-type: none"> <li>the slope, topography and any natural features (e.g. creeklines);</li> <li>trees and vegetation (particularly trees worthy of retention);</li> <li>viewlines from within the proposed lots and from adjoining properties;</li> <li>solar access to the subdivision site;</li> <li>the side, rear and front setbacks of future dwellings and structures in relation to the proposed new boundaries and development on adjoining properties;</li> <li>the visual impact of built development which will occur as a result of the subdivision process (building height, bulk and scale, visual impact of buildings);</li> <li>the provision of vehicular access to the future buildings on the proposed lots;</li> </ul> | <p>An assessment of the of the listed characteristics is as follows::</p> <ul style="list-style-type: none"> <li>Refer to assessments within Parts 7.5 and 7.4 of this report.</li> <li>Refer to the assessment within Part 7.4 of this report.</li> <li>Refer to assessments within Part 7.5 of this report.</li> <li>Solar access is obtainable to the subdivision, however specific impacts would be subject to the assessment of future application(s) for development on the proposed lots.</li> <li>The proposed setbacks of the building envelopes would ensure that future development complies with side and rear setbacks requirements.</li> <li>The proposed development would not have any significant visual impacts from public areas. Refer to assessments within Part 7.5 which relates to the appearance of the site from public areas.</li> <li>Refer to the assessment within Part 7.5 of this report.</li> </ul> | <b>YES</b> |

|   |  |            |
|---|--|------------|
| <ul style="list-style-type: none"> <li>the provision of landscaping and/or recreation space for each proposed lot;</li> <li>the provision of onsite car parking on each proposed lot;</li> <li>the provision of services to each lot, including sewerage, water, electricity, communications and gas (where available);</li> <li>the provision of emergency services to each (bushfire, fire brigade, ambulance).</li> </ul>  | <ul style="list-style-type: none"> <li>Provision of landscaped/POS area would be subject to future assessment of residential development, though such development would be capable of complying with relevant Part D controls.</li> <li>Subject to future assessment, though such development would be capable of complying with relevant Part C controls.</li> <li>Complies; to assessment within Part 7.5 of this report.</li> <li>Complies; to assessment within Part 7.5 of this report.</li> </ul>  |            |
| <p>In order to address these issues, a building envelope area is to be nominated on each proposed lot within which any future building is to be contained. The application should clearly demonstrate that a building envelope can be built on site that has regard for the following:</p> <ul style="list-style-type: none"> <li>retention of trees and bushland,</li> <li>vehicular access,</li> <li>provision of services,</li> <li>provision of emergency services,</li> <li>and safety from hazard,</li> <li>A building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.</li> </ul> <p>In this regard, an assessment of the buildings which will be erected as a result of the proposed subdivision is to be carried out demonstrating that the requirements and outcomes of the controls in this DCP which will apply to those buildings will be able to be complied with.</p> | <p>The proposed building envelopes have been assessed against relevant assessable criteria as follows:</p> <ul style="list-style-type: none"> <li>57 trees are proposed to be removed from the site. An assessment deems such works to be satisfactory, subject to conditions; refer to Part 7.4 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessment within Part 7.5 of this report.</li> <li>Complies; refer to assessments within Parts 7.4 and 7.5 of this report.</li> <li>The proposed building envelopes would be appropriately sited to accommodate residential development that should be consistent with the character of the area. Where applicable, the proposed development would be consistent with the desired development characteristics for the locality; refer to relevant assessments within Part 7.5 of this report.</li> </ul> <p>The design of dwellings on the proposed allotments would be subject to a separate assessment(s). The layout of the proposed allotments and building envelopes could however accommodate future development capable of complying with applicable development standards, controls and associated outcomes.</p> | <b>YES</b> |
| <b>Usable Site Area</b>   |  |            |
| Where a right-of-carriageway to another lot is provided over a lot, the width of that right-of-carriageway shall not be more than 20% of the required minimum width of the lot over which it is located.  | Not applicable   | N/A        |
| Where an allotment has a boundary dimension of 6.5 metres or less to a road, then the site area of the allotment shall be increased by 20% over that required for the area.   | Not applicable   | N/A        |

In summary, the proposed development satisfies the applicable development controls and outcomes of Part C4.7 of Pittwater 21 DCP.

D10.1 Character as viewed from a public place

The proposed development would satisfy controls requiring that general services be situated underground; other controls within Part 10.1 of the DCP are not applicable and/or capable of being assessed, as no residential building works are proposed. Most outcomes are also not applicable as they are not capable of being assessed within the context of the subject application. As indicated within the assessment of Part A4.10 of the DCP (see above), the proposed subdivision layout is consistent with the desired character of the area, as the layout of the proposed allotments are similar with that of the surrounding area, the design of the allotments would be safe from hazards and the proposed placement of the building envelopes would facilitate development consistent with applicable development standards and controls.

**8.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of applicable planning legislation, planning instruments and policies as listed within Part 7.1 of this report. Twenty three submissions were received which objected to the proposed development; comments and issues raised within these submissions have been addressed within Parts 5 and 7 of this report.

This assessment has found that proposed development is mostly consistent with the relevant statutory and policy controls and outcomes. It is acknowledged that the site forms part of an environmentally sensitive area, however the building envelopes within the proposed allotments would be situated within an area of the subject site that is already highly disturbed. This assessment has found that impacts associated with the proposed development would be acceptable, provided that demolition/construction works and ongoing management of the proposed allotments are undertaken in accordance with recommended conditions of consent.

While the slope of the proposed allotments would exceed the maximum requirements stipulated by the DCP, the layouts of the allotments would not be inconsistent with other residential development within the locality. Any future development on the proposed allotments (if approved) would be subject to future assessment(s) under applicable statutory and policy controls and outcomes; the size and slope of the proposed building envelopes could reasonably accommodate future residential development and associated utilities that would be consistent with the desired characteristics of the locality and which would be capable of satisfying applicable development standards, controls and outcomes. Further, assessments by Council officers and the NSW Rural Fire Service concluded that hazards affecting the site could be appropriately managed, subject to recommended conditions attached below. For these reasons and due to the otherwise high level of compliance with other development controls, the noncomplying slope of the proposed allotments should not warrant the refusal of the subject development application.

In summary, the proposal is consistent with the relevant statutory and policy controls and outcomes (refer to relevant assessments above). The impacts associated with the proposed subdivision are considered to be acceptable and supportable subject to recommended conditions. The application is therefore recommended for approval.

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#### RECOMMENDATION OF PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 **grant consent to** Development Application N0317/16 for the subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision at 62 and 85 Hillside Road, Newport (Lot 1, DP 408800 and Lot 2, DP 1036400), subject to the recommended conditions attached to this report.

#### Report prepared by

Tyson Ek-Moller  
**A/ PRINCIPAL PLANNER**  
**PLANNING AND ASSESSMENT**

**CONSENT NO: N0317/16**  
**ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS**  
**AMENDED)**  
**NOTICE TO APPLICANT OF DETERMINATION**  
**OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:  
CARISTE PTY LTD  
PO BOX 7099  
MCMAHONS POINT NSW 2060

Being the applicant in respect of Development Application No. N0317/16

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application No **N0317/16** for:

**Subdivision of 62 Hillside Road into 4 residential lots plus civil and landscaping works to 62 and 85 Hillside Road to facilitate the subdivision**

**At: 62 HILLSIDE ROAD, NEWPORT NSW 2106 (Lot 1 DP 408800) 85 HILLSIDE ROAD, NEWPORT NSW 2106 (Lot 2 DP 1036400)**

**Decision:**

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

**Plans:**

- Coversheet, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-A000, Project No. P1203617, Rev. C, dated 7 July 2016
- General Notes, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-A010, Project No. P1203617, Rev. B, dated 3 June 2016
- Sediment and Erosion Control Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-B300, Project No. P1203617, Rev. C, dated 7 July 2016
- Sediment and Erosion Control Details, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-B310, Project No. P1203617, Rev. B, dated 3 June 2016
- Demolition Plan, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-B500, Project No. P1203617, Rev. C, dated 7 July 2016
- Earthworks Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-C100, Project No. P1203617, Rev. C, dated 7 July 2016
- Earthworks Cut & Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-C600, Project No. P1203617, Rev. C, dated 7 July 2016

- Driveway Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-D100, Project No. P1203617, Rev. C, dated 7 July 2016
- MC01 Longitudinal Section, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-D200, Project No. P1203617, Rev. B, dated 3 June 2016
- MC01 Typical Sections, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-D201, Project No. P1203617, Rev. B, dated 3 June 2016
- Driveway Cross Sections Sheet 1, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-D600, Project No. P1203617, Rev. B, dated 3 June 2016
- Driveway Cross Sections Sheet 2, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-D601, Project No. P1203617, Rev. B, dated 3 June 2016
- Swept Path Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-DZ00, Project No. P1203617, Rev. C, dated 7 July 2016
- Tree Plan (Layout 02), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-F300, Project No. P1203617, Rev. C, dated 7 July 2016
- Sewer and Water Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-H200, Project No. P1203617, Rev. C, dated 7 July 2016
- Subdivision Plan, prepared by Martens & Associates Pty Ltd, Drawing No. PS03-A400, Project No. P1203617, Rev. B, dated 23 November 2016
- Drainage Plan, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-E200, Project No. P1203617, Rev. D, dated 23 November 2016
- Energy Dissipator/Rip Rap Typical Details, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-E400, Project No. P1203617, Rev. A, dated 23 November 2016
- On-Site Detention Plan (Layout 01), prepared by Martens & Associates Pty Ltd, Drawing No. PS02-E500, Project No. P1203617, Rev. D, dated 23 November 2016
- OSD Catchment Plan Drains Model and Result, prepared by Martens & Associates Pty Ltd, Drawing No. PS02-E501, Project No. P1203617, Rev. A, dated 23 November 2016
- Details and Levels over Lot 1 in D.P. 408800 & Lot 2 in D.P. 1036400, prepared by Paul Keen & Company, Ref. 9499P, dated 30 October 2015

**Documents:**

- Aboricultural Impact Assessment, prepared by Footprint Green Pty Ltd, dated 22 June 2016
- Vegetation Management Plan, prepared by Cumberland Ecology, Report Ref. 15023RP2, Rev. 2 dated 22 June 2016

- Vegetation Management Plan Advice, prepared by Cumberland Ecology, dated 25 November 2016
  - Lot 1a Vegetation Management Plan Sub-plan, prepared by Cumberland Ecology, dated 25 November 2016
  - Lot 1b Vegetation Management Plan Sub-plan, prepared by Cumberland Ecology, dated 25 November 2016
  - Lot 1c Vegetation Management Plan Sub-plan, prepared by Cumberland Ecology, dated 25 November 2016
  - Lot 1d Vegetation Management Plan Sub-plan, prepared by Cumberland Ecology, dated 25 November 2016
- Species Impact Assessment, prepared by Cumberland Ecology, Report Ref. 15023RP3, Rev. 3 dated 23 June 2016
- Bushfire Protection Assessment, prepared by Travers Bushfire & Ecology, File No. A15164, dated 18 May 2016
- Geotechnical Assessment, prepared by Martens & Associates Pty Ltd, Ref. No. P1203617JR04V01, Rev. 1, dated 9 June 2016
- Preliminary Site Investigation, prepared by Martens & Associates Pty Ltd, Ref. No. P1203617JR02V01, Rev. 1, dated 7 June 2016
- Aboriginal Survey for Aboriginal Sites, prepared by Jo McDonald Cultural Heritage Management Pty Ltd, dated 30 May 2002

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent \_\_\_\_\_

Mark Ferguson  
INTERIM GENERAL MANAGER  
Per:

**Conditions of Approval**

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

**Note:** Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.



**A. Prescribed Conditions:**

1. This development consent does not approve and/or regularise any new development on the site that is not indicated on the approved plans and/or subject to conditions within this consent. Consent shall be sought for any development on approved Lots 1a, 1b, 1c and 1d that is not:
  - Approved by this consent; and/or
  - Exempt development.
2. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
3. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
4. A sign must be erected in a prominent position onsite only showing:
  - A. The name, address and telephone number of the Principal Certifying Authority for the work, and
  - B. The name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - C. That unauthorised entry to the work site is prohibited.

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

5. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - A. in the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  - B. in the case of work to be done by an owner-builder:
    - i. The name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

- C. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information
6. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
7. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
8. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. Any power lines and/or electricity infrastructure within the site shall be located underground. New electrical connections to the site are to be carried out using underground cabling.
2. Any lighting for the driveway shall be designed as follows:
- Lighting is to illuminate the driveway only, and shall be designed/shielded to prevent light being projected up/into vegetated areas;
  - Any lighting is to be designed and/or shielded to prevent disturbance to surrounding residential properties.
3. Any retaining wall associated with the subdivision and/or driveway shall be constructed with sandstone and/or sandstone-like external materials and finishes.
4. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
5. The landowner must comply with all aspects of the approved Vegetation Management Plan and Sub-plans (Cumberland Ecology, June 2016 and November 2016) and over the life of the development.

6. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for noxious/environmental weed lists.
7. No environmental weeds are to be planted on the site. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for environmental weed lists.
8. In accordance with Part B4.22 (Protection of Trees and Bushland Vegetation) of Pittwater 21 Development Control plan, all existing trees as indicated in the approved Arborist Report shall be retained (except where Council's prior written consent has been obtained for trees that stand within the envelope of approved development areas and removal is approved through an arborist report). For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
9. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
10. Fencing is to be erected along the boundary line between Management Zone 1 and 3 for those lots identified as Lot 1a and 1b.
11. Any vegetation planted onsite is to be consistent with:
  - Species listed in the Vegetation Management Plan
  - Species listed from the Endangered Ecological Community
12. No water pollution shall result from the operation of any plant or equipment or activity carried out.
13. No emissions of air pollution shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
14. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
15. All utility services including overhead power supply and communication cables to service the lots to be created are to be placed underground.
16. Fire hydrants are to be provided in all proposed roads and adjoining public road reserves in accordance with the requirements of Sydney Water and the NSW Rural Fire Service.

17. Street lighting facilities to the development street frontages of the site and to the existing Public Road reserve adjacent to the development site are to be provided at the full cost of the developer and in accordance with the requirements of Energy Australia.
18. Where relevant, all appropriate infrastructure is to be provided to service the proposed lots, including roads and accessways, drainage facilities, water management facilities, reticulated water, reticulated sewerage, electricity, gas and telecommunication services.

**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

**Note:** All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The applicant is to consult with Sydney Water to establish whether there are any Section 73 Compliance Certificate requirements for this proposal, under the provisions of the *Sydney Water Act, 1994*. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the Construction Certificate application.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.



4. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
  - A. after excavation for, and prior to the placement of, any footings, and
  - B. prior to pouring any in-situ reinforced concrete building element, and
  - C. prior to covering of the framework for any floor, wall, roof or other building element, and
  - D. prior to covering waterproofing in any wet areas, and
  - E. prior to covering any stormwater drainage connections, and
  - F. after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

5. Construction works approved by this consent must not commence until:
  - A. Construction Certificate has been issued by a Principal Certifying Authority
  - B. a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - C. at least 2 days notice, in writing has been given to Council of the intention to commence work.
6. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
7. A contribution of **\$60,000** is payable to Northern Beaches Council for the provision of public infrastructure and services pursuant to the Pittwater Section 94 Contributions Plan for Residential Development.

The contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate (whichever occurs first) or prior to the issue of the Subdivision Certificate where no Construction Certificate is required.

The proponent may negotiate with Council for the direct provision of facilities and services specified in the Section 94 Plan, the dedication of land or another material public benefit in lieu of full or partial payment of the monetary contribution. Any agreement shall be in accordance with the Pittwater Section 94 Contributions Plan for Residential Development. The agreement must be finalised, formally signed and in place prior to payment being due.

The Pittwater Section 94 Contributions Plan for Residential Development may be inspected at Council's Mona Vale office, 1 Park Street Mona Vale or on Council's website.

Cashier Codes:

SOPS – \$24,000

SLEL – \$6000

SCSF – \$10,500

SVSS – \$19,500

8. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
9. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).

**Note:** Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.

10. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
11. Engineering plans and specifications for all roads, drainage and other civil engineering works within an existing Public Road reserve must be submitted and approved in writing by Northern Beaches Council prior to submission to the Accredited Certifier or Council of the Construction Certificate application.

Payment of the Engineering Plan Assessment fee (in accordance with Councils adopted Fees and Charges) is required prior to Council releasing the approved engineering plans.

The installation of traffic facility signs and markings, including parking signs and speed restrictions will require the approval of Council prior to commencement of installation.

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

**Note:** It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

**Note:** This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- A. Protection of site workers and the general public.
- B. Erection of hoardings where appropriate.
- C. Asbestos handling and disposal where applicable.
- D. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. The following facilities must be provided on the site:
  - A. toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - B. a garbage receptacle for food scrapes and papers, with a tight fitting lid.

Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.

5. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
6. Where possible, waste materials generated through any demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

7. The site must be fenced throughout demolition and/or construction works; such fencing must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
8. Where site fill material is necessary, any fill materials must:
  - A. Be Virgin Excavated Natural Material (VENM) only, as approved under the Department of Climate Change "General Resource Recovery Exemption ;and
  - B. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
9. Native plants located within the zone of construction (specifically Trees 43, 44, 45, 46 as identified in the arborist report) are to be translocated by a suitably qualified person into an undisturbed area onsite where possible (based on size and viability). A Bushland Management Consultant is to certify that native plants have been adequately translocated prior to the commencement of works.
10. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Footprint Green, dated 22/6/16 are required to be complied with before and throughout the development period, particularly with regard to the following:
  - A. Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;



- B. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
  - C. All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
  - D. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
  - E. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.
  - F. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report (Footprint Green, 22/6/16) are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Subdivision Certificate.
11. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.
- Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
12. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
13. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
14. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

15. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
16. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
17. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
18. No works are to be carried out in Council's Road Reserve without the written approval of the Council.

**Note:** Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.

19. No skip bins or materials are to be stored on Council's Road Reserve.
20. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
  - A. The builder's name, builder's telephone contact number both during work hours and after hours.
  - B. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
  - C. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
  - D. That no skip bins or materials are to be stored on Council's Road Reserve.
  - E. That the contact number for Northern Beaches Council for permits is 9970 1111.
21. Construction access to the property is to be via the approved driveway only.

22. If/where the volume(s) of excavated materials to be transported from the site or the importation of fill material to the site is equal to 100m<sup>3</sup> or greater, a satisfactory construction traffic management plan (CTMP) shall be prepared by a suitably qualified traffic consultant and submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
  - A. Quantity of material to be transported
  - B. Proposed truck movements per day
  - C. Proposed hours of operation
  - D. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
  - E. Location of on/off site parking for construction workers during the construction period.
23. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 *The Demolition of Structures*. The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility. All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

**F. Matters to be satisfied prior to the issue of Subdivision Certificate:**

**1. Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- A. At the issue of a subdivision certificate, a positive covenant and restriction to the land use shall be created over the proposed lots pursuant to Section 88 of the *Conveyancing Act 1919*. The instruments shall prohibit the construction of residential dwellings outside the proposed building envelopes and require land to be managed as an inner protection area (IPA) as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2). The IPA shall be managed as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the instruments.

- B. At the issue of a subdivision certificate, a restriction to the land use shall be placed on adjoining Lot 2/1036400 to the west of the subject site requiring the provision of asset protection zones (APZs) to the west and north west of the proposed building envelope on proposed Lot 1(a), as indicated on the drawing titled Schedule 1 - *Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2). These APZs shall be maintained as outlined within Section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the covenant.
- C. At the issue of a subdivision certificate, a positive covenant pursuant to Section 88 of the *Conveyancing Act 1919* shall be placed on the proposed lots which requires the ongoing implementation of the measures proposed in the vegetation management plan prepared by Cumberland Ecology referenced 15023RP and dated June 2016 for the site. Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the covenant.

**2. Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- A. New water, electricity and gas services shall comply with Section 4.1.3 of *Planning for Bush Fire Protection 2006*.

**3. Access**

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

- A. Proposed road(s) shall comply with the following requirements of Section 4.1.3(1) and Section 4.1.3(2) of *Planning for Bush Fire Protection 2006*:
  - G. Road(s) shall be two wheel drive, all weather roads, with a carriageway 6.5 metres minimum kerb to kerb.
  - H. Any construction of the minimum carriageway width, due to existing site constraints, shall be no less than 3.5 metres for no greater than 30m along the access road.
  - I. Passing bays shall be 20 metres long by 2 metres wide, making a minimum trafficable width of 6 metres at the passing bay.
  - J. Dead end roads shall be clearly signposted as dead end and direct traffic away from the hazard.



- K. Dead end roads shall incorporate the proposed 'Y' tuning head as indicated on the drawing titled *Schedule 1 - Bushfire Protection Measures* prepared by Travers bushfire Bushfire & Ecology dated 19/05/2016 (Issue 2).
  - L. Roads shall have a cross fall not exceeding 3 degrees.
  - M. Curves of roads (other than perimeter roads) shall provide a minimum inner radius of 6 metres.
  - N. the minimum distance between inner and outer curves shall be 6 metres.
  - O. Maximum grades for sealed roads shall not exceed 15 degrees and an average grade of not more than 10 degrees of other gradient specified by road design standards, whichever is the lesser gradient.
  - P. The capacity of road surface and bridges shall be sufficient to carry fully loaded fire fighting vehicles (approximately 25 tonnes for areas with reticulated water, 28 tonnes or 9 tonnes per axle for all other areas).
  - Q. Roads directly interfacing the bush fire hazard vegetation shall be provided with roll top kerbing to the hazard side of the road.
  - R. A minimum vertical clearance of 4 metres shall be provided to any overhanging obstruction, including tree branches.
- B. Tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report (Footprint Green, 22/6/16) are to be certified by the consulting arborist as being adequately retained throughout the construction process and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Subdivision Certificate.
- C. The Bushland Management Consultant to certify that:
- A. Native plant selection and planting as per Plan (Vegetation Management Plan and sub-plans, Cumberland Ecology, June and November 2016) has been completed,
  - B. All actions prescribed in the approved Vegetation Management Plan and sub-plans have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan, and
  - C. That areas/features requiring protection have been adequately protected and are in an acceptable condition.
4. "Restriction on the use of the land" and "Positive Covenants" as proposed in the letter from Cumberland Ecology (November 2016) shall be created prior to the issue of the Subdivision Certificate. The body empowered to release, vary or modify the terms of the Restriction on the use of the land and Positive Covenant shall be Northern Beaches Council. Such restrictions shall enforce the following:

- No development shall be permitted on lots burdened within the restricted development area shown as Management Zone 1 and 2 in Figures 1-5 in appendix A to the letter from Cumberland Ecology (November 2016).
  - Compliance with the Vegetation Management Plan prepared by Cumberland Ecology (2016) relating to the restricted development area shown as Management Zone 1 and 2 in Figures 1-5 in appendix A to the letter from Cumberland Ecology (November 2016).
5. At the issue of a subdivision certificate, a positive covenant and restriction to the land use shall be created. The instrument shall prohibit domestic pet animals from entering wildlife habitat areas and areas identified as Management Zone 1 in the vegetation management plan at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times. The body empowered to release, vary or modify the terms of the Restriction on the use of the land and Positive Covenant shall be Northern Beaches Council.
6. A Certificate is to be submitted to the Principal Certifying Authority with the Subdivision Certificate application by a qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Private Certifying Authority that the driveway has been constructed in accordance with the approved plans and relevant conditions of Development Consent.
7. Prior to the issue of any subdivision certificate, a detailed design plan showing the following works within the public road reserve shall be submitted to, and approved by Council:
- A. Replacement of the existing parking restriction signs within the turning head with standard "No Parking" signs; this zone is to be extended from the driveway at 81 Hillside Road around the kerb line to the driveway at 60 Hillside Road; and
  - B. Kerbs and gutters with sealed pavement shall be constructed to the Hillside Road turning area between the driveway at 81 Hillside Road and the existing kerb and gutter adjacent to 87 Hillside Road.
8. Prior to the issue of any subdivision certificate, the applicant shall submit to the Principle Certifying Authority a waste service agreement from Council indicating that the proposed subdivision will be serviced under a deed to indemnify the contractor for collection on the private road.

9. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Subdivision Certificate application.
10. A plan showing details of the location of separate water, sewerage, electricity and telephone services to each lot is to be submitted to the Principal Certifying Authority, with the Subdivision Certificate application.
11. Appropriate easements are to be created where service lines or drainage lines pass through private property other than the lot which they benefit. These are created through the registration of the Plan of Subdivision.
12. A Restriction on Use of Land is to be created, burdening Lots 1a, 1b, 1c and 1d, the terms of which restrict future buildings within Lots 1a, 1b, 1c and 1d to the building envelopes and areas shown on the approved plans. Full details in this regard are to be submitted to Council on the final plan of Subdivision / and an accompanying Section 88B instrument. The creation of the Restriction on Use of Land is achieved through registration of the Plan of Subdivision.
13. Prior to the issue of any subdivision certificate, the applicant must submit a report from a practicing geotechnical engineer, such report is to address the following matters:
  - A. The classification, or - in the case of lots which have been subject to bulk filling - the reclassification of all lots on a lot by lot basis in accordance with Australian Standard AS 2870; and
  - B. Recommendation for appropriate footing systems on a lot by lot basis in accordance with Australian Standard AS 2870.
14. The following documents and payments are to be submitted to Council in a single package to ensure the efficient release of the Subdivision Certificate:-
  - A. Evidence of Payment of the Section 94 Contribution.
  - B. A copy of the Section 73 Compliance Certificate issued under the provisions of the Sydney Water Act, 1994.
  - C. Copies of the Subdivision Plans (original plus 6 copies).
  - D. The Private Certifying Authority Compliance Certificate. Each component of the works as outlined above are to be certified as being carried out in accordance with the relevant plans and documentation by suitably qualified professional persons as outlined in this development consent. In particular, the construction of the Water Management System is to be supervised and certified by person(s) with appropriate experience and expertise in Environmental Science, Hydrology and Hydraulics, and must be NPER registered members of the Institution of Engineers (Australia).

- E. Where Material Public Benefits are involved, a Bank Guarantee for the difference between the value of the Material Public Benefit (MPB) and the value of the MPB works constructed for that stage.
  - F. Work-as-executed plans for all structures or facilities which will be dedicated to Council or which are located within drainage easements or which will require ongoing maintenance by Council. The plans are to be in paper and electronic format (dwg or dxf file) and comprise at least the following:-
    - i. Boundary layout;
    - ii. Kerb and gutter, road pavement, footpaths, traffic devices, retaining walls;
    - iii. Signage (including type and wording), line marking;
    - iv. Easements, survey numbers and marks, reduced levels and co-ordinates;
    - v. Stormwater drainage, pipe sizes and types, pit sizes and types, subsoil drains;
    - vi. Water quality devices, ponds, creekline corridors, parkland, play equipment;
    - vii. Significant landscaping.
  - G. A security deposit of a value to be determined by Council is to be made to ensure rectification of any defects during the maintenance period. A maintenance period is to apply to all works to be dedicated to Council or which will require ongoing maintenance by Council. The maintenance period will apply for six (6) months after the issue of the Subdivision Certificate. In that period the applicant will be liable for any part of the works which fail to perform in the manner required by the relevant certifications, or as would be reasonable expected under the design conditions.
15. A copy of the Section 73 Compliance Certificate issued under the provisions of the Sydney Water Act, 1994, is to be forwarded to Council or the Private Certifying Authority with the Subdivision Certificate.
  16. Prior to issue of the issue of Subdivision Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
  17. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.



18. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Subdivision Certificate application.

**G. Advice:**

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au)
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.

8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
9. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.
10. Littoral Rainforest Endangered Ecological Community as listed on Schedule 1 of the NSW Threatened Species Act 1995 has been recorded on or near this property. Under the TSC Act it is an offence to harm Endangered Ecological Communities, Endangered Populations or Threatened Species. No unapproved site disturbance or other activities shall be carried out on the property which adversely impacts on threatened species or EEC's.



|                   |   |
|-------------------|---|
| ITEM 3.2          | 129 LAGOON STREET, NARRABEEN - DA2017/0335  |
| REPORTING OFFICER | Alex Keller   |
| TRIM FILE REF     | 2017/260286   |
| ATTACHMENTS       | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plan & Elevations |

## PURPOSE

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

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That Council (Northern Beaches Independent Assessment Panel) as the consent authority **approve** Development Consent No. DA2017/0335 for Demolition works, the construction of a residential flat building and strata subdivision on land at Lot 5 & 6 DP 4888 and Lot 7 DP 1082203, 129-133 Lagoon Street Narrabeen, for the reasons outlined in the report.

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**DEVELOPMENT APPLICATION ASSESSMENT REPORT**

|   |  |
|---|--|
| <b>Application Number:</b>                | DA2017/0335  |
| <b>Responsible Officer:</b>               | Alex Keller  |
| <b>Land to be developed (Address):</b>    | Lot 5 DP 4888, 129 Lagoon Street NARRABEEN NSW 2101<br>Lot 6 DP 4888, 131 Lagoon Street NARRABEEN NSW 2101<br>Lot 7 DP 1082203, 133 Lagoon Street NARRABEEN NSW 2101 |
| <b>Proposed Development:</b>              | Demolition works, the construction of a residential flat building and strata subdivision   |
| <b>Zoning:</b>                            | LEP - Land zoned R3 Medium Density Residential<br>LEP - Land zoned R3 Medium Density Residential<br>LEP - Land zoned R3 Medium Density Residential                   |
| <b>Development Permissible:</b>           | Yes  |
| <b>Existing Use Rights:</b>               | No   |
| <b>Consent Authority:</b>                 | Northern Beaches Development Assessment Panel – Central  |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | Anthony Ellis Boccanfuso<br>Julieanne Boccanfuso   |
| <b>Applicant:</b>                         | Anthony Ellis Boccanfuso   |
| <b>Application lodged:</b>                | 13/04/2017   |
| <b>Application Type:</b>                  | Local  |
| <b>State Reporting Category:</b>          | Residential - New multi unit   |
| <b>Notified:</b>                          | 28/04/2017 to 16/05/2017   |
| <b>Advertised:</b>                        | 29/04/2017   |
| <b>Submissions:</b>                       | 7  |
| <b>Recommendation:</b>                    | Approval   |
| <b>Estimated Cost of Works:</b>           | \$ 6,028,691.00  |

**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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant,

persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

#### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B2 Number of Storeys  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D8 Privacy  
Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone  
Warringah Development Control Plan - Appendix 1 Car Parking Requirements

#### **SITE DESCRIPTION**

|                                   |  |
|-----------------------------------|--|
| <b>Property Description:</b>      | <p>Lot 5 DP 4888 , 129 Lagoon Street NARRABEEN NSW 2101</p> <p>Lot 6 DP 4888 , 131 Lagoon Street NARRABEEN NSW 2101</p> <p>Lot 7 DP 1082203 , 133 Lagoon Street NARRABEEN NSW 2101</p>   |
| <b>Detailed Site Description:</b> | <p>The subject site consists of three (3) allotments located on the eastern side of Lagoon Street, Narrabeen, near the intersection of Malcolm Street.</p> <p>The three lots together form an "L" shaped site with a frontage of 45.72 metres (m) along Lagoon Street and a depth of 60.30m. The northern boundary is stepped in two sections of 30.48m and 29.81m. The eastern boundary is also stepped in two sections of 15.24m and 30.48m. The total site area is equal to 2,295.4 square metres (sqm).</p> <p>The site is currently contains three fibro-clad dwelling houses with detached garages and outbuildings. There are some scattered medium sized trees on the site and no rock outcrops or remnant bushland. The land is within a coastal area containing deep sandy loam soils. The site has a low embankment where it falls to the road kerb at the front but is generally flat across the site except for a low sag-point near the middle of the site. The land is 150m from Narrabeen beach and 150m south of Narrabeen Lagoon, but is not subject to flooding. The site is within "Area A" for landslip risk and has a low risk of acid sulfate soils or groundwater intrusion.</p> <p>Surrounding development consists of a mix of single dwelling houses and residential flat buildings in landscaped settings. Adjoining the southern boundary are 2 x 3 storey residential flat buildings and to the north of the site there are two-storey detached dwelling houses. Development to the west of the site predominantly consists of two-storey detached dwellings also. Development to the east of the site consists of part two-storey town houses and</p> |

apartments, therefore coastal views are restricted by these buildings from within the subject site.

Redevelopment in the area is occurring, where appropriate in the R3 Medium Density zone, transitioning from existing older low density housing stock to new medium density apartments. A group of shops (shop top housing) at North Narrabeen is located 100m east of the site in the vicinity of the North Narrabeen Surf Life Saving Club.

Map:



## SITE HISTORY

**Development Application No.DA2016/1061** for demolition works, construction of a residential flat building and strata subdivision was lodged with Council on 12 October 2016. Council requested withdrawal of the application on 12 January 2017, due to inconsistencies with Warringah DCP 2011 against the two storey height control, rear boundary setback, landscaped open space control, privacy controls and site facilities.

The application also triggered *SEPP 65 Design Quality of Residential Apartment Development* raising concerns in terms of context and neighbourhood character, built form and scale, landscaping and amenity considerations. The proposal also raised objections from more than 10 surrounding residents.

The applicant withdrew the application on 13 February 2017 to enable redesign work to address the issues identified.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks development consent for demolition of three dwelling houses, outbuildings and removal of trees across three (3) separate Lots. Following site preparation works the proposal involves

excavation and the construction of a residential flat building with basement car parking, two levels of residential apartments and a loft level with associated landscaping and site works.

Specifically, the development includes the following:

Basement Level

- Car parking for 35 vehicles (including 1 disabled persons space and 4 visitor car spaces);
- Bicycle parking;
- Residential storage areas (including a bulky goods storage area);
- Plant rooms;
- Lift and stairwell access/egress; and
- Sanitary facilities;
- Games / bedroom for Units 11 and 12;
- Rainwater tanks.

Ground Floor Level - RL9.050

- 4 x 1 bedroom apartments;
- 4 x 2 bedroom\* apartments;
- 4 x 3 bedroom\* apartments;
- Lift and stairwell access/egress;
- Pedestrian entry lobby and secondary entry;
- Vehicle entry to the basement from Lagoon Street;
- Landscaping and private courtyards;
- On-site stormwater detention system.

\*Note: "Media/Loft rooms" without suitable access to natural light and natural ventilation cannot comply with the BCA for use as bedrooms.

First Floor Level - RL12.10

- 4 x 1 bedroom apartments;
- 4 x 2 bedroom\* apartments;
- 4 x 3 bedroom\* apartments;
- Lift and stairwell access/egress;

Mezzanine Loft Level - RL14.70

- Loft space for Units 15 and 16 on first floor;
- Master bedrooms and bathrooms for Units 19 to 22 on the first floor;
- Master bedrooms, living room and bathrooms for Units 17 and 18 on the first floor.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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

| Section 79C 'Matters for Consideration'                                      | Comments   |
|--|--|
| Section 79C (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
|  |  |



| Section 79C 'Matters for Consideration'  | Comments   |
|--|--|
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument  | None applicable.   |
| Section 79C (1) (a)(iii) – Provisions of any development control plan  | Warringah Development Control Plan applies to this proposal.   |
| Section 79C (1) (a)(iia) – Provisions of any planning agreement  | None applicable.   |
| Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)   | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the | <p><u>Environmental Impact</u></p> <p>The environmental impacts of the development on the natural and built environment area addressed under the Warringah Development Control Plan section of this report.</p> <p>Generally, the subject site is not constrained by any natural features and is not</p>   |

| Section 79C 'Matters for Consideration'                               | Comments   |
|---|--|
| locality  | <p>subject to any threatened species, critical habitat, bushfire, heritage or shallow acid sulfate soils. The site is able to drain stormwater to Lagoon Street and the applicant has adequately addressed the issue of OSD requirements. The proposal is supported by Council's Development Engineers subject to appropriate conditions of consent contained within the Recommendation of this report.</p> <p>The proposal is for the construction of a two storey (with loft) residential flat building located within an area zoned R3 Medium Density Residential, which permits the proposed form of residential accommodation. The area is undergoing transition with a variety of housing stock in existence from existing low density residential housing to new medium density developments located within close proximity to the subject site.</p> <p>The proposal is not considered to result in unreasonable impacts to the adjoining and nearby lands, subject to conditions. The development will maintain consistency with the existing pattern of development, maintain the residential use of the site, maintain the reasonable sharing of views. Further, it will not create an unreasonable sense of building bulk that is inconsistent with adjacent medium density development. The building will not result in an unreasonable level of overshadowing nor result in any unreasonable level of privacy loss given the setbacks and screening provided. The impacts of privacy and overshadowing are consistent with a medium density urban environment.</p> <p>The subject site is located within close proximity to Narrabeen local centre and associated bus interchange's and stops along Pittwater Road which provide public transport services to the broader Northern Beaches area, Manly and Sydney Central Business District.</p> <p>The development of this site for residential purposes is not considered likely to impact on existing or future opportunities within the zone for public recreation or the use of public open space.</p> <p>Therefore, impacts upon the public domain are considered acceptable. Further, standard conditions of consent would be imposed to ensure the adequate disposal of building and construction waste material</p> <p><u>Social Impact</u></p> <p>The development is considered satisfactory in terms of potential social impact in the locality considering the residential character of the proposal and that the development will provide greater diversity to the housing stock of the Northern Beaches LGA.</p> <p><u>Economic Impact</u></p> <p>The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p> |
| Section 79C (1) (c) – the suitability of the site for the development | The land use zone of the area as R3 Medium Density Residential is reflective of the desired future character of the area and use of land.  |

| Section 79C 'Matters for Consideration'   | Comments  |
|---|---|
|   | <p>The subject site is located in an area that in recent time has undergone a transition from existing low density housing stock to new medium density housing in the form of surrounding complementary and compatible medium density land uses.</p> <p>Lagoon Street is characterised by a mix of low density (single houses) and medium density housing stock (up to 3 storeys). To the immediate north and north west of the site are residential flat buildings, to the immediate east and west of the site are single dwelling houses.</p> <p>In this regard, the development has been designed to a scale that is considered to be of a satisfactory transition to the adjoining residential dwellings and residential flat buildings.</p> <p>Given the proximity of the site to the Warriewood Shopping centre and Pittwater Road to the east, the site is considered suitable for access to services and public transport. In addition, the existing site has access to adequate utility services (water, sewer telecommunication's and electricity etc.)</p> <p>Further, the development maintains a suitable and compatible land use for the site and is not considered to result in unreasonable or adverse impacts on the adjoining properties.</p> |
| Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on "Public Exhibition" in this report.   |
| Section 79C (1) (e) – the public interest   | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.   |

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

| Name:  | Address:                                       |
|--|--|
| Mr Anthony Keith Ford                            | 134 Lagoon Street NARRABEEN NSW 2101           |
| Genevieve Fiona Robertson                        | 132 Lagoon Street NARRABEEN NSW 2101           |
| Ms Margaret Joan McKinnon                        | 10 Malcolm Street NARRABEEN NSW 2101           |
| Mrs Julie Margaret Simpson<br>Mr Jeffrey Simpson | 135 Lagoon Street NARRABEEN NSW 2101           |
| Miss Selina Zoe Martin                           | 6 / 123 - 125 Lagoon Street NARRABEEN NSW 2101 |

| <b>Name:</b>     | <b>Address:</b>                      |
|------------------|--------------------------------------|
| Mr Peter Lowther | 122 Lagoon Street NARRABEEN NSW 2101 |
| Mr Terry Rooney  | 12 Malcolm Street NARRABEEN NSW 2101 |

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

- **Traffic Safety and Parking Impacts**
- **Construction Impacts**
- **Building Height/Number of Storeys**
- **Landscaped Open Space**
- **Removal of Trees**
- **Building Bulk**
- **Loss of Privacy**
- **Loss of Sunlight**
- **Cost of Works**
- **Dilapidation Risks**
- **Site Consolidation / Isolation**
- **Noise Disturbance**
- **Compliance with SEPP 65**
- **Fire Safety**
- **Statement of Environmental Effects**
- **Land Values**

The matters raised within the submissions are addressed as follows:

#### **1. Traffic Safety and Parking Impacts**

Concern is raised regarding traffic congestion and increased demand for on-street parking as a result of the increased development and vehicular traffic on Lagoon Street, and surrounding streets.

Particular concerns have been raised regarding the existing traffic issues on Lagoon Street relating to on-street parking being at capacity, potential safety issues associated with the residential nature and width of the street, access and parking (including trailers) and service vehicle access.

Concern has also been raised regarding the required amount of car parking for the development as per the Warringah Development Control Plan and that this requirement is insufficient to serve the proposed development.

##### Comment:

The site currently accommodates three vehicle crossings and driveways, serving Lagoon Street. The development will reduce the number of crossovers by introducing a new double width access/egress point to enable safe access/egress from the development onto Lagoon Street. The redundant laybacks are to be removed and reinstated to allow kerbside parking.

Lagoon Street includes minimal parking restrictions and enables the two-way passing of traffic, including emergency vehicles and service vehicles. Council's Traffic Engineers have advised of no special requirements to increase parking restrictions / permanent traffic control devices in the vicinity of the site. It is noted that a number of submissions raise kerbside parking congestion as an issue and concern, including trailer parking.



Lawful parking of registered cars and trailers on Lagoon Street is not a matter that the development proposal is required to address, subject to the provision of adequate on-site residential parking. Where casual public on-street parking is hindering the access to other properties this is a matter for Council's Regulatory Compliance Team / Police to patrol the enforcement of these restrictions and is not an matter applicable to the merits of the building design.

Council's Traffic Engineer has reviewed the submitted Traffic Report and the proposed development and confirms that the traffic generated by the development will be within the environmental capacity of the local road network and will not have an adverse impact on the surrounding road network.

It is noted that a number of submissions raise concern regarding the required amount of car parking and that it is insufficient to serve this type of development. The requirements for car parking are calculated using the rates prescribed under *Appendix 1 - Car Parking* requirements of the WDCP 2011.

The development provides adequate off street car parking in accordance with the requirements specified under *Appendix 1 - Car Parking* requirements of the WDCP and therefore the amount of car parking provided is deemed appropriate.

These matters do not warrant refusal of the application.

## **2. Construction Impacts**

Concern is raised regarding traffic, noise and dust impacts during construction.

### Comment:

This matter has been addressed in the Recommendation of this report which contains a condition of consent requiring the preparation of a Construction Management Plan that identifies ways to mitigate noise and dust pollution and traffic impacts during excavation and construction phases of the development.

This matter does not warrant refusal of the application.

## **3. Building Height/Number of Storeys**

Concern is raised regarding the non compliance with *Clause 4.3 Height of Buildings Development Standard* under the WLEP 2011 and *Part B2 Number of Storeys* under the WDCP 2011.

### Comment:

The matter of non-compliance with the *Height of Buildings Development Standard* is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the Warringah Local Environmental Plan section).

In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 and Clause 4.6 of the WLEP and that there is sufficient environmental planning grounds to justify and support the variation in this instance.

The matter of non-compliance with *Part B2 Number of Storeys* is addressed under the Built Form Controls within this report (refer to *Part B2 - Number of Storeys* under the WDCP 2011 section).

In summary, the building is two-storeys in height with a loft element and compliant with the control

whereby the controls permit an attic or loft element wholly contained within the roof. The loft level is permitted to include dormer windows for light and ventilation and does not constitute a 'storey' as defined under the WLEP 2011.

This matter does not warrant refusal of the application.

#### **4. Landscaped Open Space**

Concern is raised regarding the non compliance with *Part D1 Landscaped Open Space and Bushland Setting* control under the WDCP 2011

Comment:

The matter of non compliance with *Part D1 Landscaped Open Space and Bushland Setting* is addressed in detail elsewhere in this report (refer to *Part D1 Landscaped Open Space and Bushland Setting* under the WDCP 2011 section).

In summary, the assessment of this application has found that the development achieves consistency with the underlying Objectives of *Part D1 Landscaped Open Space* and the variation is supported in this instance.

This matter does not warrant refusal of the application.

#### **5. Removal of Trees**

Concern is raised regarding the removal of trees located on the subject site particularly potential impact on "tree No.11" (*Bangalay*) near the eastern boundary.

Comment:

This matter has been addressed by Council's Landscape Officer (refer to the 'Referrals' section of this report).

In summary, Council's Landscape Officer has assessed the proposed tree removal and supports the retention of the subject trees, including tree No.11. Specific conditions are required to ensure adequate tree protection measures will be in place. The landscape plan includes a range of species required to ensure a landscaped setting for the building and that there is substantial replacement planting to be provided to assist in privacy screen planting.

This matter does not warrant refusal of the application.

#### **6. Building Bulk**

Concerns are raised that the proposal is excessive in building bulk and represents an overdevelopment of the site.

Comment:

The proposal maintains a dominant two storey appearance to the street and also when viewed from the rear and side boundaries. The roof element maintains minor elements of dormer windows and loft spaces within the hipped / gable roof form. Loft elements are permitted within the zone provided they are contained within the roof space.

The building (including basement elements) maintains appropriate setbacks to the side, rear and front boundaries in order to provide landscaped open space and spatial separation commensurate with surrounding development. Overall the building height, scale are broken up by architectural elements to address building bulk and provide visual interest.

Overall the building bulk is acceptable for the medium density zone and is consistent with similar apartment buildings in the vicinity of the site that have been developed pursuant to Warringah DCP 2011.

## **7. Loss of Privacy**

Concerns are raised that the proposal will create a loss of privacy to dwelling houses and apartments to the north, east and south of the site. Particular concern is raised with regard to the adequacy of boundary fencing to maintain privacy and the privacy for the upper level.

### Comment:

The plans show the use of landscaping and courtyard areas to maintain privacy to ground level units No.3, 4, 7, 8, 9 and 10. However, the proposal also includes access pathways near the side boundaries that will require suitable side boundary fencing of at least 1.8m for privacy. Submission details from adjacent neighbours have requested common boundary fencing up to 2.1m for enhanced privacy.

This issue is suitably addressed by conditions for replacement "capped and lapped timber fencing" where replacement is required. An extended fence height of up to 2.1m along the side boundaries can be achieved with spaced horizontal battens at the top of the fence for privacy where pathways are located along the side setback.

Privacy impacts from potential overlooking from the upper floor balconies is addressed by the use of privacy screens ('plantation' style), as the planter boxes show will not enable effective and adjustable privacy for occupants. Non-sliding screens are not recommended as their position cannot be adjusted to ensure the best privacy control by occupants.

Sliding privacy screens have been provided along the inside edge of the balconies for Units 14 to 23 where balconies face a side or rear boundary (Units 17, 18 and 24 will use a minimum of two sliding screens for the corner balcony).

Therefore, this issue is addressed by the inclusion of privacy screens by the applicant and does not warrant refusal of the application. (Note: The applicant was able to provide minor changes to plans / elevations (Rev C) to address privacy concerns).

## **8. Loss of Sunlight**

Concerns are raised that the building height and scale will cause a loss of sunlight in the afternoon periods, particularly to No.208-201 Ocean Street and No.12 Malcolm Street.

### Comment:

The submitted shadow diagrams prepared by *GartnerTrovato* dated 2/4/2017 demonstrate overshadowing impacts between 9am and 3pm on June 21. The private open space for balconies within No.127 Lagoon Street are west facing and overshadowing does not reduce solar access by more than 50% of this area between the 9am to 3pm on June 21. Strata units to the east (No.208-210 Ocean Street) of the site have north facing open space areas and while the proposal will affect sunlight in the

late afternoon, solar access is maintained in compliance with WDCP 2011.

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

#### 9. Cost of Works

Concerns are raised that the stated cost of works is not representative of the actual cost of works.

Comment:

The applicant has provided a detailed Cost Summary Report to support an accurate assessment of the proposal. This estimate is prepared by a registered and qualified architect pursuant to the plans prepared, calculated costs as per Clause 25J of the EP&A Regulations 2000 and GST inclusions.

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

#### 10. Dilapidation Risks

Concerns are raised that the proposed excavation works and associated construction activities may lead to subsidence along the boundary and dilapidation risks to adjacent private property assets.

Comment:

The proposal has been submitted with a Geotechnical Report prepared by *Crozier Geotechnical Consultants*, dated 30 March 2017. The report provides the following conclusive summary to site conditions in relation to geotechnical risks from the development work:

- *"The site investigation did not identify any existing landslip hazards whilst the proposed excavations can generally be completed with safe batter slopes in sandy soils. Therefore, the potential Risk to Property or Life from instability within the excavation is considered to be 'Acceptable', based on methods outlined in Appendix: C of the Australian Geomechanics Society (AGS) Guidelines for Landslide Risk Management 2007. The risk from instability within the proposed excavation is considered to be within 'Acceptable' levels due to the sandy nature of the soils and the depth to distance ratios of the excavations proposed. Through implementation of the recommendations of this report the development can be achieved with negligible impact to adjacent properties or structures."*

This issue is addressed by conditions to ensure the recommendations of the Geotechnical report are adhered to, and a detailed dilapidation report is prepared for all adjoining private property. Specific conditions and bonds are also applied to protect Council assets within the road reserve.

Therefore this issue does not warrant refusal of the application.

#### 11. Site Consolidation / Isolation

Concern is raised that the development site should be consolidated with No.135 Lagoon Street to prevent isolation of that property from future re-development options.

Comment:

This matter has been addressed in detail under the heading *Part D19 Site Consolidation in the R3 and IN1 Zone*. In summary, No.135 Lagoon Street retains an alternative option for site consolidation to the east to prevent isolation from re-development. The applicant has provided details of considerations made to achieve amalgamation with No.135 Lagoon Street, however no agreement was able to be



achieved.

While a preferred site consolidation outcome could not be achieved this issue does not warrant refusal of the application since an alternative option remains and concept considerations have been made to demonstration re-development potential of the adjacent single dwelling site.

## **12. Noise Disturbance**

Concern is raised that the proposal will create a loss of general amenity by the increased occupancy, including potential short-term holiday letting that will create residential noise disturbance to adjacent properties.

### Comment:

Issues associated with residential noise levels / living activity between residential land uses, associated with an apartment building, can be suitably managed using the By-Laws and Body Corporate Strata Management for the building, including the control of short-term letting. A condition is recommended to ensure the Body Corporate Strata By-Laws include provision to restrict short-term "holiday letting" within the building, as this is a prohibited use within the zone which also raises concerns associated with car parking, security and noise amenity. It is noted that the NSW Government has recently released a draft 'Options Paper' on possible management framework of allowing short-term holiday letting in residential areas, however until this initiative is adopted into the State's planning framework alternative mechanisms such as the use of Strata By-Laws assist to manage this issue.

The control of noise associated with fitted equipment to the building, such a lift plant / air conditioners or the like, is suitably managed by conditions to ensure no unreasonable noise disturbance to adjacent properties. The building is a residential apartment building within the R3 Medium Density zone and is consistent with the pattern of development occurring in the zone pursuant to Warringah LEP 2011 and Warringah DCP 2011.

Adjustable sliding privacy screens ("plantation" style) are included for upper level balconies and replacement "lapped and capped" boundary fencing to assist in minimising amenity impacts from the use of outdoor private open space adjacent to neighbouring properties.

This issue is addressed by conditions and does not warrant refusal of the application.

## **13. Compliance with SEPP 65 (Design Quality of Residential Apartment Development)**

Concern is raised that the development should be subject to compliance with SEPP 65 and the *Apartment Design Guide*.

### Comment:

The proposed development is two storeys with a loft / attic level and proposes 24 dwellings. Pursuant to Warringah LEP 2011 (Standard Instrument LEP) the loft level is excluded from the definition of a 'storey' whereby it is wholly contained within the roof-space. Therefore, the proposal is not subject to SEPP 65 or the *Apartment Design Guideline* due to the Clause 4 policy requirements of the SEPP.

This issue does not warrant refusal of the application and is addressed by the design of the building to ensure "loft" elements satisfy the technical required for the two storey zone. This issue is addressed in further detail under the heading *Part B2 Number of Storeys* within this report.

## **14. Fire Safety**

Concern is raised that the development application has not adequately addressed fire safety requirements and relies on expectations of future compliance with the Construction Certificate as detailed in the Building Code of Australia (BCA) Report.

Comment:

Compliance with the BCA is a standard requirement by way of conditions of consent for a development application. Detailed compliance requirements are not required to be assessed at the development application (DA) stage pursuant to Section 79C of the EP&A Act 1979 as these matters are appropriately dealt with under legislation applying to the Construction Certificate (CC) process.

The preparation of a preliminary BCA report assists applicants to ensure primary considerations of fire safety, ventilation, access and building construction are capable of being addressed at CC stage without the need for significant amendments to the approved DA plans. In this regard, options for "deemed to comply" and "alternate solutions" are also available to address detailed BCA issues for the CC. (Note: The applicant was able to provide minor revision to the plans and BCA report to ensure compliance to address submission issues)

Therefore, this issue is addressed by conditions and does not warrant refusal of the application.

**15. Statement of Environmental Effects (SEE)**

Concern is raised that the SEE contains spelling and grammar errors and other errors / anomalies against the development application plans.

Comment:

The SEE serves to provide supporting document to the development application plans and may be written by the applicant / architect / professional consultant or other unqualified persons. The SEE provides a general description of the works and evaluates the proposal against the matters of consideration pursuant to Section 79C of the EP&A Act 1979, including applicable statutory / non-statutory development controls.

While the SEE forms an essential document to the DA, it is not relied upon as part of the approved plans or specialist documents (Geotechnical report, Arborist report, demolition & waste management plan and the like) that form part the conditions of the development consent. In this case the submitted plans (including a 3D animation) drawn by *GartnerTrovato*, dated 2/4/17 clearly show the proposed building form, including all internal and external elements with sufficient detail that accurately depicts the proposal.

Therefore, the architectural and survey plans, including the specialist documents for stormwater management, shadow diagrams, traffic and parking report, geotechnical report, BCA report, Arborist report and waste management report provide sufficient detail to enable a full and proper assessment addressing any minor inconsistencies with the SEE.

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

**16. Land Values**

Concern is raised that the proposal will cause a loss in land value to adjacent dwelling houses and residences due to the scale of the proposal and amenity impacts.

Comment:

The proposal has been designed to be consistent with the R3 Medium Density zone and the objectives of the relevant development controls in order to minimise unreasonable impacts on adjacent land. The development maintains appropriate landscaped setbacks that are consistent with similar apartment buildings that have been developed in the locality pursuant to Warringah LEP 2011 and the Warringah DCP 2011.

Issues of amenity have been addressed by design and conditions to ensure reasonable privacy consistent with a medium density urban environment. The proposal does not cause any unreasonable impact on coastal views and solar access or isolate adjacent land from other re-development options.

No supporting evidence has been provided to substantiate any localised and sustained decline in surrounding land values that would be present at a future date upon completion of the proposed development. This issue is not a matter that can be assessed pursuant to Section 79C of the EP&A Act 1979.

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

**MEDIATION**

No requests for mediation have been made in relation to this application.

**REFERRALS**

| Internal Referral Body                             | Comments  |
|--|---|
| Building Assessment - Fire and Disability upgrades | <p>The Building Code of Australia (BCA) report prepared by BCA Logic has been reviewed by Council's Building Assessment Officer, including matters relevant to Fire and Disability Access. Adequate detail is provided to address BCA issues with the Construction Certificate.</p> <p>No objections to approval is raised, subject to conditions to ensure compliance with the Building Code of Australia.</p>   |
| Development Engineers                              | <p>The proposed absorption system has been assessed pursuant to the WDCP and is considered to be satisfactory, subject to some amendments that have been conditioned. The proposed driveway access is also satisfactory subject to the services being adjusted and footpath reconstructed in accordance with Council's <i>Minor Works Technical Specification</i>.</p> <p>Development Engineering raise no objection to approval, subject to conditions as recommended.</p>   |
| Environmental Investigations (Acid Sulphate)       | <p>The report No. 2016-183.1 on geotechnical site conditions and acid sulfate soils, prepared by <i>Crozier Geotechnical Consultant</i>, dated March 2017, has been reviewed and assessed against the DCP. The report states: "<i>The test results did not trigger the Action Criteria for Equivalent Acidity or for Equivalent Sulphur as referenced from the NSW Acid Sulfate Soil Manual. Therefore, a management plan for treatment of acid sulfate soils will not be required</i>".</p> <p>Environmental Health raise no objection to approval, subject to</p> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | conditions, as recommended.  |
| Landscape Officer      | The arborist report and landscape plan have been reviewed and assessed pursuant to the WDCP 2011.<br><br>Council's Landscape Officer raises no objection to approval, subject to conditions, as recommended.   |
| Traffic Engineer       | The traffic report has been reviewed by Council's Traffic Engineers. The traffic and parking in Lagoon Street and the vicinity of the site, including traffic access and egress to the site, parking and basement area for the development have been assessed pursuant to the Warringah DCP 2011, including Australian Standards 2890.<br><br>Traffic Engineering raise no objection to approval, subject to conditions, as recommended. |
| Waste Officer          | The waste bin facilities and waste management plan have been reviewed pursuant to the Warringah DCP.<br><br>Waste Services raise no objection to approval, subject to conditions, as recommended.  |

| External Referral Body             | Comments   |
|------------------------------------|--|
| Ausgrid: (SEPP Infra.)             | The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended. |
| NSW Police - Local Command (CPTED) | The NSW Police provided no comments and no conditions pursuant to CPTED considerations. No objection to approval is raised.  |

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

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

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

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

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

##### **SEPP 55 - Remediation of Land**

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



residential land use. The Geotechnical report prepared by Crozier has not identified any soils conditions that indicate the presence of contaminating material. Conditions are included to address the appropriate disposal of asbestos materials if present during demolition and to ensure health risk to adjacent land is appropriately managed.

With respect to acid sulphate soils and water table risks the geotechnical report identifies the following minimal risk:

*"Acid sulfate soil testing was carried out for fourteen soil samples from BH1 – BH4 retrieved at depths ranging from 1.00m to 4.00m below the existing ground surface. The soils intersected throughout the investigation were clean quartz sands above the water table. The results of the testing indicated that Acid or Potential Acid sulfate soils did not underlie the site to the investigated depths. The result from 2.0m depth in Borehole 2 suggests potential acid sulfate conditions, however this sample was clean sand above the water table and would therefore have oxidised previously, indicating an erroneous result. The test results did not trigger the Action Criteria for Equivalent Acidity or for Equivalent Sulphur as referenced from the NSW Acid Sulfate Soil Manual. Therefore a management plan for treatment of acid sulfate soils will not be required."*

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

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

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:*
- (a) the development consists of any of the following:*
    - (i) the erection of a new building,*
    - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
    - (iii) the conversion of an existing building, and*
  - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
  - (c) the building concerned contains at least 4 or more dwellings.*

As previously outlined, the proposed development is for the erection of a two storey residential flat building with basement car parking, for the provisions of 24 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application as the proposed development does not consist of a building that is at least 3 or more storeys.

The building concerned satisfies the storey definitions within the WLEP 2011 and DCP for the loft / attic element to be space wholly contained within the roof space.

**storey** means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or*
- (b) a mezzanine, or*
- (c) an attic.*

**attic** means any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like.

Comment: The proposal has been designed to be technically 2 storeys, ensuring the basement less than 1.0m above ground (DCP control) and the loft element is true to the above definitions to be wholly contained within a pitched roof form (<45 degrees) without exterior side wall elements, except for minor elements such as dormers.

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

A BASIX certificate has been submitted with the application (see Certificate No. 760387M\_02 dated 4 April 2017).

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

| Commitment      | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water           | 40              | 40       |
| Thermal Comfort | Pass            | Pass     |
| Energy          | 35              | 37       |

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

##### Other Service Infrastructure Authorities

The proposal was not required to be referred to the Roads and Maritime Service (RMS) and no other service authority referral issues are raised pursuant to the SEPP.

#### **Warringah Local Environment Plan 2011**

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

|                             |     |
|-----------------------------|-----|
| aims of the LEP?            | Yes |
| zone objectives of the LEP? | Yes |

**Principal Development Standards**

| Standard   | Requirement | Proposed                              | % Variation | Complies |
|--|-------------|---------------------------------------|-------------|----------|
| Height of Buildings:<br>NGL8.55 to RL18.07<br>(as per survey plan) | 8.5m        | Up to 9.52m                           | 12% (1.02m) | No       |
| Minimum Lot Size   | 600sqm      | 2,295.4sqm<br>(by site consolidation) | Nil         | Yes      |

**building height (or height of building) means:**

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

**Compliance Assessment**

| Clause   | Compliance with Requirements              |
|--|---|
| 2.7 Demolition requires consent                                      | Yes                                       |
| 4.3 Height of buildings  | No<br>(see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards                              | Yes                                       |
| 5.3 Development near zone boundaries                                 | Yes                                       |
| 5.9AA Trees or vegetation not prescribed by development control plan | Yes                                       |
| 6.1 Acid sulfate soils   | Yes                                       |
| 6.2 Earthworks   | Yes                                       |
| 6.4 Development on sloping land                                      | Yes                                       |

**Detailed Assessment**

**4.6 Exceptions to development standards**

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

|  |                   |
|--|-------------------|
| Requirement:   | 8.5m              |
| Proposed   | 9.52*m            |
| Is the planning control in question a development standard?  | YES               |
| Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation? | Numerical (1.02m) |
| If numerical enter a % variation to requirement  | 12%               |

\* Maximum building height is taken to the top of the dividing wall between cross section "c" and "b" shown on the plans, drawn by *GartnerTrovato*, dated 2/4/17.

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

**Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

**What are the underlying objectives of the development standard?**

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

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

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

Comment:

The non-compliance occurs as a result of the proposed roof form and mezzanine level contained within the roof form of the building, predominantly through the central portion of the building where the land also contains a sag-point or shallow basin in the middle of the site.

Given the non-compliance occurs through the roof form of the building, the development maintains a two storey visual appearance, with loft elements. Overall the building is compatible with the height and scale of adjacent apartment buildings is consistent and compatible with in height of other more recent medium density development in the subject zone.

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

Comment:

The development is largely compliant with the numerical requirement of this development standard and has been designed having regard to the views obtained from adjoining properties, maintaining a reasonable level of privacy and solar access to adjoining developments.

The assessment of this application has found that the development does not result in any unreasonable overshadowing or privacy impacts and achieves a reasonable sharing of views.

The area of non-compliance is minor in nature and relates to the proposed hipped roof form of the development which is consistent with surrounding and nearby development.

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

Comment:

The development will not have an adverse impact on the scenic quality of Warringah's coastal or bush environments. The development provides appropriate landscaping and landscape elements that include a mix



of native and exotic species, including plants that are suitable for the coastal environment.

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

Comment:

The development is considered to be consistent and compatible in its context and relationship with that of surrounding medium density developments and the Lagoon Street streetscape. Further, The development provides areas of landscaping within the side, rear and front setback areas which will act to soften the visual appearance of the building.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of the R3 Medium Density Residential zone:

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

Comment:

The subject site currently accommodates three dwelling houses, which given the zoning of the land do not maximise the housing potential of the area or assist in meeting the growing housing demand within the community. The proposed medium density development containing 24 apartments of varying sizes and bedroom mix is consistent with the land zoning and will assist in meeting the growing housing needs of the community, particularly for apartment style living with access to internal parking and close to other amenities including parkland, public transport and shops.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The development provides a mix of apartment sizes which will vary in affordability. This mix, which consists of one bedroom, two bedroom, two bedroom and three bedroom units. Ground level apartments have access to garden areas and larger units have more than one living space therefore providing a variety of options within the building for accommodation in a medium density setting.

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

Comment:

The development is located within close proximity to facilities and services which meet the day to day needs of residents such as Narrabeen local centre and high frequency public transport routes along Pittwater Road. The increase in density will result in an increased frequency of visits to these precincts which enhances the economic sustainability of the local area.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The development incorporates landscaping within and around the perimeter of the site, including lawn areas and concentrated planting. The landscape concept includes areas within the front, side and rear setbacks and includes a mix of native and exotic species. A virtual (computerised) 3D model has been provided to demonstrate the visual setting of the building, including the landscaped setting and built form.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The development provides an articulated residential flat building that is consistent and compatible with that of the surrounding established buildings, recent new apartments buildings. The development provides landscaping within the front, side and rear setback areas which will act to reduce the visual appearance of the building when viewed from public streets and spaces and will contribute positively to the Lagoon Street streetscape.

Given the above, it is considered that the development is consistent with the Objectives of the R3 Medium Density Residential zone.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

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

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposed variation is consistent with this control as it provides an appropriate degree in flexibility in applying the Height of Buildings Development Standard to the development.

The proposed variation will achieve a better outcome for and from the development by way of enabling a permissible medium density development in the locality which is consistent with its storey controls, desired character, height, scale and is not "jarring" by appearance to existing development nearby. Further, the area of non-compliance relates to the proposed roof form, which is consistent with the predominant roof forms of similar developments in the area.

Strict compliance with the Development Standard would potentially result in a wholly flat roof form which would be less consistent with surrounding development in the area given the dominance of hipped style roofs. In addition to this, the non-compliance is influenced by the sag-point or low basin area in the centre of the site which accentuates the height when measured in the centre of the building.

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

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

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

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

Comment:

The applicants written request outlines reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development, given the design proposal uses an integrated loft element within the hipped roof and the resultant building height is also influenced by the sag-point (low lying area) near the centre of the site. The development, although non compliant, achieves consistency with the Objectives of the Development Standard and will maintain a two storey appearance (with loft / attic) when viewed from adjoining properties and the street, consistent with that of surrounding development.

The assessment of the proposed variation of the control concurs with the applicants submission and it is considered that compliance with the development standard in this instance would be unreasonable and unnecessary.

The applicants submissions states that the non compliance does not result in any unreasonable impacts and that the proposed development demonstrates 'orderly and economic use and development of the land' pursuant to the objectives of the Act. Therefore, there is sufficient environmental planning grounds to justify the contravention of the development standard.

The assessment of the application concurs with the applicants submission in so far as the non-compliance does not result in any unreasonable amenity impacts on the adjoining lands and that a reasonable level of privacy, solar access is maintained.

For these reasons, the variation proposed to the development standard is supported.

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

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

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

Comment:

The applicants written request (refer to 'Section 4.7 of the Statement of Environmental Effects, prepared by Tomasy Pty Ltd) has adequately addressed the matters required to be demonstrated by subclause (3).

In doing so, the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the WLEP 2011.

*(b) the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the *NSW Department of Planning*, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

**Warringah Development Control Plan**

Built Form Controls

| Built Form Control   | Requirement               | Proposed                          | % Variation* | Complies   |
|--|---------------------------|-----------------------------------|--------------|--|
| <b>B2 Number of storeys</b><br><br><i>To measure the height in storeys :<br/> The number of storeys of the building are those storeys which may be intersected by the same vertical line, not being a line which passes through any wall of the building; and<br/> Storeys that are used for the purposes of garages, workshops, store rooms, foundation spaces or the like, that do not project, at any point, more than 1 metre above ground level (existing) are not counted.</i><br><br><b>attic</b> means any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like. | 2                         | 2 storeys + mezzanine/attic space | N/A          | Yes<br>(Note: The applicant was able to provide minor plan change (Rev C) to comply with WDCP) |
| <b>B3 Side Boundary Envelope</b><br><br><i>Fascias, gutters, downpipes, eaves, masonry chimneys, flues pipes or other services</i>   | North<br>4m at 45 degrees | No encroachment                   | N/A          | Yes  |



|  |                                  |  |            |                                  |
|--|----------------------------------|--|------------|----------------------------------|
| infrastructure may encroach beyond the side boundary envelope.   | <b>South</b><br>4m at 45 degrees | No encroachment                                | N/A        | Yes                              |
| <b>B5 Side Boundary Setbacks</b><br><br><i>All development:</i> <ul style="list-style-type: none"> <li>Light fittings, electricity or gas meters or other services infrastructure and structures not more than 1 metre above ground level (existing) (including steps, landings, pedestrian ramps and stormwater structures) may encroach beyond the required setback up to 2 metres from a side boundary; and</li> <li>Entrance and stair lobbies at ground floor level may encroach the required setback up to 2 metres from a side boundary.</li> </ul><br><i>R3 - Basement carparking structures, and private open space:</i> <ul style="list-style-type: none"> <li>Variations will be considered for existing narrow width allotments, where compliance is unreasonable in the context of surrounding medium density development for basement carparking and private open space.</li> </ul><br><i>Basement car parking may extend:</i> <ul style="list-style-type: none"> <li>Up to 2 metres from the side boundary, and</li> <li>No more than 1 metre above ground level (existing)</li> </ul><br><i>Private open space may extend:</i> <ul style="list-style-type: none"> <li>Up to 3.5 metres from a side boundary</li> </ul> | <b>North</b><br>4.5m             | Basement walls<br>4.6m to 5.3m                 | N/A        | Yes                              |
|  |                                  | Ground Floor walls<br>4.0m to 5.3m             | 11.1%      | No*                              |
|  |                                  | Ground Private Open Space<br>0.0m              | up to 100% | No*                              |
|  |                                  | First Floor walls<br>4.0m to 7.5m              | 11.1%      | No*                              |
|  |                                  | First Floor Private Open Space<br>4.6m to 7.5m | N/A        | Yes                              |
|  |                                  | First Floor Loft<br>8.9m to 11.0m              | N/A        | Yes                              |
|  | <b>South</b><br>4.5m             | Basement walls<br>4.8m                         | N/A        | Yes                              |
|  |                                  | Ground Floor walls<br>3.6m to 6.6m             | N/A        | Yes                              |
|  |                                  | Ground Private Open Space<br>0.0m              | 100%       | Yes                              |
|  |                                  | First Floor walls<br>3.6m to 8.9m              | 20%        | No*                              |
|  |                                  | First Floor Private Open Space<br>3.6m to 8.9m | N/A        | Yes                              |
|  |                                  | First Floor Loft<br>8.4m to 8.8m               | N/A        | Yes                              |
| <b>B7 Front Boundary Setbacks</b><br><br><i>The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.</i>   | 6.5m<br>(Lagoon Street)          | Basement<br>5.3m to 6.9m                       | N/A        | Yes<br>(Garbage room, permitted) |
|  |                                  | Ground Floor<br>5.9m to 7.1m<br><br>Ancillary  |            | No*                              |

|   |                     |   |                                   |     |
|---|---------------------|---|-----------------------------------|-----|
|   |                     | encroachments<br>of external lift platform<br>and OSD<br>1.7m to 3.5m |                                   |     |
|   |                     | First Floor walls<br>6.5m to 7.0m                                     | N/A                               | Yes |
|   |                     | First Floor Loft<br>16.9m to 20.8m                                    | N/A                               | Yes |
| <b>B9 Rear Boundary Setbacks</b><br><br><i>Light fittings, electricity or gas meters, or other services infrastructure and structures not more than 1 metre above ground level (existing) including steps, landings, pedestrian ramps and stormwater structures, may encroach beyond the required setback to within a minimum of 2 metres of a rear boundary; and entrance and stair lobbies at ground floor level may encroach beyond the required setback to within a minimum of 2 metres of a rear boundary.</i>   | 6.0m                | Basement<br>4.3m - 6.0m   | N/A                               | Yes |
|   |                     | Ground Floor wall<br>6.1m - 10.1m                                     | N/A                               | Yes |
|   |                     | Ground Floor Private<br>Open Space<br>0.0m to 10.1m                   | N/A                               | Yes |
|   |                     | First Floor wall<br>6.0m to 11.2m                                     | N/A                               | Yes |
|   |                     | First Floor Private<br>Open Space<br>6.7m to 11.2m                    | N/A                               | Yes |
|   |                     | First Floor Mezzanine<br>8.5m   | N/A                               | Yes |
| <b>D1 Landscaped Open Space (LOS) and Bushland Setting</b><br><i>To measure the area of landscaped open space:</i><br><br><i>a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;</i><br><i>b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;</i><br><i>c) Landscaped open space must be at ground level (finished); and</i><br><i>d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.</i> | 50%<br>(1,147.7sqm) | 44% (987.3sqm)  | 13.9%<br>(shortfall of<br>160sqm) | No* |

(\*)Refer to detailed merit assessment under the relevant Built Form Controls heading within this report.

Compliance Assessment

| Clause         | Compliance with Requirements | Consistency Aims/Objectives |
|----------------|------------------------------|-----------------------------|
| A.5 Objectives | Yes                          | Yes                         |
|                |                              |                             |

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| B2 Number of Storeys   | Yes                          | Yes                         |
| B3 Side Boundary Envelope  | Yes                          | Yes                         |
| R3 Side Boundary Envelope Exceptions                                   | Yes                          | Yes                         |
| B5 Side Boundary Setbacks  | No                           | Yes                         |
| Side Setbacks - R3   | No                           | Yes                         |
| Side Setback Exceptions - R3   | Yes                          | Yes                         |
| B7 Front Boundary Setbacks   | No                           | Yes                         |
| B9 Rear Boundary Setbacks  | Yes                          | Yes                         |
| Rear Boundary Exceptions - R3  | Yes                          | Yes                         |
| C2 Traffic, Access and Safety  | Yes                          | Yes                         |
| C3 Parking Facilities  | Yes                          | Yes                         |
| C4 Stormwater  | Yes                          | Yes                         |
| C5 Erosion and Sedimentation   | Yes                          | Yes                         |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes                          | Yes                         |
| C7 Excavation and Landfill   | Yes                          | Yes                         |
| C8 Demolition and Construction   | Yes                          | Yes                         |
| C9 Waste Management  | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting                          | No                           | Yes                         |
| D2 Private Open Space  | Yes                          | Yes                         |
| D3 Noise   | Yes                          | Yes                         |
| D6 Access to Sunlight  | Yes                          | Yes                         |
| D7 Views   | Yes                          | Yes                         |
| D8 Privacy   | Yes                          | Yes                         |
| D9 Building Bulk   | Yes                          | Yes                         |
| D10 Building Colours and Materials                                     | Yes                          | Yes                         |
| D11 Roofs  | Yes                          | Yes                         |
| D12 Glare and Reflection   | Yes                          | Yes                         |
| D13 Front Fences and Front Walls                                       | Yes                          | Yes                         |
| D14 Site Facilities  | Yes                          | Yes                         |
| D15 Side and Rear Fences   | Yes                          | Yes                         |
| D19 Site Consolidation in the R3 and IN1 Zone                          | Yes                          | Yes                         |
| D20 Safety and Security  | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services                         | Yes                          | Yes                         |
| D22 Conservation of Energy and Water                                   | Yes                          | Yes                         |
| E1 Private Property Tree Management                                    | Yes                          | Yes                         |
| E2 Prescribed Vegetation   | Yes                          | Yes                         |
| E6 Retaining unique environmental features                             | Yes                          | Yes                         |
| E10 Landslip Risk  | Yes                          | Yes                         |

| Clause                              | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------|------------------------------|-----------------------------|
| Appendix 1 Car Parking Requirements | Yes                          | Yes                         |

#### Detailed Assessment

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

##### Description of non-compliance

The R3 Medium Density zone in this location is limited to 2 storeys.

- Basement levels that project more than 1.0m out of the ground are included as a storey.
- Upper floor levels that do not comprise a loft / attic, being a room wholly contained within a roof space, are included as a storey.

*"**basement** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)."*

*"**attic** means any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like."*

##### Merit consideration:

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

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

##### Comment:

The proposal is surrounded by two storey and three storey development to the north, east and south of site with a mix of one and two storey housing to the west. Apartment buildings of comparable scale are visible in close proximity within the surrounding streetscape to the south and east of the site. The building therefore fits within the context of the scale and pattern of apartment style development present on surrounding land within the medium density zone.

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

##### Comment:

The proposal presents as two-storeys when viewed from the street and maintains a landscaped setback with the post-development site levels between boundaries to remain consistent with existing natural levels.

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



Comment:

The height and scale of the building does not create an unreasonable impact on views due to the existing density of development to the east of the site that restricts any views of the beachfront and ocean.

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

Comment:

The habitable spaces within the attic / loft area has glazed windows in a dormer style element within the hipped roof form for selected apartments. This minimises potential impacts of overlooking and ensure the additional habitable space does not add any significant impacts of building bulk, overshadowing or loss of privacy to adjoining or nearby land.

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

Comment:

The proposal has used the roof pitch in the form of a hipped roof line, with dormer elements to include an attic level. The pitched roof form is consistent with the prevailing roof style of dwellings and older style residential apartment buildings in the vicinity of the site.

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

Comment:

The proposal has been designed to ensure the attic level appears as a minor element wholly contained within the roof space in order to be consistent with the number of storeys control. In effect, this the 'Height of Buildings' control has been addressed in detail within this report under the heading Principal Development Controls. In summary, the variation to the building height is influenced by a sag-point that exists near the middle area of the site and the use of a hipped roof form above to utilise space within the roof to provide a loft / attic element, connected to the main area of the apartments below.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The control requires a minimum setback to the side boundary of 4.5m.

The development proposes the following variation to the control:

- Support post / frame (south elevation) - 4.4m, a variation of 2.2%
- Ground level decks (south elevation) - 3.5m, a variation of 22%
- Blade wall intrusion (south elevation) - 3.6m, a variation of 20%
- Planter box structure (south elevation) - 3.6m, a variation of 20%
- Ground level light well structure (north elevation) - 2.5m, a variation of 44.4%
- Support post / frame (north elevation) - 4.0m, a variation of 11.1%
- Window / wall frame (north elevation) - 4.4m, a variation of 2.2%
- Balcony edge / window frame (north elevation) - 4.0m, a variation of 11.1%
- Landscaped private open space areas are also within the side setbacks extending to the boundary (Units 5, 6, 11 & 12). - a full variation for selected Units

#### Merit consideration

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

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

#### Comment:

The encroachment of the side boundary setback does not significantly reduce the development's ability to provide areas of deep soil landscaping. The assessment of the application has found the amount of landscaped open space to be satisfactory despite the shortfall in numerical area of compliant landscaped open space (as per the WDCP definition).

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

#### Comment:

The non-compliance is minor in nature and relates to ancillary elements of the building and not the main wall plane. The primary walls of the building comply with the requirements of this control.

The occurrence of ground level private open space within the side setbacks is a practical benefit to the ground floor units to enhance the amenity of those private open space areas. The ground level area acts as an extension of the living space of the unit and does not compromise the landscape setting of the building.

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

#### Comment:

The elements that encroach within the side setback are minor intrusions into the side setback and do not add any significant scale or bulk to the building. Elements include retaining walls and light wells to the basement "games room", balcony edges including planter boxes, window features and blade wall features and supporting posts / frames.

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

#### Comment:

Therefore, adequate physical separation is provided between the adjacent buildings but maintains a reasonable level of privacy, amenity and solar access appropriate to the medium density zone and DCP controls. Subject to conditions, the encroaching private open space balconies and other elements of the building do not cause an unreasonable impact on privacy. The building does not create unreasonable impacts of solar access to the south or east for adjacent land.

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

Comment:

The development does not create any unreasonable impacts on the sharing of views to and from public and private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B7 Front Boundary Setbacks**

Description of non-compliance

The control requires development to be setback 6.5m from the the front boundary.

The development proposes the following variations to the control:

- Basement Level - 5.3m or a variation of up to 30.8%
- Ground Floor - 3.5m or a variation of up to 53.8%

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The variations proposed to the control are minor in nature and relate primarily to the basement level of the development which is located substantially below ground level and is not readily exposed to the street, with the exception of openings to the basement for access (fire escape, bin room access, Unit 11 games room light well) for natural light / ventilation. Therefore, the non-complying elements have no significant impact on the sense of openness created along the site's frontage.

The minor breaches proposed on the ground floor level of the building relate to the stair lift foyer access and on site-detention system. These site facilities are generally at or below natural ground level and do not reduce the sense of openness created across the front of the site. There are no variations to the 6.5m front setback at first floor level for the building walls.

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

Comment:

The basement is located below the ground level and will therefore have no unreasonable impact on the visual continuity and pattern of buildings. A minimum 1m of soil depth has been provided above the OSD tank level in order to establish landscape elements across the front of the site. The basement carpark is wholly contained below the footprint of the residential area of the ground floor.

The proposed variations on the ground floor are minor in nature and do not disturb the visual continuity and pattern of buildings or landscape elements in the street.

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

Comment:

The encroachment at the ground floor level is minor in nature and confined to the fire door opening, bin room door, OSD tank, light well to Unit 11 'games room' and stair lift access to the building foyer. The encroaching elements are minor structures and are generally appropriate to the ground level with landscape spaces adjacent.

In this regard, the development does not have an adverse impact on the visual quality of the Lagoon Street streetscape and public spaces.

- *To achieve reasonable view sharing.*

Comment:

The development maintains a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D1 Landscaped Open Space and Bushland Setting**

Description of non-compliance

The control requires a minimum 50% of the total site area to be landscaped open space. The proposed development provides 44% (987.3sqm) of the total site area as landscaped open space. This represents a variation of 13.9% or 160sqm.

Merit consideration

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

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

Comment:



The Landscape Plan submitted with the application (refer to 'Landscape Plan Revision B' prepared by *GartnerTrovato* dated 2/4/17) indicates that the front, side and rear setback areas have been designed to accommodate landscaping work and selected plant which will maintain the long-term local streetscape character and assist to soften the visual impact of the development through the inclusion of a mix of planting including shrubs and small to medium sized trees. Planting along the front setback includes lawn areas, coastal plants and screen hedge planting to enhance the streetscape.

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

Comment:

The natural vegetation on the site has been significantly altered over the course of the residential history of the land. There are no areas of threatened species, significant topographical features or significant areas of remnant vegetation. The Landscape Plan indicates a comprehensive replacement planting regime to enhance the landscaped setting for the apartment building. Tree and shrub planting is to be provided which vary in mature height from 2m to 20m, including the retention of one large existing tree at the back of the site.

The proposed planting includes a shortfall in the required 50% area however, it is noted that side and central pathways leading up to Units 4 and 7 will be set in a landscaped setting in order to maximise the amenity of the side setback areas.

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

Comment:

The proposed planting to be located within the front, side and rear setback areas includes a mix of shrubs and small to medium sized trees and native palms which achieve a mature height of between 2m to 10m+. The spacing of the trees around the perimeter of the site softens the bulk of the building and, given the proposed heights and canopy spreads, will be of scale and density commensurate with the proposed building height, bulk and scale. Dense planting area also used in selected locations for the ground level courtyard areas to break up wall structures and soften the appearance of the lower storey of the building.

- *To enhance privacy between buildings.*

Comment:

The development includes areas of significant landscaping located around the perimeter of the site which, in-conjunction with the physical separation provided between buildings will provide adequate privacy screening. The landscape plan indicates small to medium sized trees to be planted around the perimeter of the site which achieve a height of between 2m to 20m at maturity which will further assist to provide adequate screening / landscape setting to the development when viewed from surrounding and adjoining properties.

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

Comment:

Each of the proposed apartments have been provided with appropriate private open space areas to support recreational opportunities to meet the needs of the apartments. Larger (3 bedroom) apartments at ground level have larger landscaped open space areas, however the smaller ground level courtyard areas have concentrated plantings to enhance the landscape amenity viewed from within those apartments.

Overall, the apartments proposed on the ground floor level will be served by courtyard areas located off the living areas. The apartments proposed on the first floor level will be served by balcony areas of a appropriate area and dimension to suit the needs of future dwelling occupants.

In addition to the above, the site is located close to nearby recreational areas such as parkland's within the North Narrabeen beachfront reserve and Narrabeen Lagoon to the east and north of the site. It is anticipated that occupants will utilise public facilities external to the property to meet active recreational needs that are not possible within the site.

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

Comment:

The plans do not indicate any areas allocated at ground level specifically for clothes drying. However, the ground floor apartments benefit from courtyard areas that may be suitable for clothes drying. Further, it is considered that sufficient internal areas and domestic facilities will be provided for service functions such as clothes drying.

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

Comment:

The development has been reviewed by Council's Development Engineers having regard to the provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report. The site is also within an area containing deep sandy loam soils and therefore the land has good stormwater infiltration capability within the setback areas, despite the shortfall in compliant landscape open space.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

## **D8 Privacy**

Generally the development has been designed having regard to maintaining a reasonable level of internal and external privacy to future dwelling occupants and adjoining properties.

It is noted that the submitted architectural plans show moveable privacy screens to be provided the first floor balcony areas. Given concerns raised by adjacent neighbours regarding the use of operable privacy screens are recommended to enable solar access and view lines to be best managed by occupants.

Merit consideration

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

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

Comment:

The assessment of this application has identified that operable screens will assist in maintaining a reasonable level of privacy and are required in this instance. Moveable privacy screens are provided for all first floor balcony areas that face east, north or south as shown on the plans.

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

Comment:

The use of adjustable "plantation style" sliding screens (on horizontal rails) fitted between the balustrade / planter box level and the ceiling level will enable occupants to maximise privacy and solar access to their private open space. The privacy screens are a minimum of 1.25m wide to enable effective screening from the balcony width toward adjacent land. This enables optimum privacy for the occupants by means of an fully adjustable screen that also enables better solar access when desirable.

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

Comment:

In order to maintain effective personal and property security, the existing boundary fencing will require replacement. This should be provided at the applicants expense and be 1.8m high 'lapped and capped' timber fencing. The addition of a horizontal (screen) rail consisting of 3-4 spaced horizontal timber battens attached to the top of the fence is warranted where the external pathways leading to units at the rear of the site passes near the side boundary is recommended. This will take part of the boundary fencing up to 2.1m and provide enhanced privacy where there is an external walkway beside neighbouring land. This issue is addressed by conditions for the CC plans.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D19 Site Consolidation in the R3 and IN1 Zone**

Merit consideration

In making an assessment of this issue reference is made to the Planning Principle established under *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189*. Consideration established by the Court are firstly;

- *"Is amalgamation of the site feasible?" and; secondly*
- *"Can orderly and economic use of development of the separate sites be achieved if*

*amalgamation is not feasible?"*

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control and the issues raised in the Planning Principle as follows:

- *To encourage lot consolidation to allow efficient use of land.*

Comment:

The proposal includes the consolidation of No.129 Lagoon Street to No.133 Lagoon Street to form an "L" shaped site. The three lots contain original fibro cottages. The adjoining land to the south contains two x three storey apartment buildings (single site). The adjoining land to the north contains two-storey masonry dwellings at No.135 Lagoon Street and No.12 Malcolm Street. NO.10 Malcolm Street contains a smaller original cottage.

Therefore, No's 10 to 12 Malcolm Street and No.135 Lagoon Street remain to be developed. This may be achieved by consolidation to form an "L" shaped site by consolidation of the three lots or alternative re-development considerations. Details of considerations made by the applicant are provided within the development application documents and include issues of potential uplift, feasibility, existing building scale and schematic plans of re-development to a suitable height, setback and built form.

The applicant demonstrated a genuine effort to encourage site consolidation with No.135 Lagoon Street, with the aid of professional Real Estate appraisal assistance and the like. However, the negotiations were unsuccessful to achieve a favourable outcome.

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

Comment:

The demolition of No.135 Lagoon Street and No.12 Malcolm Street may be required, if an alternative innovative design solution to convert the existing buildings to units is not preferable. With demolition and site consolidation, the three properties (including No.10 Malcolm Street) have sufficient land area to enable re-development pursuant to the WDCP 2011. Considerations of this have been made by the applicant and presented with the development application documents. Schematic plans demonstrate that issues of privacy, setback, landscaping, internal amenity, building bulk and compatibility in density vs area can be achieved with innovative design options. Therefore, the key principle that both sites can achieve a development that is consistent with the planning controls has been addressed.

- *To avoid lot sterilization.*

Comment:

The adjacent property of No.135 Lagoon Street has an alternative option to consolidate to the east (including No.10-12 Malcolm Street) and therefore avoid isolation. Future development potential of adjoining lots remains consistent with the present the zoning objectives/controls and secondly there are options for site amalgamation and innovative solutions should any future redevelopment be deemed feasible for adjoining lots to the north of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and



Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **Appendix 1 Car Parking Requirements**

The development provides the following on-site car parking:

| Use                       | Appendix 1 Calculation                           | Required                     | Provided  | Difference (+/-) |
|---------------------------|--|------------------------------|-----------|------------------|
| Residential Flat Building | 1.0 space per 1 bedroom dwelling                 | 8 x (1 bedroom) x 1 = 8      | 8         | 0                |
|                           | 1.2 spaces per 2 bedroom dwelling                | 6 x (2 bedroom*) x 1.2 = 7.2 | 7         | - 0.2            |
|                           | 1.5 spaces per 3 bedroom dwelling                | 10 x (3 bedroom*) x 1.5 = 15 | 15        | 0                |
|                           | 1 visitor space per 5 units or part of dwellings | 24 Units / 5 = 5 car spaces  | 2         | 0                |
|                           |  |                              | 5         |                  |
| <b>Total</b>              |  | <b>35.2</b>                  | <b>35</b> | <b>-0.2</b>      |

#### Merit Assessment of Parking:

For the purposes of car parking the DCP requires that:

*"Studies, lofts, or other such rooms capable of being used as bedrooms will also be calculated as a bedroom.*

*Community title subdivisions are to include provision for one visitor parking space per five dwellings or part thereof. These spaces are to be located within the neighbourhood property lot. "*

Rooms that are shown as "media room / bed" are not included as a calculated bedroom for the purposes of car parking where those rooms would meet BCA requirements for light and ventilation to be used as a bedroom, regardless of on-plan description. A condition is included to ensure strata restriction (on Title) to prevent rooms being converted to bedroom accommodation purposes.

Clause C3 of WLEP 2011 requires that adequate off-street car parking is to be provided within the subject property boundaries in accordance with the use provisions of Appendix 1. The variation of 0.2 of a parking space does not warrant refusal of the application given the location of the proposal to local centres, public transport and local open space recreational reserves within convenient walking distance. The basement is also provided with bicycle rack storage area and allocated storage cages for units, suitable for individual bicycle storage for the occupants.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Warringah Section 94A Development Contribution Plan**

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

| Warringah Section 94 Development Contributions Plan            |                  |                |
|--|------------------|----------------|
| Contribution based on a total development cost of \$ 6,028,691 |                  |                |
| <b>Contributions</b>   | <b>Levy Rate</b> | <b>Payable</b> |
| Total Section 94A Levy   | 0.95%            | \$ 57,273      |
| Section 94A Planning and Administration                        | 0.05%            | \$ 3,014       |
| Total  | 1%               | \$ 60,287      |

#### **CONCLUSION**

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The proposal is a permitted use as an apartment building, being within the R3 Medium Density Zone. The proposal is consistent with the development transition occurring to the housing stock in the vicinity of the site, whereby older single dwelling lots are being taken up for multi-dwelling re-development, pursuant to the relevant land use planning controls. The site consists of three (3) lots to be consolidated and site preparation works require the demolition of all structures and the removal of selected trees. Excavation for basement parking is suitable for the deep sandy soils with car park access to be gained from Lagoon Street.

The site has been subject to a previous development application (withdrawn), and the subject proposal has been prepared to address previous concerns raised by adjacent neighbours and Council, in order to better meet the objectives of the Warringah LEP and DCP, including the numerical development controls. The proposal is in a location that requires an appropriate design response to address height controls, landscaping, pedestrian access, waste management, privacy impacts, visual bulk, traffic and parking, stormwater management, dilapidation risks and a built form to ensure a suitable design for the physical attributes and surrounding amenity.

The variations to the numerical development controls include building height, setbacks and landscaped open space. The proposal utilises allowable "attic / loft" elements to ensure technical compliance with the two (2) storey height control. Issues of non-compliance with the front / side setbacks and landscape open space have been considered in detail and do not warrant refusal of the application.

The public submissions received have been addressed within this report and those issues raised have been considered in the context of the development proposal and likely impacts. Submissions included concerns raised in respect of traffic / parking, construction, building height, landscaping, privacy, BCA compliance, site isolation, occupancy, development values, and amenity. These matters have been considered in detail pursuant to Section 79C of the EP&A Act 1979 and the relevant local planning controls. No issues raised warrant refusal of the application and relevant issues have been addressed by conditions, where appropriate.

In summary, the proposal is supported, subject to conditions to ensure consistency with the Warringah DCP 2011 and Warringah LEP 2011. This includes conditions to address privacy impacts, dilapidation risk, noise, fencing, stormwater management, erosion control, traffic safety and maintaining a landscape setting.

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

## RECOMMENDATION

THAT Northern Beaches Development Assessment Panel – Central as the consent authority grant Development Consent to DA2017/0335 for Demolition works, the construction of a residential flat building and strata subdivision on land at Lot 5 DP 4888, 129 Lagoon Street, NARRABEEN, Lot 6 DP 4888, 131 Lagoon Street, NARRABEEN, Lot 7 DP 1082203, 133 Lagoon Street, NARRABEEN, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp |         |                |
|---|---------|----------------|
| Drawing No.   | Dated   | Prepared By    |
| A.01 B Rev C - Site Plan                            | 26/7/17 | GartnerTrovato |
| A.02 B Rev C - Basement Plan                        | 26/7/17 | GartnerTrovato |
| A.03 Rev C - Ground Floor Plan                      | 26/7/17 | GartnerTrovato |
| A.04 Rev C - First Floor Plan                       | 26/7/17 | GartnerTrovato |
| A.05 Rev C - Second Floor (Loft) Plan               | 26/7/17 | GartnerTrovato |
| A.06 Rev C - Elevations                             | 26/7/17 | GartnerTrovato |
| A.06 Rev C - Sections A, B, and C                   | 26/7/17 | GartnerTrovato |
| Colours and Materials Board                         | 2/4/17  | GartnerTrovato |

| Engineering Plans  |         |                    |
|--|---------|--------------------|
| Drawing No.  | Dated   | Prepared By        |
| D01 Rev B - Ground Floor and Site Stormwater Management Plan | 11/4/17 | iStruct Consulting |
| D02 Rev B - Basement Drainage Plan                           | 11/4/17 | iStruct Consulting |
| D03 Rev B - First Floor Drainage Plan                        | 11/4/17 | iStruct Consulting |
| D04 Rev B - Second Floor and Lower Roof Drainage Plan        | 11/4/17 | iStruct Consulting |



|  |         |                    |
|--|---------|--------------------|
| D05 Rev B - Upper Roof Drainage Plan and Details | 11/4/17 | iStruct Consulting |
|--|---------|--------------------|

| <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>       |
| Geotechnical Site Investigation 2016-183.1  | 30/3/17      | Crozier Geotechnical     |
| BCA Assessment Report 107334-BCA-r2   | 26/7/17      | BCA Logic                |
| Basix Report 760387M-02   | 4/4/17       | GartnerTrovato           |
| Arborist Report   | March 2017   | Urban Forestry Australia |

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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

| <b>Landscape Plans</b>    |              |                    |
|---------------------------|--------------|--------------------|
| <b>Drawing No.</b>        | <b>Dated</b> | <b>Prepared By</b> |
| A.10 Rev B Landscape Plan | 2/4/17       | GartnerTrovato     |

| <b>Waste Management Plan</b> |              |                    |
|------------------------------|--------------|--------------------|
| <b>Drawing No.</b>           | <b>Dated</b> | <b>Prepared By</b> |
| Waste Management Plan        | 12/4/2017    | Sean Gartner       |

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. (DACPLB01)

## 2. **Amendments to the approved plans**

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

- The first floor privacy screens shown on the approved plans are to be adjustable ("plantation style") and fitted on horizontal sliding rails to enable occupants to adjust privacy / sunlight to the balcony space.
- New "Capped and Lapped" timber paling fencing 1.8m high is to be provided along the side boundaries (beyond the 6.5m front building line) and rear boundaries, at the Applicant's expense, to ensure privacy at ground level between adjacent land. Fencing in front of the building is to be open style metal / wire / wood with screen hedge planting up to 1.2m above finished ground level.

Details demonstrating compliance are to be shown on the Construction Certificate plans and

submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts in accordance with WLEP2011 and WDCP. (DACPLB02)

**3. Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of

work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement (DACPLB09)

**4. General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

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

(h) No building, demolition, excavation or material of any nature and no hoist, plant and

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

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

(j) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

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

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

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for



swimming pools.

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

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

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

(o) New solid fuel burning heaters or existing solid fuel heaters affected by building works must comply with the following:

(1) AS 2918:2001 Domestic Solid Fuel Burning Appliances – Installation.

(2) AS 4013:2014 Domestic Solid Fuel Burning Appliances – Method of Determination of Flue Gas Emissions.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

#### **FEES / CHARGES / CONTRIBUTIONS**

**5. Policy Controls**

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

| Northern Beaches Council Section 94 Development Contributions Plan |                  |                |
|--|------------------|----------------|
| Contribution based on a total development cost of \$ 6,028,691.00  |                  |                |
| <b>Contributions</b>   | <b>Levy Rate</b> | <b>Payable</b> |
| Total Section 94A Levy   | 0.95%            | \$ 57,272.56   |
| Section 94A Planning and Administration                            | 0.05%            | \$ 3,014.35    |
| Total  | 1%               | \$ 60,286.91   |

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council's

Development Contributions Plan.

**6. Security Bond**

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

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

**7. Works Bonds**

Construction, Excavation and Associated Works Bond (Crossing/Kerb)

(a) A Bond of \$20,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

(b) Construction, Excavation and Associated Works Bond (Pollution)

A Bond of \$5,000 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

(c) Construction, Excavation and Associated Works Bond (Failure to Remove Waste)

A bond of \$5,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.warringah.nsw.gov.au/your-council/forms](http://www.warringah.nsw.gov.au/your-council/forms)).

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

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

**8. On-site Stormwater Absorption Compliance Certification**

An On-site Stormwater Absorption System must be designed and constructed in accordance with Council's PL 850 Water : Water Management Policy. A stormwater drainage plan detailing the provision of On-site Stormwater Absorption System in accordance with the

above Policy and the concept drawing by iSTRUCT Consulting Engineers, drawing number 160818 D01 to D05 dated 11 April 2017.

The stormwater drainage plans must address the following:

1. Invert level of the overflow outlet from the stormwater rainwater tank must be set minimum 150mm above the maximum design water level in the onsite stormwater absorption system. This is to prevent backflow water from the onsite stormwater absorption system entering the stormwater rainwater tank.
2. Minimum effective storage in the onsite stormwater absorption trench is to be 37.6 cubic metres.
3. The onsite stormwater absorption system consisting of Atlantis Modules is to be re-designed and constructed as reinforced tank structures with no bases.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's PL 850 Water : Water Management Policy, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

**9. Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with Council's Stormwater Drainage Policy. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer.

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

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site. (DACENC04)

**10. Application for Works to be Approved within Council's Roadway**

An application for works to be approved within Council's roadway under Sections 138 & 139 of the Roads Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design and construction of the driveway crossing and layback, 1.5 metres wide footpath along the frontage of the site, landscaping including street trees and turf and reinstatement of the redundant crossings and laybacks which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

The design must be in accordance with the following requirements:

- a) A 6.0 metre wide driveway crossing in accordance with Council's Normal driveway profile.
- b) A 1.5 metres concrete footpath along the full frontage of the site.
- c) All Public utility services ( such as Telstra, Sydney Water, AGL, Ausgrid etc) requiring adjustment are to be shown on the plans with approval from the respective service authority submitted to Council. All cost associated with the relocation of public utility services must be borne by the owner.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure compliance with Council's specification for engineering works. (DACENC08)

**11. Vehicle Driveway Gradients**

Driveway gradients within the private property are to include a gradient of 1 in 20 (5%) maximum for the first 6 metres from the property boundary into the proposed basement with transition gradients in accordance with the requirements of AS/NZS2890.1:2004. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property. (DACENC13)

**12. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

**13. Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACENC05)

**14. Construction Management Plan**

A Construction Management Plan (CMP) is to be prepared to ensure appropriate operational management of on-site works including, but not limited to:

- site plan, including tree protection areas,
- dust and noise minimisation requirements,



- maintaining prescribed hours for works,
- heavy vehicle access,
- equipment and materials delivery locations,
- traffic and parking management to ensure no inconvenience to neighbours access,
- sediment and pollution controls,
- safety fencing / screening requirements,
- safety signage and publicly visible contact details for site management issues,
- routine construction management issues.

The CMP is to be submitted to the Principal Certifying Authority and a copy kept on site for implementation by the site manager for the duration of construction works.

Reason: To minimise disruption to residential parking and maintain safety / reasonable amenity during works (DACENCPC1)

**15. Tree protection**

- (a) Existing trees which must be retained
  - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land
- (b) Tree protection
  - i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

**16. Dilapidation Report / Survey**

A pre-construction / demolition Dilapidation Report is to be prepared by a suitably qualified person to record and address potential dilapidation risk to adjacent land (sharing a common boundary), including any other adjacent structures deemed necessary by the Accredited Certifier. The report is to also record the condition of public assets / infrastructure within the road reserve in front of the site.

A photographic survey of adjoining private properties (as appropriate) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person. On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to

the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

The pre-construction / demolition dilapidation report must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

The pre-construction / demolition dilapidation report must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACNEC20)

**17. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*\*
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking\*\*
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities\*\*
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities\*\*
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking\*\*
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities\*\*
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set\*\*
- (l) AS 1428.1 - 2009\* Design for access and mobility - General requirements for access - New building work\*\*
- (m) AS 1428.2 - 1992\*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities\*\*

(n) AS1668 The use of mechanical ventilation

\*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website  
[http://www.humanrights.gov.au/disability\\_rights/buildings/good.htm](http://www.humanrights.gov.au/disability_rights/buildings/good.htm)

\*\*Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

**18. Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.  
(DACWTC01)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**19. Public Liability Insurance - Works on Public Land**

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

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**20. Vehicle Crossings**

The provision of one vehicle crossing 6 metres wide in accordance with Warringah Council Drawing No A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

**21. Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

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

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

**22. Footpath Construction**

The applicant shall construct a 1.5 metres wide concrete footpath for the entire frontage of the site in Lagoon Street. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's minor works policy
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

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

Reason: To ensure compliance of footpath works with Council's specification for engineering works. (DACENE07)

**23. Layback Construction**

A layback 6 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

**24. Maintenance of Road Reserve**

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

Reason: Public Safety. (DACENE09)

**25. Notification of Inspections within Roadway**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of layback and driveway slab
- (d) Prior to pouring of footpath
- (e) Completion of landscaping works

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: To ensure new Council infrastructure is constructed to Council's requirements. (DACENE10)

**26. Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Council's Minor Works Policy and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.



Reason: Public Safety. (DACENE11)

**27. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**28. Requirement to notify about new contamination evidence**

Any new information revealed during demolition or excavation works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment (DACHPEDW1)

**29. Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

**30. Protection of sites of significance**

a) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

**31. Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

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

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

33. **Authorisation of Legal Documentation Required for On-site Stormwater Absorption**  
The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

34. **Registration of Encumbrances for On-site Stormwater Absorption**  
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To identify encumbrances on land. (DACENF02)

35. **Reinstatement of Kerb**  
All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

36. **Restriction as to User for On-site Stormwater Absorption**  
A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as

the party to release, vary or modify such restriction.

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

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

**37. Stormwater Disposal**

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

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

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

**38. On-Site Stormwater Absorption Compliance Certification**

Upon completion of the on-site stormwater absorption system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved drainage system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

**39. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be

maintained to an appropriate operational standard. (DACENF11)

**40. Positive Covenant for On-site Stormwater Absorption**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater absorption structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

**41. Creation of Positive Covenant and Restriction as a User**

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the "Department of Lands".

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

Reason: To identify encumbrances on land. (DACENF14)

**42. Required Planting**

Trees shall be planted in accordance with the following schedule:

| No. of Trees Required. | Species  | Location  | Pot Size                           |
|------------------------|--|---|------------------------------------|
| All trees              | As indicated on Landscape Plan Dwg No. A.10 B dated 02/04/17 prepared by Gartner Trovato Architects. | As indicated on the Landscape Plan  | As indicated on the Landscape Plan |
| 2                      | <i>Cupaniopsis anacardioides</i> (Tuckeroo)  | Road reserve forward of the property clear of driveway sightlines and generally in alignment with other street trees. | 75 litre                           |

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



prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

**43. Consolidation of Lots**

The subject land must be consolidated as one (1) allotment and registered on a survey plan (prepared and signed by a Registered Surveyor) with the NSW Land & Property Information Service (NSW Department of Lands).

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

Reason: To ensure development is not constructed over property boundaries. (DACPLF02)

**44. Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

**45. House / Building Number**

House/building number is to be affixed to the building / property entry point to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

**46. Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

**47. Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

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

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire

Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

**48. Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLF08)

**49. Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

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

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

**50. Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled. (DACWTF02)

**51. Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

**52. Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land. (DACWTF04)

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

**53. Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity

**54. Visitor Car parking**

Visitor car parking must be permanently available, freely accessible and clearly marked / signposted. The visitor car parking spaces area not to be allocated to individual units / tenancies.

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

Reason: To ensure visitor carparking is available at all times and is clearly identified. (DACPLG02)

**CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

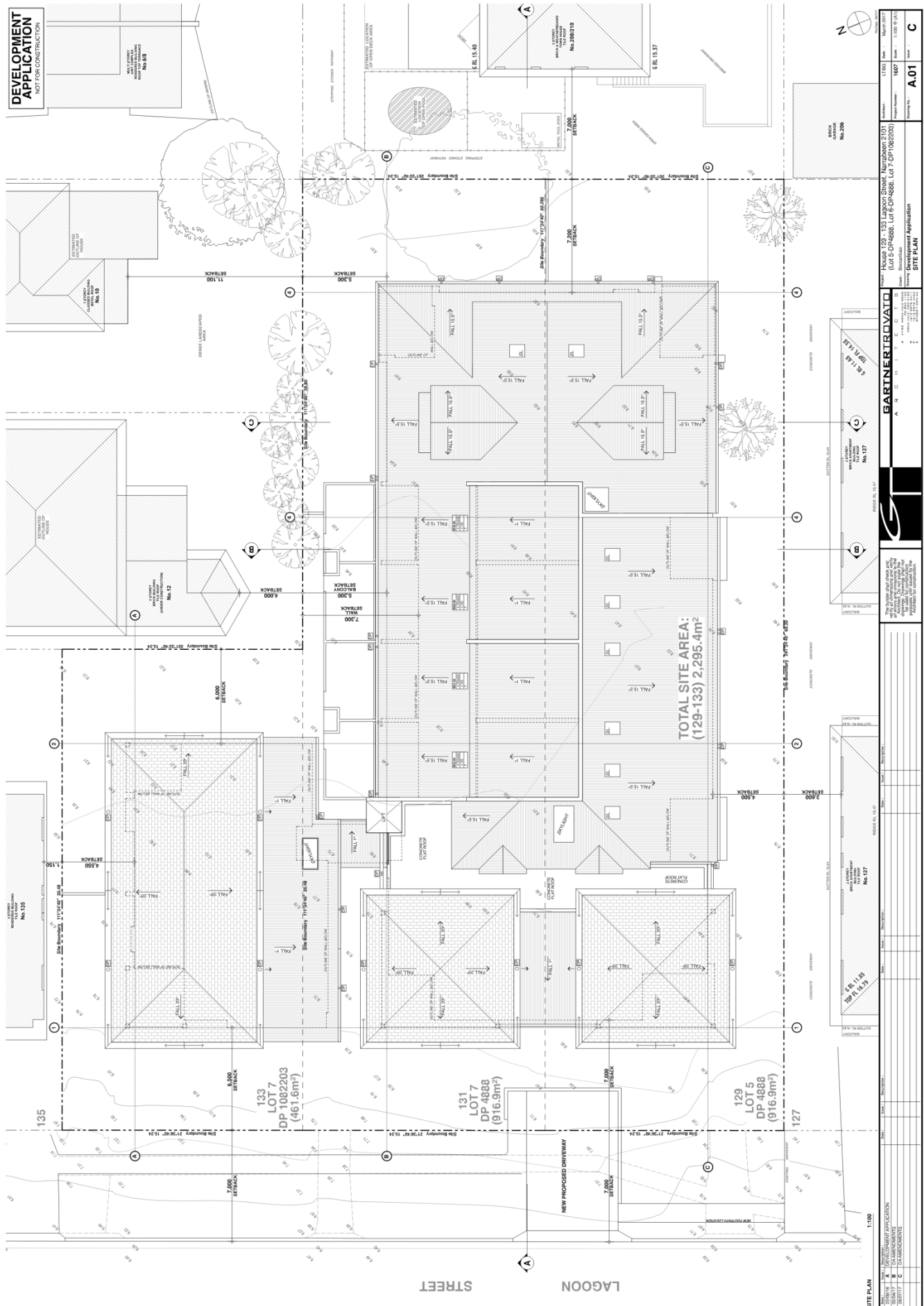
**55. Restriction on User**

Concurrent to any Strata Subdivision of the building the rooms that are shown / depicted as ancillary spaces for "Loft", "Media Room / Bed", "Loft Living" or "Games Room" within Units 1, 3, 4, 6, 11, 12, 13, 14, 17 & 18 shown on the approved plan, are to have a restrictive covenant on their Strata Title preventing the use or conversion of those ancillary spaces as habitable bedrooms.

Details are to be registered on Title, including that the *Northern Beaches Council* shall be nominated as the only party able to release, vary or modify such covenant / restriction.

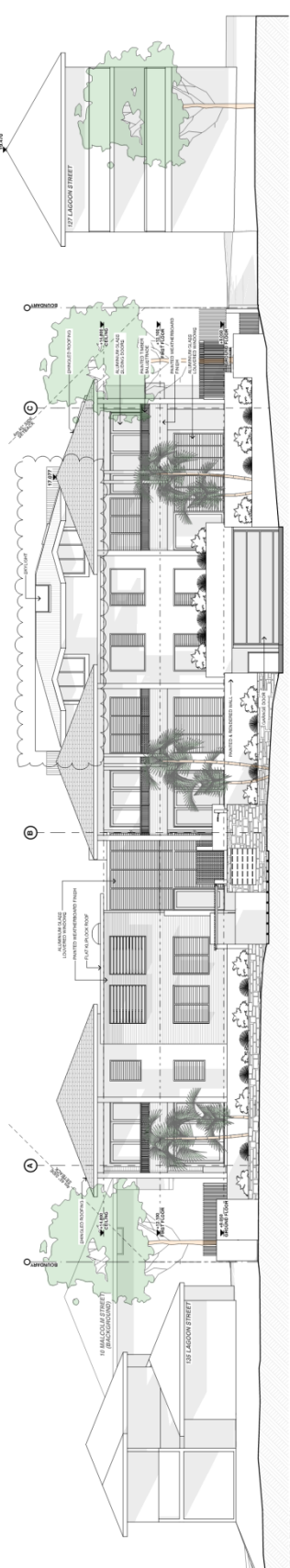
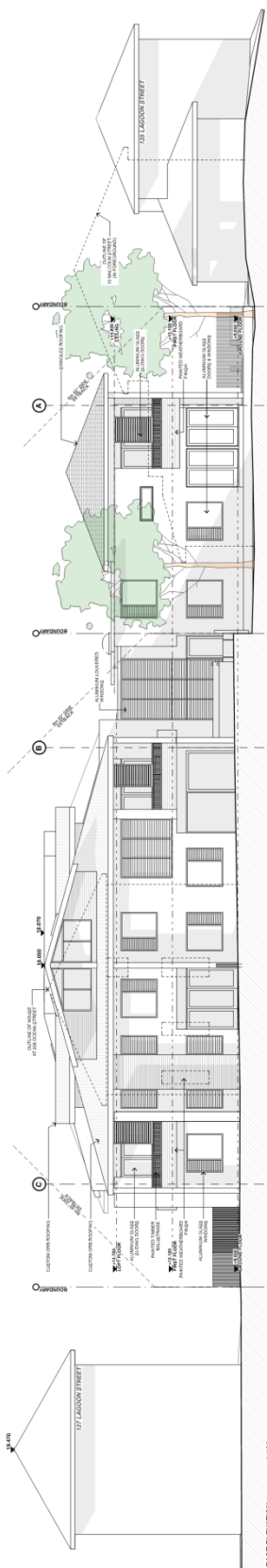
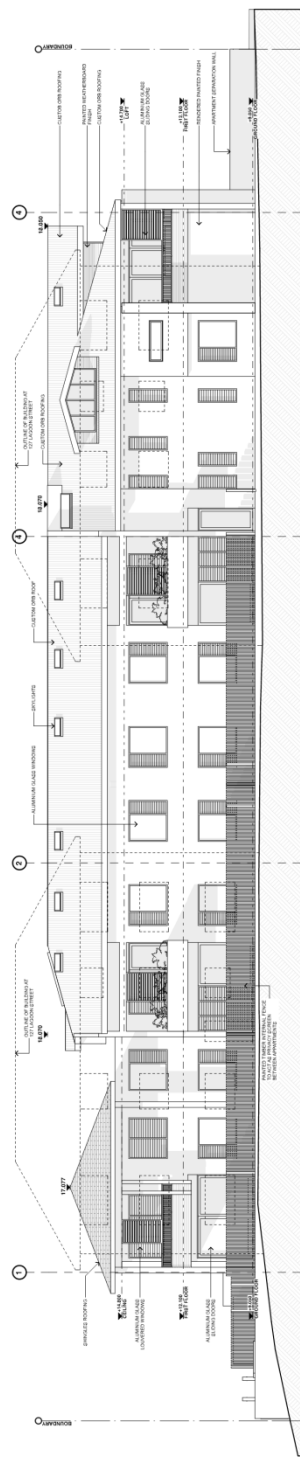
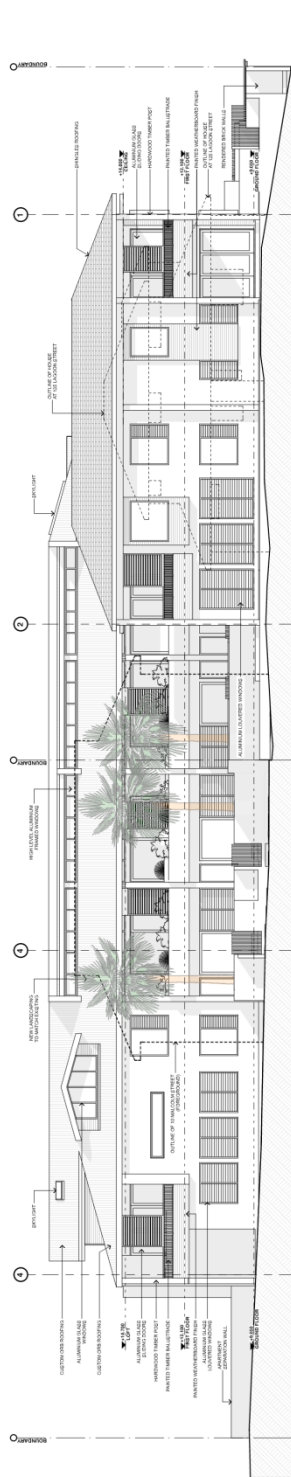
Details are to be prepared pursuant to the *Conveyancing Act 1919* and submitted to the Principal Certifying Authority prior to the issue of any Strata Subdivision.

Reason: Compliance with prescribed carparking and ensure consistency with the approved plans. (DACTRHPS1)





DEVELOPMENT  
APPLICATION  
NOT FOR CONSTRUCTION



|   |  |   |  |   |
|---|--|---|--|---|
| <p><b>GARTNER/ROVATO</b></p>  |  | <p>Project: House 129 - 133 Lagoon Street, Narrabeen 2101<br/>(Lot E-DP4488, Lot E-DP4488, Lot 7-DP1082203)</p>   |  | <p>Drawn: 1/10/17<br/>Scale: 1:100<br/>Sheet: C</p>   |
| <p>Client: GARTNER/ROVATO</p>   |  | <p>Architect: GARTNER/ROVATO</p>  |  | <p>Project Number: 1407<br/>Drawing No: A.06<br/>Title: ELEVATIONS</p>  |
| <p>Notes: The client has advised that the drawings are for information only and are not to be used for construction. The client has advised that the drawings are for information only and are not to be used for construction.</p> |  | <p>Notes: The client has advised that the drawings are for information only and are not to be used for construction. The client has advised that the drawings are for information only and are not to be used for construction.</p> |  | <p>Notes: The client has advised that the drawings are for information only and are not to be used for construction. The client has advised that the drawings are for information only and are not to be used for construction.</p> |

|                   |   |
|-------------------|---|
| ITEM 3.3          | 89-90 NORTH STEYNE AND 90-92 WHISTLER STREET, MANLY - DA0056/2017                   |
| REPORTING OFFICER | Claire Downie   |
| TRIM FILE REF     | 2017/259516   |
| ATTACHMENTS       | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plan & Elevations |

## PURPOSE

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

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That Council (Northern Beaches Independent Assessment Panel) as the consent authority **approve** Development Consent No. DA56/2017 for Demolition of existing structures and construction of a Residential Flat Building on land at Lot A & B DP 430074, SP 10633 and SP 3980, 89-90 North Steyne & 90-92 Whistler Street, Manly, for the reasons outlined in the report.

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## Development Assessment Report

MC/17/66340

|                     |   |
|---------------------|---|
| <b>DA #</b>         | 56/2017   |
| <b>Site Address</b> | 89-90 North Steyne & 90-92 Whistler Street, Manly<br>Lots A & B DP 430074, SP 10633 and SP 3980 |
| <b>Proposal</b>     | Demolition of existing structures and construction of a Residential Flat Building               |
| <b>Officer</b>      | Claire Downie   |

### **SUMMARY:**

#### **Application Lodged:**

27 March 2017

#### **Applicant:**

Made Property Group Pty Ltd

#### **Owner:**

89 North Steyne: Corowa Units Pty Ltd

90 North Steyne: Ceekay Group Properties Pty Ltd

90 Whistler: K & M Tucker, C & M Gargan

92 Whistler: P Dracakis, K Dracakis, P & S Good, G & S

Wilson, J Thomas

#### **Estimated Cost:**

\$10,214,829.00

#### **Zoning:**

MLEP, 2013 – R3 Medium Density Residential

#### **Heritage:**

Adjacent to Item 2 Stone Kerbs

In the vicinity of Item 256 Masonic Hall and Items 257, 258, 259 Houses

Not applicable.

#### **NSW LEC:**

#### **Notification:**

5 April-10 May 2017

#### **Submissions received:**

12

#### **Site Inspected:**

5 June 2017

#### **LEP (4.6) Variations proposed:**

Height of Buildings, Floor Space Ratio

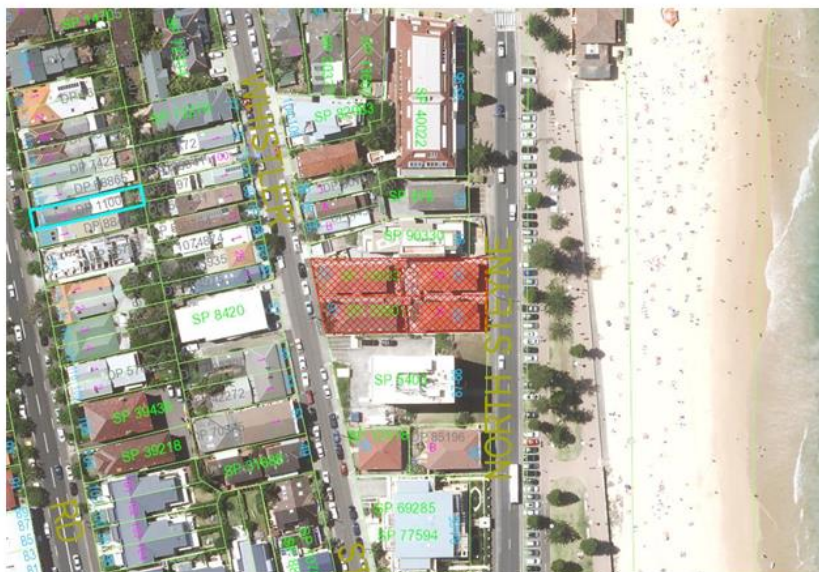
#### **DCP Variations proposed:**

Wall height, Number of Storeys, Setbacks (Sides, Rear), Open Space (Landscaped and Above Ground), Number of Endemic Trees

#### **Recommendation:**

Approval

### **Subject Property and surrounding area**





The subject properties are commonly known as 89-90 North Steyne and 90-92 Whistler Street, Manly and legally known Lots A & B DP 430074, SP 10633 and SP 3980. The site is located on the western side of North Steyne and the eastern side of Whistler Street. The properties are irregular in shape, have a total frontage of 22.855m to North Steyne and 23.27m to Whistler Street, an average depth of 52m and an overall site area of 1,189m<sup>2</sup> (1,043m<sup>2</sup> excluding area dedicated for road widening). The properties currently each contain a two-storey residential flat building. The properties are level.

The adjacent property to the north, at 91 North Steyne, is developed with a four-storey residential flat building. The adjacent property to the south, at 88 North Steyne, is developed with a 9-storey residential flat building.

#### **Property Burdens and Constraints**

The property is subject to a road widening dedication of 146m<sup>2</sup> to the east of the site. However, no building work are proposed in this area.

#### **Site History/Background**

Recent relevant applications relating to the subject properties include:

DA201/2013 (90 North Steyne): Four (4) Lot Strata Subdivision of an existing Residential Flat Building. Approved under delegation 19 February 2014

DA190/2014 (90 Whistler Street): Alterations and additions to an existing residential flat building including new second floor addition with roof top deck, new balcony and alterations to units 3 and 4. Refused by MIAP on 20 August 2015 for the following reasons:

1. Pursuant to Part 1, Section 5 of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be consistent with the Object of the Act as it would not represent the proper management or development of land for the purpose of promoting the social and economic welfare of the community and a better environment;
2. Pursuant to the provisions of *State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development 2015*, the proposed development has not been considered against relevant provisions and considerations within this legalisation as part of the application which has not identified which legislation that application is to be assessed under;
3. Pursuant to Clause 50 of the *Environmental Planning and Assessment Regulation 2000* the applicant has failed to provide a full set of detailed and accurate amended plans including consistent elevations, plans, details and contextual information. The amended set provided is not to scale, includes no site plan or ground floor level plan or locality/analysis plan and does not provide for a reasonable level of certainty to Council. In addition, the plans do not include correctly annotated property boundaries or details of surrounding development or its pattern and the statement of environmental effects provided is inadequate because it does not address local or state planning controls that apply. To this end the applicant has not addressed Clause 4.6 of MLEP 2013 where it applies. There is no site analysis plan included in support of the application or landscape plan or site plan and the Survey provided includes no scale, author or date and appears to be a copy which has no consent for use in terms of copyright legislation;
4. Pursuant to Clause 54 of the *Environmental Planning and Assessment Regulation 2000* the applicant has failed to provide a full set of detailed and accurate amended plans as requested in writing by the consent authority within a specified time period which has been extended for a reasonable length of time to allow the applicant to respond. The information requested, in the form requested, including a Statement of Environmental Effects has not been received.



5. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with, and not limited to, the aims found at Part 1, Clause 1.2 (2)(a)(b)(e) in of *Manly Local Environmental Plan 2013*, because the proposal would have a negative impact upon the amenity of neighbouring properties in terms of privacy and overlooking and overshadowing and visual bulk and general amenity;
6. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with the relevant objectives at Part 4, Clause 4.3 (Height of Buildings) of *Manly Local Environmental Plan 2013* because the proposal would result in an excessive and unreasonable level of bulk and would interrupt views to residential development and views from public places and reduce solar access for surrounding properties;
7. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Part 6, Clause 6.9 (Foreshore Scenic Protection Area) of *Manly Local Environmental Plan 2013* because the proposal would have a negative impact upon the 'visual aesthetic amenity' of the foreshore and that it will not minimise the contrast between the built environment and the natural environment. The proposed works include excessive visual bulk which will have negative localised environmental impacts;
8. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Clause *Manly Development Control Plan 2013* because it does not meet Clause 2.1.1 - Form of application because the plans and information submitted in support of the application are not in the form required and requested by Council as detailed within the following clauses of MDCP 2013:
  - Clause 2.1.2 – Context and Site analysis,
  - Clause 2.1.1.2 Survey Plans,
  - Clause 2.1.3 –Landscape Plan,
  - Clause 2.1.4 Shadow Diagrams,
  - Clause 2.1.6 Schedule of Building Materials and Finishes,
  - Clause 2.1.9.1 Access Statement,
  - Clause 2.1.12 Waste Management Plan.

In addition to non-compliance with the clauses above, the plans provided do not meet other requirements of the Regulation as detailed previously.

9. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Clause 3.4.1 'Sunlight Access and Overshadowing' of *Manly Development Control Plan 2013* because it does not comply with due to the apparent extent of shadows that will be cast due to the third storey;
10. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Clause *Manly Development Control Plan 2013* because it does not meet the requirements or objectives of Clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise) due to potential localised impacts from the rooftop terrace due its size, scale and location;
11. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Clause 3.4.2 Privacy and Security of the *Manly Development Control Plan 2013* because it does not meet Objectives 1 and 2 because it will cause excessive overlooking and acoustic impacts and could therefore impact upon the development potential of the surrounding area;
12. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Schedule 3 'Parking and Access' of *Manly Development Control Plan 2013* because it does not meet or consider the relevant car parking requirements pertaining to the development proposed;

13. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with a draft amendment to *Manly Development Control Plan 2013* because it would not meet the provisions as exhibited further to Council resolution in regard to Environmental Services Division Report No. 25 at Ordinary Meeting of Council to July 13<sup>th</sup> 2015;
14. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Clause 3.1.1 Streetscape (Residential Areas) of *Manly Development Control Plan 2013* because the redevelopment would not complement the area and would detract from its scenic amenity and includes an elevated element being the rooftop terrace of an excessive size;
15. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered inconsistent with Clause 4.1.4 Setbacks (front, side and rear) of *Manly Development Control Plan 2013* because it does not meet numerical controls for side or rear setbacks and will have unreasonable amenity impacts upon adjoining properties and the area including a rooftop terrace element and therefore reduce or preclude development rights for adjoining properties due to the relative location of such uses;
16. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979* the development as proposed is considered to be an over-intensification of the use of the site due to the extent and relative scale of the building works proposed in association with the fourth storey addition and the impacts that would ensue from the proposal including shadowing, lack of parking for residents and reduced amenity for neighbouring properties;
17. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979* the works are not considered to represent appropriate development for the site because the site is not suitable for the development proposed.

This is due to the inconsistency in terms of the size and scale of the proposal with the desired future character as described under the controls and non-compliance with local requirements and inadequate supporting information and localised impacts to surrounding properties;
18. Pursuant to Section 79C(1)(d) of the *Environmental Planning and Assessment Act 1979* the works have been considered in light of public submissions received by Council and the proposal has not been found to be in the public interest as relevant planning issues have been raised within the submissions that are considered to preclude the development as proposed;
19. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979* the works are not considered to be in the public interest due to the inconsistencies with local controls and potential negative environmental impacts of the proposal.

#### **Description of proposed development**

The proposal involves:

- Demolition of all structures, which include 4 x residential flat buildings containing a total of 16 units;
- Construction of a four-storey residential flat building comprising 14 units
  - Three one-bedroom apartments,
  - Three two-bedroom apartments,
  - Six three-bedroom apartments,
  - Two four-bedroom apartments, each including a roof terrace.
- Construction of a two-level basement car park, comprising 37 parking spaces, bin storage area, garbage chute, plant rooms, and bicycle storage; and
- Landscaping works.

The application originally sought the strata subdivision of the proposed building. However, this element of the application was withdrawn by the applicant on 14 July 2017.

### **Internal Referrals**

#### **Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **Landscaping Comments**

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **Heritage Comments**

Council's Heritage Officer has commented on the proposal as follows:

*"The following comments from a heritage perspective were presented to the applicant as part of the pre-DA process*

*It is considered that the application is generally acceptable however there are a few issues that will need to be addressed*

1. *The Whistler Street elevation will become a private enclosed yard which will result in a loss of amenity to the neighbouring heritage items and streetscape generally. The design team should consider amending the plans to ensure that Whistler Street elevation remains an active component of the streetscape.*
2. *Any development application for this site will need to be accompanied by a Heritage Impact Assessment which considers the potential impacts to the neighbouring heritage items (both in Whistler Street and to North Steyne).*
3. *A Photographic record of the exterior of the buildings will be required as a condition of consent to ensure that there a lasting record of the streetscape prior to the demolition of the buildings."*

*It is noted that an assessment of heritage impact has been undertaken, however the activation of the streetscape has been reduced and the impact of this should be considered from an Urban/Streetscape design perspective.*

*The building, while not heritage listed have contributed positively to the neighbouring heritage items and streetscape, a lasting photographic record should be produced to enable future historians and interested parties have access to accurate historical records of the areas."*

#### **Assessing Officer's Comments:**

The Heritage Officer's comments are addressed as follows:

1. Whistler Street is not a main road and is therefore not intended to be an active street. The treatment of Whistler Street in the proposed development retains an adequate level of amenity, including terraces at ground level, and is consistent with existing development in the street. As such, the proposal is acceptable in this regard.
2. A heritage assessment has been provided, as noted above.
3. Suitable conditions have been applied requiring a photographic record be undertaken.



**Waste Comments**

Council's Waste Officer has commented on the proposal as follows:

*"Have not addressed pre-lodgement advice regarding manoeuvring of bins up ramp."*

Assessing Officer's Comments:

A suitable condition has been applied requiring the relocation of the bin storage area from the basement to the rear (Whistler St) of the property.

**Environmental Health**

Council's Environmental Health Officer has commented on the proposal as follows:

*"The Geotechnical report provided states that significant disturbance of Acid Sulfate Soils will occur and a management plan is recommended."*

Assessing Officer's Comments:

Suitable conditions have been applied.

**Access Comments**

Council's Access Officer has commented on the proposal as follows:

*"The proposed penthouse development for 14 apartments and 37 car parking spaces is a rare example of a high quality residential building with outstanding aesthetics, good housing mix and consideration for universal design and access beyond compliance."*

*The proposed 3 adaptable units satisfy the Manly DCP requirement for 25% adaptable units. The floor layout of the 3 units is identical and appears one of the best that have been proposed in recent times."*

*The Accessibility Design Review by McKenzie Group outlines all the necessary access requirements and provides recommendations to achieve compliance. Additional detail of floor plans, dimensions and features should be further assessed in the next stage of the DA process."*

*My only comments are in regards to the car park:*

- *Check the overhead clearance from the underground car park entry to Level B1 where the accessible parking spaces are located - should be minimum 2500mm*
- *Clearly marked accessible pathway from the accessible parking spaces to the lift (as it crosses the car driveway) should be provided at completion."*

Assessing Officer's Comments:

Australian Standard AS2890.6, Clause 2.4 requires that the minimum head height clearance at the entrance of a car park is 2200mm, and that the minimum head height clearance at an accessible parking space is 2500mm. The proposed development is compliant with these requirements. A suitable condition has been applied in relation to the marking out of the accessible pathway.



### **Traffic Comments**

Council's Traffic Engineer has commented on the proposal as follows:

*"The parking provision is significantly more than the DCP requirement.  
The driveway access to Whistler Street is only single width however The Australian Standard for off street parking AS2890.1 does not require the driveway to be more than single width if it caters for less than 30 vehicle movements in the am peak period. In this case the range of vehicle movements likely to be generated is likely to be between 8 and 11 trips in the peak hour (based upon RMS traffic generation rates for residential unit development) and the likelihood of vehicle to vehicle conflict is therefore minimal and a single width driveway is therefore acceptable. Convex mirrors should however be installed at the junction of the driveway with the basement carpark to minimise vehicle to vehicle conflict on the access ramp.  
Sight line triangles have been provided at the junction the driveway with the footpath. These should be consistent with Fig 3.3 of AS2890.1 to allow for clear visibility to pedestrians using the footpath."*

### Assessing Officer's Comments:

Suitable conditions have been applied.

### **Driveway Comments**

Council's Driveway Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

### **Coastal Management Comments**

Council's Coastal Management Officer has commented on the proposal as follows:

*"No coastal comments. Groundwater to be addressed by Team Leader Water Cycle."*

### Assessing Officer's Comment

The application was referred to Council's Groundwater Officer.

### **Groundwater Comments**

Council's Groundwater Officer has commented on the proposal as follows:

*"The property is identified within the Manly LEP 2013 Acid Sulfate Soils map, under Class 4 land. The development proposes excavation to depths of up to 6m for the 2 level car park basement. In accordance with the Manly LEP 2013, Development consent is required for the carrying out of works on Class 4 Acid Sulfate Soil land if proposed works are more than 2 metres below the natural ground surface, and if works by which the water table is likely to be lowered more than 2 metres below the natural ground surface."*

*The geotechnical investigation conducted by JK Geotechnics involved drilling four boreholes to depths ranging from 2.05m to 4.45m below the existing surface levels, and Dynamic Cone Penetrometer (DCP) tests that extended to depths ranging from 4.55m to 4.7m below existing surface levels. Selected samples were analysed by Envirolab Services Pty Ltd (NATA Accredited) and tested pH, sulfate content, chloride content, and minimum resistivity of the soil.*

*No groundwater was encountered in the boreholes during or shortly after the completion of augering. JK Geotechnics and a desktop assessment conducted by the CPO of nearby groundwater works using NSW Natural Resource Atlas database, indicate that the groundwater is typically found at depths around 5m, and is affected by tidal fluctuations.*

*It is predicted that groundwater will be encountered during excavation to the maximum depth of 6m, and therefore recommended that supplementary geotechnical investigations be conducted that extend to the full depth of excavation and additional soil & groundwater sampling be conducted. Groundwater dewatering may be required with relatively high pumping rates predicted, consequently approval from WaterNSW may be required in regard to the quantity of groundwater extraction and water table drawdown. Council will determine approval regarding water quality and disposal method if within Council assets."*

Assessing Officer's Comments:

The application was referred to Water NSW for comment. Water NSW raised no objections to the proposal. Suitable conditions have been applied.

External Referrals

**Water NSW**

The proposal was referred to Water NSW. Water NSW raised no objection to the proposal.

**AUSGRID**

The proposal was referred to Ausgrid. Ausgrid raised no objection to the proposal, subject to recommended conditions of consent.

Planning Comments

**Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
  - (i) *any environmental planning instrument, and*

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)**

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

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
  - (a) the development consists of any of the following:
    - (i) the erection of a new building,
    - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
    - (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a four-storey residential flat 'housing' development plus basement car parking for the provisions of 14 self-contained dwellings. As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):
  - (a) the advice (if any) obtained from the design review panel, and
  - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
  - (c) the Apartment Design Guide.

#### **DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel.

#### **DESIGN QUALITY PRINCIPLES**

##### **Principle 1: Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

##### **Principle 2: Built Form and Scale**

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

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

Comment: The proposal results in variations to the height of buildings and floor space ratio development standards. The variation is assessed as being acceptable, as detailed in the section of this report relating to Part 4 of the MLEP 2013 – Principal Development Standards. As such, the proposal is consistent with this principle.

**Principle 3: Density**

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

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 6: Amenity**

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

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

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 7: Safety**

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.



**Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 9: Aesthetics**

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

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

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

| Development Control                  | Criteria / Guideline   | Comments  |
|--------------------------------------|--|---|
| <b>Part 3 Siting the Development</b> |  |   |
| <b>Site Analysis</b>                 | Does the development relate well to its context and is it sited appropriately?   | The proposed development is sited appropriately.  |
| <b>Orientation</b>                   | Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?  | The proposed development responds well to the streetscape to optimise solar access.   |
| <b>Public Domain Interface</b>       | Does the development transition well between the private and public domain without compromising safety and security?<br><br>Is the amenity of the public domain retained and enhanced? | The proposed development provides an appropriate transition between the public and private domain while maintaining adequate safety and security for residents. The amenity of the public domain is retained. |

| <b>Communal and Public Open Space</b>                                 | <p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)</li> </ol>  | <p>The proposed development requires 297.25m<sup>2</sup> of communal open space. The proposed development includes 147m<sup>2</sup> of communal open space.</p> <p>However, this is acceptable, given the site's location next to the beachfront. The proposed development is compliant with criterion No. 2.</p> |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
|---|---|---|-------------------------------|---------------------|-----------------------------|----|----|---|----|------|----------------------------------|-----|----|--|----|--|---|
| <b>Deep Soil Zones</b>  | <p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td>7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td><td></td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td><td></td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td><td></td></tr> </tbody> </table>  | Site area   | Minimum dimensions            | Deep soil zone (%)  | Less than 650m <sup>2</sup> | -  | 7% | 650m <sup>2</sup> – 1,500m <sup>2</sup> | 3m |      | Greater than 1,500m <sup>2</sup> | 6m  |    | Greater than 1,500m <sup>2</sup> with significant existing tree cover  | 6m |  | <p>The proposed development is compliant with these criteria. The proposed development requires 83.23m<sup>2</sup> of deep soil zone with a minimum dimension of 3m. The proposed development provides 125m<sup>2</sup> of deep soil zone with a minimum dimension of 6.4m.</p> |
| Site area   | Minimum dimensions  | Deep soil zone (%)  |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| Less than 650m <sup>2</sup>   | -   | 7%  |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| 650m <sup>2</sup> – 1,500m <sup>2</sup>                               | 3m  |   |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| Greater than 1,500m <sup>2</sup>                                      | 6m  |   |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m  |   |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| <b>Visual Privacy</b>   | <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | Building height   | Habitable rooms and balconies | Non-habitable rooms | Up to 12m (4 storeys)       | 6m | 3m | Up to 25m (5-8 storeys)                 | 9m | 4.5m | Over 25m (9+ storeys)            | 12m | 6m | <p>The proposed development, being 4 storeys and containing habitable rooms and balconies on the side elevations, requires setbacks of 6m.</p> <p>The proposed development does not comply with this criteria. However, the setbacks proposed adequately provide visual privacy between the subject site and the adjacent properties to the north and south.</p> <p>The proposal includes minimum 2m setbacks to both the north and south side boundaries. Having regard to the context of development</p> |    |  |   |
| Building height   | Habitable rooms and balconies   | Non-habitable rooms   |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| Up to 12m (4 storeys)   | 6m  | 3m  |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| Up to 25m (5-8 storeys)   | 9m  | 4.5m  |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |
| Over 25m (9+ storeys)   | 12m   | 6m  |                               |                     |                             |    |    |   |    |      |                                  |     |    |  |    |  |   |

|                                      |   |   |
|--------------------------------------|---|---|
|                                      |   | along the beachfront, where many flat buildings have been developed with nil side setbacks the proposal is satisfactory as the design orientates views and private open space to the beachfront.            |
| <b>Pedestrian Access and entries</b> | <p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>  | The proposed development is compliant with these criteria. The building entry and pedestrian access connects well to and addressed the public domain. The entry points are accessible and easy to identify. |
| <b>Vehicle Access</b>                | Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?   | The proposed development is compliant with this criterion. Pedestrian and vehicular access points are separated in order to avoid conflicts.  |
| <b>Bicycle and Car Parking</b>       | <p>For development in the following locations:<br/>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or<br/>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p> | Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.                             |

| Part 4 Designing the Building |  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
|-------------------------------|--|---|--|-----------------|------|---------------|------|-------------------------|---------------------------------|--|---|--------------|---------------------------------|--|---|---|
| Amenity                       |  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| Solar and Daylight Access     | <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <p>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>   | <p>Apartments 1, 3, 5, 7, 9, 11 and 13 would receive at least 2 hours of direct sunlight to living rooms and private open spaces.</p> <p>However, each proposed unit is dual-aspect, so all units will receive an adequate level of solar access.</p> <p>Apartments 13 and 14 are triple aspect.</p> <p>None of units receive no direct sunlight between 9am and 3pm at mid-winter.</p> |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| Natural Ventilation           | <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</p>   | <p>The proposed development is compliant with these criteria.</p> <p>Each of the 14 proposed apartments is dual-aspect, and so is able to provide natural cross-ventilation.</p> <p>Apartments 13 and 14 are triple aspect.</p>   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| Ceiling Heights               | <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor</td></tr><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor</td></tr><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table> | Minimum ceiling height  |  | Habitable rooms | 2.7m | Non-habitable | 2.4m | For 2 storey apartments | 2.7m for main living area floor |  | 2.4m for second floor, where its area does not exceed 50% of the apartment area | Attic spaces | 2.7m for main living area floor |  | 2.4m for second floor, where its area does not exceed 50% of the apartment area | <p>The proposed development is compliant with all apartments having 2.7m ceiling heights.</p> |
| Minimum ceiling height        |  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| Habitable rooms               | 2.7m   |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| Non-habitable                 | 2.4m   |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| For 2 storey apartments       | 2.7m for main living area floor  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
|                               | 2.4m for second floor, where its area does not exceed 50% of the apartment area  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
| Attic spaces                  | 2.7m for main living area floor  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |
|                               | 2.4m for second floor, where its area does not exceed 50% of the apartment area  |   |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |   |



|  | <div>If located in mixed used areas</div> <div>2.7m for main living area floor</div> <div>2.4m for second floor, where its area does not exceed 50% of the apartment area</div>  |   |                       |        |                  |           |                  |           |                  |           |                  |  |
|--|--|---|-----------------------|--------|------------------|-----------|------------------|-----------|------------------|-----------|------------------|--|
| Apartment Size and Layout  | Apartments are required to have the following minimum internal areas:  | The proposed development is compliant with these criteria.  |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> | Apartment type  | Minimum internal area | Studio | 35m <sup>2</sup> | 1 bedroom | 50m <sup>2</sup> | 2 bedroom | 70m <sup>2</sup> | 3 bedroom | 90m <sup>2</sup> | The proposed one-bedroom units are a minimum of 50sqm in area. |
|  | Apartment type   | Minimum internal area   |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | Studio   | 35m <sup>2</sup>  |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | 1 bedroom  | 50m <sup>2</sup>  |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | 2 bedroom  | 70m <sup>2</sup>  |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | 3 bedroom  | 90m <sup>2</sup>  |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.   | The proposed two-bedroom units have one additional bathroom each and are a minimum of 82sqm in area.          |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.  | The proposed three-bedroom units have two additional bathrooms each, and are a minimum of 145sqm in area.     |                       |        |                  |           |                  |           |                  |           |                  |  |
|  | Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.     | The proposed four-bedroom units have an additional three bathrooms each, and are a minimum of 235sqm in area. |                       |        |                  |           |                  |           |                  |           |                  |  |
| In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. | Each habitable room has a window of compliant dimensions.  |   |                       |        |                  |           |                  |           |                  |           |                  |  |
| Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).         | The open plan living/dining/kitchen areas are within 8m of a window.   |   |                       |        |                  |           |                  |           |                  |           |                  |  |
| Bedrooms have a minimum dimension of 3m (excluding wardrobe space).  | Bedrooms are compliant with required minimum areas and dimensions.   |   |                       |        |                  |           |                  |           |                  |           |                  |  |
| Living rooms or combined living/dining rooms have a minimum width of:  | Living rooms are compliant with minimum dimensions.  |   |                       |        |                  |           |                  |           |                  |           |                  |  |
| <div>3.6m for studio and 1 bedroom apartments</div> <div>4m for 2 and 3 bedroom apartments</div>                               |  |   |                       |        |                  |           |                  |           |                  |           |                  |  |
| The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts          |  |   |                       |        |                  |           |                  |           |                  |           |                  |  |

|                                  |   |                     |               |  |
|----------------------------------|---|---------------------|---------------|--|
| Private Open Space and Balconies | All apartments are required to have primary balconies as follows:   |                     |               | The proposed development is compliant with these criteria. The proposed development includes balconies with a minimum area of 17.5m <sup>2</sup> and a minimum depth of 3m.  |
|                                  | Dwelling Type   | Minimum Area        | Minimum Depth |  |
|                                  | Studio apartments   | 4m <sup>2</sup>     | -             |  |
|                                  | 1 bedroom apartments  | 8m <sup>2</sup>     | 2m            |  |
|                                  | 2 bedroom apartments  | 10m <sup>2</sup>    | 2m            |  |
|                                  | 3+ bedroom apartments   | 12m <sup>2</sup>    | 2.4m          |  |
|                                  | For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m. |                     |               |  |
| Common Circulation and Spaces    | The maximum number of apartments off a circulation core on a single level is eight.   |                     |               | The proposed development is compliant with these criteria.<br><br>The maximum number of units off the circulation core at each level is 4.<br><br>The building is four storeys in height and contains 14 apartments.   |
|                                  | For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.   |                     |               |  |
|                                  |   |                     |               |  |
| Storage                          | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:  |                     |               | The proposed development provides greater than required storage areas for each apartment, being 10m <sup>3</sup> for each of the one-, two-, and three-bedroom units, and at least 15m <sup>3</sup> for the four-bedroom units.<br><br>However, five of the fourteen apartments do not provide at least 50% of the required storage within the apartment (units 2, 3, 4, 6 and 12). This is supported, as the provided storage is more than adequate and securely located in the basement. |
|                                  | Dwelling Type   | Storage size volume |               |  |
|                                  | Studio apartments   | 4m <sup>3</sup>     |               |  |
|                                  | 1 bedroom apartments  | 6m <sup>3</sup>     |               |  |
|                                  | 2 bedroom apartments  | 8m <sup>3</sup>     |               |  |
|                                  | 3+ bedroom apartments   | 10m <sup>3</sup>    |               |  |
|                                  | At least 50% of the required storage is to be located within the apartment.   |                     |               |  |

|                            |   |  |
|----------------------------|---|--|
| <b>Acoustic Privacy</b>    | Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms. | The proposed development is compliant with this criterion as noise sources are predominantly located away from bedrooms.   |
| <b>Noise and Pollution</b> | Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.   | The proposed development is compliant with this criterion. The orientation of the development mitigates the impacts of external noise pollution and transmission.  |
| <b>Configuration</b>       |   |  |
| <b>Apartment Mix</b>       | Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.            | The proposed development is compliant with this criterion in that it provides one-, two-, three-, and four-bedroom dwellings.  |
| <b>Facades</b>             | Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.  | The proposed development is compliant with this criterion. The façade provides visual interest with the inclusion of curved elevations and blade walls.  |
| <b>Roof Design</b>         | Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.<br>Test whether the roof space can be maximised for residential accommodation and open space.       | The proposed development is compliant with this criterion. The proposed development provides an appropriate roof design, being a butterfly form. The roof space is proposed to be used as terrace space for units 13 and 14. |
| <b>Landscape Design</b>    | Was a landscape plan submitted and does it respond well to the existing site conditions and context.  | The proposed development is compliant with this criterion. The landscape plan provided responds well to the existing site conditions and context, being adjacent to the beachfront.  |

|                               |  |   |                    |                   |                           |   |
|-------------------------------|--|---|--------------------|-------------------|---------------------------|---|
| <b>Planting on Structures</b> | When planting on structures the following are recommended as minimum standards for a range of plant sizes:   |   |                    |                   |                           | The proposed development is compliant with these criteria.  |
|                               | <b>Plant type</b>  | <b>Definition</b>                               | <b>Soil Volume</b> | <b>Soil Depth</b> | <b>Soil Area</b>          |   |
|                               | Large Trees  | 12-18m high, up to 16m crown spread at maturity | 150m <sup>3</sup>  | 1,200mm           | 10m x 10m or equivalent   |   |
|                               | Medium Trees   | 8-12m high, up to 8m crown spread at maturity   | 35m <sup>3</sup>   | 1,000mm           | 6m x 6m or equivalent     |   |
|                               | Small trees  | 6-8m high, up to 4m crown spread at maturity    | 9m <sup>3</sup>    | 800mm             | 3.5m x 3.5m or equivalent |   |
|                               | Shrubs   |   |                    | 500-600mm         |                           |   |
|                               | Ground Cover   |   |                    | 300-450mm         |                           |   |
|                               | Turf   |   |                    | 200mm             |                           |   |
| <b>Universal Design</b>       | Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.   |   |                    |                   |                           | <p>The proposed development is compliant with this criterion.</p> <p>The proposed development provides three adaptable units, equating to 21.4% of the total apartments. Accordingly, three accessible parking spaces have been provided.</p> |
| <b>Adaptive Reuse</b>         | New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.  |   |                    |                   |                           | Not applicable. The proposed development is of wholly new construction.   |
| <b>Mixed Use</b>              | <p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p> |   |                    |                   |                           | Not applicable. The proposed development is a residential use only.   |



|  |   |  |
|--|---|--|
| <b>Awnings and Signage</b>               | Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.<br><br>Signage must respond to the existing streetscape character and context. | Not applicable. The proposed development is a residential use only, and no awnings or signage is proposed. |
| <b>Performance</b>                       |   |  |
| <b>Energy Efficiency</b>                 | Have the requirements in the BASIX certificate been shown in the submitted plans?   | The proposed development is compliant with this criterion.   |
| <b>Water Management and Conservation</b> | Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?   | The proposed development is compliant with this criterion.   |
| <b>Waste Management</b>                  | Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.   | The proposed development is compliant with this criterion.   |
| <b>Building Maintenance</b>              | Incorporates a design and material selection that ensures the longevity and sustainability of the building.   | The proposed development is compliant with this criterion.   |

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

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

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
  - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
  - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
  - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment: The above parking rate does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
  - (a) the design quality principles, and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

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

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

Comment: The application demonstrates that adequate regard has been given to design quality principles and the objectives of the Apartment Design Guide, as it provides a Design Verification Statement outlining the proposed works.

#### **Manly Local Environmental Plan 2013**

The subject site is located in Zone R3 Medium Density Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone R3 Medium Density Residential**

##### **Objectives of zone**

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

The proposed development provides fourteen dwellings to suit the needs of the community.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development complements the variety of housing types within the existing medium density residential environment.

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

Not applicable. The proposed development retains the residential use of the site.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed development includes suitable modern redevelopment of the four existing lots into one large lot, thereby revitalising the area.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed development retains the residential use of the site.

#### **Part 4 Principal development standards**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

| <b>4.</b> | <b>Principal Development Standards</b> | <b>Requirement</b>   | <b>Proposed</b>   | <b>Complies Yes/No</b> | <b>Comments</b>    |
|-----------|--|--|---|------------------------|--------------------|
| 4.3       | Height of buildings                    | 13m  | 14.76m  | No                     | See comment below. |
| 4.4       | Floor Space Ratio                      | 1.5:1<br>1,783.5m <sup>2</sup><br>(Based on site area including road widening) | 1.72:1<br>2,050m <sup>2</sup><br>(Based on site area including road widening) | No                     | See comment below. |

#### **4.6 Exceptions to development standards**

##### Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

|  |           |
|--|-----------|
| Requirement  | 13m       |
| Proposed   | 14.76m    |
| Is the planning control in question a development standard?  | Yes       |
| Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation? | Numerical |
| If numerical enter a % variation to requirement  | 13.5%     |

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

##### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

##### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

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

Comment: The proposed development, including the butterfly roof form, is consistent with and complementary to other developments within the streetscape and the locality. The proposed development provides and appropriate height in the context, adjacent to a 9-storey residential flat building to the south and a four-storey residential flat building to the north.

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

Comment: The bulk and scale of the proposed development are consistent with and lesser than other developments in the immediate vicinity and are controlled by articulation of the building by varied setbacks and angled walls. The proposed development results in a variation to the floor space ratio development standard (which controls the bulk of developments). This variation is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Floor Space Ratio.

- (c) *to minimise disruption to the following:*

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

Comment: The proposed development does not result in unreasonable view loss to, from or between private or public spaces, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Maintenance of Views.

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

Comment: The proposed development does not result in unreasonable overshadowing impacts, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Sunlight Access and Overshadowing.

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

Comment: Not applicable. The site is zoned R3 Medium Density Residential.

#### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of Zone R3 Medium Density Residential:

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

The proposed development provides fourteen dwellings to suit the needs of the community.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development complements the variety of housing types within the existing medium density residential environment.

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

Not applicable. The proposed development retains the residential use of the site.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed development includes suitable modern redevelopment of the four existing lots into one large lot, thereby revitalising the area.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed development retains the residential use of the site.

#### **Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of buildings development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed development results in a better outcome, as it provides modern housing in the local area.



- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The applicant has provided the following written request justifying the contravention of the height of building development standard:

***“Zone and Zone Objectives***

*The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.1.1 of this statement.*

***Height of Buildings Standard and Objectives***

*This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:*

- *The areas of non-compliance are limited to the architectural roof elements and the roof terrace access stairs and balustrade and in the context of the height of surrounding development are appropriately described as minor. The area/ extent of variation is depicted in Figures 8 and 9 of this report. The balance the development, including the residential floor plates in their entirety, sits comfortably below the height standard.*
- *We note that prior to the gazettal of Manly LEP 2013 that a 15 metre height limit applied to development on the sites fronting North Steyne with the proposed development fully compliant with these superseded provisions pursuant to which a significant number of residential flat buildings along North Steyne were approved and constructed.*
- *The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the recently approved and constructed residential flat building to the north with a near identical overall building height proposed as depicted in Figure 10 below. The non-compliant architectural roof elements contribute positively to the design quality of the building ensuring that it will be a landmark development within its context.*



Figure 10 – Comparative/ contextual height diagram

- *Excavation is limited to that required to accommodate the basement parking, storage and waste collection areas with natural ground levels maintained around the perimeter of the site.*
- *It has been determined that the building height breach will not give rise to any unacceptable/ non-compliant residential amenity impacts in terms of overshadowing as depicted on the accompanying shadow diagrams Plan A-21. In this regard, detailed shadow analysis has influenced the roof form design with the lower southern roof wing and central break in the roof form ensuring that at least 2 hours of solar access will be maintained to the principal living and adjacent private open space areas of all apartments within the southern adjoining residential flat building between 8:00am and 4:00pm in mid-winter with the exception of the apartment at the north western lowest level of the building. This apartment is extremely vulnerable to shadowing impact with the same level of impact arising from a fully compliant building. We note that at least 6 hours of solar access is maintained to all north facing apartments, including the apartment at the north western lowest level of the adjoining building, at the Equinox (March 21 and Sept 21) being an acceptable solar access outcome under the circumstances. The additional hour in the morning and afternoon is only required to be taken into account for the lowest residential level apartments which due to their orientation and location are extremely vulnerable to shadowing impact from any development on the subject site. The adoption of an 8:00am to 4:00pm solar analysis is regularly accepted by the Land and Environment Court as being reasonable applied to such circumstances. Existing compliant levels of solar access to the balance of surrounding properties is not compromised due to the maintenance of established spatial separation and allotment orientation.*
- *In relation to privacy we confirm that the only potential impact arising from the building height non-compliance is overlooking from the proposed roof terraces. In this regard, the roof terraces have been pulled back away from the northern and southern building facades with integrated planter boxes to a height of 1.1 metres provided to the outer edges. The accompanying landscape plans nominate plantings of between 500mm and 1.5 metre in height which will reach effective mature heights of between 1.6 and 2.6 metres from terrace level thus obscuring direct overlooking between adjoining development. The proposal provides for the sharing of both public and private views with view corridors maintained down both sides of the property. Development to the west is predominantly 1, 2 and 3 storeys in height such that the non-compliant building height elements will not result in the loss of any views which would otherwise be available over a building on the site displaying a fully compliant building height. The proposed building maintains complimentary and compatible setbacks to both street frontages with the facade alignments and open style balconies maintaining views across the corners of the development site from neighbouring properties. In fact, the demolition of the existing buildings on the site and their replacement with a building maintaining greater setbacks to both street frontages will actually enhance views from the lower level apartments in both immediately adjoining developments. Whilst some view impact will arise due to the increased height of development on the site, such impacts were reasonably anticipated by the zoning of the land and the prescribed building heights. We confirm that view impacts are limited to views currently available directly across the side boundaries of the subject and which are only available as a result of the underdeveloped 2 storey nature of the property. Views available across the front and rear boundaries of both adjoining properties are preserved. Under such circumstances any resultant view loss is appropriately described as minor.*

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.
- Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding residential properties.
- Having regard to the matter of *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the exceptional design quality of the building which is significantly enhanced as a consequence of breaching architectural roof elements proposed. Further, the compatibility of the proposed building height with the height and form of surrounding development, the developments compliance with the objectives of the height standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

A better environmental planning and urban design outcome is achieved through the facilitation of the building height variation proposed.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance."



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

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

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

Comment: The applicant's written request has adequately addressed the relevant matters.

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

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

#### Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

|  |   |
|--|---|
| Requirement  | 1.5:1 (1,783.5m <sup>2</sup> GFA)<br>(Based on site area including road widening) |
| Proposed   | 1.72:1 (2,050m <sup>2</sup> GFA)<br>(Based on site area including road widening)  |
| Is the planning control in question a development standard?  | Yes   |
| Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation? | Numerical   |
| If numerical enter a % variation to requirement  | 14.9%   |

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

#### **Is the planning control in question a development standard?**

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

#### **What are the underlying objectives of the development standard?**

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

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



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

Comment: The proposed development is located between two residential flat buildings, being a four-storey development to the north, and a nine-storey development to the south. A number of other four- and five-storey residential flat buildings exist in the vicinity along North Steyne. As such, the proposed development is consistent with (and lesser than) the bulk and scale of existing development in the streetscape.

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

Comment: The proposed development does not unreasonably obscure important landscape and townscape features, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Maintenance of Views.

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

Comment: The proposal maintains an appropriate visual relationship between the new development and the existing character and landscape of the area, as it is of a comparable (and lesser) scale to existing development in the street. Further, the proposal retains a large landscaped area along the North Steyne street frontage, which provides a greater transition between the open nature of the beachfront to the east and the proposed new building.

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

Comment: The proposed development does not unreasonably impact on the use or enjoyment of adjoining land.

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

Comment: Not applicable. The site is zoned R3 Medium Density Residential.

#### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of Zone R3 Medium Density Residential:

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

The proposed development provides fourteen well-serviced dwellings to suit the needs of the community.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development complements the variety of housing types within the existing medium density residential environment.

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

Not applicable. The proposed development retains the residential use of the site.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed development includes suitable modern redevelopment of the four existing lots into one large lot, thereby revitalising the area.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed development retains the residential use of the site.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the floor space ratio development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed development results in a better outcome, as it provides modern well-serviced housing in the local area.

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

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

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

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

Comment: The applicant has provided the following written request justifying the contravention of the floor space ratio development standard:

***“Zone and Zone Objectives***

*The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.1.1 of this statement.*

***Floor Space Ratio Standard and Objectives***

*This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:*

- *The height, bulk and scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment as depicted in Figure 11 below.*



Figure 11 – Comparative/ contextual height diagram

- The development will not obscure unreasonably obscure important landscape or townscape features with an appropriate landscape curtilage maintained.
- It has been determined that the highly articulated and modulated building form and massing will not give rise to any unacceptable/ non-compliant residential amenity impacts in terms of overshadowing as depicted on the accompanying shadow diagrams Plan A-21.

In this regard, detailed shadow analysis has influenced the roof form design with the lower southern roof wing and central break in the roof form ensuring that at least 2 hours of solar access will be maintained to the principal living and adjacent private open space areas of all apartments within the southern adjoining residential flat building between 8:00am and 4:00pm in mid-winter with the exception of the apartment at the north western lowest level of the building. This apartment is extremely vulnerable to shadowing impact with the same level of impact arising from a fully compliant building.

We note that at least 6 hours of solar access is maintained to all north facing apartments, including the apartment at the north western lowest level of the adjoining building, at the Equinox (March 21 and Sept 21) being an acceptable solar access outcome under the circumstances.

Existing compliant levels of solar access to the balance of surrounding properties is not compromised due to the maintenance of established spatial separation and allotment orientation.

- In relation to privacy we confirm that internal living and adjacent private open space areas have been oriented towards both street frontages with side boundary facing fenestration limited and off-set from windows in adjoining development where possible to prevent direct overlooking opportunities between properties. That said, where all properties are orientated to take advantage of available views and northerly aspect, as is the current circumstance, a degree of mutual overlooking will inevitably occur. In this regard, the maintenance of views and solar access is often offset by a reduced expectation in relation to the maintenance of absolute privacy. We have formed the considered opinion that a reasonable level of visual and aural privacy will be maintained between adjoining development.
- The proposal provides for the sharing of both public and private views with view corridors maintained down both sides of the property. Development to the west is predominantly 1, 2 and 3 storeys in height such that the non-compliant building height elements will not result in the loss of any views which would otherwise be available over a building on the site displaying a fully compliant building height. The proposed building maintains complimentary and compatible setbacks to both street frontages with the facade alignments and open style balconies maintaining views across the corners of the development site from neighbouring properties. In fact, the demolition of the existing buildings on the site and their replacement with a building maintaining greater setbacks to both street frontages will actually



enhance views from the lower level apartments in both immediately adjoining developments.

Whilst some view impact will arise due to the increased height of development on the site, such impacts were reasonably anticipated by the zoning of the land and the prescribed building heights. We confirm that view impacts are limited to views currently available directly across the side boundaries of the subject and which are only available as a result of the underdeveloped 2 storey nature of the property. Views available across the front and rear boundaries of both adjoining properties are preserved. Under such circumstances any resultant view loss is appropriately described as minor.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.
- Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding residential properties.
- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the exceptional design quality of the building and the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the sites visual catchment. The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and



(e) *that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and*

(f) *that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.*

*As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance."*

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

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

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

Comment: The applicant's written request has adequately addressed the relevant matters.

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

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

#### **Part 5 Miscellaneous Provisions**

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

| <b>5.</b> | <b>Miscellaneous Provisions</b> | <b>Applies</b> | <b>Complies</b> | <b>Comment</b>  |
|-----------|---------------------------------|----------------|-----------------|---|
| 5.10      | Heritage Conservation           | Yes            | Yes             | The proposed development is compliant with the relevant objectives and provisions within Clause 5.10 of the Manly LEP 2013. |

#### **Part 6 Local Provisions**

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

| <b>6.</b> | <b>Local Provisions</b> | <b>Applies</b> | <b>Complies</b> | <b>Comment</b>   |
|-----------|-------------------------|----------------|-----------------|--|
| 6.1       | Acid Sulfate Soils      | Yes            | Yes             | As modified by conditions of consent, the proposed development is consistent with the objectives and provisions of Clause 6.1 of the Manly LEP 2013. |
| 6.2       | Earthworks              | Yes            | Yes             | The proposed development is consistent with the objectives and provisions of Clause 6.2 of the Manly LEP 2013.                                       |

|      |                       |     |     |   |
|------|-----------------------|-----|-----|---|
| 6.4  | Stormwater Management | Yes | Yes | The proposed development is consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.  |
| 6.12 | Essential services    | Yes | Yes | The proposed development is consistent with the objectives and provisions of Clause 6.12 of the Manly LEP 2013. |

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

#### **Manly Development Control Plan 2013**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

#### **Part 3 General Principles of Development**

| <b>Issues</b>                     | <b>Consistent with Principle</b> | <b>Inconsistent with Principle</b> |
|-----------------------------------|----------------------------------|------------------------------------|
| Streetscape                       | ✓                                |                                    |
| Heritage – In Vicinity            | ✓                                |                                    |
| Landscaping Design                | ✓                                |                                    |
| Landscape/Tree Preservation       | ✓                                |                                    |
| Sunlight Access and Overshadowing | ✓                                |                                    |
| Privacy and Security              | ✓                                |                                    |
| Maintenance of Views              | ✓                                |                                    |

#### **Comment:**

##### **3.1 Streetscapes and Townscapes**

##### **Streetscape**

*Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

The proposed development includes a generous front setback of 6.405m (for road widening dedication) to the proposed terraces and balconies and 12.4m to the building proper, thereby reducing the visual impact of walls along the main street frontage. The proposed development does not include fencing along the main street frontage. The proposed fence along the western frontage of the site is compliant. The proposed development reduces the visual impact of car parking on the street by locating the car park entrance to the rear of the subject site, away from the beach front, on the quieter Whistler Street.

*Objective 2) To ensure development generally viewed from the street complements the identified streetscape.*

The proposed development complements the existing streetscape character, as the street contains a number of residential flat buildings of comparable or greater scale.

*Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

The proposed development incorporates a compliant fence to the western frontage, and landscaping to the eastern frontage.

### 3.2 Heritage Considerations

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The subject site is not heritage listed. The proposed development is within the vicinity of heritage-listed Item 2 Stone Kerbs, Item 256 Masonic Hall and Items 257, 258, 259 Houses. The proposed development is consistent with and complements the existing streetscape character, as the street contains a number of residential flat buildings of comparable or greater scale. As such, the proposed development does not unreasonably impact upon the heritage significance of the nearby heritage-listed items.

*Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

Not applicable. The subject site is not a heritage item (or a potential heritage item), nor within a heritage conservation area.

*Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

The proposed development is of an appropriate form and design so that it does not unreasonably impact upon the significance of the nearby heritage items.

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

Not applicable. The proposed modifications and the approved development do not involve infrastructure.

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

Not applicable. The subject site is not heritage listed, nor within a heritage conservation area.

#### 3.3.1 Landscaping Design

*Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*

The proposed development provides adequate deep soil planting zones in accordance with State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide.

*Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The proposed development does not unreasonably alter important landscape features and vegetation.

### 3.3.2 Landscape/Tree Preservation

*Objective 1) To ensure that development protects and conserves the natural environment.*

The proposed development satisfactorily protects and conserves the natural environment with the inclusion of adequate deep soil planting zones.

*Objective 2) To protect and preserve urban bushland areas in recognition of their:*

- *value as part of the natural heritage;*
- *aesthetic value; and*
- *value as a recreational, educational and scientific resource.*

The subject site does not contain any urban bushland.

*Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.*

The subject site does not contain any riparian land.

### 3.4.1 Sunlight Access and Overshadowing

*Objective 1) To provide equitable access to light and sunshine.*

The proposal provides equitable access to light and sunshine in that the development does not eliminate more than one third of the open space to the adjacent property to the south. The northern windows and balconies to the first and second floors of the property to the south experience a loss of solar access during mid-winter. However, the overshadowing impact is negligibly greater than that of a completely compliant development and is acceptable.

*Objective 2) To allow adequate sunlight to penetrate:*

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

As above, the northern windows and balconies to the first and second floors of the property to the south experience a loss of solar access during mid-winter. However, the overshadowing impact is negligibly greater than that of a completely compliant development and is acceptable.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed development incorporates modulated building bulk, with the articulation of side setbacks to the south. Further, the proposed development incorporates a generous front (east) setback and an acceptable rear (west) setback, in order to allow for sunlight penetration to the property to the south in the morning and afternoon.

### 3.4.2 Privacy and Security

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

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

The proposed development minimises the loss of privacy to adjacent and nearby development with the inclusion of privacy screening, opaque glazing and highlight windows where appropriate. Further, the proposed balconies on the eastern (front) and western (rear) elevations are predominantly orientated to the street, rather than across the side boundaries. Finally, the proposed roof terraces are centrally located within the building footprint and incorporate planter boxes along the northern and southern sides in order to prevent overlooking. In these ways, the proposed development is appropriately designed for privacy and mitigates direct viewing between properties.



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

The proposed development provides adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposed first floor addition includes balconies and windows on each elevation of the building, encouraging awareness of neighbourhood security through passive surveillance.

### 3.4.3 Maintenance of Views

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

The proposed development allows for view sharing for residents of the existing adjacent buildings and the proposed building.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

The proposed development does not result in unreasonable view loss to and from public spaces, as demonstrated below.

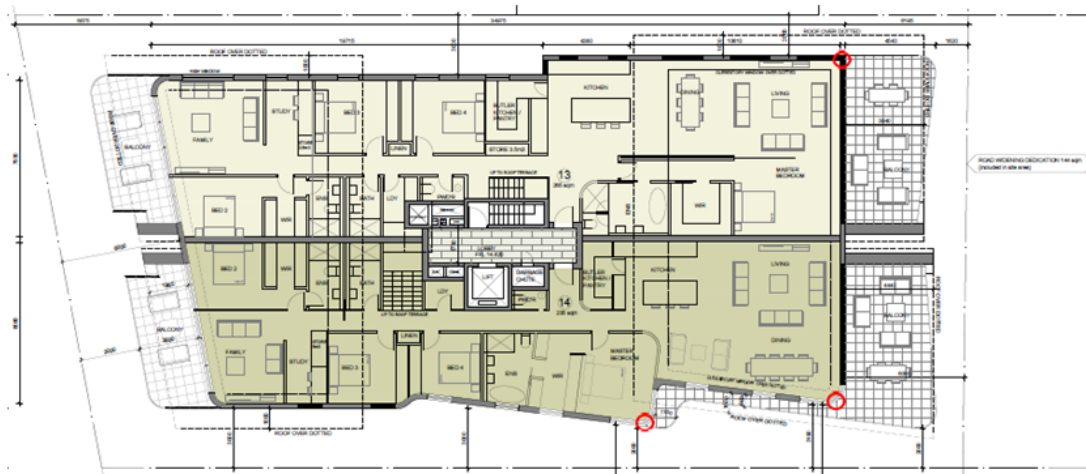
*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

The proposed development does not result in unreasonable view loss or view creep, as demonstrated below.

The proposed development attracted a number of objections in relation to view loss. The Assessing Officer carried out site visits at each of the objecting properties where access was granted, and photographed the affected views. The Assessing Officer was unable to ascertain the extent of potential view loss to Units 12, 15 and 18 at 88 North Steyne, so requested the construction of height poles at the following locations:



Proposed Eastern Elevation



Level 3 Floor Plan

These locations were chosen as they are the points where the greatest view loss would occur to Units 12, 15 and 18 at 88 North Steyne. The Assessing Officer carried out subsequent view loss site visits at Units 12 and 15 at 88 North Steyne. Unit 18 was unable to be accessed again at the time of writing this report. Photographs and assessments of each affected view are as follows.

In this case, the Planning Principle relating to view loss has been considered as per Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. The four steps of assessment of view loss as established by the NSW Land and Environment Court planning principle are addressed as follows.

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

Comment: Step 1 addressed collectively with Steps 2 and 3 for each individual property below.

*"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."*

Comment: Step 2 addressed collectively with Steps 1 and 3 for each individual property below.

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

Comment: Step 3 addressed collectively with Steps 1 and 2 for each individual property below.





Unit 1, 88 North Steyne:  
Living Room Balcony (Front)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the minor loss of view to the sky and the minor gain of view to the road. May gain minor additional water views. The overall view loss to this property is negligible.



Unit 6, 88 North Steyne:  
Living Room Balcony (Side)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to the sky and the minor expansion of the view corridor to the road and sand/water interface. The overall view loss to this property is minor.



Unit 7, 88 North Steyne:  
Living Room Balcony (Front)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the minor loss of view to the sky and the minor gain of view to the road. The overall view loss to this property is negligible.



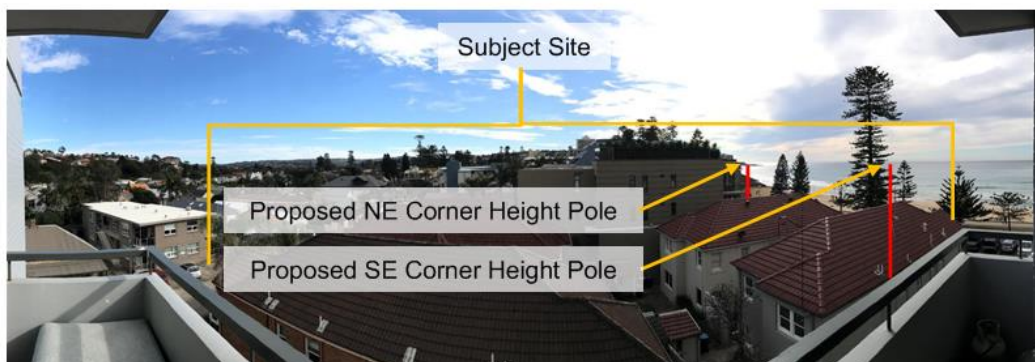
Unit 8, 88 North Steyne:  
Living Room Balcony (Side)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the minor loss of view to the sky and adjacent properties, and the minor gain of view to the road. The overall view loss to this property is minor.



Unit 10, 88 North Steyne:  
Living Room Balcony (Front)

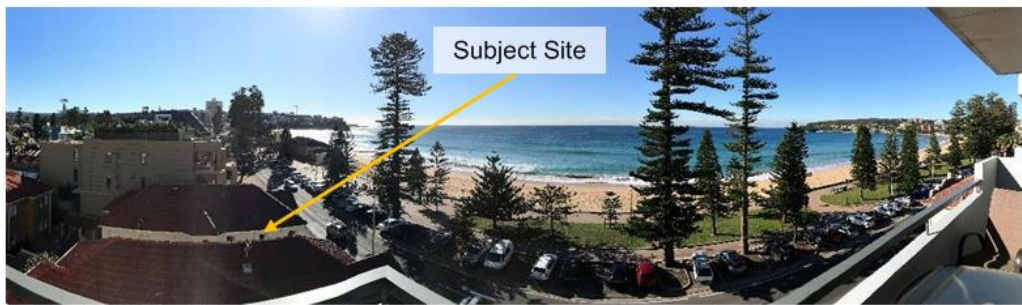
The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the minor loss of view to adjacent properties and minor gain of view to the road. The overall view loss to this property is negligible.



Unit 12, 88 North Steyne:  
Living Room Balcony (Side)

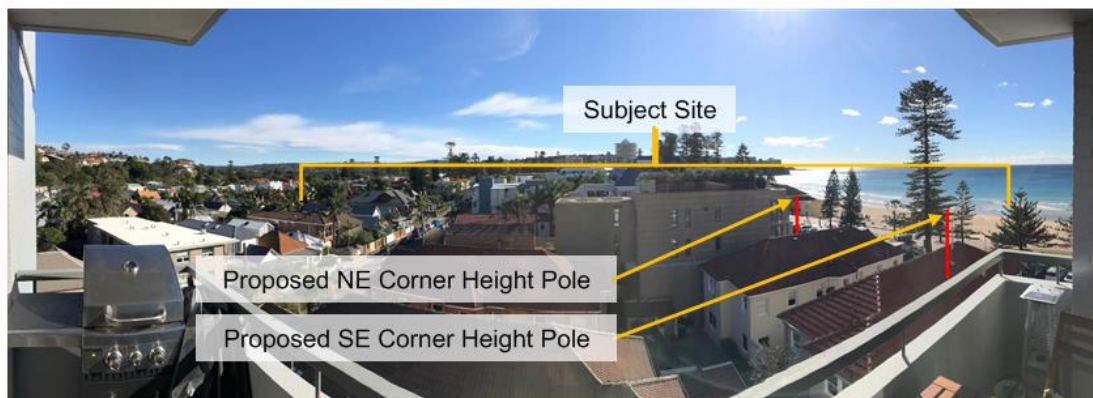
The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to adjacent properties and approximately half the existing water view. A view corridor to the water (including interface between sand and water) is retained and a minor view to the sand is gained. The overall view loss to this property is moderate.





Unit 14, 88 North Steyne:  
Living Room Balcony  
(Front/Side)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to adjacent properties and a minor loss of water. The overall view loss to this property is minor.



Unit 15, 88 North Steyne:  
Living Room Balcony (Side)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to adjacent properties and a portion of the interface between the sand and water. The overall view loss to this property is minor.



Unit 18, 88 North Steyne:  
Living Room Balcony (Side)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to adjacent properties and a minor loss of the interface of the sand and water. The overall view loss to this property is minor.





Unit 21, 88 North Steyne:  
Living Room Balcony (Side)

The affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to adjacent properties and a minor loss of view to the sand. The overall view loss to this property is negligible.



Unit 22, 88 North Steyne:  
Living Room Balcony (Front)

The proposed development will not result in view loss to this property.



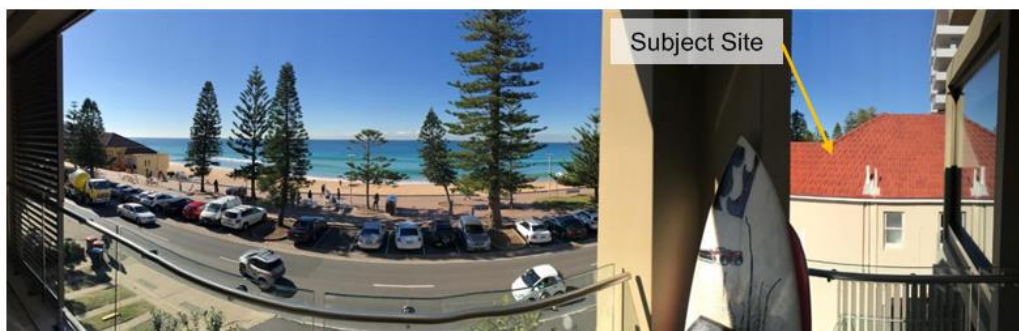
Unit 1, 91 North Steyne:  
Rear Terrace (Side)

The affected view is accessed from the rear terrace across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to the sky above the existing building and a minor gain of view to the sky to the rear. The overall view loss to this property is negligible.



Unit 3, 91 North Steyne:  
Living/Dining Room Balcony  
(Front)

The affected view is accessed from the balcony off the living room, across the front and side boundaries, from seated and standing positions. The proposed development will result in the loss of view to the sky and the gain of view to the water, including its interface with the sand. The overall view loss to this property is negligible, and some view is gained.



Unit 4, 91 North Steyne:  
Living Room Balcony (Front)

The affected view is accessed across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to the sky and the gain of view to the road. The overall view loss to this property is minor.





Unit 5, 91 North Steyne:  
Living Room Balcony (Front)

The main affected view is accessed from the balcony off the living room, across the side boundary, from seated and standing positions. The proposed development will result in the loss of view to the sky and pines, and the gain of view to the road.

The second affected view is accessed from the kitchen window, across the side boundary, from a standing position. The proposed development will result in the loss of view to North Head and St Patrick's Church. However, views to these icons are retained from the living room, the balcony off the living room, and the roof terrace.

The overall view loss to this property is minor.

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

Comment: The proposed development is non-compliant in relation to height of buildings, floor space ratio, wall height, number of storeys, setbacks (sides, rear), open space (landscaped and above ground), and number of endemic trees. These non-compliances are considered acceptable for the reasons detailed in the sections of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards and Part 4 of the Manly DCP 2013 – Development Controls.

The subject site is currently underdeveloped, containing two-storey buildings only. A compliant development (up to four storeys) would result in comparable view loss as the proposed development. The proposed development retains view corridors along the site, with the inclusion of minimum 2m setbacks to each side of the site to provide for view corridors. Comparable recent developments in the locality have previously provided nil side setbacks. Amendments to the building to ensure compliance would result in a negligible reduction of view loss for adjacent properties, if any. As such, to require amendments to the design in order to retain existing views is considered onerous and not in line with view-sharing principles.

#### Part 4 - Development Controls

The State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide prevail over the Manly DCP 2013. Notwithstanding this, an assessment of the proposal against the development controls at Part 4 of the MDCP 2013 is provided below.

| Site Area:                    | 1,189m <sup>2</sup> | Permitted/<br>Required                        | Proposed  | Complies<br>Yes/No        |
|-------------------------------|---------------------|---|---|---------------------------|
| Residential Density – Area D1 |                     | 50m <sup>2</sup> of site area<br>per dwelling | 84.9m <sup>2</sup> of site<br>area per dwelling | Yes                       |
| Wall height                   | North side          | 12m   | 12.1m   | No. See comment<br>below. |



|                                |                     |   |  |                            |
|--------------------------------|---------------------|---|--|----------------------------|
| Site Area:                     | 1,189m <sup>2</sup> | <b>Permitted/<br/>Required</b>  | <b>Proposed</b>  | <b>Complies<br/>Yes/No</b> |
| South side                     |                     | 12m   | 12.1m  | No. See comment below.     |
| Number of Storeys              |                     | 3   | 4  | No. See comment below.     |
| Roof height                    |                     | 2.5m  | 2.35m  | Yes                        |
| Setback Front                  |                     | 6.0m or streetscape   | 6.405m to terraces and balconies (incl. area for road widening)<br><br>12.4m to building proper        | Yes                        |
| North setback side             |                     | 4m  | 2m   | No. See comment below.     |
| South setback side             |                     | 4m  | 2m   | No. See comment below.     |
| Wall on boundary height        |                     | 3m  | No walls on boundary are proposed.   | NA                         |
| Wall on boundary length        |                     | 35% of boundary length  |  |                            |
| Setback Rear                   |                     | 8.0m  | 1.5m to rear ground floor terraces<br><br>3m to rear first-third floor balconies<br><br>6m to building | No. See comment below.     |
| Setback to RE1, RE2, E1 and E2 |                     | 6.0 / 8.0m  | 14m  | Yes                        |
| Open space - total             |                     | Min. 45% of Site Area (535.05m <sup>2</sup> )   | 74% (881m <sup>2</sup> )   | Yes                        |
| Open space - landscaped        |                     | Min. 25% of Total Open Space (220.25m <sup>2</sup> )  | 17.6% (155m <sup>2</sup> )   | No. See comment below.     |
| Open space - above ground      |                     | Max. 40% of Total Open Space (352.4m <sup>2</sup> )   | 50.4% (444m <sup>2</sup> )   | No. See comment below.     |
| Number of Endemic Trees        |                     | 4   | 0  | No. See comment below.     |
| Private Open Space             |                     | 12m <sup>2</sup> per dwelling   | 17.5m <sup>2</sup> + per dwelling  | Yes                        |
| Car Parking – Residents        |                     | 1 space per dwelling, plus 0.2 spaces per 2-bed dwelling, plus 0.5 spaces per 3+ bed dwelling:<br>19 spaces | 33 spaces  | Yes                        |

|   |  |  |     |
|---|--|--|-----|
| - Visitors  | 0.25 spaces per dwelling:<br>4 spaces  | 4 spaces   | Yes |
| Swimming pool height  | 1m   | Pools located on roof terraces                         | NA  |
| Swimming pool setbacks pool concourse / deck  | 1m   | 6.7m<br>(northern pool)<br><br>8.1m<br>(southern pool) | Yes |
| Swimming pool setbacks water's edge   | 1.5m   | 6.9m<br>(northern pool)<br><br>8.3m<br>(southern pool) | Yes |
| Fence height  | 1m solid / 1.5 with transparency   | 950mm<br>(western frontage)                            | Yes |
| Excavation  | Generally 1m, excluding basement parking and swimming pools<br><br>Dilapidation or Geotechnical report | 6.16m for the purpose of a basement parking            | Yes |
| Subdivision<br>-Access and services<br><br>-Prevailing subdivision pattern and natural features<br><br>-Energy efficiency | Assess and services acceptable<br>Complements existing pattern<br>Maximise solar access                | No subdivision is proposed.                            | NA  |

**Comment:**

LEP Clause 4.3 Height of buildings

Clause 4.1.2.1 of the MDCP 2013 requires that the maximum wall height for the subject site is 12m. The proposal incorporates 12.1m wall heights. Clause 4.1.2.2 of the MDCP 2013 provides that the maximum number of storeys is 3. The proposed development is 4 storeys. The Manly DCP 2013 refers to the height of development standard objectives at Clause 4.3 of the Manly LEP 2013. The objectives of this clause are as follows:

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

The proposed development, including the butterfly roof form, is consistent with and complementary to other developments within the streetscape and the locality. Despite the non-compliant wall height and number of storeys, the proposed development provides an appropriate height in the context, adjacent to a 9-storey residential flat building to the south and a four-storey residential flat building to the north.

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

Despite the non-compliant wall height and number of storeys, the bulk and scale of the proposed development are consistent with and lesser than other developments in the immediate vicinity. The bulk and scale are controlled by articulation of the building by varied setbacks and angled walls. The proposed development results in a variation to the floor space ratio development standard (which controls the bulk of developments). This variation is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Floor Space Ratio.

*(c) to minimise disruption to the following:*

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

The proposed non-compliant wall height and number of storeys do not result in unreasonable view loss to, from or between private or public spaces, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Maintenance of Views.

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

The proposed non-compliant wall height and number of storeys do not result in unreasonable overshadowing impacts, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Sunlight Access and Overshadowing.

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

Not applicable. The site is zoned R3 Medium Density Residential.

#### 4.1.4 Setbacks (Side and Rear) and Building Separation

Clause 4.1.4.2 of the MDCP 2013 requires that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed development seeks non-compliant side setbacks of 2m (4m required). Clause 4.1.4.4 of the MDCP 2013 requires that the distance between any part of a building and the rear boundary must not be less than 8m. The proposed development incorporates 1.5m rear setback to the western ground floor terraces, 3m to the rear first- to third-floor balconies, and 6m to the building.

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

The proposed side and rear setbacks are consistent with and complementary to the existing developments within the immediate vicinity, thereby maintaining the desired spatial proportions of the street, the street edge and the landscape character of the street.

*Objective 2) To ensure and enhance local amenity by:*

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

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed development does not unreasonably impact upon traffic conditions.

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

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

*Objective 4) To enhance and maintain natural features by:*

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

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. This is detailed further in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls – Open Space and Landscaping. The subject site does not contain urban bushland.

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

The subject site is not within an area of bushfire prone land.

#### 4.1.5 Open Space and Landscaping

Clause 4.1.5.1 of the MDCP 2013 requires that the subject site provide a minimum of 25% of the total open space as landscaped area, and a maximum of 40% of the total open space as open space above ground. The proposed development incorporates 155sqm of landscaped open space, equating to 17.6% of the total open space. The proposed development incorporates 44sqm of open space above ground, equating to 50.4% of the total open space. Further, Clause 4.1.5.2 of the MDCP 2013 requires that the subject site plant four native trees on site. The proposal does not include the planting of any native trees.

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

The subject site is level and is currently predominantly built upon or paved. As such, the proposed development does not unreasonably impact upon important landscape features and vegetation, and provides an improved landscaped arrangement that currently exists.

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

The subject site is level and is currently predominantly built upon or paved. As such, the proposed development provides an improved landscaped arrangement that currently exists, thereby maximizing landscaped areas at the ground level. The proposed development includes adequate deep soil planting zones.

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

The amenity impacts (sunlight, privacy, and views) resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

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

As above, the open space currently available on the subject site is predominantly hard and impervious. The proposed development includes adequate deep soil planting zones, which demonstrate an improvement on the existing situation and will satisfactorily assist with water infiltration.



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

The proposed development is adequately landscaped so as not encourage the spread of weeds.

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

The proposed development provides adequate landscaped spaces for wildlife habitat and corridors.

#### **Part 5 - Special Character Areas and Sites**

| <b>Special Character Areas and Sites</b>     | <b>Applicable</b> | <b>Not Applicable</b> |
|--|-------------------|-----------------------|
| Conservation Area                            |                   | ✓                     |
| Foreshore Scenic Protection Area             | ✓                 |                       |
| Threatened Species and Critical Habitat      |                   | ✓                     |
| Flood Control Lots                           |                   | ✓                     |
| Riparian Land and Watercourses               |                   | ✓                     |
| Road Widening                                |                   | ✓                     |
| Gurney Crescent and Clavering Road, Seaforth |                   | ✓                     |

#### **Comment:**

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the visual aesthetic amenity of the area.

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed development.

#### **79C(1)(a) (iv) - the regulations**

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

#### **79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

#### **79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

#### **79C(1) (c) - the suitability of the site for the development,**

The proposed development is suitable for the site.

#### **79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with twelve submissions received from the following objectors raising the following concerns:

| <b>Submission and Address</b>               | <b>Main Issues raised in the submission</b>  |
|---|--|
| 1. F. Peylaire<br>6/4 Carlton Street, Manly | <ul style="list-style-type: none"> <li>• Excessive height – impacting on overshadowing and air flow</li> <li>• The height non-compliance is predominantly caused by the roof terrace areas, which are unnecessary given the beach front location</li> <li>• Excessive bulk/floor space – impacting on open space and drainage</li> <li>• Inconsistent with the heritage streetscape</li> </ul>   |
| 2. A. Collins<br>16/88 North Steyne, Manly  | <ul style="list-style-type: none"> <li>• Excessive height – height poles are required</li> <li>• Excessive bulk</li> <li>• Concerned regarding roof reflectivity</li> </ul>  |
| 3. Owners Corporation SP5403                | <ul style="list-style-type: none"> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> </ul>  |
| 4. N. Keevers<br>24/88 North Steyne, Manly  | <ul style="list-style-type: none"> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> </ul>  |
| 5. P. Lawson<br>12/88 North Steyne, Manly   | <ul style="list-style-type: none"> <li>• Overshadowing of my living areas</li> <li>• Property value loss</li> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> </ul> |
| 6. Confidential                             | <ul style="list-style-type: none"> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> </ul>  |

|   |  |
|---|--|
| 7. W. Weissel<br>1/88 North Steyne, Manly                               | <ul style="list-style-type: none"> <li>• Excessive height</li> <li>• Roof reflectivity and wind deflection</li> <li>• Non-compliant side setbacks</li> <li>• View loss</li> <li>• Concerned regarding potential damage to adjacent properties caused by excavation and construction</li> </ul>   |
| 8. M. Phibbs<br>18/88 North Steyne, Manly                               | <ul style="list-style-type: none"> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> </ul>  |
| 9. A. Wines<br>Units 10, 14 and 22<br>88 North Steyne, Manly            | <ul style="list-style-type: none"> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> </ul>  |
| 10. A. McCoy<br>21/88 North Steyne, Manly                               | <ul style="list-style-type: none"> <li>• Excessive height – height poles required</li> <li>• Excessive bulk</li> <li>• View loss</li> <li>• Property value</li> <li>• Non-compliant number of storeys</li> <li>• Non-compliant side setbacks</li> <li>• Roof reflectivity</li> <li>• Dilapidation reports should be required and provided to neighbouring properties</li> <li>• Roof reflectivity</li> <li>• Air flow restriction</li> </ul> |
| 11. E. Armstrong on behalf of<br>91 North Steyne, Manly<br>(All owners) | <ul style="list-style-type: none"> <li>• Privacy impacts</li> <li>• Non-compliant side setbacks</li> <li>• Air flow restriction</li> <li>• Roof reflectivity</li> <li>• View loss</li> <li>• Excessive height</li> <li>• Inconsistent with streetscape and Foreshore Scenic Protection Area</li> </ul>   |
| 12. L Winnacott on behalf of<br>S. Goerner<br>15/88 North Steyne, Manly | <ul style="list-style-type: none"> <li>• Excessive height</li> <li>• View loss</li> <li>• Non-compliance with LEP and DCP controls</li> </ul>  |

**Comments:**

Excessive Height / Number of Storeys

The proposed variation to the height of building development standard is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Height of Buildings. Height poles were requested of the applicant and provided in mid-July.

Excessive Bulk

The proposed variation to the floor space ratio development standard (which controls building bulk) is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Floor Space Ratio.

Amenity – Streetscape / Overshadowing / Privacy / View Loss

The amenity impacts of the proposed development (including in relation to streetscape, overshadowing, privacy and view loss) are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

Roof Terraces

The proposed roof terraces are acceptable as they do not result in any unreasonable amenity impacts and are generally not visible from the street.

Roof Reflectivity

Roof reflectivity is controlled by Condition of Consent No. 2BM02.

Setbacks

The non-compliant side-setbacks are acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly DCP 2013 –Development Controls.

Dilapidation Report

A dilapidation report is required by Condition of Consent No. 2CD02.

Property Value

Property value is not a planning matter and is beyond the scope of this application.

Air Flow

The proposed development retains side setbacks of at least 2m to the north and south boundaries of the subject site. These corridors allow for adequate airflow between properties and through to Whistler Street.

LEP and DCP Non-Compliances

Any non-compliances to the Manly LEP 2013 or Manly DCP 2013 are addressed throughout the report.

**79C(1) (e) - the public interest.**

The proposed development is in the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
  - (b) *the payment of a monetary contribution, or both.*



- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

The proposal includes 14 dwellings. 16 dwellings exist on site. Accordingly, no contribution is payable in this case.

**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory for **Approval**, subject to conditions.

**RECOMMENDATION**

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standards contained in Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 56/2017 for demolition of existing structures and construction of a Residential Flat Building at 89-90 North Steyne & 90-92 Whistler Street, Manly be **Approved** subject to the following conditions:-

**GENERAL CONDITIONS**

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 56/2017:*

| Plan No. / Title                      | Issue/<br>Revision & Date | Date Received by<br>Council |
|---------------------------------------|---------------------------|-----------------------------|
| A-01 Site Plan & Site Analysis        | Rev A 17 February 2017    | 27 March 2017               |
| A-02 Basement 2 Plan                  | Rev A 17 February 2017    | 27 March 2017               |
| A-03 Basement 1 Plan                  | Rev A 17 February 2017    | 27 March 2017               |
| A-04 Ground Floor Plan                | Rev A 17 February 2017    | 27 March 2017               |
| A-05 First Floor Plan                 | Rev A 17 February 2017    | 27 March 2017               |
| A-06 Second Floor Plan                | Rev A 17 February 2017    | 27 March 2017               |
| A-07 Third Floor Plan                 | Rev A 17 February 2017    | 27 March 2017               |
| A-08 Roof Plan                        | Rev A 17 February 2017    | 27 March 2017               |
| A-09 Section AA                       | Rev A 17 February 2017    | 27 March 2017               |
| A-10 Section BB                       | Rev A 17 February 2017    | 27 March 2017               |
| A-11 East Elevation                   | Rev A 17 February 2017    | 27 March 2017               |
| A-12 North Elevation                  | Rev A 17 February 2017    | 27 March 2017               |
| A-13 West Elevation                   | Rev A 17 February 2017    | 27 March 2017               |
| A-14 South Elevation                  | Rev A 17 February 2017    | 27 March 2017               |
| A-30 Driveway Concept Plan            | Rev A 17 February 2017    | 27 March 2017               |
| LP01/01 Landscape Plan – Ground Floor | Rev 01 10 March 2017      | 27 March 2017               |
| LP02/01 Landscape Plan – Roof Level   | Rev 01 10 March 2017      | 27 March 2017               |

*Reference Documentation affixed with Council's stamp relating to Development Consent No. 56/2017:*

- Acid Sulphate Soil Assessment prepared by Environmental Investigation Services dated 10 February 2017 and received by Council on 27 March 2017
- Acoustic Report prepared by Acoustic Logic dated 21 March 2017 and received by Council on 27 March 2017
- BASIX Certificate No. 800432M\_02 dated 16 March 2017 and received by Council on 27 March 2017
- Disabled Access Report prepared by McKenzie Group dated 22 March 2017 and received by Council on 27 March 2017
- Geotechnical Investigation prepared JK Geotechnics dated 9 February 2017 and received by Council on 27 March 2017
- Traffic and Parking Assessment prepared by Varga Traffic Planning dated 16 March 2017 and received by Council on 27 March 2017
- Letter prepared by Ausgrid dated 28 April 2017 and received by Council on 28 April 2017

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

*Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council*

## 2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

**ANS01**

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from Water NSW. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Water NSW are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

**ANS02**

The four lots comprising the subject site (Lots A & B DP 430074, SP 10633 and SP 3980) are to be consolidated as a single land parcel. The Plan of Consolidation is to be registered with Land and Property Information NSW within three months of the issue of the Final Occupation Certificate.

Reason: To ensure the subdivision pattern and lot size is consistent with the development.

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

**ANS03**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

**ANS04**

Prior to the issue of the Construction Certificate, a simple historical record of the exterior of the building is to be made of all elevations of the buildings and a number of contextual shots of both street frontages, depicting the sites surrounding environment. The record is to be compiled into a single hard copy document which also includes the existing plans of the building floorplans and elevations, and is to be submitted with a digital version (jpeg) of the photos to Council's Heritage Advisor. Written confirmation that Council reserves the right to use the photographs for its own purposes and genuine research purposes is also to be included.

Reason: To provide a historic record of heritage significance works on the site for archival purposes.

**ANS05**

Prior to the issue of the Construction Certificate, an Acid Sulfate Soil Management Plan prepared by an appropriately qualified person is to be submitted to the satisfaction of the Certifying Authority.

Reason: To ensure management of potential acid sulfate soils.

**ANS06**

The proposed bin storage area is to be relocated from basement level 1 to ground level at the rear of the property (Whistler St) to allow for kerbside collection on Whistler Street. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate and accessible waste collection.

**1 (2BM02)**

Roofing materials are to be factory pre-finished with a low glare surface and maximum reflectivity of 20% and be compatible with the colours of neighbouring buildings' roof colours. Colours listed as 'Very Light' in the BCA solar absorbance scale of colours in metal roofing cause glare issues therefore colours should be selected from 'Light' onwards. The applicant is to provide evidence with the Construction Certificate that the selected roofing material will not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties.

Reason: To ensure roofing material does not cause excessive glare or reflectivity nuisance to adjoining properties and those overlooking the site.

**2 (2CD01)**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**Note:** Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.



### 3 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, that attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful.

**Note:** This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

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

### 4 (2CD03)

The applicant is to lodge a Hoarding Application with Council for any protective hoardings, fences and lighting which are to be provided during demolition, excavation and building works. The Hoarding Application is to be submitted to Council with the appropriate fee, prior to any works on site or prior to the issue of the Construction Certificate.

All hoardings must be in accordance with Council's Hoarding Application Form and must comply with the requirements of the Department of Industrial Relations, Construction Safety Act, the WorkCover Authority and relevant Australian Standards.

**Note:** On corner properties, particular attention is to be given to the provision of adequate sight distances.

*Reason: To ensure public safety and amenity on public land.*

### 5 (2CD04)

Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings and specifications certifying the shoring will be adequate for their intended purpose and must be submitted to the Council/Accredited Certifier for approval with the Construction Certificate. The documentation prepared and certified by an appropriately qualified and practicing structural engineer is to show all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements. A copy of this documentation must be provided to the Council for record purposes at the time of Construction Certificate application.

*Reason: To ensure the protection of existing public infrastructure and adjoining properties.*

### 6 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

*Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.*

### 7 (2CD13)

All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes are to be concealed within the building. Plumbing other than stormwater downpipes must not be attached to the external surfaces of the building.

*Reason: To ensure the visual quality of the development.*

8 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

9 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

10 (2DS04)

The basement car parking level is to be adequately protected from flooding. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To prevent property damage and ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

11 (2DS05)

Pump systems will only be permitted for the drainage of seepage waters from basement areas. In this case, pump systems should be inspected and serviced regularly. Hydraulic analyses carried out by suitable qualified hydraulic engineer, confirming suitability of pumps should be submitted to Council.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner which protects adjoining properties.

12 (2DS06)

All balconies (above 2 storeys) are to be graded and drained to an internally concealed drainage system.

Reason: To ensure adequate provision is made for stormwater drainage from the balconies.

13 (2FP02)

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate.

Specific works include:

- 1) Full width vehicular crossings having a maximum width, at the back of layback, and in accordance with the current policy of Council and Specifications for the construction of vehicle crossings; and
- 2) Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway must be provided for assessment. Gradients and transitions must be in accordance with Australian Standard AS 2890.1 – 2004, Part 1 – Off-Street Car Parking. The driveway profile submitted to Council must be to scale at 1:25 (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Driveway to be designed to provide for existing or future footpaths across driveway, in accordance with Council's Specification for Civil Infrastructure Works, Developments & Subdivisions 2003 and Australian Standard AS 1428.1:2001 - Design for access and mobility.

Reason: To facilitate suitable vehicular access to private sites.

14 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

15 (2FP04)

The pedestrian footpaths and pavements in the streets surrounding the proposed development are to be constructed as per Manly Council Paving Design Guidelines as amended. The design details are to be submitted with the Construction Certificate application for approval by Council prior to the issue of the Construction Certificate.

Reason: To ensure appropriate quality of public infrastructure arising from the development works.

16 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

17 (2LD01)

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.

18 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method.



The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

19 (2MS04)

Drawings in accordance with this approval are to be submitted with the Construction Certificate Application to indicate finished surface levels at 3m intervals around the building. All floor levels are to be shown in plan, section and elevation, and roof and gutter heights to Australian Height Datum.

Reason: To ensure that the development is constructed in accordance with the approved drawings.

20 (2MS06)

The applicant/owner is to enter into a legal agreement to transfer to Council at no cost that portion of the site affected by the road widening of North Steyne. This legal agreement, to be prepared at the applicants/owners expense by Council's Solicitors, is required to be executed prior to the issue of a Construction Certificate and the transfer is to occur prior to the final occupation certificate being issued for the building.

Reason: To ensure appropriate quality public infrastructure and provide suitable access for pedestrians and vehicular traffic.

21 (2NL02)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Details of the acoustic measures to be employed to achieve compliance with this condition must be prior to the issue of the Construction Certificate.

Reason: To ensure compliance with legislation and to protect public health and safety.

22 (2NL04)

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles



- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

Reason: To protect acoustic amenity of surrounding properties and the public.

23 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

24 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

25 (2PT03)

The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Reason: To ensure compliance with this consent and Australian Standards relating to manoeuvring, access and parking of vehicles.

26 (2SP01)

All of the following are to be satisfied in relation to the proposed swimming pool:

- 1) The swimming pool is to be surrounded by a child-resistant barrier in accordance with the Swimming Pools Amendment Act 2009 and Regulations 2008 which:
  - separates the swimming pool from any residential building situated on the property and from any place adjoining the property, and
  - is designed, constructed, installed and maintained in accordance with the standards prescribed by the Regulations and appropriate Australian Standards.
- 2) All surface waters from non-pervious areas surrounding the swimming pool must be collected and disposed of to the stormwater system.
- 3) Windows giving access to the pool areas must be made child safe and comply with the following:
  - Window opening is to be restricted by an approved means so that a round bar 105mm in diameter cannot be passed through the opening or the window is to be protected by a child safe grille.

However if the restricted opening of such windows means that they will no longer meet the natural ventilation requirements of the Building Code of Australia, then only a child safe grille is permissible.

- 4) The proposed pool gates are to be mounted so that:
  - they are clear of any obstruction that could hold the gate open, and
  - when lifted upward or pulled downward, movement of the gate does not release the latching device, unhinge the gate or provide a ground clearance greater than 100mm; and
  - they open outwards from the pool.

Reason: To comply with Australian Standard AS 1926 and provide a reasonable level of child safety

27 (2SP02)

A railing or other safety measures or devices are to be erected around the sides of the pool surround structure where height above natural ground level exceeds 900mm. All details of the necessary device are to be submitted to and approved by the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To ensure the safety of persons using those walkways.

28 (2SP03)

The backwash of Swimming Pool water must be discharged to Sydney Waters' sewer in accordance with Australian/New Zealand Standard AS/NZS 3500.

Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

Reason: To ensure compliance with legislation and Australian Standards and to protect public health and amenity.

29 (2SP04)

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the noise from the machinery is not audible at the property boundary. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

30 (2SP05)

Spa pools or the like are to be provided with approved-type safety outlet covers in accordance with Australian Standard AS 2610 (Spa Pools), and details of the outlet areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To comply with Australian Standards and provide a reasonably level of child safety.

31 (2WM03)

Garbage rooms or grease arrester rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.

32 (2WM05)

All Multi Unit Dwellings (MUDs) must locate the waste storage and recycling area with convenient access to Council's usual collection point.

To assist the servicing of a Council provided bins. Council allocates a 240L general waste bin, a 240L paper recycling bin and a 240L co-mingled recycling bin to be shared by every 4 residential dwellings. Provision for an additional 240L vegetation bin should be included.

The storage area for MUDs of 17 or more dwellings must be accessible to Council Garbage Collectors unless bins requiring collection are normally be presented at kerbside. For residential MUDs with 16 or fewer dwellings, kerbside collection is usually required. Refer to Manly Development Control Plan 2013.

Reason: To ensure Multi Unit Dwelling developments allow sufficient space for waste bins.

33 (2WM06)

All Multi Unit Dwellings must provide a location for dry recycling systems (i.e. recycling of paper and recyclable containers) and services. Manly Council provides recycling services to all residential dwellings.

Reason: To provide of dry recycling systems as required by the Department of Environment and Climate Change (DECC).

#### **CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

34 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

35 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

36 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

37 (3CD04)

Any hoarding must be in place prior to the commencement of works on the site. Trees which are affected by the hoarding and located outside the boundaries of the allotment are not to be cut, trimmed or removed without the prior approval of Council. The hoarding be removed immediately at the applicant's expense, if any of these conditions relating to hoardings are not fully complied with.

Reason: To ensure public safety and amenity on public land.

38 (3FP01)

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a Vehicular Crossing, for the design, specification and inspection by Council. Applications are to be made a minimum of two (2) working days prior to commencement of proposed works on Council's property.

Reason: To provide suitable vehicular access to private sites, without disruption to pedestrian and vehicular traffic.

39 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

40 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.



**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**ANS07**

Sight line triangles consistent with Fig 3.3 of AS2890.1 are to be provided at the junction of the driveway and footpath.

Reason: To allow for clear visibility to pedestrians using the footpath.

**ANS08**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council.

Reason: To protect human health and the environment.

**ANS09**

All excavation, construction and associated works 2 metres below the natural surface must be conducted in accordance with the Acid Sulfate Soil Management Plan.

Reason: To ensure management of potential acid sulfate soils.

**41 (4AP02)**

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

**42 (4CD01)**

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.



- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

43 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

44 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

45 (4CD04)

All hoardings must be lit between the hours of sunset and sunrise. Lights are to be erected at intervals of not greater than 5.0 metres for the length of the hoarding. The applicant must keep the hoarding presentable to the public for the whole of the time it is erected. There must be no catch points or protrusions likely to cause injury or damage to the public from the hoarding. The hoarding must be constructed of demountable timber frame sections lined with a smooth face material, and painted with an approved white paint which will not wash or rub off.

Reason: To ensure public safety and amenity on public land.

46 (4CD05)

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a suitably qualified structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the structural adequacy of the retaining walls.

47 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

48 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

49 (4CD10)

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.

50 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system. The details of this drainage system should be shown in a plan and submitted to Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To prevent uncontrolled seepage entering excavated areas.

51 (4DS02)

Any de-watering from the excavation or construction site must comply with the Protection of the Environment Operations Act 1997 and the following:

- 1) Ground water or other water to be pumped from the site into Council's stormwater system must be sampled and analysed by a NATA accredited laboratory or Manly Council for compliance with ANZECC Water Quality Guidelines, and
- 2) If tested by NATA accredited laboratory, the certificate of analysis issued by the laboratory must be forwarded to Manly Council as the appropriate regulatory authority under the Protection of the Environment Operations Act 1997, prior to the commencement of de-watering activities; and
- 3) Council will grant approval to commence site de-watering to the stormwater based on the water quality results received, and
- 4) It is the responsibility of the applicant to ensure during de-watering activities, the capacity of the stormwater system is not exceeded, there are no issues associated with erosion or scouring due to the volume of water pumped; and turbidity readings must not at any time exceed the ANZECC recommended 50ppm (parts per million) for receiving waters.

Reason: To ensure compliance with legislation and to protect the surrounding natural environment.

52 (4DS03)

Rainwater tanks must be installed on residential properties by a suitably qualified and licensed plumber and in accordance with the following:

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy

Reason: To protect public health and amenity.

53 (4FP01)

The existing footpath level and grade at the street alignment of the property must be maintained.

Reason: To ensure appropriate access and infrastructure protection.

54 (4FR02)

All requirements of the NSW Fire Brigades for the building must be complied with in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the requirements of the Building Code of Australia and to provide an adequate level of fire safety for the occupants of the building.

55 (4HT03)

Where an approved driveway construction necessitates the removal of any part of any existing heritage listed stone kerb, the redundant stone kerb blocks are to be carefully removed, without damage, in whole blocks. These kerb blocks are to be delivered to Council's depot in Balgowlah. To arrange access to the depot and a suitable time for delivery contact Council's Works Superintendent on 9976 1455 between 8.00 a.m. and 4.00 p.m. Mon-Fri. The removal and delivery of the stone kerb blocks is to be undertaken at the expense of the owner/applicant.

Reason: To allow for preservation of cultural resources within the Manly Council area.

56 (4HT04)

Should any potentially historic relics be discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage should be informed in accordance with Section 146 of the Heritage Act 1977. "Relics" are any deposit, artefact, object or material evidence that relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and are of State or local heritage significance.

Should any potentially significant Aboriginal material be discovered on the site, all excavation or disturbance of the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage is to be informed in accordance with Section 91 of the National Parks and Wildlife Act 1974.

Reason: To ensure the proper management and preservation of potentially significant archaeological material.

57 (4HT07)

Alterations to, and demolition of, the existing building shall be limited to that documented on the approved plans (by way of notation) or conditioned in this consent. No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

Should any portion of the existing building which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of this damaged portion are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained.

Reason: To ensure that all matters relating to significant fabric and spaces are resolved using best practice for heritage conservation.

58 (4HT08)

Should any concealed building remnants or architectural features, not previously noted in the DA documentation, be discovered during demolition or building works, all works are to cease immediately and Council's Heritage Advisor is to be contacted for advice.

Reason: To ensure the protection and conservation of Manly's significant heritage resources.



59 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

*Reason: This is to ensure no damage is caused to trees from various methods of possible damage.*

60 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

*Reason: To prevent/contain erosion.*

61 (4MS02)

In order to ensure compliance with approved drawings, a Survey Certificate, to Australian Height Datum, must be prepared by a registered surveyor as follows:

- (a) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries, and
- (b) at the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials, and
- (c) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved drawings and the proposed works.

*Reason: To ensure compliance with the development consent.*

62 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

*Reason: To protect the environment from the effects of sedimentation and erosion from development sites.*

63 (4MS05)

All excavation, construction and associated works must be conducted in accordance with the approved Acid Sulfate Soil Management Plan: {insert management plan as referenced in condition code 1AP.1}.

*Reason: To ensure management of potential acid sulfate soils.*

64 (4MS07)

The storage and handling of flammable and combustible liquids must be in accordance with Australian Standard AS1940-2004 - The storage and handling of flammable and combustible liquids.

*Reason: To protect public safety.*



65 (4NL01)

Noise arising from demolition and construction works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To prevent disturbance to the surrounding community during construction.

66 (4WM02)

Removal of trackable wastes from the site must comply with the Protection of the Environment Operations (Waste) Regulation 2005 for the transportation, treatment and disposal of waste materials. Waste materials must not be disposed on land without permission of the land owner and compliance with the provisions of the Protection of the Environment and Operations Act 1997.

Reason: To ensure compliance with legislation.

#### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

##### **ANS10**

Prior to the issue of any Occupation Certificate, convex mirrors be installed at the junction of the driveway with the basement carpark and on the ramp joining levels B1 & B2

Reason: To provide for visibility to oncoming traffic.

##### **ANS11**

Prior to the issue of any Occupation Certificate, an accessible path is to be marked from any and all accessible parking spaces to the lift.

Reason: To ensure compliance with the relevant Australian Standard and provide clear disabled access.

67 (5CD01)

On completion of the works and prior to the issue of a final Occupation Certificate, a certificate is to be prepared stating that no damage has resulted to adjoining premises, and is to be provided to Council and the Principal Certifying Authority.

Alternatively, if damage is identified which is considered to require rectification, the damage is to be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to the issue of a final Occupation Certificate.

Reason: To ensure adjoining owners' property rights are protected.

68 (5FP01)

All surplus vehicular crossings and/or kerb laybacks must be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

Reason: To provide on-street parking, suitable vehicular access to private sites, and infrastructure protection.

69 (5HT03)

Where there is an existing surplus vehicular crossing and/or kerb layback to be removed, the kerb and nature strip is to be reinstated prior to issue of the Occupation Certificate. If there is heritage listed stone kerb, as identified in Schedule 5 – Environmental Heritage of the Manly Local Environmental Plan 2013, the kerb must be reinstated to Council's specification with stone to match the existing heritage listed kerb. Kerbing stones may be purchased from Council by contacting Council's Works Superintendent on 9976 1455 between 8.00am and 4.00pm Mon-Fri.

Reason: To allow for preservation of cultural resources within the Manly Council area.

70 (5LD02)

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

71 (5SP01)

All protective fencing and gates are to be in accordance with Australian Standard AS 1926 prior to the pool being filled with water. The fence is to be a minimum of 1200mm in height and posts and/or supports are to be firmly fixed or encased in such a way that the posts/support are unable to be removed easily. The fence is not to be removed or altered at any time without the prior approval of Council. No water can be in the swimming pool until the required protective fencing has been inspected and approved by Council.

*Reason: To comply with Australian Standard AS1926 and provide a reasonable level of child safety.*

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

72 (6DS01)

The ongoing use and operation of the rainwater tank(s) must be maintained in accordance with:

- Sydney Water Guidelines for Rainwater Tanks on Residential Properties, 2003.
- Australian Government EnHealth Council publication Guidance on the use of Rainwater Tanks, 2004.

*Reason: To protect public health and amenity.*

73 (6LP02)

No tree other than on land identified for the construction of buildings and works as shown on the building drawing can be felled, lopped, topped, ringbarked or otherwise wilfully destroyed or removed without the approval of Council.

*Reason: To prevent the destruction of trees on other properties adjoining the development site.*

74 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

*Reason: This is to ensure that landscaping is maintained appropriately.*

75 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

*Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.*

76 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

*Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.*

77 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

*Reason: To ensure compliance with legislation and to protect public health and amenity.*

78 (6NL06)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997. Domestic air-conditioners must not be audible in nearby dwellings between 10:00PM to 7:00AM Monday to Friday, and 10:00PM to 8:00AM on Saturdays, Sundays and public holidays.

*Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.*

79 (6NL12)

Swimming pool and spa pumps must be installed and operated at times so as not to cause 'offensive noise' as defined by the Protection of the Environments Operation Act 1997. Swimming pool and spa pumps must not be audible in nearby dwelling between 8:00PM to 7:00AM Monday to Friday, and 8:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

80 (6PT01)

The visitor parking is to be accessible at all times, and a sign post erected at the vehicular entry point(s) of the development indicating the location of the visitor parking.

Reason: To ensure visitors are not forced to park on public streets when visitor parking has been provided and is available within the development.

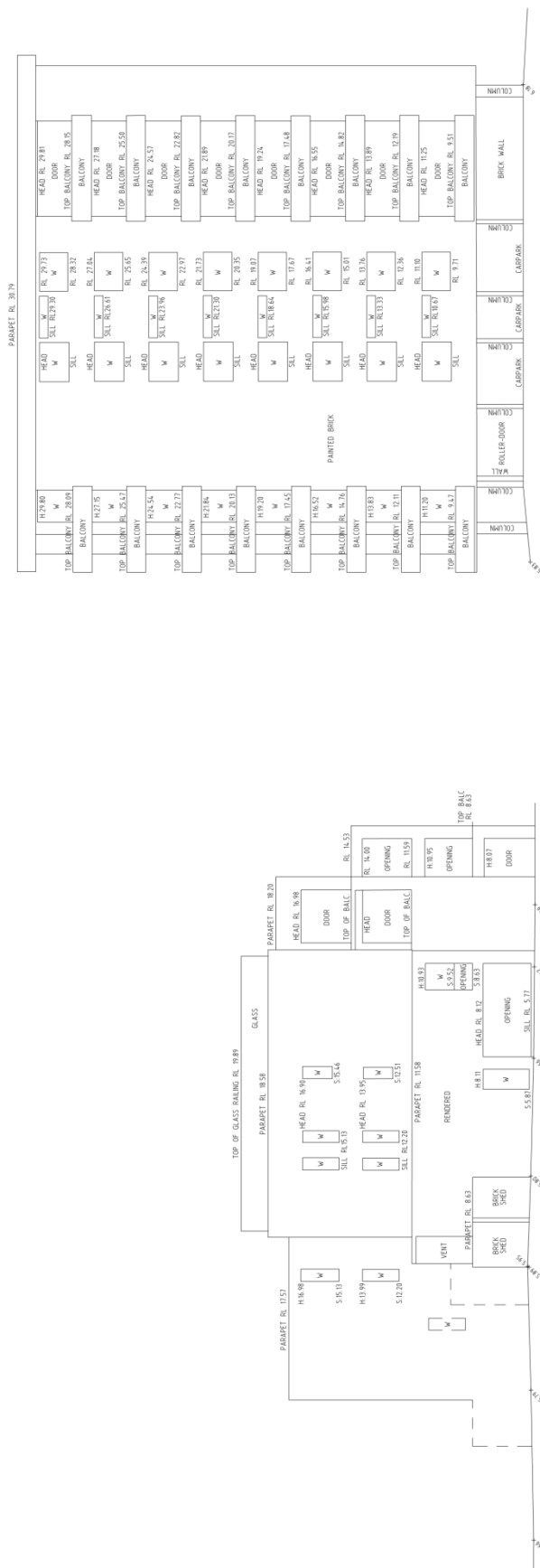
81 (6WM06)

Signage on the correct use of the waste management system and materials to be recycled must be posted in the communal waste storage cupboard/room or bin bay prior to receiving an occupation certificate. Signs are available from Manly Council's Customer Service.

Reason: To ensure all residents are aware of Council's waste and recycling system with regard to their dwelling.







**LEGEND**

|                      |     |
|----------------------|-----|
| WINDOW               | W   |
| HEAD/SHUTTER         | H/S |
| APPROXIMATE POSITION | --- |

REFER TO NOTES AND LEGEND



| THIS IS THE PLAN REFERRED TO IN ALL LETTERS DATED: |  | Client: MADE PROPERTY GROUP PTY LTD |  | Drawing title: PLAN OF DETAIL AND LEVELS OVER LOTS A & B IN NORTH STEYNE & NOS 90 & 92 WHISTLER STREET, MANLY |  | Drawing number: 4405301 |  | Project number: 4405301 |  | Reference number: 4405301 |  |
|--|--|-------------------------------------|--|---|--|-------------------------|--|-------------------------|--|---------------------------|--|
| D  |  | C                                   |  | B   |  | A                       |  | 1:100                   |  | 02/12/16                  |  |
| Revision   |  | Description                         |  | Date  |  | Reference               |  | Sheet                   |  | Of                        |  |
| 1  |  | Initial                             |  | 2016  |  | 1                       |  | 1                       |  | 1                         |  |
| 2  |  | Revised                             |  | 2016  |  | 2                       |  | 2                       |  | 2                         |  |











|                   |   |
|-------------------|---|
| ITEM 3.4          | 21 ILUKA AVENUE, MANLY - DA17/2017  |
| REPORTING OFFICER | Claire Downie   |
| TRIM FILE REF     | 2017/259531   |
| ATTACHMENTS       | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plan & Elevations |

## PURPOSE

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

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That Council (Northern Beaches Independent Assessment Panel) as the consent authority **approve** Development Consent No. DA17/2017 to modify approved Construction of two semi-detached dwellings and Torrens Title land subdivision – Part 2 on land at Lot 2 DP 1217919, 21 Iluka Avenue, Manly, for the reasons outlined in the report.

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## Northern Beaches Independent Assessment Panel Report

2017/219988

|                     |   |
|---------------------|---|
| <b>DA No.</b>       | 17/2017   |
| <b>Site Address</b> | 21 Iluka Avenue, Manly. Lot 2 DP 1217919.   |
| <b>Proposal</b>     | Section 96(1A) to modify approved Construction of two semi-detached dwellings and Torrens Title land subdivision – Part 2 |
| <b>Officer</b>      | Claire Downie   |

**SUMMARY:**

|                                       |  |
|---------------------------------------|--|
| <b>Application Lodged:</b>            | 26 May 2017                              |
| <b>Applicant:</b>                     | Action Plans Building Designs            |
| <b>Owner:</b>                         | C & W Derrin and E & L Miles             |
| <b>Estimated Cost:</b>                | \$925,705                                |
| <b>Zoning:</b>                        | MLEP, 2013 – R1 General Residential      |
| <b>Heritage:</b>                      | Item 213 Sewerage Pumping Station No. 37 |
| <b>NSW LEC:</b>                       | Not applicable                           |
| <b>Notification:</b>                  | 1-19 June 2017                           |
| <b>Submissions received:</b>          | One                                      |
| <b>Site Inspected:</b>                | 10 July 2017                             |
| <b>LEP (4.6) Variations proposed:</b> | Nil                                      |
| <b>DCP Variations proposed:</b>       | Setback Side                             |
| <b>Recommendation:</b>                | Approval                                 |

**Subject Property and surrounding area**

The subject property is commonly known as 21 Iluka Avenue, Manly and legally known as Lot 2 in DP 1217919. The site is located on the southern side of Iluka Avenue, Manly. The property is irregular in shape and has a frontage of 15.125m to Iluka Avenue, an average depth of 37m and an overall site area of 523.8m<sup>2</sup>. The property is currently vacant. The property is level.

The adjacent property to the east, at 19 Iluka Avenue, is developed with a one- and two- storey detached dwelling. The adjacent property to the west, at 254 Pittwater Road, is developed with a residential flat building. Development in this area of Iluka Avenue is developed with one- and two-storey detached dwellings and residential flat buildings.

#### **Property Burdens and Constraints**

There are no burdens or constraints that would preclude the proposed development.

#### **Site History/Background**

Relevant recent applications on the site include:

DA65/2016: Demolition of concrete slabs and material bay, removal of seven trees and carry out remediation works on the part of land. Approved by DAU on 4 May 2016.

DA17/2017: Construction of two semi-detached dwellings and Torrens Title land subdivision. Approved by NBIAP (Manly LEP) on 20 April 2017.

#### **Description of proposed development**

The modification application seeks the following amendments:

- Deletion of *Muraya paniculata* along the eastern side boundary and replacement with *Pandorea Pandorana* and *Bambusa textilis 'Gracilis'*; and
- Deletion of Condition No. ANS05A, which reads as follows:  
*"ANS05A  
 The living room, dining room and kitchen on the ground floor of proposed Lot 10 shall be set back a further 500mm.  
 Reason: To protect the amenity of neighbours."*

ANS05A was not in the staff recommendation and was applied by the NBIAP (Manly LEP).

#### **Internal Referrals**

##### **Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of original recommended conditions of consent.

##### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

##### **Landscaping Comments**

No comments were received from Council's Landscape Officer.

##### **Assessing Officer's Comments:**

The proposed replacement of planting species along the eastern boundary is acceptable from a planning perspective. The new planting ensures pedestrian access between the building and boundary fence. The proposed *Bambusa textilis 'Gracilis'* is expected to grow to a width of 300mm, leaving 600mm width for pedestrian access along the eastern side of the building. The *Pandorea pandorana* is expected to grow to a width of 200mm, leaving 700mm width for pedestrian access along the eastern side of the building.

##### **Heritage Comments**

Council's Heritage Officer has commented on the proposal as follows:

*"No heritage-related issues."*



### **Waste Comments**

Council's Waste Officer offered no objections to the proposal, subject to the imposition of original recommended conditions of consent.

### **Groundwater Comments**

Council's Groundwater Officer has commented on the proposal as follows:

*"The property is identified within the Manly LEP 2013 Acid Sulphate Soils map, under Class 3 land. Proposed development comprises of minimal excavation, and will not exceed depth of 1m. In accordance with the Manly LEP 2013, Development consent is not required for the carrying out of works on Class 3 Acid Sulphate Soil land if proposed works are less than 1 metres below the natural ground surface, and if works by which the water table is not likely to be lowered more than 1 metres below the natural ground surface.*

*As excavation is minimal and proposed to be less than 1m below the ground surface, it is very unlikely that groundwater will be encountered.*

*The entire area of the property has been identified as a flood affected lot due to its relatively close proximity to Manly Lagoon.*

#### Recommendations and Conditions of Consent

*Based on the review of the documents provided by the proponent and the additional analysis completed it is recommended that the DA be approved with the following conditions:*

- 1. If groundwater is encountered during excavation and dewatering is required, an Activity Approval under the Water Management Act 2000 may be required. Where required, the proponent must be granted an Activity Approval permit from the relevant State Government Agency. All conditions of consent and documentation as required by this Development Consent, any requirements of the Activity Approval issued, and all legislation are to be adhered to at all times throughout the development.  
Reason: To ensure compliance with NSW State Government Legislation.*
- 2. Where groundwater dewatering is required, the groundwater must achieve the following water quality criterion prior to disposal. If the quality of groundwater is not within the target parameters, the groundwater must be treated to meet the following criterion before disposal.*

| Parameter                    | Criterion  | Method                            | Time Prior to Discharge |
|------------------------------|------------|-----------------------------------|-------------------------|
| Oil and grease               | No visible | Visual inspection                 | <1 hour                 |
| pH                           | 6.5- 8.5   | Probe/meter                       | <1 hour                 |
| Total Suspended Solids (TSS) | <50mg/L    | Meter/grab sample measures as NTU | <1 hour                 |

*NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.*

*Reason: To protect the environment and mitigate against any potential damage to aquatic ecosystems and biota of receiving waters."*

#### Assessing Officer's Comment

The above recommended conditions were not recommended or required for the original approval dated 20 April 2017 are not considered necessary in this case. The proposed amendments to the approved development do not increase the depth of excavation and therefore do not increase the likelihood of hitting ground water beyond that of the original development. As such, the current modification application does not require additional conditions relating to groundwater.

#### External Referrals

No external referrals were considered necessary.

### **Planning Comments**

#### **Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) **the provisions of:**  
(i) **any environmental planning instrument, and**

#### **Manly Local Environmental Plan 2013**

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone R1 General Residential**

##### **Objectives of zone**

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

The proposed modifications to the approved development retain the residential use of the site.

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

The proposed modifications to the approved development retain the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed modifications to the approved development retain the residential use of the site.

#### **Part 4 Principal development standards**

There are no relevant principal development standards under Part 4 of the Manly LEP 2013 to consider as part of this modification application.

#### **4.6 Exceptions to development standards**

No variations to the development standards are proposed as part of this modification application.

#### **Part 5 Miscellaneous Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

| <b>5.</b> | <b>Miscellaneous Provisions</b>     | <b>Applies</b> | <b>Complies</b> | <b>Comments</b>   |
|-----------|-------------------------------------|----------------|-----------------|---|
| 5.9       | Preservation of trees or vegetation | Yes            | Yes             | The proposed modifications do not alter the approved development's compliance with Clause 5.9 of the Manly LEP 2013.  |
| 5.10      | Heritage Conservation               | Yes            | Yes             | The proposed modifications do not alter the approved development's compliance with Clause 5.10 of the Manly LEP 2013. |

#### **Part 6 Local Provisions**

There are no relevant local provisions under Part 6 of the Manly LEP 2013 to consider as part of this modification application.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

**Manly Development Control Plan 2013:**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

**Part 3 General Principles of Development**

| Issues                            | Consistent with controls | Inconsistent with controls |
|-----------------------------------|--------------------------|----------------------------|
| Streetscape                       | ✓                        |                            |
| Heritage – In Vicinity            | ✓                        |                            |
| Landscaping Design                | ✓                        |                            |
| Landscape/Tree Preservation       | ✓                        |                            |
| Sunlight Access and Overshadowing | ✓                        |                            |
| Privacy and Security              | ✓                        |                            |
| Maintenance of Views              | ✓                        |                            |

**Comment:**

The Streetscape, Heritage, Sunlight Access and Overshadowing, and Maintenance of Views objectives of the MDCP 2013 are not relevant in this case, as the proposed modifications to the approved development do not alter the site's compliance with these objectives.

**3.3.1 Landscaping Design**

The proposal includes the replacement of *Murraya paniculata* along the eastern side boundary with *Pandorea Pandorana* and *Bambusa textilis 'Gracilis'*.

*Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*

The proposed modifications to the approved development do not impact upon existing or approved trees or vegetation on site.

*Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The proposed modifications to the approved development do not impact upon important landscape features.

**3.3.2 Landscape/Tree Preservation**

*Objective 1) To ensure that development protects and conserves the natural environment.*

The proposed modifications to the approved development do not unreasonably alter the natural environment.

*Objective 2) To protect and preserve urban bushland areas in recognition of their:*

- value as part of the natural heritage;
- aesthetic value; and
- value as a recreational, educational and scientific resource.

The subject site is not located in an urban bushland area.

*Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.*

The subject site is not located in a riparian land area.

### 3.4.2 Privacy and Security

The original application sought a ground floor eastern side setback of 900-944mm. The Northern Beaches Independent Assessment Panel (Manly LEP) approved the original application, subject to the following condition:

*“ANS05A*

*The living room, dining room and kitchen on the ground floor of proposed Lot 10 shall be set back a further 500mm.*

*Reason: To protect the amenity of neighbours.”*

The current modification application seeks the deletion of Condition No. ANS05A in order to reinstate the originally proposed 900-944mm eastern side setback to the ground floor.

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

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

The proposed modification is acceptable in relation to privacy, in that the proposed decreased side setback is at the ground floor only and does not result in direct viewing between windows or outdoor living areas of adjacent buildings. Further, proposed decreased side setback is adjacent to a side boundary fence, which further prevents direct viewing.

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

The proposed modifications are appropriately designed for privacy without compromising access to light and air. The proposed modifications are balanced in that direct viewing is minimised, but the outlook from the relevant windows is still available.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposed modifications do not impact upon the approved windows facing the street, which encourage awareness of neighbourhood security.

### Part 4 - Development Controls

| Site Area: 261.9m <sup>2</sup><br>per lot | Permitted/<br>Required | DA Approved | Proposed   | Complies<br>Yes/No           |
|---|------------------------|-------------|------------|------------------------------|
| East setback side                         | Ground Floor<br>1.26m  | 900mm-1.44m | 900-944mm  | No. See<br>comment<br>below. |
|   | First Floor<br>2.24m   | 900mm-2.1m  | 900mm-2.1m | Approved –<br>unchanged      |

#### Comment:

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

Clause 4.1.4.2 of the MDCP 2013 provides that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed eastern ground floor wall height is 3.81m, requiring a setback of 1.26m to the ground floor. The original application sought a ground floor eastern side setback of 900-944mm. The Northern Beaches Independent Assessment Panel (Manly LEP) approved the original application, subject to the following condition:

*“ANS05A*

*The living room, dining room and kitchen on the ground floor of proposed Lot 10 shall be set back a further 500mm.*

*Reason: To protect the amenity of neighbours.”*



The current modification application seeks the deletion of Condition No. ANS05A in order to reinstate the originally proposed 900-944mm eastern side setback to the ground floor.

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

The proposed modification to the eastern side setback does not impact upon the streetscape in relation to spatial proportions of the street, the street edge of the landscape character of the street, as the section of the ground floor proposed to be modified is not generally visible from the street frontage.

*Objective 2) To ensure and enhance local amenity by:*

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

The proposed amendments to the approved development provide adequate amenity in relation to privacy, access to light, sunshine and air movement, view-sharing and streetscape character as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. Further, the proposed ground floor eastern side setback is articulated with the inclusion of the alfresco deck. This reduces the visual impact of the building at the ground floor and provides adequate amenity for the property to the east.

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

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

*Objective 4) To enhance and maintain natural features by:*

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

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The subject site does not contain urban bushland.

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

Not applicable. The subject site is not located in a bush fire protection zone.

#### **Part 5 - Special Character Areas and Sites**

| <b>Special Character Areas and Sites</b> | <b>Applicable</b> | <b>Not Applicable</b> |
|--|-------------------|-----------------------|
| Conservation Area                        |                   | ✓                     |
| Foreshore Scenic Protection Area         |                   | ✓                     |
| Threatened Species and Critical Habitat  |                   | ✓                     |
| Flood Control Lots                       |                   | ✓                     |
| Riparian Land and Watercourses           |                   | ✓                     |
| Road Widening                            |                   | ✓                     |

**79C(1)(a)(iiia) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed modifications to the approved development.

**79C(1)(a) (iv) - the regulations**

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

**79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no applicable Coastal Zone Management Plan.

**79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed modifications to the approved development are not considered to have any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

**79C(1) (c) - the suitability of the site for the development,**

The proposed modifications to the approved development are considered to be suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2.2 with one submission received from the following objector raising the following concerns:

| Submission and Address                     | Main Issues raised in the submission   | Comments on submission  |
|--|--|---|
| 1. J. McCuaig<br>19 Iluka Avenue,<br>Manly | <ul style="list-style-type: none"> <li>The proposed eastern side setback is non-compliant</li> </ul> | <ul style="list-style-type: none"> <li>The proposed eastern side setback is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls.</li> </ul> |

**79C(1) (e) - the public interest.**

The proposed modifications to the approved development are in the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
  - (b) *the payment of a monetary contribution,*
  - or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, the proposed modification to the proposed modifications to the approved development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

**Section 96(1A) of the Environmental Planning and Assessment Act 1979**

**(1A) Modifications involving minimal environmental impact**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with one submission received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

**CONCLUSION:**

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

**RECOMMENDATION**

That pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 17/2017 to modify approved Construction of two semi-detached dwellings and Torrens Title land subdivision – Part 2 at 21 Iluka Avenue, Manly be **Approved** subject to:

## GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(1A) Application – Part 2:

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 17/2017:*

| Plan No. / Title                          | Issue/<br>Revision & Date | Date Received by<br>Council |
|---|---------------------------|-----------------------------|
| DA02 Subdivision Plan                     | 2 February 2017           | 3 February 2017             |
| DA03 Site Analysis                        | 2 February 2017           | 3 February 2017             |
| DA05 Ground Floor Plan                    | 2 February 2017           | 3 February 2017             |
| DA06 First Floor Plan                     | 2 February 2017           | 3 February 2017             |
| DA07 North / East / Front Fence Elevation | 2 February 2017           | 3 February 2017             |
| DA08 South / West Elevation               | 2 February 2017           | 3 February 2017             |
| DA09 Section Sheet 1                      | 2 February 2017           | 3 February 2017             |
| DA10 Section Sheet 2                      | 2 February 2017           | 3 February 2017             |
| DA11 Driveway Plan & Long Section         | 2 February 2017           | 3 February 2017             |
| L/01 Proposed Landscape Plan              | 25 January 2017           | 3 February 2017             |

*Reference Documentation affixed with Council's stamp relating to Development Consent No. 17/2017:*

- Statement of Environmental Effects prepared by Particular Planning dated January 2017 and received by Council on 3 February 2017
- BASIX Certificate No. 785099S\_03 dated 2 February 2017 and received by Council on 3 February 2017
- BASIX Certificate No. 785064S\_05 dated 2 February 2017 and received by Council on 3 February 2017
- Flood Certificate prepared by Taylor Consultants dated 20 December 2017 and received by Council on 3 February 2017
- Heritage Impact Statement prepared by Action Plans Building Design dated January 2017 and received by Council on 3 February 2017
- Geotechnical Recommendations prepared by Morrow Geotechnics dated 8 December 2016 and received by Council on 3 February 2017

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 2:*

| Plan No. / Title  | Issue/<br>Revision & Date | Date Received<br>by Council |
|---|---------------------------|-----------------------------|
| S96 – 01 Site / Roof Plan / Sediment Erosion & Waste Management | 17 May 2017               | 26 May 2017                 |
| S96 – 03 Proposed Ground Floor Plan                             | 17 May 2017               | 26 May 2017                 |
| S96 – 04 Proposed First Floor Plan                              | 17 May 2017               | 26 May 2017                 |
| S96 – 05 North / East Elevation                                 | 17 May 2017               | 26 May 2017                 |
| S96 – 06 South / West Elevation                                 | 17 May 2017               | 26 May 2017                 |
| S96 – 07 Sections   | 17 May 2017               | 26 May 2017                 |
| L/01 Landscape Plan   | 9 May 2017                | 26 May 2017                 |



In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

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

**ANS01**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

**ANS02**

The minimum finished floor levels of new habitable rooms shall be at or above the Flood Planning Level (FPL) of 3.64m AHD. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

**ANS03**

The proposed *Livstona australis* trees are to be deleted from the planting schedule and replaced with a species that attains a mature height of 8m.

Reason: To ensure suitable planting species are used, as the *Livstona australis* trees are too large for the proposed lots.

**ANS04**

For each proposed dwelling, the ground floor rear deck and the roof above the ground floor rear deck are to be reduced to a depth of 2.5 metres from the external face of the rear wall. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that the built elements of the proposed building are sufficiently set back from the rear boundary to reduce the potential visual impact to the neighbouring heritage item.

**ANS05**

The privacy walls on the eastern and western elevations to the first floor rear balcony of proposed Lot 11 and the eastern elevation to the first floor rear balcony of proposed Lot 10 are to be reduced to a height of 1.65m above finished floor level. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To lighten the appearance of the rear walls, to reduce the dense appearance of the newer property when viewing the heritage item from Pittwater Road.

**The following Condition No. ANS05A is to be deleted as per Section 96(1A) Application – Part 2:**

**ANS05A  
DELETED**

1 (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

4 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

5 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event



- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

#### 6 (2DS07)

Detailed plans and specifications of the design of the rainwater tanks must be provided prior to the issue of the Construction Certificate complying with the requirements:-

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy.

Reason: To protect public health and amenity.

#### 7 (2FP02)

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate. Specific works include:

- 1) Full width vehicular crossings having a maximum width, at the back of layback, and in accordance with the current policy of Council and Specifications for the construction of vehicle crossings; and
- 2) Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway must be provided for assessment. Gradients and transitions must be in accordance with Australian Standard AS 2890.1 – 2004, Part 1 – Off-Street Car Parking. The driveway profile submitted to Council must be to scale at 1:25 (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Driveway to be designed to provide for existing or future footpaths across driveway, in accordance with Council's Specification for Civil Infrastructure Works, Developments & Subdivisions 2003 and Australian Standard AS 1428.1:2001 - Design for access and mobility.

Reason: To facilitate suitable vehicular access to private sites.

#### 8 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

#### 9 (2HT07)

A schedule of external colours is to be submitted to Council's satisfaction prior to the issue of Construction Certificate. The external colour schemes of new buildings are to be in keeping with the original character of the heritage buildings on the site. On the heritage buildings the external colour scheme for surfaces intended for painting is to be based, where possible, on physical and documentary evidence in keeping with the architectural style and period of the buildings.

Reason: To ensure the proposed colour scheme is appropriate to the type and style of the building and the surrounding area



10 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

11 (2NL04)

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

Reason: To protect acoustic amenity of surrounding properties and the public.

12 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

13 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

14 (2TC01)

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements must be submitted to the Council / Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard AS 3660.1 - 2000 Termite management – New building work, and to the Manly Code for the Protection of Buildings Against Termite Attack 1996.

Reason: To protect the building from possible termite damage.

15 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of construction of two semi-detached dwellings and Torrens Title land subdivision is \$20,000, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

16 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

17 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

18 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

19 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

**20 (3FP01)**

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a Vehicular Crossing, for the design, specification and inspection by Council. Applications are to be made a minimum of two (2) working days prior to commencement of proposed works on Council's property.

Reason: To provide suitable vehicular access to private sites, without disruption to pedestrian and vehicular traffic.

**21 (3PT01)**

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

**22 (3PT02)**

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**ANS06**

The sediment and erosion control methods identified by Action Plans on 2 February 2017 are to be adopted by the development during demolition, excavation and construction.

Reason: to protect the environment from the effects of sedimentation and erosion from development sites.

**ANS07**

Any new information revealed during demolition, excavation or construction works that has the potential to alter the previous conclusions about site contamination or hazardous materials shall be immediately notified to Council or the Private Certifying Authority.

Reason: To protect public health and the environment.

**ANS08**

In the event of a pollution incident, the details of the incident must be recorded in a register including the remedial action taken. The appropriate authority must be notified of a pollution incident as soon as reasonably possible after the incident has occurred.

The Protection of the Environment Operations Act 1996 defines a pollution incident as an 'incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise'

Reason: To ensure compliance with legislation and to protect public health and amenity.

**ANS09**

All new construction and services shall be designed and constructed to withstand flooding up to a minimum level of the FPL 3.64m AHD. This shall be in accordance with the requirements specified in the NSW Floodplain Development Manual. Buoyancy, flowing water with debris, wave action, the flood compatibility of materials, and waterproofing shall be addressed in accordance with the Manual.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.



**ANS10**

All new construction, including but not limited to new fences and foundation system, must allow for the unimpeded flow of flood water into and through the site and must not reduce the flood storage of the site.

Reason: In order to not adversely affect flood behaviour resulting in detrimental increases in the potential flood affection of other development or properties.

**23 (4AP02)**

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

**24 (4CD01)**

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.



17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

25 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

26 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

27 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

28 (4CD10)

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.

29 (4CD11)

The activity of rock-breaking associated with the development of the site, must only occur between the hours of:

- 9.00 AM – 5.00 PM on weekdays (Monday – Friday) only.

Rock-breaking activities must not occur on weekends or public holidays.

Adjoining properties must be notified in writing of the times and days in which rock-breaking activities will be carried out. Notices must be distributed at least seven (7) days before the activity is to occur.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

30 (4DS03)

Rainwater tanks must be installed on residential properties by a suitably qualified and licensed plumber and in accordance with the following:

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy

Reason: To protect public health and amenity.

31 (4FP01)

The existing footpath level and grade at the street alignment of the property must be maintained.

Reason: To ensure appropriate access and infrastructure protection.

32 (4HT04)

Should any potentially historic relics be discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage should be informed in accordance with Section 146 of the Heritage Act 1977. "Relics" are any deposit, artefact, object or material evidence that relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and are of State or local heritage significance.

Should any potentially significant Aboriginal material be discovered on the site, all excavation or disturbance of the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage is to be informed in accordance with Section 91 of the National Parks and Wildlife Act 1974.

Reason: To ensure the proper management and preservation of potentially significant archaeological material.

33 (4HT08)

Should any concealed building remnants or architectural features, not previously noted in the DA documentation, be discovered during demolition or building works, all works are to cease immediately and Council's Heritage Advisor is to be contacted for advice.

Reason: To ensure the protection and conservation of Manly's significant heritage resources.

34 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

35 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

36 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 8, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**ANS11**

All electrical equipment, wiring, and fuel lines shall be watertight below the Flood Planning Level (FPL) of 3.64m AHD and shall be certified upon completion by a Licensed Electrical Contractor. Copy of the certification to be provided prior to the issue of any Occupation Certificate.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

**ANS12**

Sewerage system to be constructed to prevent surcharge of sewerage during times of flooding up to the FPL of 3.64m AHD and shall be certified upon completion by a Licensed Plumber and Drainer. Certification to be provided prior to the issue of any Occupation Certificate.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

**ANS13**

The requirements of flood condition(s) shall be supervised during the works by a registered surveyor who shall certify compliance to Council's flood condition(s) prior to the issue of an Occupation Certificate.

Reason: To ensure the proposed development is to be compatible with the flood hazard and reduce the risks and cost of flooding to the area.

**37 (5DS01)**

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

**38 (5FP01)**

All surplus vehicular crossings and/or kerb laybacks must be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

Reason: To provide on-street parking, suitable vehicular access to private sites, and infrastructure protection.

**39 (5FR01)**

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

**40 (5US01)**

Any adjustment to a public utility service is to be carried out in compliance with its standards; where consent is required, with its concurrence; and with the full cost being borne by the applicant. Full documents of adjustments to any public utility service should be submitted to Council.

Reason: To ensure compliance with the terms of this consent.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

**ANS14**

Items susceptible to flood damage and goods that are likely to amplify the damages arising from flood events (including but not limited to pollutants and toxic chemicals) shall be stored as to not find their way into flood waters.

Reason: In order for the proposed development to be compatible with the flood hazard and reduce the risks to humans, the environment and cost of flooding to the area.

**41 (6DS01)**

The ongoing use and operation of the rainwater tank(s) must be maintained in accordance with:

- Sydney Water Guidelines for Rainwater Tanks on Residential Properties, 2003.
- Australian Government EnHealth Council publication Guidance on the use of Rainwater Tanks, 2004.

Reason: To protect public health and amenity.

**42 (6FC01)**

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement.

More than 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1 800 990 777 or at <http://www.cjc.nsw.gov.au/>.

Reason: To ensure the applicant is aware the Dividing Fences Act 1991 may be used to resolve disputes about dividing fences.

**43 (6LP03)**

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

**44 (6MS02)**

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

**45 (6NL01)**

Glare from internal lighting is not permitted to extend beyond the limits of the building authorised by this approval.

Reason: To ensure there is no glare from internal lighting to neighbouring properties and land.

**46 (6NL03)**

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.



47 (6WM10)

The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

*Reason: To ensure compliance with legislation and to protect public health and amenity.*

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE**

48 (7SD01)

The Subdivision Certificate to enable the lodgement of the linen plan at Department of Lands must not be issued until Principal Certifying Authority for Development Consent has issued the final Occupation Certificate in relation to that development.

*Reason: Ensure the plans relate to the approved development.*



**GUTTER PROTECTION :**  
 PROVIDE PROTECTION TO DOWNHILL GRATE IN  
 GUTTER BY MEANS OF SAND BAGS OR BLUE METAL  
 WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR  
 SAND BUILDS UP AROUND THIS SEDIMENT BARRIER,  
 THE MATERIAL SHOULD BE RELOCATED BACK TO THE  
 SITE FOR DISPOSAL.

**STOCKPILES :**  
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE STOCKPILE MUST BE COVERED WITH A PERMISSIBLE POLYETHYLENE OR NATURAL STRIPS REQUIRE COUNCILS PERMISSION.  
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.  
IF REQUIRED STOCKPILES, BANK & BANK AROUND STOCKPILES.

**SEDIMENT NOTE:**

1. ALL EROSION AND SEDIMENT CONTROL MEASURES MUST BE INSPECTED AND MAINTAINED DAILY BY THE SITE SUPERVISOR.

2. MINIMIZE DISTURBED AREAS. REMOVE EXCESS SOIL FROM ANY EXPOSED AREAS AS SOON AS POSSIBLE.

3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINAGE, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.

4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.

5. ROADS AND FOOTPATHS TO BE SWEEP DAILY.

**DUST CONTROL :**  
TO REMOVE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE SHALL BE REQUIRED. WATERING OF THE SITE SHALL BE REQUIRED TO PREVENT DUST. TO PREVENT DUST, THE SURFACE MOIST TO MINIMISE DUST. TO PREVENT DUST, A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATEMENT OF PREVENT DUST BY COVERING STOCKPILES.

## NOTES

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Do not scale on drawings. Use figured dimensions.

## ACTION PLANS

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**CLIENT**

CLIENT  
DM HOLDINGS

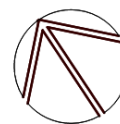
**PROJECT ADDRESS**  
21 Iluka Avenue Manly  
2095

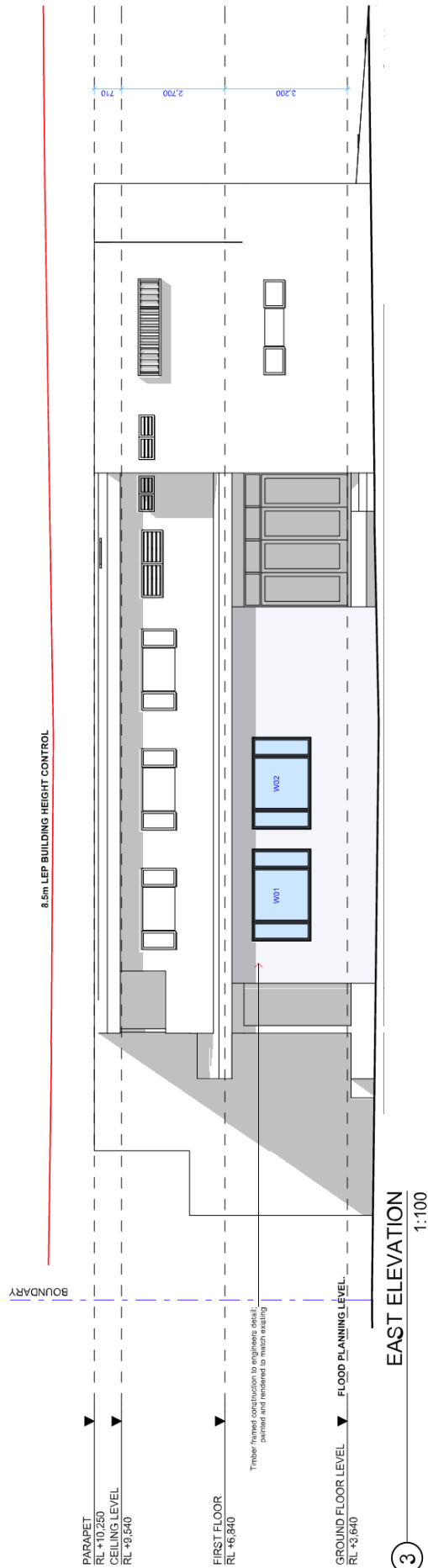
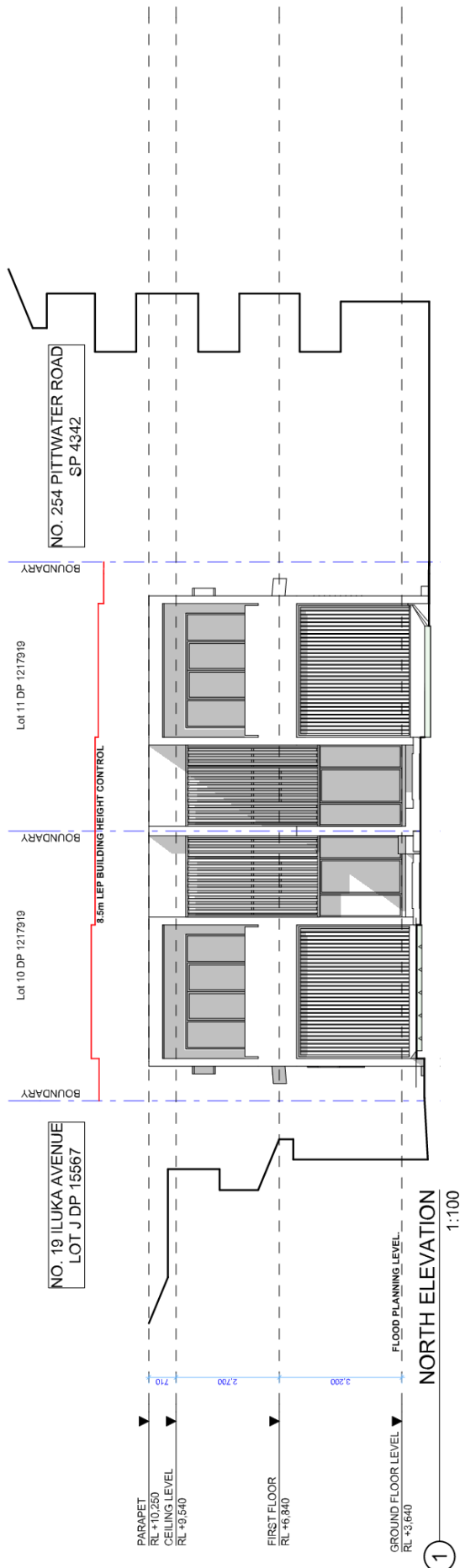
DRAWING NO.  
S96 - 01

**DATE**  
Wednesday, 17 May  
2017

**DRAWING NAME**  
SITE / ROOF / SEDIMENT  
EROSION / WASTE  
MANAGEMENT PLAN

SCALE  
1:200 @A3





DRAWING NO.  
**S96 - 05**

DATE  
Wednesday, 17 May 2017

DRAWING NAME  
NORTH / EAST  
ELEVATION

SCALE  
1:100 @A3

CLIENT  
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PROJECT ADDRESS  
21 Iluka Avenue Manly 2095

LEGEND

TIMBER  
GLASS  
BRICKWORK  
METAL

TERRACOTTA ROOF TILES  
CONCRETE  
TILES  
EXISTING WALLS

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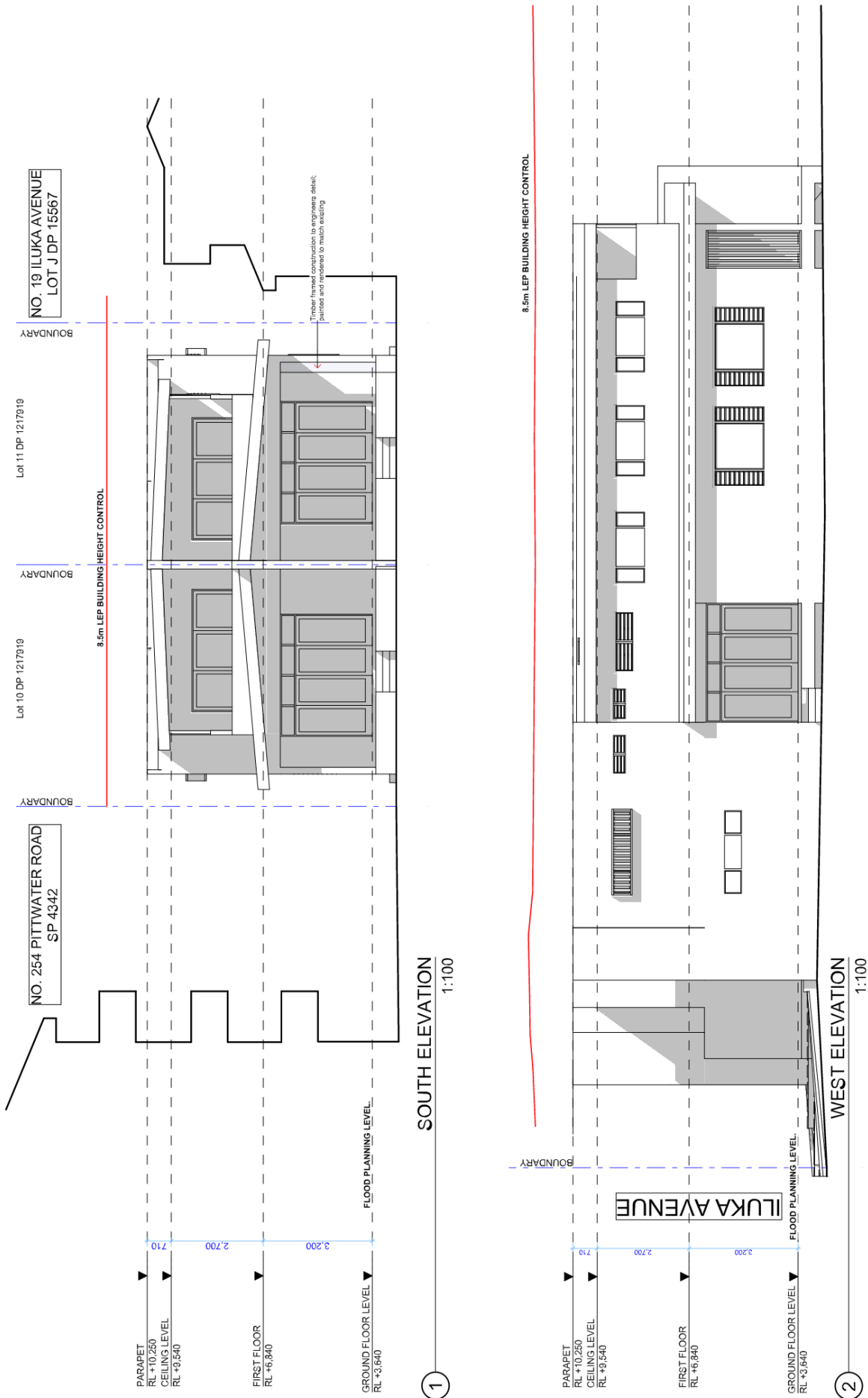
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Do not scale on drawings.

## LEGEND

|           |                       |
|-----------|-----------------------|
| TIMBER    | TERRACOTTA ROOF TILES |
| GLASS     | CONCRETE              |
| BRICKWORK | TILES                 |
| METAL     | EXISTING WALLS        |

## CLIENT

DM HOLDINGS  
**PROJECT ADDRESS**  
21 Iluka Avenue Manly 2095

## DRAWING NO.

**S96 - 06**

## DRAWING NAME

SOUTH / WEST  
ELEVATION

**DATE**  
Wednesday, 17 May  
2017

**SCALE**  
1:100 @A3



## 4.0 REVIEW OF DETERMINATIONS

|                   |   |
|-------------------|---|
| ITEM 4.1          | 571-575 SYDNEY ROAD, SEAFORTH - DA373/2016  |
| REPORTING OFFICER | Claire Downie   |
| TRIM FILE REF     | 2017/259561   |
| ATTACHMENTS       | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plan & Elevations |

### PURPOSE

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

---

### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That Council (Northern Beaches Independent Assessment Panel) as the consent authority **approve** Development Consent No. DA373/2016 for Section 82A Review of Determination of refused demolition, construction of shop top housing and strata/stratum subdivision – Part 2 on land at Lot 43 DP 656428, 571-575 Sydney Road, Seaforth, for the reasons outlined in the report.

---

## Northern Beaches Independent Assessment Panel Report

2017/227273

|                     |   |
|---------------------|---|
| <b>DA #</b>         | 373/2016  |
| <b>Site Address</b> | 571-575 Sydney Road, Seaforth. Lot 43 DP 656428.  |
| <b>Proposal</b>     | Section 82A Review of Determination of refused demolition, construction of shop top housing and strata/stratum subdivision – Part 2 |
| <b>Officer</b>      | Claire Downie   |

### **SUMMARY:**

|                                       |   |
|---------------------------------------|---|
| <b>Application Lodged:</b>            | 1 June 2017   |
| <b>Applicant:</b>                     | Boston Blyth Fleming Town Planners Pty Ltd                                    |
| <b>Owner:</b>                         | Mr F Soliman  |
| <b>Estimated Cost:</b>                | \$3,262,500   |
| <b>Zoning:</b>                        | MLEP, 2013 – B2 Local Centre  |
| <b>Heritage:</b>                      | Not applicable  |
| <b>NSW LEC:</b>                       | Not applicable  |
| <b>Notification:</b>                  | 6-22 June 2017  |
| <b>Submissions received:</b>          | 15  |
| <b>Site Inspected:</b>                | 17 July 2017  |
| <b>LEP (4.6) Variations proposed:</b> | Height of Building  |
| <b>DCP Variations proposed:</b>       | Loading Bay, Awning, Wall Height, Number of Storeys, Setbacks – Rear and Side |
| <b>Recommendation:</b>                | Approval  |

### **Subject Property and surrounding area**



The subject property is commonly known as 571-575 Sydney Road, Seaforth and legally known as Lot 43 in DP 656428. The site is located on the southern side of Sydney Road. The property is irregular in shape and has a frontage of 17.98m to Sydney Road, an average depth of 44m and an overall site area of 608.5m<sup>2</sup>. The property currently contains a two-storey shop top housing development with no vehicular access. The property slopes approximately 3m from north to south.

The adjacent property to the east, at 567 Sydney Road, contains a five-storey shop top housing development. The adjacent properties to the west, at 577 and 581 Sydney Road, contain a two-storey commercial development and a two-storey detached dwelling, respectively. Development in this area of Sydney Road consists of commercial premises, shop top housing and residential development.

#### **Property Burdens and Constraints**

A sewer main runs along the western side boundary at the rear of the property and across the rear quadrant of the property. A sewer access chamber is located by the western boundary of the property.

#### **Site History/Background**

Recent development applications include:

DA508/2001: Alteration and/or Additions to existing Commercial Development. Approved by DCU 5 December 2001.

DA532/2004: Addition of basement carparking, lift & stairs & removal of tree. Refused by DAU 3 March 2005.

DA353/2009: Alterations to the existing shop front. Approved under delegation 5 January 2010.

DA373/2016:

- Demolition of existing structures;
- Construction of a 5-storey mixed use development, incorporating:
  - Two ground floor retail tenancies;
  - Two 2-bedroom apartments;
  - Two 3-bedroom apartments;
  - One 4-bedroom apartment;
  - Basement car parking for 13 vehicles (9 residential, 1 visitor and 3 retail/business spaces); and
  - Rooftop terrace/communal open space.

The application was refused by MIAP on 20 April 2017 for the following reasons:

1. The panel does not find that the Clause 4.6 Variation in relation to height is well founded and accordingly has no jurisdiction to approve of the application which is refused.
2. The panel does not support the proposed height of the development which has a number of adverse implications for the amenity of the neighbours. Further, the panel does not accept the parking which is proposed by the development as it is unsatisfactory in terms of access, number of car spaces, on site manoeuvring and pedestrian safety.

#### **Description of proposed development**

The current application seeks a review of the determination (refusal) pursuant to Section 82A of the *Environmental Planning and Assessment Act 1979*. The proposal seeks consent for:

- Demolition of existing structures;
- Construction of a four-storey mixed use development, incorporating:
  - Two ground floor retail/business tenancies;
  - Two 2-bedroom apartments;
  - Two 3-bedroom apartments;
  - One 4-bedroom apartment;
  - Two levels basement of car parking for 15 vehicles (9 residential, 1 visitor and 5 retail/business spaces).

The Section 82A application has provided amendments to the proposal in an attempt to address the reasons for refusal. The amendments maintain substantially the same development as the development described in the original application.

The current amended proposal contains the following amendments to the original:

- Additional basement level to accommodate compliant parking;
- Deletion of car stackers;
- Provision of disabled access to commercial and residential bin storage areas;
- Deletion of eastern and western blade walls and replacement with fire shutters to relevant windows;
- Additional articulation to western elevation of Apartment 5;
- Deletion of the roof terrace (roof now non-trafficable);
- 300mm reduction in height of Apartment 5 roof form;
- Inclusion of car park waiting bay and traffic signal system.

### **Internal Referrals**

#### **Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **Landscaping Comments**

No comments were received from Council's Landscape Officer. Council's Landscape Officer commented on the original proposal as follows:

*"Retain and protect during Construction the Jacaranda mimosifolia located in the rear year on the western boundary. As the tree doesn't have to be impacted by footprint."*

Assessing Officer's Comment: The *Jacaranda mimosifolia* tree is located well within the footprint of the required basement car park. As the proposal is adequately landscaped, the requirement to retain the *Jacaranda mimosifolia* is unreasonable in this case. The proposal will be landscaped in a manner consistent with the B2 zoning. This includes open space to the rear of the proposal and landscaping being proposed along the south western, south eastern and southern boundaries, which will ensure a reasonable transition between the B2 and R2 zones.

#### **Waste Comments**

Council's Waste Officer commented on the proposal as follows:

*"In relation to 2WM05, the proposed residential bin store is inadequate. 5 residential units would require storage for 7 x 240 litre bins (2 x garbage, 2 x paper, 2 x comingled containers, 1 x vegetation recycling)."*

Assessing Officer's Comment: Suitable condition has been applied to ensure the proposed bin storage area is of sufficient area to accommodate the required bins.

#### **Environmental Health**

Council's Environmental Health Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.



### Access Comments

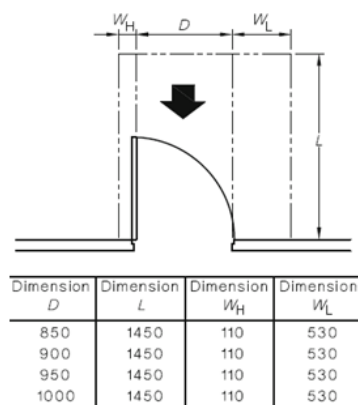
Council's Access Officer has commented on the proposal as follows:

#### **"Adaptable Apartment 2"**

The plans show a wardrobe in bedroom 2 fitted right next to the door (same design as before). As per my previous comments (MC/17/1106) sufficient circulation space at the doorway is required at all internal doors of the adaptable units not just the adaptable bedroom. This is to ensure that an occupant in a wheelchair is not potentially trapped inside the room.

A minimum of 530mm on the latch side is required as per AS1428.1 (please see below):

**FIGURE 31 (in part) CIRCULATION SPACES AT DOORWAYS WITH SWINGING DOORS –**



(h) Front approach,  
door opens towards user

#### **Car Parking**

Accessible space Retail 1 - The shared space is obstructed by a column – only a bollard can be installed there. It can be swapped with the car space Retail 5 which has more space and no obstruction.

Accessible space Apt 2 – this is well designed, however, there is no continuous accessible pathway to the lift. The plans show a 4m long ramp 1:8 on the way to the lift. This is the incline specified for a kerb ramp. To be accessible the ramp should have max incline 1:14.

The DA planner to ensure that there is an accessible continuous pathway from the space all the way to the lift.

#### **Outdoor space**

The outdoor lawn and communal space shown on the plans are not accessible due to a proposed footpath with stepping stones to the lawn and steps down to the communal space.

As the lawn appears to be level, a footpath with a slip resistant ground surface should be considered instead of or in addition to the stepping stones. A ramp to the communal space could also be considered."

Council's Access Officer indicated that the previous comments provided apply, as follows:

*"The proposed adaptable unit 2 appears well appointed with good accessibility features. The following points to be checked by the DA planner to ensure compliance is achieved:*

- Main entry door to the building should have hand controls installed according to AS1428.1-2009. Cl.13.5.2 – the force required to open the door, hold it and swing it should not exceed 20 N.*
- Main entry to the apartment appears to be direct from the lift (the drawings show a lift with two doors to 2 apartments on this level). Confirm is it opening via security card.*
- Bedroom 2: approach to the door from inside the bedroom is restricted by the wardrobe. A min of 530 mm clearance is required at the latch side of the door (see fig. (h) over page - AS1428.1-2009, Cl.13.3)*
- Laundry: A space for a clothes dryer should be available next to the washing machine to be easy to reach.*
- Balcony sliding doors: max threshold of 35mm at doorway is required (Cl. 10.5)*
- Residents Waste Bin area appears very compact and inaccessible – the general waste & recycling bins should be both accessible for a resident in a wheelchair to use independently.*
- Letter boxes area is not identified on the plans. This should also be accessible."*

Assessing Officer's Comment: Suitable conditions have been applied.

#### **Traffic Comments**

Council's Traffic Engineer has commented on the proposal as follows:

*"Minimum parking requirements for the proposed development as per the DCP are 12 car parking spaces comprising 5 commercial car spaces, 5 residential car spaces, 1 visitor car space & 1 disabled parking space and 5 bicycle stands. The Proposed modifications includes 15 car parking spaces comprising 5 commercial car spaces, 8 residential car spaces, 1 visitor car space & 1 disabled parking space and 5 bicycle stands. The development proposal therefore complies with the DCP parking rate requirement. The modified proposal introduces an additional level of basement parking to accommodate an increased number of parking spaces. This has enabled the deletion of the previously proposed car stackers. The modification also provides a dedicated single lane driveway ramp waiting bay.*

*It is noted that parking space 'Retail 1' marked as a disabled parking bay (Drawing Number DA01E dated 31/05/2017) does not comply with the requirements of AS2890.6. It should either be re-annotated as an able bodied retail parking space OR the adjacent retail space marked as per AS2890.6 as a disabled parking unload area. Car park swept paths provided in the traffic report prepared by "Ray Dowsett Traffic and Transport Planning Pty Ltd" appears satisfactory.*

*Vehicular access to the site is provided via Sydney Road, as the site has no alternative street frontages. The modification does not significantly impact on traffic or amenity.*

Assessing Officer's Comment: Suitable conditions have been applied where required.

#### **Driveway Comments**

Council's Driveway Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

#### **External Referrals**

##### **AUSGRID**

The proposal was referred to Ausgrid, who raised no objections to the proposal, subject to conditions of consent.

**Planning Comments**

**Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) **the provisions of:**  
(i) **any environmental planning instrument, and**

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**State Environmental Planning Policy (Infrastructure) 2007**

Clause 101 of State Environmental Planning Policy (Infrastructure) 2007 applies, as the subject site has frontage to a classified road (Sydney Road). Clause 101 is as follows:

- (1) *The objectives of this clause are:*  
(a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*  
(b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*  
(a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*  
(b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*  
(i) *the design of the vehicular access to the land, or*  
(ii) *the emission of smoke or dust from the development, or*  
(iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*  
(c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: The proposed development does not compromise the effective and ongoing operation and function of Sydney Road. The proposed development will not result in unreasonable traffic noise or vehicle emission. Vehicular access to the site is provided via Sydney Road, as the site has no alternative frontages. The design of vehicular access to the land and the nature, volume and frequency of vehicles using Sydney Road to access the site do not adversely affect the safety, efficiency and ongoing operation of Sydney Road. The development is not of a type that is sensitive to traffic noise or vehicle emissions, and is designed in a way that ameliorates traffic noise and emissions from Sydney Road. As such, the proposed development is consistent with the objectives and provisions of Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007.

**State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)**

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

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
  - (a) the development consists of any of the following:
    - (i) the erection of a new building,
    - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
    - (iii) the conversion of an existing building, and
  - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
  - (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a four-storey shop top housing development plus basement car parking, for the provisions of five self-contained dwellings. As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):
  - (a) the advice (if any) obtained from the design review panel, and
  - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
  - (c) the Apartment Design Guide.

**DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel.

**DESIGN QUALITY PRINCIPLES**

**Principle 1: Context and Neighbourhood Character**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.



**Principle 2: Built Form and Scale**

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

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

Comment: The proposal results in a variation to the height of buildings development standard. The variation is assessed as being acceptable, as detailed in the section of this report relating to Part 4 of the MLEP 2013 – Principal Development Standards. As such, the proposal is consistent with this principle.

**Principle 3: Density**

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

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 5: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 6: Amenity**

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

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

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 7: Safety**

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**Principle 9: Aesthetics**

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

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

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

| Development Control                  | Criteria / Guideline   | Comments  |
|--------------------------------------|--|---|
| <b>Part 3 Siting the Development</b> |  |   |
| <b>Site Analysis</b>                 | Does the development relate well to its context and is it sited appropriately?   | The proposed development is sited appropriately.  |
| <b>Orientation</b>                   | Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?  | The proposed development responds well to the streetscape to optimise solar access.   |
| <b>Public Domain Interface</b>       | Does the development transition well between the private and public domain without compromising safety and security?<br><br>Is the amenity of the public domain retained and enhanced? | The proposed development provides an appropriate transition between the public and private domain while maintaining adequate safety and security. The amenity of the public domain is retained. |

| <b>Communal and Public Open Space</b>                                 | <p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)</li> </ol>   | <p>The proposed development provides communal open space with a minimum area equal to 19% of the site. The originally-proposed roof terrace (which provided compliant communal open space) has been deleted in response to the concerns of the previous Northern Beaches Independent Assessment Panel.</p> <p>The proposed communal open space does not achieve the required solar access as the site has a north-south orientation and the most practical location for the open space is to the south.</p> |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
|---|--|---|-------------------------------|---------------------|-----------------------------|----|----|---|----|----------------------------------|-----------------------|---|----|--|
| <b>Deep Soil Zones</b>  | <p>Deep soil zones are to meet the following minimum requirements:</p> <table> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </table>   | Site area   | Minimum dimensions            | Deep soil zone (%)  | Less than 650m <sup>2</sup> | -  | 7% | 650m <sup>2</sup> – 1,500m <sup>2</sup> | 3m | Greater than 1,500m <sup>2</sup> | 6m                    | Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m | <p>The proposed development is compliant with these criteria. The proposal provides 115.7sqm of deep soil zone, equating to 19% of the site. As the site is 608.5sqm in area, no minimum dimension is required.</p>  |
| Site area   | Minimum dimensions   | Deep soil zone (%)  |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| Less than 650m <sup>2</sup>   | -  | 7%  |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| 650m <sup>2</sup> – 1,500m <sup>2</sup>                               | 3m   |   |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| Greater than 1,500m <sup>2</sup>                                      | 6m   |   |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m   |   |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| <b>Visual Privacy</b>   | <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> | Building height   | Habitable rooms and balconies | Non-habitable rooms | Up to 12m (4 storeys)       | 6m | 3m | Up to 25m (5-8 storeys)                 | 9m | 4.5m                             | Over 25m (9+ storeys) | 12m   | 6m | <p>The proposed development does not comply with this criteria, in that it provides nil side setbacks to 3.0m. However, these setbacks are satisfactory according to the relevant Manly DCP 2013 control, and adequately provide visual privacy between properties. The nil setback provisions are consistent with adjoining and nearby developments where blank walls abut each</p> |
| Building height   | Habitable rooms and balconies  | Non-habitable rooms   |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| Up to 12m (4 storeys)   | 6m   | 3m  |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| Up to 25m (5-8 storeys)   | 9m   | 4.5m  |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |
| Over 25m (9+ storeys)   | 12m  | 6m  |                               |                     |                             |    |    |   |    |                                  |                       |   |    |  |

|                                      |  |  |
|--------------------------------------|--|--|
|                                      | <i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i>  | other thus maintaining privacy.<br><br>The setback to the adjoining R2 zone to the south and south/west of the subject site is reasonable to ensure a transition in scale and landscape opportunities to the lower density zone. |
| <b>Pedestrian Access and entries</b> | Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?<br><br>Large sites are to provide pedestrian links for access to streets and connection to destinations.  | The building entry and pedestrian access connects well to and addressed the public domain. The entry and access points are accessible and easy to identify.  |
| <b>Vehicle Access</b>                | Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?  | Pedestrian and vehicular access points are separated in order to avoid conflicts. The current proposal provides sight lines in order to further prevent pedestrian and vehicular conflict.                                       |
| <b>Bicycle and Car Parking</b>       | For development in the following locations:<br>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or<br>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre<br><br>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.<br><br>The car parking needs for a development must be provided off street.<br><br>Parking and facilities are provided for other modes of transport.<br><br>Visual and environmental impacts are minimised. | Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.  |



| Part 4 Designing the Building |  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
|-------------------------------|--|--|--|-----------------|------|---------------|------|-------------------------|---------------------------------|--|---|--------------|---------------------------------|--|---|--|
| Amenity                       |  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| Solar and Daylight Access     | <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <p>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>   | <p>Apartments 2 and 4 are compliant with the minimum 2 hours of direct sunlight to living rooms and private open spaces.</p> <p>Apartments 1, 3 and 5 receive compliant direct sunlight to their primary private open space.</p> <p>None of the units receive no direct sunlight.</p> <p>It is noted that whilst the apartments have a northern aspect to a busy road, water views are obtained from the south and the design has responded to this orientation.</p> |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| Natural Ventilation           | <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</p>   | <p>All apartments are naturally cross ventilated.</p>  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| Ceiling Heights               | <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor</td></tr><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor</td></tr><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table> | Minimum ceiling height   |  | Habitable rooms | 2.7m | Non-habitable | 2.4m | For 2 storey apartments | 2.7m for main living area floor |  | 2.4m for second floor, where its area does not exceed 50% of the apartment area | Attic spaces | 2.7m for main living area floor |  | 2.4m for second floor, where its area does not exceed 50% of the apartment area | <p>The proposed development is compliant with these criteria.</p> <p>All residential floor to ceiling heights are 2.7m.</p> <p>The commercial floor to ceiling heights are 3.3m.</p> |
| Minimum ceiling height        |  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| Habitable rooms               | 2.7m   |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| Non-habitable                 | 2.4m   |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| For 2 storey apartments       | 2.7m for main living area floor  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
|                               | 2.4m for second floor, where its area does not exceed 50% of the apartment area  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
| Attic spaces                  | 2.7m for main living area floor  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |
|                               | 2.4m for second floor, where its area does not exceed 50% of the apartment area  |  |  |                 |      |               |      |                         |                                 |  |   |              |                                 |  |   |  |

|                                | <table><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor<br/><br/>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>   | If located in mixed used areas | 2.7m for main living area floor<br><br>2.4m for second floor, where its area does not exceed 50% of the apartment area |        |                  |           |                  |           |                  |           |                  |  |
|--------------------------------|--|--------------------------------|--|--------|------------------|-----------|------------------|-----------|------------------|-----------|------------------|--|
| If located in mixed used areas | 2.7m for main living area floor<br><br>2.4m for second floor, where its area does not exceed 50% of the apartment area   |                                |  |        |                  |           |                  |           |                  |           |                  |  |
| Apartment Size and Layout      | <p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:<br/>3.6m for studio and 1 bedroom apartments<br/>4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p> | Apartment type                 | Minimum internal area  | Studio | 35m <sup>2</sup> | 1 bedroom | 50m <sup>2</sup> | 2 bedroom | 70m <sup>2</sup> | 3 bedroom | 90m <sup>2</sup> | <p>The proposed development is compliant with these criteria.</p> <p>Each of the two-bedroom apartments contain one additional bathroom and are a minimum of 92.6sqm in area.</p> <p>Each of the three-bedroom units contain one additional bathroom and are 142.8sqm in area.</p> <p>The four-bedroom unit contains two additional bathrooms and has an area of 187.9sqm.</p> <p>Each habitable room has a window of compliant dimensions.</p> <p>The open plan living/dining/kitchen areas are within 8m of a window.</p> <p>Bedrooms are compliant with required minimum areas and dimensions.</p> <p>Apartments 1, 3 and 5 are compliant with living room widths.</p> <p>Apartments 2 and 4 provide living rooms with a minimum width of 3.5m. However, the depth of these living rooms are 6.2m, providing adequate living space.</p> |
| Apartment type                 | Minimum internal area  |                                |  |        |                  |           |                  |           |                  |           |                  |  |
| Studio                         | 35m <sup>2</sup>   |                                |  |        |                  |           |                  |           |                  |           |                  |  |
| 1 bedroom                      | 50m <sup>2</sup>   |                                |  |        |                  |           |                  |           |                  |           |                  |  |
| 2 bedroom                      | 70m <sup>2</sup>   |                                |  |        |                  |           |                  |           |                  |           |                  |  |
| 3 bedroom                      | 90m <sup>2</sup>   |                                |  |        |                  |           |                  |           |                  |           |                  |  |

|                                  |   |                     |               |  |
|----------------------------------|---|---------------------|---------------|--|
| Private Open Space and Balconies | All apartments are required to have primary balconies as follows:   |                     |               | The proposed development contains balconies at the following dimensions:<br><br><b>Apartment 1 (3-bed)</b><br>Northern Balcony: 21.4m <sup>2</sup> , min. depth 2.4m<br>Southern Balcony: 18.7m <sup>2</sup> , min. depth 2.6m<br><br><b>Apartment 2 (2-bed)</b><br>Northern Balcony: 16.8m <sup>2</sup> , variable depth 300mm-4.5m<br><br><b>Apartment 3 (3-bed)</b><br>Northern Balcony: 24.6m <sup>2</sup> , min. depth 2.4m<br>Southern Balcony: 18.7m <sup>2</sup> , min. depth 2.6m<br><br><b>Apartment 4 (2-bed)</b><br>Northern Balcony: 16.8m <sup>2</sup> , variable depth 300mm-4.5m<br><br><b>Apartment 5 (4-bed)</b><br>North-East Balcony: 20m <sup>2</sup> , min. depth 2.4m<br>North-West Balcony: 23.6m <sup>2</sup> , min. depth 2.4m<br>Southern Balcony: 21.8m <sup>2</sup> , min. depth 3m |
|                                  | Dwelling Type   | Minimum Area        | Minimum Depth |  |
|                                  | Studio apartments   | 4m <sup>2</sup>     | -             |  |
|                                  | 1 bedroom apartments  | 8m <sup>2</sup>     | 2m            |  |
|                                  | 2 bedroom apartments  | 10m <sup>2</sup>    | 2m            |  |
| 3+ bedroom apartments            | 12m <sup>2</sup>  | 2.4m                |               |  |
|                                  | For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m. |                     |               |  |
| Common Circulation and Spaces    | The maximum number of apartments off a circulation core on a single level is eight.<br><br>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.        |                     |               | The proposed development is compliant with this criterion.<br><br>The maximum number of apartments off the circulation core at any one level is two. The proposed building is four storeys in height.  |
| Storage                          | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:  |                     |               | The proposed development is compliant with these criteria.<br><br>Apartments 2 and 4, being two-bedroom apartments contains at least 9.4m <sup>3</sup> of storage.   |
|                                  | Dwelling Type   | Storage size volume |               |  |
|                                  | Studio apartments   | 4m <sup>3</sup>     |               |  |
|                                  | 1 bedroom apartments  | 6m <sup>3</sup>     |               |  |
|                                  | 2 bedroom apartments  | 8m <sup>3</sup>     |               |  |
| 3+ bedroom apartments            | 10m <sup>3</sup>  |                     |               |  |

|                            |   |   |
|----------------------------|---|---|
|                            | At least 50% of the required storage is to be located within the apartment.   | Apartments 1, 3 and 5 being three- or four-bedroom apartments contains at least 12.5m <sup>3</sup> of storage.  |
| <b>Acoustic Privacy</b>    | Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms. | The proposed development is compliant with this criterion as noise sources are predominantly located away from bedrooms.  |
| <b>Noise and Pollution</b> | Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.   | The proposed development is compliant with this criterion. The orientation of the development mitigates the impacts of external noise pollution and transmission.                               |
| <b>Configuration</b>       |   |   |
| <b>Apartment Mix</b>       | Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.            | The proposed development is compliant with this criterion in that it provides two-, three-, and four-bedroom dwellings.   |
| <b>Facades</b>             | Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.  | The proposed development is compliant with this criterion. The façade provides visual interest with the inclusion of stepped balconies.   |
| <b>Roof Design</b>         | Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.<br>Test whether the roof space can be maximised for residential accommodation and open space.       | The proposed development is compliant with this criterion. The proposed development provides an appropriate flat roof design. The roof is not used for residential accommodation or open space. |
| <b>Landscape Design</b>    | Was a landscape plan submitted and does it respond well to the existing site conditions and context.  | The proposed development is compliant with this criterion. The landscape plan provided responds well to the existing site conditions and context.   |



| <b>Planting on Structures</b> | <p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table> | Plant type  | Definition | Soil Volume               | Soil Depth | Soil Area | Large Trees | 12-18m high, up to 16m crown spread at maturity | 150m <sup>3</sup> | 1,200mm | 10m x 10m or equivalent | Medium Trees | 8-12m high, up to 8m crown spread at maturity | 35m <sup>3</sup> | 1,000mm | 6m x 6m or equivalent | Small trees | 6-8m high, up to 4m crown spread at maturity | 9m <sup>3</sup> | 800mm | 3.5m x 3.5m or equivalent | Shrubs |  |  | 500-600mm |  | Ground Cover |  |  | 300-450mm |  | Turf |  |  | 200mm |  | <p>The proposed development is compliant with these criteria.</p> |
|-------------------------------|---|---|------------|---------------------------|------------|-----------|-------------|---|-------------------|---------|-------------------------|--------------|---|------------------|---------|-----------------------|-------------|--|-----------------|-------|---------------------------|--------|--|--|-----------|--|--------------|--|--|-----------|--|------|--|--|-------|--|---|
| Plant type                    | Definition  | Soil Volume   | Soil Depth | Soil Area                 |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| Large Trees                   | 12-18m high, up to 16m crown spread at maturity   | 150m <sup>3</sup>   | 1,200mm    | 10m x 10m or equivalent   |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| Medium Trees                  | 8-12m high, up to 8m crown spread at maturity   | 35m <sup>3</sup>  | 1,000mm    | 6m x 6m or equivalent     |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| Small trees                   | 6-8m high, up to 4m crown spread at maturity  | 9m <sup>3</sup>   | 800mm      | 3.5m x 3.5m or equivalent |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| Shrubs                        |   |   | 500-600mm  |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| Ground Cover                  |   |   | 300-450mm  |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| Turf                          |   |   | 200mm      |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| <b>Universal Design</b>       | <p>Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</p>   | <p>The proposed development is compliant with this criterion. The proposed development provides one adaptable unit, equating to 20% of the total apartments. Accordingly, one accessible parking space has been provided.</p> |            |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| <b>Adaptive Reuse</b>         | <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>  | <p>Not applicable.</p>  |            |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |
| <b>Mixed Use</b>              | <p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>  | <p>The proposed development is compliant with these criteria. The subject site is adequately serviced by bus. Retail/business uses are proposed to be located on the ground floor.</p>  |            |                           |            |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |   |

|  |   |   |
|--|---|---|
| <b>Awnings and Signage</b>               | Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.<br><br>Signage must respond to the existing streetscape character and context. | The proposed development is compliant with these criteria. The proposed awning is located above the existing footpath, over the active street frontage and building entry. The awning complements the building design and is consistent with the streetscape. No signage is proposed as part of this application. |
| <b>Performance</b>                       |   |   |
| <b>Energy Efficiency</b>                 | Have the requirements in the BASIX certificate been shown in the submitted plans?   | The proposed development is compliant with this criterion.  |
| <b>Water Management and Conservation</b> | Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?   | The proposed development is compliant with this criterion.  |
| <b>Waste Management</b>                  | Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.   | The proposed development is compliant with this criterion.  |
| <b>Building Maintenance</b>              | Incorporates a design and material selection that ensures the longevity and sustainability of the building.   | The proposed development is compliant with this criterion.  |

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

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

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
  - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
  - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
  - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

**Comment:** The car parking proposed for the site exceeds the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments). However, this parking rate does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The parking rate within the MDCP 2013 has been applied.

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The proposed internal areas for each apartment exceed the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide.

The proposed ceiling heights are equal to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The application is not being refused in relation to these matters.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
  - (a) the design quality principles, and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:
  - (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
  - (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

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

**Comment:** The application demonstrates that adequate regard has been given to design quality principles and the objectives of the Apartment Design Guide, as it provided a Design Verification Statement with the original application, outlining the proposed works.

#### **Manly Local Environmental Plan 2013**

The subject site is located in Zone B2 Local Centre under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone B2 Local Centre**

##### **Objectives of zone**

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposed development includes retail/business premises at the ground floor in order to serve the needs of the people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

The proposed development encourages employment opportunities in that it includes retail/business premises.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposed development is located within short walking distance of public transport.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

The subject site is located adjacent to R2 Low Density Residential land. The proposed development will not result in any unreasonable noise, odour, delivery of materials, or use of machinery.

#### **Part 4 Principal development standards**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

| <b>4.</b> | <b>Principal Development Standards</b> | <b>Requirement</b>            | <b>Original Proposal</b>      | <b>Current Proposal</b>       | <b>Complies Yes/No</b> | <b>Comments</b>    |
|-----------|--|-------------------------------|-------------------------------|-------------------------------|------------------------|--------------------|
| 4.3       | Height of buildings                    | 12.5m                         | 17.15m                        | 14.275m                       | No                     | See comment below. |
| 4.4       | Floor Space Ratio                      | 1.5:1<br>912.75m <sup>2</sup> | 1.39:1<br>849.9m <sup>2</sup> | 1.39:1<br>847.2m <sup>2</sup> | Yes                    | -                  |

#### **4.6 Exceptions to development standards**

##### Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

|  |           |
|--|-----------|
| Requirement  | 12.5m     |
| Proposed   | 14.275m   |
| Is the planning control in question a development standard?  | Yes       |
| Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation? | Numerical |
| If numerical enter a % variation to requirement  | 18%       |

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

##### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

##### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

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

Comment: The current proposal removes the originally proposed roof terrace storey, thereby reducing the overall height of the building and ensuring consistency with the height and number of storeys of other developments within the vicinity, including the development immediately to the east. The current proposal responds well to the existing context as it steps away from the main street frontage, in order to reduce the bulk along the streetscape.

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

Comment: The bulk and scale of the proposed development is controlled by articulation of the building by terrace and balcony spaces, and is consistent with other developments in the immediate vicinity. Further, the proposed development is compliant with the floor space ratio development standard, which controls bulk and scale. Finally, the current proposal deletes the originally proposal roof terrace storey, thereby minimising the overall bulk of the proposal.



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

Comment: The proposed development is likely to result in minor view loss for a number of surrounding properties. However, this view loss is acceptable, for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development, Maintenance of Views. The proposed development does not unreasonably disrupt views to, from or between public spaces.

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

Comment: The proposed development is acceptable in relation to solar access, for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development, Sunlight Access and Overshadowing.

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

Comment: Not applicable. The subject site is zoned B2 Local Centre.

#### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone.

The underlying objectives of Zone B2 Local Centre are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposed development includes retail premises at the ground floor in order to serve the needs of the people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

The proposed development encourages employment opportunities in that it includes retail/business premises.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposed development is located within short walking distance of public transport.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

The subject site is located adjacent to R2 Low Density Residential land. The proposed development will not result in any unreasonable noise, odour, delivery of materials, or use of machinery.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of buildings ratio development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed development results in a better outcome, as it provides additional well-serviced housing in the local area.

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

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

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

Comment: The applicant has provided the following written request justifying the contravention of the height of building development standard:

***"Zone and Zone Objectives***

*The subject property is zoned B2 Local Centre pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013") with commercial premises and shop top housing permissible in the zone with consent. The stated objectives of the B2 zone are as follows:*

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- To encourage employment opportunities in accessible locations.*
- To maximise public transport patronage and encourage walking and cycling.*
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

*Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.*

*The development incorporates dwellings located above ground floor retail/ business premises with all residential apartments located within a single building form and above basement car parking. Accordingly, the development is appropriately defined as shop top housing and permissible with consent in the zone.*

*The proposed development meets the relevant zone objectives given the ground floor commercial uses proposed and the appropriate concentration of residential densities within an established Business zone. The height and scale of the development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity or streetscape impacts.*

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Height of Buildings Standard and Objectives

Pursuant to Clause 4.3 MLEP 2012 the height of any building on the land shall not exceed a height of 12.5 metres. The objectives of this clause are:

- (i) to share public and private views, and
- (ii) to minimise the visual impact of buildings when viewed from the harbour and surrounding foreshores, and
- (iii) to ensure new buildings are compatible with the desired future character of the area in terms of building height and roof form, and
- (iv) to minimise the effects of bulk and scale of new buildings.

As previously indicated the plans have been amended to remove the rooftop terrace and lower the overall height of the remaining building form by 300mm. These amendments have resulted in the building displaying a compliant building height to the street with the remaining height breach directly associated with the topography of the site which falls away to the rear.

In this regard, the development, as amended, has a maximum overall building height along the southern edge of the Apartment 5 roof form of 14 metres representing a maximum non-compliance of 1.5 metres or 12.5%. We confirm the northern edge of the building, where it adjoins Sydney Road, has a maximum building height of 12.9 metres representing a non-compliance of 400mm or 1.5 metres or 3.4%. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- Detailed site analysis identified a number of site specific constraints and opportunities the majority of which relate to the height, proximity and orientation of adjoining development. Through such analysis appropriate setbacks, building envelopes and transitional building heights were identified providing for the highly articulated and modulated building form currently proposed.
- The proposed development is fully compliant with the 1.5:1 floor space ratio development standard with the additional building height reflecting the topography of the site and the desire on this particular site, given its orientation, to provide roof top communal open space with appropriate accesses and shading structures.
- The height, bulk and scale of the building are entirely consistent with the built form characteristics established by adjoining development and more recently constructed development along this section of Sydney Road as depicted in Figure 2 below.





**Figure 2** – View looking south from adjacent roundabout showing established 4 storey built form context. The subject site is to the far right of the photograph.

*It has been determined that the additional building height will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk. The proposal provides for the sharing of public and private views.*

- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding properties.
- Having regard to the matter of *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

*In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.*

*It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.*

*The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it).*



*In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls. While the judgment did not directly overturn the Four2Five v Ashfield decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard.*

*He held that the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary.*

*In this regard, it is considered that there are sufficient environmental planning grounds to justify the variation sought namely the topography of the land which makes strict compliance difficult whilst achieving a complimentary and compatible 4 storey building form on this site consistent with that which exists to the east of the site and which establishes a clear desired future character along this section of Sydney Road. The roof top communal open space which will receive excellent levels of sunlight throughout the day provides a far superior open space outcome that reliance on the ground level south facing open space area which will be self shadowed by the proposed development all day.*

*The ability to satisfy the underlying objectives and general paucity of adverse residential amenity and streetscape impacts are also relevant matters for consideration in terms of planning justification.*

### **Conclusions**

*Having regard to the clause 4.6 variation provisions we have formed the considered opinion:*

- (a) that the contextually responsive development is consistent with the zone objectives, and*
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and*
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and*
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.*

*As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance."*

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

- (a) the consent authority is satisfied that:

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

Comment: The applicant's written request has adequately addressed the relevant matters.

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

Comment: For reasons detailed above, the proposal is consistent with the objectives of the B2 Local Centre zone in the MLEP 2013 and is therefore in the public interest

- (b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

#### **Part 5 Miscellaneous Provisions**

There are no relevant miscellaneous provisions under Part 5 of the Manly LEP 2013 to consider as part of this application.

#### **Part 6 Local Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

| <b>6.</b> | <b>Local Provisions</b>          | <b>Applies</b> | <b>Complies</b> | <b>Comments</b>   |
|-----------|----------------------------------|----------------|-----------------|---|
| 6.1       | Acid Sulfate Soils               | Yes            | Yes             | The subject site is classified as Class 5 Acid Sulfate Soils. The proposed development is consistent with the objectives and provisions of Clause 6.1 of the MLEP 2013, as the originally submitted Geotechnical Assessment indicates that there is no known occurrence of acid sulfate soils in the site locality. |
| 6.2       | Earthworks                       | Yes            | Yes             | The proposed development is consistent with the objectives and provisions of Clause 6.2 of the MLEP 2013.   |
| 6.4       | Stormwater Management            | Yes            | Yes             | The proposed development is consistent with the objectives and provisions of Clause 6.4 of the MLEP 2013.   |
| 6.9       | Foreshore Scenic Protection Area | Yes            | Yes             | The proposed development is consistent with the objectives and provisions of Clause 6.9 of the MLEP 2013.   |
| 6.11      | Active street frontages          | Yes            | Yes             | The proposed development is consistent with the objectives and provisions of Clause 6.11 of the MLEP 2013.  |

|      |                             |     |     |  |
|------|-----------------------------|-----|-----|--|
| 6.12 | Essential services          | Yes | Yes | The proposed development is consistent with the objectives and provisions of Clause 6.12 of the MLEP 2013.   |
| 6.13 | Design excellence           | Yes | Yes | The proposed development is consistent with the objectives and provisions of Clause 6.13 of the MLEP 2013.   |
| 6.16 | Gross floor area in Zone B2 | Yes | No  | <p>The proposed development includes 188.4m<sup>2</sup> commercial floor space, equivalent to 22.2% of the gross floor area. Clause 6.16 requires that at least 25% of the gross floor area be used as commercial premises.</p> <p>The objectives of this clause are to ensure the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities that will contribute to economic growth, retention of local services and employment opportunities in local centres.</p> <p>The proposed development meets the objectives as commercial opportunities exists with the floor space provided in the context of a shop top housing development. The proposed floor space is also consistent with nearby developments.</p> |

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

**Manly Development Control Plan 2013:**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

### Part 3 General Principles of Development

| Issues                            | Consistent with principle | Inconsistent with principle |
|-----------------------------------|---------------------------|-----------------------------|
| Townscape                         | ✓                         |                             |
| Heritage – In Vicinity            | NA                        |                             |
| Sunlight Access and Overshadowing | ✓                         |                             |
| Privacy and Security              | ✓                         |                             |
| Maintenance of Views              | ✓                         |                             |
| Sustainability                    | ✓                         |                             |
| Accessibility                     | ✓                         |                             |
| Stormwater management             | ✓                         |                             |
| Waste Management                  | ✓                         |                             |
| Mechanical Plant Equipment        | ✓                         |                             |

#### **Comment:**

#### **3.1 Streetscapes and Townscapes**

##### Townscape

*Objective 1) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

The proposed entrance to the basement carpark is designed and sited to be consistent with the existing townscape, especially as compared development in the immediate vicinity.

*Objective 2) To assist in maintaining the character of the locality.*

The proposed development is consistent with the existing character of the locality, in that it incorporates both retail/business and residential development, and is of a comparable bulk and scale to that of existing development in the vicinity.

*Objective 3) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

The proposed development retains the existing wide footpath, in order to recognise the importance of pedestrian movements. The retail centre of Seaforth is promoted with the inclusion of two retail/business premises.

*Objective 4) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The visual impact of the proposed development is minimised with the use of building articulation and stepping back higher storeys. Further, the current proposal deletes the originally proposal roof terrace storey, thereby minimising the overall bulk of the proposal.

#### **3.3.1 Landscaping Design**

*Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.*

The proposed development allows for significant landscaping, including tree planting and vegetation.

*Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

The proposed development does not unreasonably alter important landscape features.



### 3.3.2 Landscape/Tree Preservation

*Objective 1) To ensure that development protects and conserves the natural environment.*  
The proposed development does not unreasonably alter the natural environment.

*Objective 2) To protect and preserve urban bushland areas in recognition of their:*

- *value as part of the natural heritage;*
- *aesthetic value; and*
- *value as a recreational, educational and scientific resource.*

The subject site does not contain any urban bushland.

*Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.*

The subject site does not contain any riparian land.

### 3.4.1 Sunlight Access and Overshadowing

*Objective 1) To provide equitable access to light and sunshine.*

The proposed development provides equitable access to light and sunshine in that it does not overshadow the northern elevation of the adjacent property to the east, or the north-eastern and eastern elevations of the property to the west. Further, the current proposal deletes the originally proposed roof terrace and therefore results in a reduced overshadowing impact than the original proposal.

*Objective 2) To allow adequate sunlight to penetrate:*

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposal locates the primary private open spaces for the development on the northern elevation, thereby allowing adequate sunlight access to these spaces.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed development modulates the northern setback at each level, thereby reducing bulk along the northern elevation. The proposal includes a maximised southern (rear) setback and reduced wall lengths from the original proposal along the eastern and western elevations, allowing for greater solar access during the morning and afternoon.

### 3.4.2 Privacy and Security

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

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

The proposed development is designed to retain the privacy of adjacent properties, while maintaining adequate access to sunlight and air. The proposed development predominantly does not include windows on the side elevations. Where windows are included, their dimensions and setbacks from the side boundaries minimising viewing between properties. The proposed rear balconies are reasonably setback from adjacent properties and the proposed front balconies are restricted by side walls. As such, overlooking from balconies is minimised. Further, the current proposal deletes the originally proposed roof terrace and therefore results in a reduced privacy impact than the original proposal.

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

The proposed development provides adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposed first floor addition includes balconies on the front (northern) elevation, encouraging awareness of neighbourhood security through passive surveillance.

### 3.4.3 Maintenance of Views

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

The proposed development is considered acceptable under these objectives for the reasons outlined in this section. In this case, the Planning Principle relating to view loss has been considered as per Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. The four steps of assessment of view loss as established by the NSW Land and Environment Court planning principle are addressed as follows:

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

The affected property is to the west of the subject site and contains a residential apartment and a commercial premises. The affected views contain an outlook over the subject site, vegetation, and a glimpse of Sydney Harbour. The harbour glimpse is predominantly obstructed by existing vegetation and nearby developments. Photographs below demonstrate the view:



Harbour glimpse  
View from living area / study desk (residential apartment) at 577-579 Sydney Road, Seaforth



No harbour glimpse  
View from sitting area (commercial premises) at 577-579 Sydney Road, Seaforth



Harbour glimpse  
View from meeting room (commercial premises) at 57-579 Sydney Road, Seaforth



*"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."*

The affected views are available across the eastern side boundary from both standing and seated positions.

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

The original proposal included blade walls to the eastern and western side elevations in order to provide fire safety. These blade walls were the source of view loss under the original proposal. The views from the residential apartment and the commercial sitting room are likely to remain generally unobstructed by the current proposed development as the blade walls have been deleted and alternative fire safety measures have been introduced. As such, the view loss as a result of the proposed development is considered negligible.

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

The proposed development is non-compliant with a number of development controls relating to the height and bulk of the development, including height of building, wall height, number of storeys and setbacks (side and rear). These non-compliances are acceptable for the reasons detailed in the sections of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards, and Part 4 of the Manly DCP 2013 – Development Controls. However, these non-compliances do not result in unreasonable view loss. As such, the proposal is considered to provide reasonable view sharing.

### 3.5 Sustainability

*Objective1) To ensure the principles of ecologically sustainable development are taken into consideration within a consistent and integrated planning framework that achieves environmental, economic and social sustainability in the short, medium and long term.*

The proposed development ensures the principles of ecologically sustainable development are taken into consideration during construction and ongoing use of the premises through the adherence to the submitted waste management plan. This aims to achieve satisfactory environmental, economic and social sustainability.

*Objective 2) To encourage the retention and adaptation of existing dwellings including a preference for adaptive reuse of buildings rather than total demolition. Where retention and adaption is not possible, Council encourages the use of building materials and techniques that are energy efficient, non-harmful and environmentally sustainable.*

The proposal requires demolition of existing structures. Where possible, the proposal incorporates the reuse and recycling of building waste during construction in order to achieve greater energy efficiency and encourage environmental sustainability.

*Objective 3) To minimise waste generated by development and embodied in the building materials and processes through demolition.*

The proposed development demonstrates responsible waste procedures in the waste management plan, which incorporates reuse and recycling where possible during construction and ongoing use of the premises.

*Objective 4) To encourage the use of recycled materials in landscape construction works.*  
As above at Objective 3.

*Objective 5) To encourage the establishment of vegetable gardens and the planting of fruit trees.*  
The proposed development incorporates a sufficient deep soil zone, which is capable of holding a vegetable garden and/or fruit trees.

*Objective 6) To encourage energy efficient building design, construction and practices, that reduce energy consumption (primarily for heating and cooling), reduce the use of non-renewable fossil fuels, minimise air pollution, greenhouse gas emissions and reduce energy bills.*

As above at Objective 3.

*Objective 7) To require that residential site planning and building design optimise solar access to land and buildings.*

The proposed development optimises solar access to land and buildings through the concentration of bulk to the centre of the building to allow sunlight to pass around the eastern and western sides, and by locating the primary private open spaces on the northern elevation of the development.

*Objective 8) To site and design development to optimise energy conservation and sustainability in accordance with BASIX legislation and encourage development to exceed requirement particularly to ensure energy efficient use of energy for internal heating and cooling.*

The proposed development demonstrates compliance with the relevant BASIX requirements where necessary and incorporates passive solar design principles, thermal massing and cross ventilation.

*Objective 9) To site and design development to optimise energy conservation (in accordance with the energy hierarchy) and sustainability to which BASIX does not apply.*

As above the proposed development incorporates energy conservation measures including passive solar design principles, thermal massing and cross ventilation.

*Objective 10) To ensure non-residential development involving a gross total floor area of greater than 500 sqm set and meet criteria for energy efficiency/conservation through an Energy Performance Report.*

Not applicable. The proposed commercial use of the site totals 188.4sqm.

*Objective 11) To ensure non-residential development complies with the Building Code of Australia energy efficiency provisions.*

As required by the prescribed conditions of consent, the proposed development must comply with all relevant Building Code of Australia provisions.



### 3.6 Accessibility

*Objective 1) To ensure equitable access within all new developments and ensure that any refurbishments to existing buildings provide improved levels of access and facilities for people with disabilities.*

As modified by conditions of consent, the proposed development ensures equitable access and provides improved levels of access and facilities for people with disabilities.

*Objective 2) To provide a reasonable proportion of residential units that should be designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.*

The proposed development provides a compliant proportion of adaptable units designed to be easily modified for people with disabilities.

*Objective 3) To highlight consideration of access issues early in the development design process.*  
Access issues have been adequately considered during the assessment process.

*Objective 4) To continue improving understanding and awareness of access issues for people with disabilities through a commitment to implementation of best practice.*

As modified by conditions of consent, the proposed development provides a commitment to best practice in relation to access.

*Objective 5) To ensure that the public domain, including public domain in new developments provides connectivity, legibility, flexibility and consistency to allow for equitable and safe access for all people.*

The proposed development ensures that the public domain provides connectivity, legibility and consistency, to allow for equitable and safe access for all people.

### 3.7 Stormwater Management

*Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.*

The proposed development demonstrates that all storm water will be collected and disposed of to the existing Council drainage infrastructure via the required onsite detention tanks.

*Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.*

The Sediment and Erosion Management Plan demonstrates satisfactory measures to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

*Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.*

The proposed development is adequately landscaped, thereby promoting ground infiltration. The proposed development incorporates an onsite detention tank.

*Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.*

The Stormwater Management Plans demonstrate adequate arrangements for the ongoing maintenance of storm water facilities.

### 3.8 Waste Management

*Objective 1) Minimise overall environmental impacts of waste in accordance with regional waste plans and Federal and State Government waste minimisation targets.*

The submitted waste management plan demonstrates appropriate waste minimisation measures in accordance with waste minimisation targets.

*Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:*

- *sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- *provision of design standards that complement waste collection and management services offered by Council and private service providers;*
- *building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- *appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

The proposed development encourages environmentally protective waste management practices, with the inclusion of waste sorting, reuse and recycling where possible, thereby minimising disposal of waste to landfill. The proposed waste management plan demonstrates design standards that are complementary to the relevant waste collection and management services.

*Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.*

The submitted waste management plan demonstrates appropriate waste minimisation, management and handling measures.

*Objective 4) Provide advice to intending applicants on:*

- *matters to be considered when assessing the waste implications of DAs;*
- *sound waste management practices and requirements for the preparation of waste management plans; and*
- *the reduction and handling of waste during the demolition and construction phase.*

The proposal demonstrates sound waste management practices within its waste management plan, detailing measures used to reduce and appropriately handle waste during demolition and construction.

### 3.9 Mechanical Plant Equipment

No objectives to consider as part of this assessment. However, the proposed development meets the relevant controls under Clause 3.9 of the MDCP 2013.

## **Part 4 - Development Controls**

| Site Area:  | 608.5m <sup>2</sup> | <b>Permitted/<br/>Required</b>   | <b>Original<br/>Proposal</b>  | <b>Current<br/>Proposal</b>   | <b>Complies<br/>Yes/No</b> |
|-------------|---------------------|--|---|---|----------------------------|
| Car Parking |                     | Residential:<br>1 space per dwelling<br>(5 spaces),<br><br>Visitor:<br>0.16 visitor space<br>per dwelling (1<br>space)<br><br>Commercial:<br>1 space per 40sqm<br>of commercial gross<br>floor area (5 spaces) | Residential:<br>9 spaces<br><br>Visitor:<br>1 space<br><br>Retail/Business:<br>3 spaces | Residential:<br>9 spaces<br><br>Visitor:<br>1 space<br><br>Retail/Business:<br>5 spaces | Yes                        |
| Loading bay |                     | To meet demand   | No loading bay  | No loading bay  | See<br>comment<br>below.   |

|   |   |  |  |                            |
|---|---|--|--|----------------------------|
| Site Area: 608.5m <sup>2</sup>  | <b>Permitted/<br/>Required</b>  | <b>Original<br/>Proposal</b>   | <b>Current<br/>Proposal</b>  | <b>Complies<br/>Yes/No</b> |
| Signage<br>- Number of signs<br>- Size of signs   | Max. 2 signs  | No signage is proposed.  | No signage is proposed.  | NA                         |
| Awnings   | 3.5-4.5m above ground<br><br>Setback min. 600mm from kerb                               | 3.2m above ground<br><br>1.05m from kerb   | 3.2m above ground<br><br>1.05m from kerb   | No. See comment below.     |
| Excavation  | Generally 1m<br><br>Dilapidation or Geotechnical report                                 | 5.4m for basement car park, with geotechnical report   | 6.5m for basement car park, with geotechnical report as per condition.                                       | Yes                        |
| Subdivision<br>-Access and services<br><br>-Prevailing subdivision pattern and natural features<br><br>-Energy efficiency | Access and services acceptable  | As modified by conditions of consent access and services are acceptable.                                     | As modified by conditions of consent access and services are acceptable.                                     | Yes                        |
|   | Complements existing pattern  | Subdivision is strata only. No change is proposed to subdivision pattern.                                    | Subdivision is strata only. No change is proposed to subdivision pattern.                                    | NA                         |
|   | Maximise solar access   | Solar access is maximised.   | Solar access is maximised.   | Yes                        |
| <b>Seaforth Local Centre Controls</b>   |   |  |  |                            |
| Wall Height   | 10.5m   | 13.83m   | 13.83m   | No. See comment below.     |
| Number of Storeys   | 3   | 4 plus roof terrace  | 4  | No. See comment below.     |
| Height Above Wall Height  | Max. 2m   | 3.33m  | 400mm  | Yes                        |
| Car Parking and Access  | Prevent conflicts with other controls and pedestrians etc.                              | Conflicts reasonably managed   | Conflicts well managed – sight lines and traffic light system included                                       | Yes                        |
| Façade Design and Front Setback   | Awning at ground floor<br><br>Main façade above<br><br>Third floor parapet/roof element | Proposed awning is at ground floor<br><br>Façade is above awning<br><br>Third floor parapet element employed | Proposed awning is at ground floor<br><br>Façade is above awning<br><br>Third floor parapet element employed | Yes                        |
| Building Design   | Visual and acoustic privacy   | Privacy is maximised   | Privacy is maximized   | Yes                        |

|                                   |                     |   |  |   |                              |
|-----------------------------------|---------------------|---|--|---|------------------------------|
| Site Area:                        | 608.5m <sup>2</sup> | <b>Permitted/<br/>Required</b>  | <b>Original<br/>Proposal</b>   | <b>Current<br/>Proposal</b>   | <b>Complies<br/>Yes/No</b>   |
|                                   |                     | Cross ventilation   | All apartments<br>cross ventilated   | All apartments<br>cross ventilated  |                              |
| Front Setback                     |                     | 0m  | 0m   | 0m  | Yes                          |
| Side Setback                      |                     | 0m to depth of 15m<br><br>3m beyond 15 depth  | East: 0m to<br>depth of 17m<br><br>West: 0m to<br>depth of 27m   | West: 0m to<br>depth of 15.2m<br><br>East: 0m to<br>depth of 25m  | No. See<br>comment<br>below. |
| Rear Setback                      |                     | 8m<br>Plus further setback<br>on 45 degree plane,<br>3m above ground<br>level of the site,<br>commencing at the<br>8m setback point | Breach of 4m at<br>basement<br><br>Breach of<br>300mm at fourth<br>storey                                  | Breach of 4m at<br>basement<br><br>Breach of<br>300mm at fourth<br>storey                               | No. See<br>comment<br>below. |
| Street Level Design and<br>Access |                     | Retail/business<br>premises occupy<br>most of façade to<br>minimum depth of<br>10m  | Retail/business<br>premises area<br>located on<br>entire ground<br>floor (>10m<br>depth, entire<br>façade) | Retail/business<br>premises area<br>located on entire<br>ground floor<br>(>10m depth,<br>entire façade) | Yes                          |
| Corner Element                    |                     | Acknowledge vistas  | Responds to<br>corner and does<br>not disrupt<br>vistas  | Responds to<br>corner and does<br>not disrupt<br>vistas   | Yes                          |

**Comment:**

**General Controls**

**4.2.4 Car parking, Vehicular Access and Loading**

*Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.*

The current proposal includes additional parking spaces, further than that originally proposed. As a result, the proposal is now compliant in relation to parking provision.

Clause 4.2.4.3 of the MDCP 2013 provides that loading bays must be provided in sufficient number to meet anticipated demand. The proposed development proposes two retail/business premises on site. As two retail premises exist on site currently without the demand for a loading bay, it is considered that the provision of a loading bay for the proposed development is unreasonable in this case. Further, given the restricted gross floor area for the two proposed retail/business premises, it is likely that deliveries would reasonably only require a van, rather than a large truck. In such cases, the allocated retail parking spaces allocated could be used for delivery purposes.

*Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.*

The current proposal includes sight lines for exiting vehicles and a traffic lighting system to prevent pedestrian and vehicular conflicts.

**4.4.4.1 Awnings in LEP B1 and B2 Business Zones**

Clause 4.4.4.1 of the MDCP 2013 provides that awnings in the B2 Local Centre zone must be a minimum of 3.5m above ground the proposed development incorporates an awning 3.2m above ground. However, the proposed awning is proposed at a height to match the adjacent property to the east. To require a compliant awning height would result in an inconsistent streetscape, and is therefore unreasonable in this case.



### **Seaforth Local Centre Controls**

The relevant Seaforth Local Centre controls do not have corresponding objectives. As such, the objectives relating to equivalent general controls have been used to assess the merit of any non-compliance with Seaforth Local Centre controls.

#### LEP Clause 4.3 Height of buildings

Clauses 4.2.7.1 and 4.2.7.2 of the MDCP 2013 provide that the maximum wall height for the subject site is 10.5m and the maximum number of storeys is three. The proposed development is four storeys in height and has a maximum wall height of 13.83m. The proposed development includes a non-compliant overall building height of 14.275m. The non-compliant wall height and number of storeys are a result of this non-compliant building height. The variation to the height of building is acceptable, as detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development standards.

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

The current proposal removes the originally proposed roof terrace storey, thereby reducing the overall height of the building and ensuring consistency with the height and number of storeys of other developments within the vicinity, including the development immediately to the east. The current proposal responds well to the existing context as it steps away from the main street frontage, in order to reduce the bulk along the streetscape.

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

Despite the non-compliant wall height and number of storeys, the bulk and scale of the proposed development are consistent with and lesser than other developments in the immediate vicinity. The bulk and scale are controlled by articulation of the building by varied setbacks and angled walls. Further, the proposed development is compliant with the floor space ratio development standard within the Manly LEP 2013, which controls bulk and scale. Finally, the current proposal deletes the originally proposed roof terrace storey, thereby minimising the overall bulk of the proposal.

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

The proposed non-compliant wall height and number of storeys do not result in unreasonable view loss to, from or between private or public spaces, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Maintenance of Views.

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

The proposed non-compliant wall height and number of storeys do not result in unreasonable overshadowing impacts, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 General Principles of Development – Sunlight Access and Overshadowing.

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

Not applicable. The site is zoned B2 Local Centre.

#### 4.2.3 Setbacks Controls in LEP Zones B1 and B2

*Objective 1) To ensure unobstructed access between the private and public domain.*

*Objective 2) To maintain the existing streetscape of building to the boundary.*

Side Setback

Clause 4.2.7.6(c)(ii) of the MDCP 2013 provides that buildings on the subject site must be built to the side boundary to a depth of 15m from the front boundary. Beyond 15m, buildings must be setback 3m from the side boundary. The proposed development incorporates a nil side setback for 15.2m along the western boundary and 25m along the eastern boundary. The proposal allows for unobstructed access between the public and private domains, and maintains the existing streetscape of building to the boundary, which is consistent along Sydney Road. As such, the proposed development meets the relevant setback objectives above and is acceptable.

Rear Setback

Clause 4.2.7.6(c)(iii) of the MDCP 2013 provides that buildings on the subject site must be setback 8m from the rear boundary. Above ground floor, buildings must be further setback by a 45 degree plane, 3m above ground level of the site, commencing at the 8m setback point. The proposed development breaches this control by 4m at the basement car park and by 300mm at the fourth level. However, Clause 4.2.7.6(c)(iii) also states that part of this setback may be used for basement parking if the area will be capable of sustaining sufficient deep soil planting no other alternative is available for access to existing or proposed parking areas. The proposed development incorporates adequate deep soil planting. As such, the proposed rear setback in relation to the basement carpark is acceptable.

The non-compliant rear setback at the fourth level is minor and created by the balcony planter box, rather than the bulk of the building. Further, the proposed development meets the relevant setback objectives (as above). As such, the rear setback in relation to the fourth level balcony planter box is acceptable.

**Part 5 - Special Character Areas and Sites**

| Special Character Areas and Sites            | Applicable | Not Applicable |
|--|------------|----------------|
| Conservation Area                            |            | ✓              |
| Foreshore Scenic Protection Area             | ✓          | ✓              |
| Threatened Species and Critical Habitat      |            | ✓              |
| Flood Control Lots                           |            | ✓              |
| Riparian Land and Watercourses               |            | ✓              |
| Road Widening                                |            | ✓              |
| Gurney Crescent and Clavering Road, Seaforth |            | ✓              |

**Comment:**

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the visual aesthetic amenity of the area.

**79C(1)(a)(iiia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed development.

**79C(1)(a) (iv) - the regulations**

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

**79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

**79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed development as modified by the conditions of consent is not considered to have any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

**79C(1) (c) - the suitability of the site for the development,**

The proposed development as modified by the conditions of consent is suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with fifteen submissions received from the following objectors raising the following concerns:

| <b>Submission and Address</b>  | <b>Main Issues raised in the submission</b>  |
|--|--|
| 1. D. Graham<br>11/567 Sydney Road, Seaforth   | <ul style="list-style-type: none"> <li>The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>The waiting bay is insufficient</li> <li>The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul>  |
| 2. J. Roberts<br>8/567 Sydney Road, Seaforth   | <ul style="list-style-type: none"> <li>The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul>   |
| 3. J. Page<br>14/567 Sydney Road, Seaforth   | <ul style="list-style-type: none"> <li>Excessive height, bulk and length</li> <li>Floor heights (alignment issues)</li> <li>Privacy impacts</li> <li>Overshadowing impacts</li> <li>The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>Roof terrace – privacy and noise impacts</li> <li>The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul>    |
| 4. Confidential  | <ul style="list-style-type: none"> <li>The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>Ventilation grates on street elevation are inappropriate</li> <li>Inconsistent with streetscape</li> </ul>  |
| 5. Owners Corporation SP 75566<br>567 Sydney Road, Seaforth                                      | <ul style="list-style-type: none"> <li>Excessive height and bulk and length</li> <li>Privacy impacts</li> <li>Overshadowing impacts</li> <li>The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>Floor heights (alignment issues)</li> <li>Roof terrace – privacy and noise impacts</li> <li>The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul> |
| 6. Baxter & Jacobson Architects<br>On behalf of J. Koutsounadis<br>577-579 Sydney Road, Seaforth | <ul style="list-style-type: none"> <li>Excessive height and bulk</li> <li>Non-compliant wall height and number of storeys</li> <li>Inconsistent with streetscape</li> <li>Overshadowing impacts</li> <li>View loss</li> </ul>  |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>• The waiting bay is insufficient</li> <li>• Ventilation grates are inappropriate</li> <li>• Undergrounding of power</li> </ul>  |
| 7. D. Butchart & M. Brayshaw<br>4/567 Sydney Road, Seaforth | <ul style="list-style-type: none"> <li>• Excessive height, bulk and length</li> <li>• Floor heights (alignment issues)</li> <li>• Privacy impacts</li> <li>• Overshadowing impacts</li> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> </ul>   |
| 8. D. & M. Butchart<br>581 Sydney Road, Seaforth            | <ul style="list-style-type: none"> <li>• Overshadowing impacts</li> <li>• Privacy impacts</li> <li>• Excessive height and bulk</li> <li>• Vegetation will box in our property</li> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> </ul>  |
| 9. G. Hyde<br>16/567 Sydney Road, Seaforth                  | <ul style="list-style-type: none"> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>• The proposal will lead to increased traffic</li> <li>• The construction will also lead to traffic issues</li> </ul>  |
| 10. Confidential  | <ul style="list-style-type: none"> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>• Excessive height</li> <li>• A construction traffic management plan is required</li> <li>• There are no noise or dust control measures proposed</li> </ul>  |
| 11. J. Oliver<br>9/567 Sydney Road, Seaforth                | <ul style="list-style-type: none"> <li>• Excessive height and bulk and length</li> <li>• Privacy impacts</li> <li>• Overshadowing impacts</li> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>• The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul>  |
| 12. M. Flack<br>2/567 Sydney Road, Seaforth                 | <ul style="list-style-type: none"> <li>• Excessive height and bulk</li> <li>• Privacy impacts</li> <li>• Overshadowing impacts</li> <li>• Inconsistent rear setback</li> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>• The waiting bay is insufficient</li> <li>• Ventilation grates are inappropriate</li> <li>• The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul> |
| 13. M. Philippe   | <ul style="list-style-type: none"> <li>• Excessive building length</li> <li>• Floor height</li> <li>• Privacy impacts</li> <li>• Overshadowing impacts</li> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> <li>• Roof terrace – noise impacts</li> </ul>   |



|   |  |
|---|--|
| 14. M. & S. Smellie<br>13/567 Sydney Road, Seaforth | <ul style="list-style-type: none"> <li>• Excessive height and bulk</li> <li>• Overshadowing impacts</li> <li>• Privacy impacts</li> <li>• The proposal is not consistent with the B2 Local Centre objectives and is not in the public interest</li> </ul>                            |
| 15. J. & S. Young<br>1/567 Sydney Road, Seaforth    | <ul style="list-style-type: none"> <li>• Excessive height and bulk</li> <li>• Overshadowing impacts</li> <li>• Privacy impacts</li> <li>• No consultation with neighbours</li> <li>• The proposal and additional driveway will lead to pedestrian and vehicular conflicts</li> </ul> |

### **Comment**

#### Height of Building – Overall Height, Wall Height, Number of Storeys

The proposed development results in a non-compliant building height, wall height and number of storeys. These non-compliances are acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Development Standards, and Part 4 of the Manly DCP 2013 – Development Controls.

#### Floor Space Ratio – Bulk / Scale

The proposed development is compliant with the floor space ratio development standard within the Manly LEP 2013, which controls bulk and scale of buildings.

#### Setbacks

The proposed non-compliant setbacks are acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls.

#### Traffic – Pedestrian and Vehicular Conflicts / Traffic Management / Waiting Bay

As required by recommended Condition of Consent No. ANS04, a detailed Construction Traffic Management Plan (CTMP) for the proposed development is to be prepared, prior to the issue of the Construction Certificate. The CTMP is to address the overall management of the site and nearby roads in the Seaforth Local Centre during the construction process, including the provision of parking arrangements for all trade vehicles. Further, the proposed development has been reviewed by Council's Traffic Engineer, who raised no objection to the proposed development, subject to the application of recommended conditions of consent. As such, the proposed development acceptable and is not considered to result in an unreasonable risk to vehicular and pedestrian safety.

#### B2 Local Centre Objectives / the Public Interest

The proposed development is consistent with the objectives of the B2 Local Centre Zone for the reasons detailed in the section of this report relating to the Manly LEP 2013. As such, the proposal is in the public interest.

#### Amenity – Streetscape / Overshadowing / Privacy / View Loss

The amenity impacts of the proposed development (including in relation to streetscape, overshadowing, privacy and view loss) are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

#### Floor Heights

The proposed development is compliant with the minimum floor to ceiling heights required by the Apartment Design Guide, as detailed in the section of this report relating to the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG).

#### Ventilation Grate Location

The ventilation grates to the basement car park are located on the rear (southern) elevation, not on the street (northern) elevation. The application was referred to Council's Environmental Health Officer, who raised no objections to the proposal.

#### Undergrounding Power

The application was referred to Ausgrid, who raised no objections to the proposal. No requirement for the undergrounding of power was recommended.

#### Vegetation

The proposed vegetation in the rear yard is acceptable, as it softens the rear elevation of the proposed development and retains privacy for adjacent properties to the southwest.

#### Construction Noise and Dust

As required by recommended Conditions of Consent Nos. 6NL10 and 4CD01, the construction and ongoing use of the premises shall not give rise to offensive noise or air pollution and all works shall be in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

#### Roof Terrace Level

The originally proposed roof terrace level has been deleted. No roof terrace is proposed under this application.

#### Consultation

While it is good practice to consult neighbouring properties prior to lodging a development application, it is not a legislative requirement.

#### **79C(1) (e) - the public interest.**

The proposed development has demonstrated consistency with the relevant objectives and provisions of the Manly LEP 2013 and the Manly DCP 2013, and has incorporated design changes that address the reasons for refusal of the original application, as follows. As such, the proposal is in the public interest.

*Reason 1: The panel does not find that the Clause 4.6 Variation in relation to height is well founded and accordingly has no jurisdiction to approve of the application which is refused.*

The current proposal deletes the originally proposed roof terrace storey and reduces the floor-to-floor height at each level. As such, the proposal demonstrates a reduction in the overall height of the building of 2.875m from 17.15m to 14.275m. Thus, the proposed development is consistent with the four-storey predominant building height along Sydney Road and Ethel Street. While non-compliant, the reduced overall building height is well-founded and justified in the context of the site.

*Reason 2: The panel does not support the proposed height of the development which has a number of adverse implications for the amenity of the neighbours. Further, the panel does not accept the parking which is proposed by the development as it is unsatisfactory in terms of access, number of car spaces, on site manoeuvring and pedestrian safety.*

The current proposal has incorporated a number of measures to reduce amenity impacts on the adjacent properties and the public. The current proposal deletes the originally proposed roof terrace store, thereby reducing privacy impacts on neighbours due to overlooking. This amendment also reduces the visual bulk of the proposed building on the streetscape, providing consistency with the existing streetscape character. Further, the current proposal deleted the blade walls along the eastern and western side boundaries, thereby minimising view loss to the adjacent property to the west (as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Maintenance of Views).

The current proposal deletes the originally proposed car stacker system and instead incorporates a second basement parking level. This amendment allows for additional car parking, and the proposal is now compliant with car parking requirements. Additionally, the current proposal introduces sight lines at the entrance/exit of the car park, in order to increase visibility for vehicles and pedestrians. A waiting bay and traffic light system has also been introduced, in order to prevent conflict between vehicles and pedestrians. Each of these amendments provides additional off-street parking, safer and clearer vehicular access, better vehicular manoeuvrability and increases pedestrian safety.

#### **S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
  - (b) the payment of a monetary contribution,*
  - or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

#### **Comments:**

In this case, the proposal includes three (3) additional dwellings on site. Accordingly a contribution of 3 x \$20,000 = \$60,000 is payable. A suitable condition has been included in the recommendation.

The proposed development results in a reduction in the total retail/business floor space on site. As such, no contributions are payable in this regard.

#### **CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory for **Approval**, subject to conditions.

#### **RECOMMENDATION**

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 373/2016 for demolition, construction of shop top housing and strata/stratum subdivision at 571-575 Sydney Road, Seaforth be **Approved** subject to the following conditions:-

#### **GENERAL CONDITIONS**

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 373/2016:*

| Plan No. / Title                     | Issue/<br>Revision & Date | Prepared By                         |
|--------------------------------------|---------------------------|-------------------------------------|
| DA01E L1 & L2 Basement Plans         | Rev. E 30 May 2017        | Ray Fitz-Gibbon Architects          |
| DA02B Ground Floor Plan              | Rev. B 5 May 2017         | Ray Fitz-Gibbon Architects          |
| DA03B L1 & L4 Apartment Levels       | Rev. B 5 May 2017         | Ray Fitz-Gibbon Architects          |
| DA04B L5 Apartment Level & Roof      | Rev. B 5 May 2017         | Ray Fitz-Gibbon Architects          |
| DA05C Sections                       | Rev. C 9 May 2017         | Ray Fitz-Gibbon Architects          |
| DA06A Elevations 1                   | Rev. A 2 May 2017         | Ray Fitz-Gibbon Architects          |
| DA07A Elevations 2                   | Rev. A 2 May 2017         | Ray Fitz-Gibbon Architects          |
| 1614/L01 Ground Floor Landscape Plan | 12 December 2016          | Trish Dobson Landscape Architecture |

*Reference Documentation affixed with Council's stamp relating to Development Consent No. 373/2016:*

- SEPP Design Certificate prepared by Ray Fitz-Gibbon & Associates dated 20 December 2016
- Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions dated 20 December 2016
- Report on Geotechnical Assessment prepared by Douglas Partners dated December 2016
- Traffic And Parking Impact Assessment prepared by Ray Dowsett Traffic and Transport Planning dated 30 May 2017

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

*Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council*

## 2. Prescribed Conditions

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

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



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

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

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

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

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

### **ANS01**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

### **ANS02**

The nominated adaptable unit (Apartment 2) and all common areas of the proposed development, including the bin storage area, are to be compliant with AS1428.1-2009 – Design for access and mobility. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the proposed development is compliant with the relevant Australian Standards in relation to design for access and mobility.

**ANS03**

Prior to the issue of the Construction Certificate, an asset adjustment approval is to be obtained through a water servicing coordinator for the relocation of the sewer main and sewer access chamber.

Reason: To ensure the correct relocation of the sewer services.

**ANS04**

A detailed Construction Traffic Management Plan (CTMP) for the proposed development is to be prepared, prior to the issue of the Construction Certificate. The CTMP will address the overall management of the site and nearby roads in the Seaforth Local Centre during the construction process, including truck delivery routes, any traffic control arrangements, anticipated truck numbers accessing the site during demolition, excavation and construction stages and parking arrangements for worker vehicles throughout the project.

Reason: To ensure equitable access to users of the Seaforth Local Centre and to manage traffic as a result of the construction of the proposed development.

**ANS05**

No obstructions are permitted to the accessible parking spaces, except in accordance with Australian Standard AS2890.6. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the relevant Australian Standard.

**ANS06**

Prior to the issue of the Construction Certificate, details of the vehicle priority and pedestrian safety systems are to be submitted to the satisfaction of the Certifying Authority. Details are to include detailed design drawings and associated signage and line marking proposed for the junction of the driveway and the footpath.

Reason: To ensure the safety of vehicles and pedestrians and to ensure the traffic light system is satisfactory.

**ANS07**

The proposed development is to provide storage for 7 x 240L residential bins (2 x general waste, 2 x paper, 2 x comingled containers, 1 x vegetation recycling) and 6 x 240L commercial bins. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate waste storage.

**1 (2AP03)**

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

**2 (2CD01)**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

### 3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

### 4 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

### 5 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.



6 (2FP02)

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate.

Specific works include:

- 1) Full width vehicular crossings having a maximum width, at the back of layback, and in accordance with the current policy of Council and Specifications for the construction of vehicle crossings; and
- 2) Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway must be provided for assessment. Gradients and transitions must be in accordance with Australian Standard AS 2890.1 – 2004, Part 1 – Off-Street Car Parking. The driveway profile submitted to Council must be to scale at 1:25 (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Driveway to be designed to provide for existing or future footpaths across driveway, in accordance with Council's Specification for Civil Infrastructure Works, Developments & Subdivisions 2003 and Australian Standard AS 1428.1:2001 - Design for access and mobility.

Reason: To facilitate suitable vehicular access to private sites.

7 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

8 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

9 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.



10 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

11 (2PT03)

The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1:2004.

Reason: To ensure compliance with this consent and Australian Standards relating to manoeuvring, access and parking of vehicles.

12 (2PT05)

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Drawings must be submitted with the Construction Certificate application.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

13 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development is \$60,000, being \$20,000.00 per 3 x additional dwellings. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

14 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

15 (2WM04)

The building must include not less than two independently designated areas or garbage rooms for commercial and for residential occupants; to keep commercial waste and recycling separate to residential waste and recycling.

Reason: To ensure the appropriate separation and collection of waste generated by commercial and residential activities.

16 (2WM05)

All Multi Unit Dwellings (MUDs) must locate the waste storage and recycling area with convenient access to Council's usual collection point.

To assist the servicing of a Council provided bins. Council allocates a 240L general waste bin, a 240L paper recycling bin and a 240L co-mingled recycling bin to be shared by every 4 residential dwellings. Provision for an additional 240L vegetation bin should be included.

The storage area for MUDs of 17 or more dwellings must be accessible to Council Garbage Collectors unless bins requiring collection are normally be presented at kerbside. For residential MUDs with 16 or fewer dwellings, kerbside collection is usually required. Refer to Manly Development Control Plan 2013.

Reason: To ensure Multi Unit Dwelling developments allow sufficient space for waste bins.

17 (2WM06)

All Multi Unit Dwellings must provide a location for dry recycling systems (i.e. recycling of paper and recyclable containers) and services. Manly Council provides recycling services to all residential dwellings.

Reason: To provide of dry recycling systems as required by the Department of Environment and Climate Change (DECC).

18 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

19 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

20 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

21 (3FP01)

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a Vehicular Crossing, for the design, specification and inspection by Council. Applications are to be made a minimum of two (2) working days prior to commencement of proposed works on Council's property.

Reason: To provide suitable vehicular access to private sites, without disruption to pedestrian and vehicular traffic.

22 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

23 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **ANS08**

The recommendations outlined within the Geotechnical Assessment Project 85781.00 prepared by Douglas Partners dated December 2016 are to be implemented during construction and ongoing operation of the proposed development.

*Reason: To ensure compliance with the Geotechnical Assessment Project 85781.00 prepared by Douglas Partners dated December 2016 and to ensure geotechnical works are undertaken in an appropriate manner.*

### **24 (4AP02)**

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

*Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.*

### **25 (4CD01)**

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.

- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

26 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

27 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

28 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

29 (4FP01)

The existing footpath level and grade at the street alignment of the property must be maintained.

Reason: To ensure appropriate access and infrastructure protection.

30 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.



**31 (4LD04)**

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

**32 (4LD06)**

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

**33 (4MS04)**

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

**34 (4PT01)**

All requirements of the Local or Regional Traffic Advisory Committees are to be complied with.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner which respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**ANS09**

Prior to the issue of any Occupation Certificate, the vehicle priority and pedestrian safety systems are to be certified as fit for purpose and operational by the installation contractor.

Reason: To ensure the safety of vehicles and pedestrians and to ensure the traffic light system is satisfactory.

**ANS10**

Prior to the issue of any Occupation Certificate, an accessible path is to be marked from any and all accessible parking spaces to the lift.

Reason: To ensure compliance with the relevant Australian Standards and provide clear disabled access.

**ANS11**

Prior to the issue of any Occupation Certificate, the rear lawn and communal open space is to be made accessible for those with disabilities.

Reason: To ensure compliance with the relevant Australian Standards and legislation, and provide equitable disabled access.

35 (5DS01)

Stormwater drainage from the proposed development must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

36 (5FP01)

All surplus vehicular crossings and/or kerb laybacks must be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

Reason: To provide on-street parking, suitable vehicular access to private sites, and infrastructure protection.

37 (5US01)

Any adjustment to a public utility service is to be carried out in compliance with its standards; where consent is required, with its concurrence; and with the full cost being borne by the applicant. Full documents of adjustments to any public utility service should be submitted to Council.

Reason: To ensure compliance with the terms of this consent.

#### **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

##### **ANS12**

The use of the land is to be in accordance with the definition of 'shop top housing' as per the *Manly Local Environmental Plan 2013*, as follows:

"Shop top housing means one or more dwellings located above ground floor retail premises or business premises"

Reason: To ensure compliance with the approved use.

38 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

39 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

40 (6NL10)

The construction and ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to air pollution. All works shall ensure air quality controls are in place and all activity is in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

Reason: To ensure compliance with legislation and to protect public health and amenity.

41 (6PT01)

The visitor parking is to be accessible at all times, and a sign post erected at the vehicular entry point(s) of the development indicating the location of the visitor parking.

Reason: To ensure visitors are not forced to park on public streets when visitor parking has been provided and is available within the development.

42 (6PT03)

Loading and unloading of vehicles and delivery of goods to the land must be carried out within the site. The car parking area shown on the approved drawings must be used for vehicle parking only. Any loading or unloading of materials of potential environmental damage must be appropriately bunded with adequate spill response equipment in place to ensure nil runoff from the site.

Reason: To ensure the safety and amenity of the general public using public streets, and to ensure the protection of the environment from spillage of materials.

43 (6WM02)

Deliveries and waste collection must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.

44 (6WM03)

Waste bins used for commercial premises are to be left on public footpaths for the minimum time necessary for waste collection and then promptly removed. Lids should be closed to prevent littering.

Reason: To ensure waste and bins are promptly removed from public places following collection; to limit obstruction of footpaths or roads; and to minimise public amenity impacts.

45 (6WM04)

All non-recyclable waste from commercial premises must be presented for collection in a lidded receptacle. Waste receptacles are not to be stored in public spaces such as footpaths.

Reason: Public amenity and litter minimisation.

46 (6WM05)

No waste generated on site from any commercial operation is to be placed in public place bins. Commercial operators must maintain their commercial waste bins in an organised, clean and sanitary condition, preventing potential for litter from overflowing bins.

Reason: To communicate policy regarding illegal trade waste dumping in public bins; and maintenance of trade waste bins.

47 (6WM06)

Signage on the correct use of the waste management system and materials to be recycled must be posted in the communal waste storage cupboard/room or bin bay prior to receiving an occupation certificate. Signs are available from Manly Council's Customer Service.

Reason: To ensure all residents are aware of Council's waste and recycling system with regard to their dwelling.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE**

48 (7SD01)

The Subdivision Certificate to enable the lodgement of the linen plan at Department of Lands must not be issued until Principal Certifying Authority for Development Consent has issued the final Occupation Certificate in relation to that development.

Reason: Ensure the plans relate to the approved development.

49 (7US02)

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator; for details see the Sydney Water web site [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92.

Following application a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

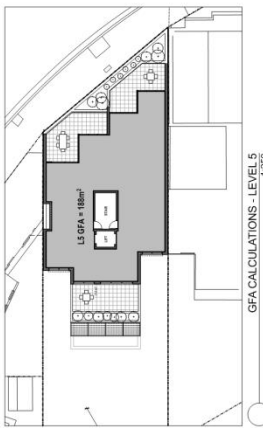
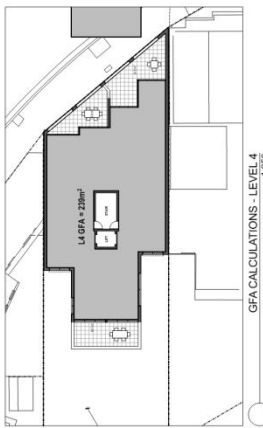
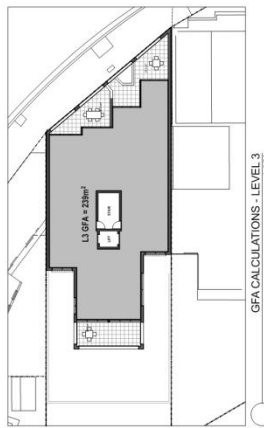
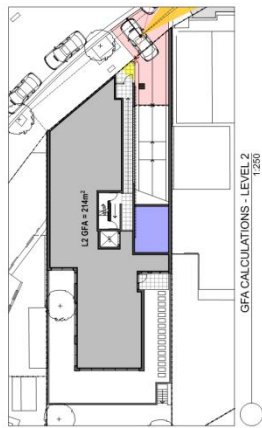
The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the linen plan/occupation of the development.

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

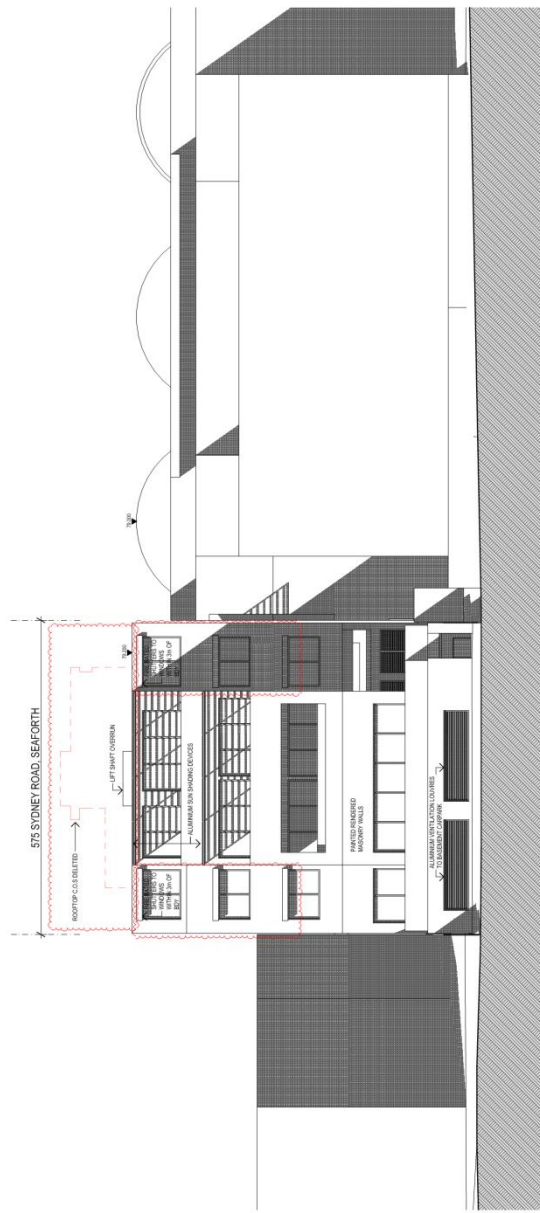
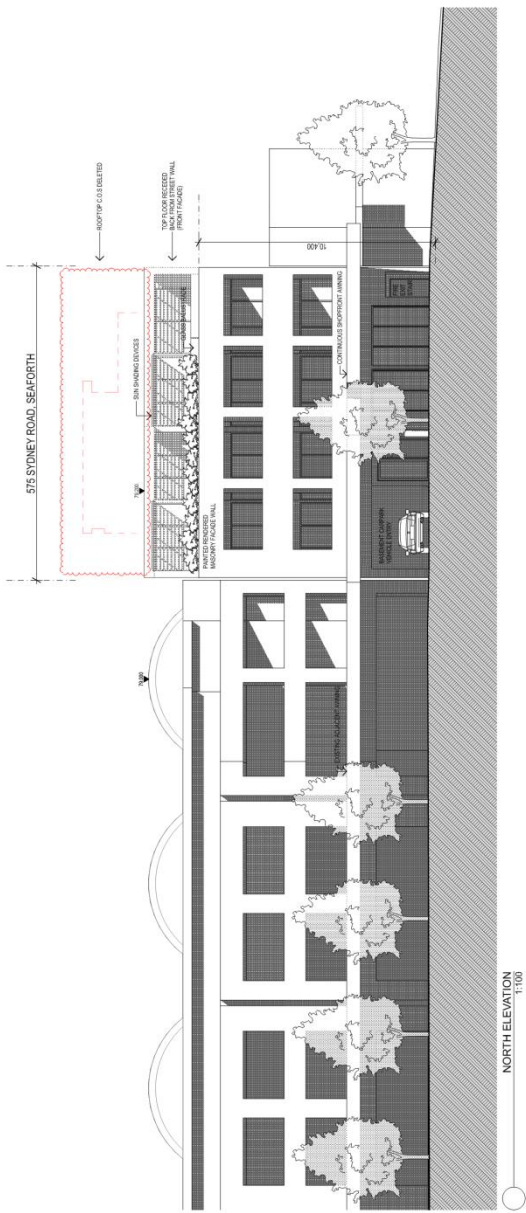




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|---|--|---|---|--|



|                  |                           |
|------------------|---------------------------|
| FSR CALCULATION: | 608.5m²                   |
| SITE AREA:       | 912.75m²                  |
| FSR @ 1.51       | PROPOSED GFA: 880m²       |
| FSR @ 1.51       | = 1.45:1 FSR (3.6% under) |
| TOTAL:           | 880m²                     |





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|--|---|--|------------------------------|--|--|

