

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 16 NOVEMBER 2022

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



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 16 November 2022

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 2 November 2022.	
3.0	CATEGORY 3 APPLICATIONS	
4.0	PUBLIC MEETING ITEMS	5
4.1	PEX2022/0001 - 10-12 Boondah Road, Warriewood - Planning Proposal	5
4.2	DA2022/0971 - Sydney Road, Manly - Demolition of an existing child care centre building and installation of landscaping.	36
4.3	DA2022/0753 - 160 Crescent Road, Newport - Demolition works and construction of a dwelling house including swimming pool and boatshed.....	66
5.0	NON PUBLIC MEETING ITEMS	133
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
5.1	DA2022/1526 - 27 The Corso, Manly - Alterations and additions to an existing pub.	133
5.2	DA2022/1036 - 126 Parkes Road, Collaroy Plateau - Alterations and additions to a dwelling house.	185
5.3	DA2022/1500 - 8/122 Bower Street, Manly - Alterations and additions to a residential flat building.	218

ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 2 NOVEMBER 2022

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 2 November 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 Public Meeting Items

ITEM 4.1	PEX2022/0001 - 10-12 BOONDAH ROAD, WARRIEWOOD - PLANNING PROPOSAL
AUTHORISING MANAGER	MANAGER, STRATEGIC & PLACE PLANNING
TRIM FILE REF	2022/496912
ATTACHMENTS	1 NSW State Emergency Service (SES) Preliminary Advice 2 Submissions - Summary of Issues Raised

PURPOSE

To report the assessment of a Planning Proposal for land at 10-12 Boondah Road, Warriewood and to recommend that the Panel advise Council to reject and not progress the Planning Proposal to a Gateway Determination.

SUMMARY

A Planning Proposal for land at 10-12 Boondah Road, Warriewood (the subject site) has been submitted by Henroth Pty Ltd and seeks to amend *Pittwater Local Environmental Plan 2014* by rezoning the subject site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation, along with other amendments, to enable residential development comprising 40 dwellings in a 3-storey townhouse typology and 4 affordable housing dwellings for a period of 10 years in a manor home or 2-storey residential flat building typology.

The Planning Proposal has been assessed and found to be inconsistent with the strategic planning framework and fails to demonstrate sufficient strategic and site-specific merit, particularly in relation to flooding, water management, biodiversity impacts, affordable housing, and overall public benefit.

RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING

That the Northern Beaches Local Planning Panel recommend that Council reject the Planning Proposal for 10-12 Boondah Road, Warriewood and not forward it to the NSW Department of Planning and Environment for a Gateway determination for the following reasons:

- A. The NSW State Emergency Service (SES) has raised significant concerns in relation to flood risk, and has indicated it does not support rezonings to enable development on the floodplain with risk management strategies that rely on early evacuation, private alarm systems, shelter in place, and transfer of residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.
- B. The Planning Proposal seeks to rezone land within the flood planning area and insufficient information has been provided to demonstrate that the proposed development will not:
 - i. result in a net loss of flood storage in the floodplain;
 - ii. result in significant adverse impacts to other properties;
 - iii. result in an increased requirement for government spending on emergency management services, flood mitigation and emergency response measures;
 - iv. adversely affect the safe occupation and efficient evacuation of people; and
 - v. place people and property at risk or in intolerable conditions in the event of a major flood.

- C. The Planning Proposal is inconsistent with the objectives of Clause 5.21 Flood Planning of *Pittwater Local Environmental Plan 2014*.
- D. The Planning Proposal is likely to result in unacceptable impacts on biodiversity, particularly in respect of:
 - i. failure to site and design development to avoid and minimise impacts to biodiversity;
 - ii. removal of the full extent of remnant Bangalay Sand Forest, an Endangered Ecological Community of significant biodiversity value, as well as impacts to threatened species habitats, reduction in local wildlife connectivity, and potential for altered flow regimes to impact groundwater dependent ecosystems;
 - iii. uncertainty with regards to Biodiversity Certification and, given that offset obligations are not available in the Northern Beaches, the likelihood of a net loss of local biodiversity;
 - iv. failure to exclude from development all of the mapped Coastal Wetland;
 - v. failure to provide an adequate 15 metre wide landscaped buffer, exclusive of the bushfire asset protection zone, to protect the adjacent wetlands; and
 - vi. inadequate groundwater investigation and water quality monitoring to demonstrate adequate management of impacts on the downstream environment and the wetland.
- E. The Planning Proposal does not comply with Council's Affordable Housing Policy as it only offers dwellings as affordable housing for a period of 10 years, and it fails to include a suitable mechanism to include the site in the *Affordable Housing Contributions Scheme*.
- F. The proposed 15m maximum building height is not commensurate with the proposed 3 storey townhouses and could enable a scale of built form that is out of character with the area.
- G. The proposed C2 zoning of land could trigger acquisition obligations for Council.
- H. The Planning Proposal has not demonstrated sufficient strategic merit or site-specific merit, and is inconsistent with the following elements of the strategic planning framework:
 - i. *Greater Sydney Region Plan*:
 - Objective 27: Biodiversity is protected, urban bushland remnant vegetation is enhanced
 - Objective 36: People and places adapt to climate change and future shocks and stresses
 - Objective 37: Exposure to natural and urban hazards is reduced.
 - ii. *North District Plan*:
 - Planning Priority N16: Protecting and enhancing bushland and biodiversity
 - Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change
 - iii. *Towards 2040 Local Strategic Planning Statement* for the Northern Beaches:
 - Priority 1: Healthy and valued coast and waterways
 - Priority 2: Protected and enhanced bushland and biodiversity
 - Priority 8: Adapted to the impacts of natural and urban hazards and climate change
 - Priority 15: Housing supply, choice and affordability in the right locations
 - iv. *Warriewood Valley Strategic Review Addendum Report* adopted 17 November 2014 and amended 19 December 2017 by Northern Beaches Council and incorporated in Clause 6.1 Warriewood Valley Release Area of the *Pittwater Local Environmental Plan 2014*.
 - v. *Local Planning Directions* issued by the Minister for Planning:
 - Local Planning Direction 4.1: Flood Prone Land
 - Local Planning Direction 4.2 Coastal Management

Local Planning Direction 4.4: Planning for Bushfire Protection

REPORT

BACKGROUND

Previous Planning Proposals

The site has been the subject of three previous Planning Proposals which have not proceeded, in summary:

2013 Planning Proposal (PP 0007/13)

The 2013 Planning Proposal lodged with former Pittwater Council, which included the subject site and land at 6 Jacksons Road and 3, 6 and 8 Boondah Road, was for a large mixed use development comprising retail, commercial and residential land uses. The former Pittwater Council resolved to not support this proposal on 17 March 2014. Upon a review sought by the applicant, the Joint Regional Planning Panel's decision on 17 February 2015 was to recommend against the Planning Proposal proceeding to Gateway Determination.

2016 Planning Proposal (PP 0005/16)

The 2016 Planning Proposal, which included the subject site and land at 6 Jacksons Road, sought to enable development of a 4-storey residential flat building with a yield of up to 30 dwelling units, and a 2-storey bulky goods retail centre of up to 17,000sqm GFA. Council resolved not to support this proposal on 28 March 2017. Upon review sought by the applicant, the Sydney North Planning Panel's unanimous decision on 31 May 2017 was that the Planning Proposal should not be submitted for Gateway Determination as it had not demonstrated strategic merit. Subsequent appeals by the applicant to the Land & Environment Court and the Supreme Court were dismissed.

2019 Planning Proposal (PEX2019/0003)

The 2019 Planning Proposal, which included the subject site and land at 6 Jacksons Road, sought to enable development of five 4-storey residential flat buildings with a yield of up to 130 dwelling units, along with an offer to enter into a Planning Agreement to dedicate land at 6 Jacksons Road to Council and facilitate the provision of new and expanded sports fields. Council resolved not to support this proposal on 17 December 2019. Upon review sought by the applicant, the Sydney North Planning Panel's unanimous decision on 8 September 2020 was that the Planning Proposal should not be submitted for Gateway Determination as it had not demonstrated strategic merit.

Pre-Lodgement Meeting

A pre-lodgement meeting was held with Council officers on 22 July 2021 in relation to the current Planning Proposal, and formal notes were issued to the applicant on 27 August 2021. Amongst other things, the notes include specific requirements and considerations in relation to the strategic planning context, flooding, biodiversity, bush fire, riparian values, stormwater quality management, traffic and road design, parks and landscaping, dwelling density, affordable housing, development contributions, and the necessary components of justification for a Planning Proposal.

Revisions to Warriewood Valley Development Contributions Plan

At the time of the pre-lodgement meeting, the Warriewood Valley Development Contributions Plan Amendment 16 (Revision 3) 2018 (2018 Contributions Plan) was under review by the Council. Section 6.2.3 of Contributions Plan 2018 identified the strategy for provision of open space and recreation areas to meet the needs of the anticipated residential population in the release area. Land at 10-12 Boondah Road, Warriewood (the site of the current Planning Proposal), was identified as two of five properties in the Southern Buffer area identified for purchase for future active open space.

To date, the Council has only been successful in purchasing one (3 Boondah Road, Warriewood) of the five properties identified for future active open space.

The applicant was advised at the pre-lodgment meeting that provision of open space, particularly active open space such as sports fields, remains a key area in which community needs are not adequately met in Warriewood Valley, and that the Council was considering alternatives.

At its meeting on 28 June 2022, the Council resolved to adopt the Warriewood Valley Development Contributions Plan Amendment 16 (Revision 4) 2022 (2022 Contributions Plan) which came into effect on 1 July 2022. The 2022 Contributions Plan included revised calculations of open space still to be delivered, based on updated assumptions on anticipated development in the release area. Active open space still to be delivered has been revised down from 3.74ha in the 2018 Contributions Plan to 1.31ha in the 2022 Contributions Plan. Section 6.2.3 no longer identifies properties in the Southern Buffer area, including the site, for purchase for future active open space. The 2022 Contributions Plan recognises that opportunities for future land purchase for active open space are limited and focusses instead on satisfying remaining active open space demands through the embellishment of existing sports fields to increase available hours of use through upgrading turf surfaces, improving drainage and providing lighting.

SITE DESCRIPTION

The site is located at 10-12 Boondah Road, in Warriewood Valley (see Figure 1).



Figure 1 - Site Location - Aerial Photograph

The site adjoins Warriewood Wetlands to the west, land developed with a 3-storey residential flat building to the north (part of the larger residential complex developed by Meriton at the corner of Boondah Road and Macpherson Street), and a rural property to the south-east with a dwelling.

Warriewood Square shopping centre is further south of the site on Jacksons Road, and to the east on the opposite side of Boondah Road is bushland and a Sydney Water sewerage treatment plant.

The area referred to in planning documents as the Southern Buffer, derived its name from a 400m buffer distance to the sewerage treatment plant which was originally embargoed from the land release area until Sydney Water developed a plan for capping the plant to reduce odour impacts on the surrounding area.

Other land uses along Boondah Road include public sports fields and netball courts, a Council depot, and a community centre.

The site has a total area of 2.044ha, comprising lots described in the table below.

Address	Property Description	Area	Owner
10 Boondah Road	Lot 4 DP 26902	1.027	Henry Fraser Pty Ltd
12 Boondah Road	Lot 3 DP 26902	1.017	Cassius Investments Pty Ltd

The site is used in part for rural and storage purposes, and contains sheds, a small paddock and at least one dwelling. The topography of the site is generally flat and low-lying land, draining to the Warriewood Wetlands adjoining to the west and Narrabeen Creek to the south.

Although parts of the site are cleared, substantial vegetation exists on the site, having significant biodiversity and wildlife connectivity value, including Threatened Ecological Communities (TEC) and Threatened Species and their habitats. In particular, the site contains two Endangered Ecological Communities (EEC), being Bangalay Sand Forest an EEC under the NSW Biodiversity Conservation Act 2016 (NSWBC Act) located on 12 Boondah Road, and Swamp Oak Floodplain Forest an EEC within NSWBC Act and Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) located on 10 Boondah Road. Vegetation on the site merges with that of the adjacent Warriewood Wetlands and includes intact mature canopy.

The site is in the Flood Planning Area. Council's Flood Hazard Map identifies High, Medium and Low Risk Precinct areas within the site (see Figure 2).

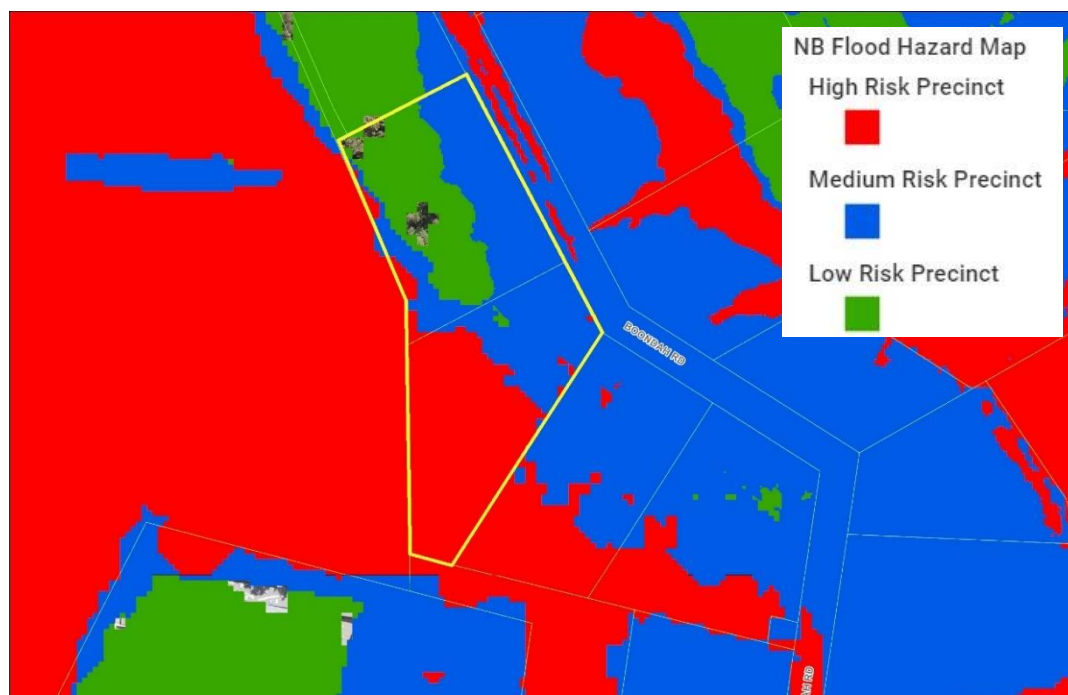


Figure 2 - Flood Hazard Map

The site includes Vegetation Category 1 and Vegetation Buffer on Council's Bushfire Prone Land Map (see Figure 3).

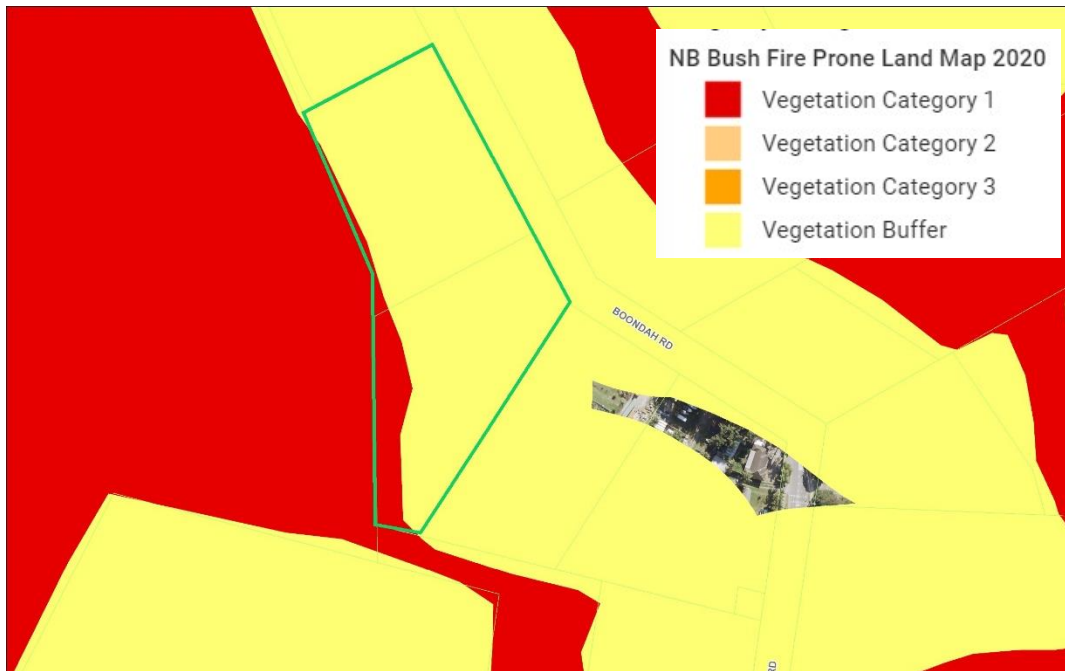


Figure 3 – Bush Fire Prone Land Map

THE PROPOSAL

Henroth Pty Ltd lodged a Planning Proposal application via the NSW Government ePlanning Portal and it was assigned for review by Council on 22 July 2022.

Documents submitted with the application which are relied on for this assessment include:

- Planning Proposal by SJB Planning, dated June 2022
- Urban Design report (various plans) by Buchan Group, dated June 2022
- Water Management Report by Calibre Group, dated 2 June 2022
- Biodiversity Certification Assessment Report by Travers Bushfire & Ecology, dated 5 May 2022
- Conservation Measures Implementation Plan by Travers Bushfire & Ecology, dated 6 May 2022
- Bush Fire Strategic Study by Travers Bushfire & Ecology, dated 8 June 2022
- Traffic Impact Assessment by The Transport Planning Partnership, dated 3 June 2022
- Preliminary Site Investigation (Contamination) by Douglas Partners, dated May 2022

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 (LEP) for land at 10-12 Boondah Road, Warriewood to permit future residential development of 44 dwellings, including 40 x three-storey multi-dwelling housing dwellings (townhouses) and four dwellings in a manor house form to be used as affordable housing for a period of 10 years.

A conceptual Site Plan shows six rows of townhouses with internal circulation roads and driveways across much of the site, along with a kids' playground, pedestrian pathway/fire trail, informal open space areas and a riparian corridor in the southern part of the site (see Figure 4). This Site Plan is a revision of an earlier version lodged with the application, in response to some issues raised at a meeting with Council officers. The revision increases to 15m the setback of the internal road from

the site's boundary to Warriewood Wetland, with the end townhouses in each row re-oriented to achieve suitable road/driveway gradients. The development footprint remains largely unchanged.

The Site Plan indicates a 6m setback of the proposed townhouses from Boondah Road, and a 24m wide bushfire asset protection zone (APZ) between the proposed townhouses and the boundary to the Warriewood Wetland, with roads, paths and parking located within the 24m wide APZ area.

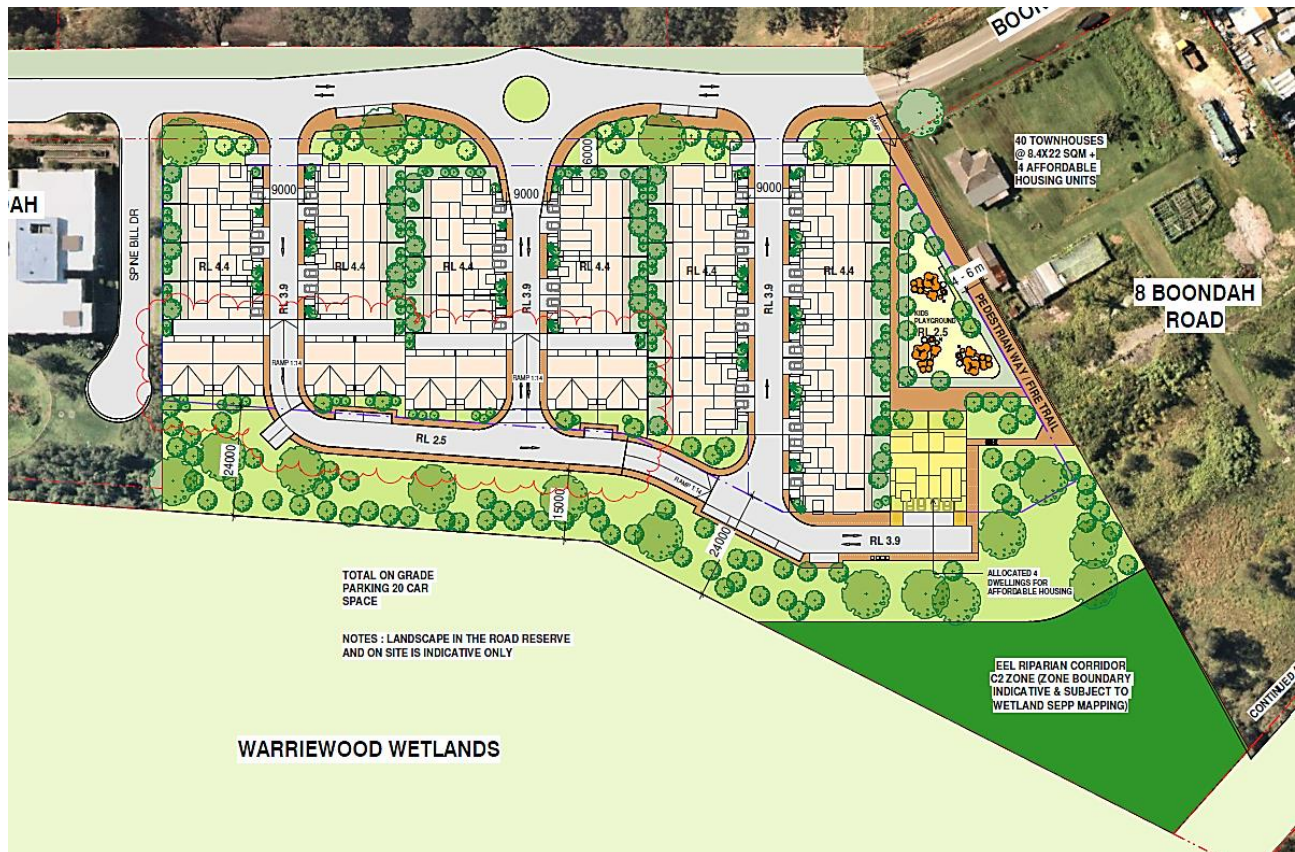


Figure 4 - Extract of Site Plan prepared by Buchan Group

The three-storey townhouse designs incorporate garage, living, dining and kitchen at ground level, and bedrooms and bathrooms on the two levels above (see Figures 5 and 6).

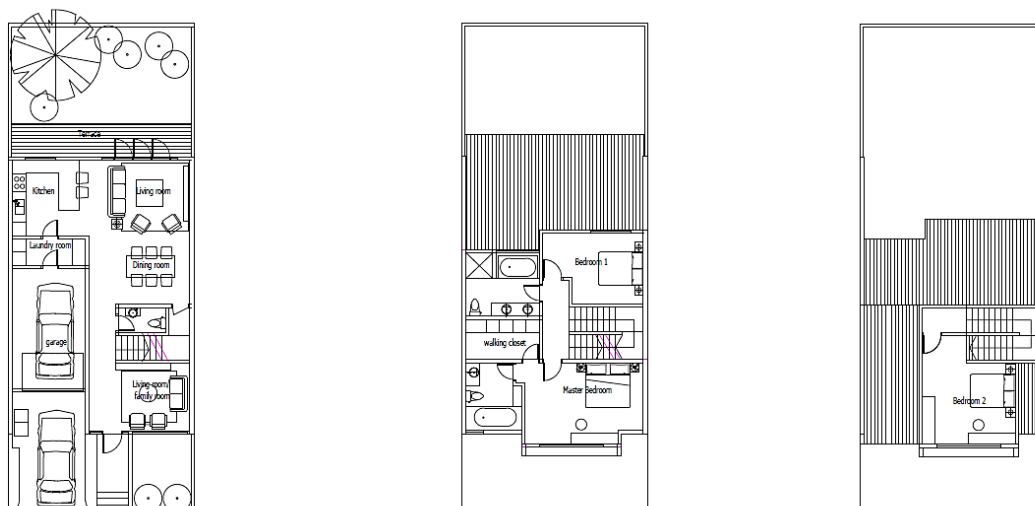


Figure 5 – Standard Housing Type 2 (Extract from Buchan Group report)

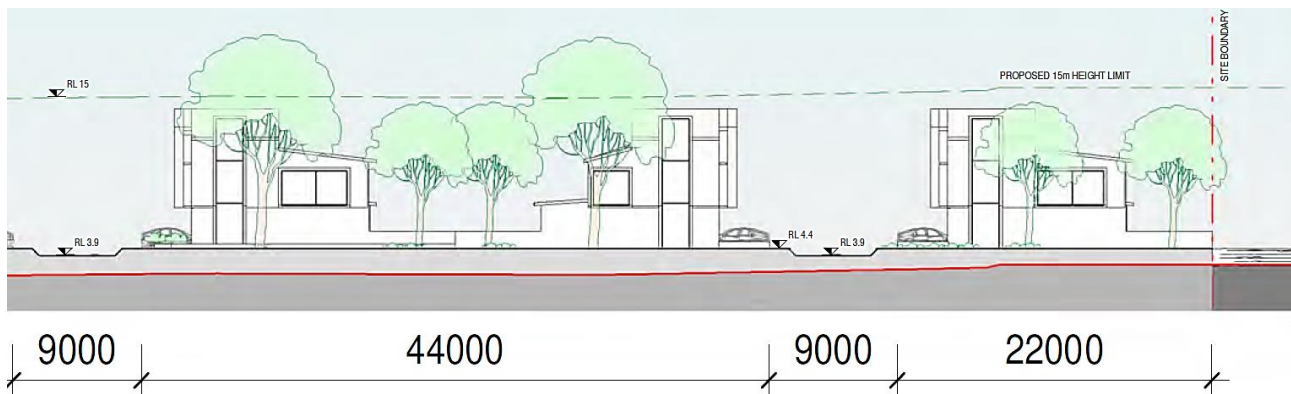


Figure 6 - Elevation to Boondah Rd, north end of site next to Meriton complex (extract Buchan Group report)

Most, if not all the proposed R3 Medium Density Residential zoned land (around 90% of total site area) will be subject to earthworks, mostly filling to raise the land to achieve levels required to meet flood planning criteria, including townhouse ground levels at RL4.4m, road and driveways at RL3.9m, and park and play areas at RL2.5m. Boondah Road along the site's frontage is also to be raised to RL3.9m - which 1% AEP (previously referred to as 1 in 100-year flood level) plus an allowance for climate change. The earthworks are likely to necessitate removal of most if not all the existing vegetation in the proposed R3 zoned area. No earthworks are proposed for the riparian corridor proposed to be zoned C2 Environmental Conservation.

The applicant has not made an offer to enter into any Planning Agreement. The applicant has stated the intention is for the C2 zoned land to remain in private ownership as part of a Community Title.

ASSESSMENT OF PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Government's Local Environmental Plan Making Guideline December 2021 (Guideline).

Part 1 – Objectives or Intended Outcomes

The stated objectives and intended outcomes of the Planning Proposal are to:

- continue residential development adjoining existing residential development within the Warriewood Valley release area;
- provide residential accommodation opportunities responding to identified demand;
- optimise the utilisation of existing infrastructure;
- preclude from urban development those areas identified through the studies undertaken that are not suited for urban development;
- to accommodate approximately 44 dwellings equating to a yield of approximately 22 dwellings per hectare.

The stated objectives rely on the premise that the Planning Proposal responds to the outcomes of the previous Rezoning Review for the 2019 Planning Proposal. Specifically, that changes to the Warriewood Valley Development Contributions Plan (Contributions Plan) whereby Council is no longer targeting the land for acquisition for open space, overcome the main reason for the 2019 Planning Proposal failing to demonstrate strategic merit.

Response

This premise is not accepted. Although the quantum of open space still to be delivered in the release area has been revised down and the site is no longer identified for purchase for future

active open space by the Contributions Plan, this does not mean that the site by default becomes suitable in a strategic planning sense for urban or residential development.

The site's earlier designation for active open space was not based solely on meeting the needs of the anticipated population, but also on the findings of a suite of technical studies that informed the planning strategy for Warriewood Valley Release Area. These studies included land capability mapping based on identified environmental constraints to development such as flooding, bush fire and biodiversity. Strategic Merit is discussed further in Part 3 below.

Part 2 – Explanation of Provisions

The applicant's proposed LEP amendments seek to:

- rezone the site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation (see Figures 7 and 8);
- increase the maximum building height from 8.5m to 15m over the proposed R3 zoned land;
- remove the minimum subdivision lot size; and
- amend the Urban Release Area Map and clause 6.1(3) to apply a dwelling yield range of 40-45 dwellings.



Figure 7 – Existing Zoning

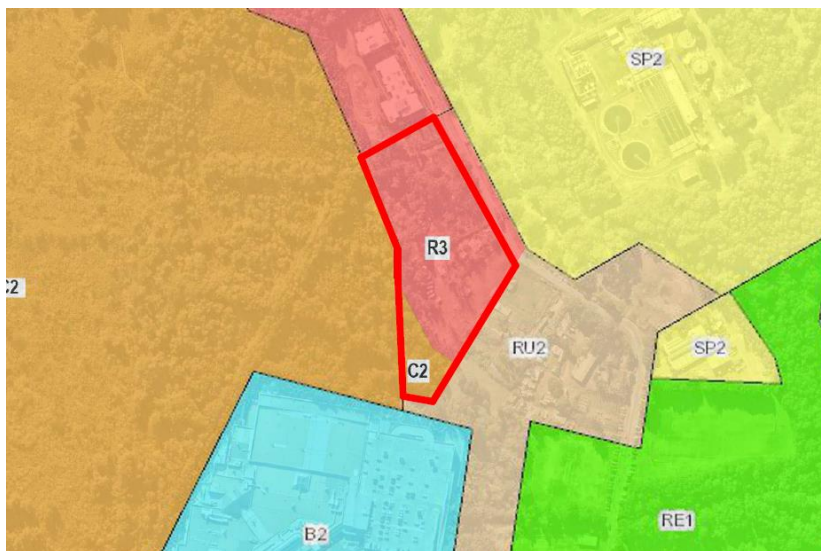


Figure 8 – Proposed Zoning

Response – Proposed Zoning

The proposed R3 zoning may be a suitable zoning to accommodate residential development at the density that is proposed. However, the extent of development proposed is not appropriate having regard to flooding, biodiversity, and water quality. These issues are discussed further in Part 3.

The proposed C2 Environmental zoning is not acceptable, for the following reasons:

- it has not been demonstrated that the extent of the proposed C2 zoning adequately aligns with the biodiversity values of the land and the conservation requirements to protect these values;
- while the applicant has stated that the proposed C2 zoning boundary encompasses all of the mapped Coastal Wetland under State Environmental Planning Policy (Resilience and Hazards) 2021, the proposal appears to include roads, earthworks, asset protection zones, bioretention basins, and stormwater filters and discharge points within the mapped Coastal Wetland areas;
- while the applicant has stated that the proposed C2 zoned land is intended to remain in private ownership under a Community Title scheme, without legal advice to indicate otherwise, there is a possibility that the C2 zoning could trigger an obligation for Council to acquire the land under the owner-initiated hardship provisions of the Land Acquisition (Just Terms Compensation) Act 1991, if the C2 zoning is deemed to be reserving the land for use for a public purpose. Despite enquiries made by Council planners, the NSW Department of Planning and Environment was unable to clarify the operation of the relevant legislation in this instance due to legal complexity;
- while the proposed C2 zoning may offer better protection of biodiversity values than the current RU2 Rural Landscape zoning, there is uncertainty as to responsibility for implementation of the proposed conservation measures, and the prospects of Biodiversity Certification.

Response – Building Height

The proposed maximum building height of 15m is not sufficiently justified for the proposed 3-storey townhouses and could potentially enable a scale of built form out of character with the area. The applicant states the 15m height has been nominated to ensure that the earthworks required to raise the land to create building platforms above flood planning level and, once the site has been raised, the proposed dwellings do not result in a contravention of the height standard when measured from existing ground levels. No ground survey information has been submitted to indicate the maximum level of fill necessary for flood planning levels or to provide an accurate estimate of the maximum height of the proposed townhouses. The applicant has confirmed a willingness to accept an LEP control that limits the height of the buildings to 2 storeys plus attic, in addition to the proposed 15m height limit. The detail of this proposal has not been provided. The onus is on the applicant to propose appropriate LEP provisions and supply sufficient information to demonstrate that the provisions would result in buildings that are not of excessive scale and are in character with the area.

The 2019 Planning Proposal sought a maximum building height of 15m to accommodate 4-storey residential flat buildings. This height was assessed at the time as being inappropriate having regard to the local character. The residential neighbourhood character and predominant built form and scale of the Warriewood Valley Release Area is a diverse mix of 1, 2 and 3-storey low density housing, seniors housing, townhouses and apartment buildings. Only the Meriton apartment complex approved by the former Planning Assessment Commission at the corner of Macpherson Street and Gahnia Lane includes 4-storey buildings in limited areas away from the main street frontages.

Response – Dwelling Yield Range

Part 6.1 of the LEP implements the adopted planning strategy for Warriewood Valley Release Area contained in the Warriewood Valley Strategic Review (WVSR) adopted by former Pittwater Council

and endorsed by the NSW Director of Planning in 2013 and the Warriewood Valley Strategic Review Addendum (WVSR Addendum) adopted in 2014 and amended in 2017 (WVSR Addendum).

Clause 6.1(3) of the LEP specifies dwelling yield ranges to control the density of residential development. The dwelling yield ranges are based on densities adopted through the WVSR and WVSR Addendum for individual residential sectors, with density calculated on the 'developable area' – that is, the total site area excluding land identified as environmentally sensitive, creek line corridor and/or having no potential for development due to a prevailing condition/hazard.

32 dwellings per developable hectare is the maximum density that has been planned and applied generally across most of the undeveloped release land in Warriewood Valley through the WVSR and WVSR Addendum. The Planning Proposal seeks a dwelling yield range of 40-45 dwellings.

The Planning Proposal report by SJB refers to a density of 22 dwellings/ha, with no explanation for how this is calculated. A density of 22 dwellings/ha applied to the total site area of 2.044ha equates to 45 dwellings in total. However, this calculation is not appropriate as not all of the site can reasonably be considered 'developable', given the significant environmental constraints associated with flooding and riparian and biodiversity values, especially in the southern half of the site at 10 Boondah Road.

The Water Management Report by Calibre nominates at page 37 that the 'developable land' is a minimum of 1.32ha, defined as the land within the low and medium flood hazard zones. 1.32ha at a density of 32 dwellings per hectare will permit 42 dwellings.

On this basis, the proposed dwelling yield range is generally consistent with the density limit of 32dwellings/ha applied by the planning strategy for Warriewood Valley.

Affordable Housing

Council's stated policy is that it is committed to a 10% affordable rental housing target for all planning proposals for urban renewal or greenfield development, and the Contributions Scheme and related LEP provisions are the mechanism by which affordable housing is to be secured.

The proposed LEP amendments do not include any amendments to give effect to an affordable housing contribution in accordance with Council's Affordable Housing Policy and its Affordable Housing Contributions Scheme. Such amendments would include a new LEP clause and map, and a new section in the Contributions Scheme applying to the subject land, to specify the proportion of total residential gross floor area to be dedicated as affordable housing or provided as a monetary contribution in lieu of dedication as a condition of a future development consent.

The Planning Proposal includes an offer to provide four dwellings as affordable housing for a period of 10 years, managed during that time by a registered community housing provider. Affordable housing for a time limited period is not acceptable, nor is it in accordance with Council's Policy. Dwellings secured for affordable housing are required to be in Council ownership in perpetuity.

Part 3 – Justification

STRATEGIC MERIT

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The applicant's report states the site has been part of the Warriewood Valley Release Area since its inception and is identified in the WVSR and WVSR Addendum as land having development capability ranging from Least to More.

The case for need put forward by the applicant is based on housing need, in particular that the proposal responds to a shortfall of 275 dwellings identified in Council's Local Housing Strategy (LHS), a shortfall of 251 dwellings from the original forecasts for the Release Area, and the exacerbation of any shortfall as a result of the abandonment of the Ingleside Place Strategy.

Response

The applicant's justification with regards to need is not supported.

The LHS forecasts housing demand to the year 2036 and identifies a deficit in capacity under the current planning controls of 275 dwellings across the entire Northern Beaches local government area. The LHS estimates of capacity to meet housing demand factored in 1000 new dwellings in Ingleside. In response to the State Government's decision earlier this year to not proceed with Ingleside Place Strategy, Council's strategic planning team is actively investigating alternative locations.

The LHS builds on the strategy for housing identified in Council's Towards 2040 Local Strategic Planning Statement (LSPS) of focusing new housing in and around centres with good transport. Centre Investigation Areas are the cornerstone of Council's adopted approach to meeting housing targets and the LHS identifies Brookvale, Dee Why, Mona Vale, Manly Vale and Narrabeen as priorities for urban renewal in the short-medium term. Medium density residential development is to be concentrated in strategic and selected town centres on the current and future B-line routes, and these centres will be the subject of detailed planning to identify opportunities for renewal and respond to the unique circumstances and character of each centre.

Planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre has real potential to meet the 275 dwellings deficit identified in the LHS and a major portion of the 1000 dwellings no longer being planned in Ingleside, in a location having significant advantages in terms of existing infrastructure, proximity to employment and services, and an efficient, transit-supportive urban structure that can promote less reliance on private vehicles and less impact on traffic congestion. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan is on track to be reported to Council in November 2022 with a view to endorsement for a final phase of public exhibition.

Given the progress made to date and the ability for Council to meet its housing targets through a methodical, strategic, principles-based approach to increasing housing capacity in and around its most accessible centres, there is no need for the subject Planning Proposal to rezone land in Warriewood, especially given the site-specific constraints and potential environmental, social, and economic impacts which are discussed in the section on Site-Specific Merit later in this report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The applicant's report suggests the site is a logical extension of existing urban zoned lands and the Planning Proposal is a logical infill development opportunity that does not face the infrastructure delivery constraints that pose challenges to the Ingleside and Frenchs Forest release areas.

Response

As discussed under Q1. above, Council is on track to meet the housing targets identified in its' LHS and detailed planning is underway for Centre Investigation Areas, including Brookvale. Phase 1 of the Frenchs Forest Precinct is being implemented through new planning controls that came into effect on 1 June 2022 and is scaled to ensure growth and development is in line with infrastructure.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy?

The applicant's report states that the Planning Proposal is consistent with Greater Sydney Region Plan and North District Plan.

Response

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The proposed development will result in unacceptable impacts on biodiversity, fails to provide an adequate buffer to adjacent wetland, and insufficient information has been submitted in relation to water quality management and impacts on groundwater dependent ecosystems. For these reasons, the Planning Proposal is inconsistent with:

Greater Sydney Region Plan

- Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced
- Objective 36: People and places adapt to climate change and future shocks and stresses
- Objective 37: Exposure to natural and urban hazards is reduced.

North District Plan:

- Planning Priority N16: Protecting and enhancing bushland and biodiversity
- Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The applicant's report states that the Planning Proposal is consistent with the endorsed LSPS and the endorsed LHS.

Response - Towards 2040 Local Strategic Planning Statement

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The proposed development will result in unacceptable impacts on biodiversity, fails to provide an adequate buffer to adjacent wetland, and insufficient information has been submitted in relation to water quality management and impacts on groundwater dependent ecosystems.

With good progress made to date and the ability for Council to meet its housing targets through a methodical, principles-based approach to increasing housing capacity and diversity in and around its most accessible centres, there is no need to rezone the subject site to allow housing, especially given the flooding constraints and potential environmental impacts.

The proposal fails to incorporate appropriate provision for contributing affordable housing dwellings in perpetuity in accordance with the relevant policy and scheme.

The proposed C2 zoned land presents uncertainty for Council with regards to potential acquisition triggers and responsibility for ongoing implementation of conservation measures.

For these reasons, the Planning Proposal is inconsistent with the following Priorities of the LSPS:

- Priority 1: Healthy and valued coast and waterways
- Priority 2: Protected and enhanced bushland and biodiversity

- Priority 8: Adapted to the impacts of natural and urban hazards and climate change
- Priority 15: Housing supply, choice and affordability in the right locations
- Priority 16: Access to quality social and affordable housing

It is furthermore inconsistent with the following Housing Principle adopted in the LSPS:

- Limit development where there are unacceptable risks from natural and urban hazards, or impact on tree canopy.

Response – Northern Beaches Local Housing Strategy

Council's ongoing forward planning for centres will address the shortfall of 275 dwellings identified in the LHS and find alternatives for the 1000 dwellings previously envisaged for Ingleside.

The Centre Investigation Areas earmarked in the LHS for investigation for renewal will be the key locations for delivering new housing with detailed planning for these centres looking to provide a variety of housing types including medium to higher density housing in highly accessible locations.

The second approach outlined in the LHS, Low-rise Housing Diversity Areas, identifies Warriewood as one of several local centres potentially suited to low to medium density typologies within 400m of centres. This approach is explicitly subject to environmental and other constraints, which means the site's flooding, bushfire and biodiversity constraints would need to be properly considered.

Warriewood's disjointed layout, with the shopping centre being more than 350m from the B-line stop, does not lend itself to a decision on balance where the benefits of providing more housing would outweigh the disbenefits associated with flood risk and impacts on biodiversity.

These issues with the location of the B-line stop, the layout of the wider centre, and the local environmental and flooding constraints, are the reason Warriewood did not present as a viable option for a Centre Investigation Area in the LHS.

As the Planning Proposal does not adequately address the site's environmental constraints, it is inconsistent with the LHS.

Warriewood Valley Strategic Review and Warriewood Valley Strategic Review Addendum

Assessment of Strategic Merit should also consider the adopted planning strategy for Warriewood Valley Release Area contained in the Warriewood Valley Strategic Review Report adopted by the former Pittwater Council and endorsed by the NSW Director of Planning in 2013 (WVSR) and the Warriewood Valley Strategic Review Addendum Report adopted in 2014 and amended in 2017 (WVSR Addendum). Clause 6.1(3) of the LEP, which implements the planning strategy for Warriewood Valley Release Area, includes the objectives:

- (a) *to permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the Warriewood Valley Strategic Review Addendum Report, and*
- (b) *to ensure that development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors.*

The catalyst for WVSR was an approval in 2011 by the Planning Assessment Commission (PAC), under its now repealed Part 3A powers, of the Meriton development at the corner of Macpherson Street and Boondah Road, comprising multiple 3-4 storey residential flat buildings with a total of approximately 450 dwellings. Part of this development adjoins the subject site's northern boundary. The PAC called for a comprehensive strategic study for all undeveloped land in Warriewood Valley, including for the first time the Southern Buffer area, which includes the subject site.

The WVSR investigated the remaining undeveloped lands, first utilising composite land capability mapping of a range of environmental, economic, and social characteristics to classify land into

categories of capability for development ranging from Least to Most developable. It then drew on a major hydrology study to inform developable land classifications, and used independent urban design, strategic transport, and economic feasibility studies to determine the recommended density and dwelling yield ranges for specific residential sectors. These were incorporated into the controls in clause 6.1 of the LEP, and such provisions required endorsement by the State Government.

The WVSR explored development opportunities for the Southern Buffer, including the potential for a mixed-use centre. It recognised that under existing conditions, flood depths exceed 1m across most of the Southern Buffer in a 1% AEP event and that a significant amount of compensatory cut and fill would be required to create two developable areas; one being 0.87ha at the northern end of the Southern Buffer (i.e., part of 10 Boondah Road), the other at the corner of Pittwater and Jacksons Rds. The WVSR also recognised the high biodiversity values of some of the Southern Buffer land. Although a draft concept plan and design principles were publicly exhibited, due to community opposition and a reluctance amongst landowners to collaborate, the concept did not progress any further. No future land use or dwelling yield was recommended for the Southern Buffer.

The WVSR Addendum was prepared to identify a forward path for remaining sectors which were not considered or not identified with a forward path by the WVSR. The WVSR Addendum utilised updated information on bushfire, flooding, biodiversity, and slope to produce new land capability mapping. It re-evaluated sector boundaries and recommended dwelling densities with dwelling yield ranges that were once again incorporated into subsequent amendments to LEP clause 6.1.

The WVSR Addendum was also informed by the Pittwater Open Space and Recreation Strategy in 2014, which highlighted a significant undersupply of active recreation areas in the Pittwater LGA and the importance of Release Areas providing places and facilities for recreation to meet the needs of their incoming populations. The estimated remaining open space to be provided in Warriewood Valley Release Area was identified as 6.32ha, comprising 1.69ha of linear open space and 4.63ha of active open space.

For the Southern Buffer, based on updated flood and bushfire information, biodiversity values, and the findings of the Open Space and Recreation Strategy, no residential potential was identified. Most of the Southern Buffer, including the subject site was given a land use designation of 'Active Recreation'. This outcome is reflected in the absence of any Southern Buffer land from the table in Clause 6.1(3) of the LEP which specifies the number of dwellings to be erected on specified land areas in the Release Area. It was also later reflected in the Warriewood Valley Development Contributions Plan which specifically identified 5 properties along Boondah Road, including the subject site, for purchase for active open space.

Following years of unsuccessful attempts to purchase this land, revisions to the Contributions Plan which came into effect on 1 July 2022 reflect a change in strategy to focus on embellishment of existing sports fields instead of purchasing of additional land to meet the needs of the population for active open space. While the subject site is no longer identified for purchase for active open space, this does not mean that site by default becomes suitable in a strategic planning sense for residential development. The planning strategy for Warriewood Valley set out in the WVSR and the WVSR Addendum was informed by land capability mapping and a suite of technical studies that recognised constraints to development such as flooding, bush fire and biodiversity. The site has never been allocated an endorsed forward path for residential development because of these characteristics. Any Planning Proposal to enable residential development would need to demonstrate that these characteristics can be properly managed through a design and impact assessment process that achieves a site that is suitable for the intended uses, without significant adverse economic, social, or environmental impact. This has not been demonstrated in this case.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

See earlier comments under Question 3.

Q6. Is the planning proposal consistent with applicable SEPPs?

The applicant's report states that the Planning Proposal does not conflict with any of the SEPPs.

Response - SEPP (Resilience and Hazards)

In relation to Chapter 2 Coastal Management of the SEPP (R&H), the site is mapped as Coastal Wetlands and Proximity Area for Coastal Wetlands (see Figure 9).

In accordance with Part 2.2 of the SEPP (R&H), Council must not grant consent for development unless it is satisfied that:

- for Coastal Wetlands, “sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest”; and
- for Proximity Areas, “the proposed development will not significantly impact on -
 - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland...”

The Planning Proposal has not demonstrated that a future development application will be able to satisfy Council in accordance with these requirements.



Figure 9 Coastal Wetlands and Littoral Rainforest Area Map

Part of the mapped Coastal Wetland falls within the proposed R3 zoned area that is intended to be developed, including areas subject to proposed earthworks, roads, parking, bioretention basins, stormwater filters and outlets, and management as a bushfire APZ. Wetland vegetation will necessarily be removed and altered stormwater flow regimes could have detrimental impacts on groundwater dependent ecosystems both within the site and the adjacent Warriewood Wetlands.

All of the site that is mapped Proximity Area will be subject to major earthworks to raise the land above flood planning levels which will significantly alter flows to and from the site. The applicant has not submitted information regarding the potential impact of the altered flow regimes on the Wetland, or undertaken adequate groundwater investigation and water quality monitoring.

The Planning Proposal fails to provide a 15m wide extensively landscaped buffer to protect the adjacent wetlands in accordance with clause 6.6 of the Pittwater DCP (DCP) due to management requirements of the overlapping bushfire Asset Protection Zone (APZ). In order to function as an effective ecological buffer to the wetland, the DCP requires a 15m buffer consisting of landscaped mounds with mass planting of native trees and shrubs. The buffer should be exclusive of any APZ, and not overlap with it as is proposed. This is consistent with conditions of approval set by the PAC for the adjacent Meriton development, requiring a 25m wide APZ outside of a 10m wide Vegetated Wetland Buffer Zone and no excavation works in the Wetland Buffer Zone.

The Planning Proposal does not take adequate measures to protect or enhance the hydrological and ecological integrity of the mapped Coastal Wetland or to minimise impact on the quantity and quality of surface and ground water flows to and from the adjacent Coastal Wetland.

Furthermore, any development within the mapped Coastal Wetland area would be Designated Development requiring an Environmental Impact Statement under the SEPP (R&H) provisions.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The applicant's report states the Planning Proposal would be consistent with all relevant Directions.

Response - Local Planning Direction 4.1 Flooding

The Planning Proposal is not consistent with clause 4.1(2) of Direction 4.1 as it seeks to rezone land within the flood planning area from a Rural zone to a Residential zone.

The Planning Proposal is not consistent with clause 4.1(3) of Direction 4.1 as it will:

- permit development that will result in significant flood impacts to other properties,
- permit a significant increase in the development and/or dwelling density of that land; and
- is likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures.

Direction 4.1 requires planning proposals to give effect to and be consistent with the principles of the Floodplain Development Manual 2005 (the Manual), any flood study prepared by Council in accordance with the Manual 2005, and the Considering Flooding in Land Use Planning Guidelines which introduced Standard Instrument LEP clauses related to Flooding.

The Manual 2005 promotes a merit approach to development decisions in the floodplain, taking into account social, economic, and ecological factors as well as flooding considerations. Its primary objective is to reduce the impact of private and public losses resulting from floods, and it looks to containing the potential for flood losses through application of planning and development controls and enabling councils to be responsible for determining the appropriate planning and development controls to manage future flood risk.

The Pittwater Development Control Plan (DCP) includes flood-related controls in section B3.11 Flood Prone Land. For land affected by flooding in High and Medium Risk Flood Precincts, the controls require that development must demonstrate, amongst other things, for all flood events up to the 1% AEP event: no adverse impacts on flood levels or velocities caused by alterations to the flood conveyance, no adverse impacts on surrounding properties, and no net loss of flood storage.

The Planning Proposal involves filling of most of the proposed R3 zoned land and the magnitude of filling is significant to meet required flood planning levels for the townhouses of RL4.4m, well above existing ground levels of around 2-4m AHD. Without adequate compensatory cut, this will result in a sizeable net loss of flood storage from the site which will need to be absorbed by other properties in the floodplain. The proponent has not demonstrated no net loss of flood storage. No volumetric calculations showing the proposed cut and fill balance have been provided. The proponent has instead focused on modelling to demonstrate no adverse impacts on surrounding properties and compliance with specific DCP controls for Warriewood Valley Release Area under C6.1.

Development that results in a net loss of flood storage is contrary to specific controls established by Council to manage flood risk.

Risks to life and property are arguably the more critical considerations under Direction 4.1.

The results of Calibre's flood modelling of the Probable Maximum Flood (PMF) event indicate that at 195 minutes into a PMF storm event, internal driveways and Boondah Road become unsafe for small vehicles, and at 210 minutes into a PMF storm event water levels on the site have risen to 4.54m and will enter the ground floors of the townhouses, and anyone who has not evacuated will need to shelter in place on the first floor above. The applicant proposes a private evacuation alarm system (light and siren) set to trigger at a flood level 90 minutes into the PMF storm event allowing 75 minutes for people to pack and leave, as well as a separate sensor set to trigger at 180 minutes (different light and siren) indicating it is too late to leave and residents must shelter in place.

Evacuation will place pressure on a road system that is already restricted in major flood events.

The NSW State Emergency Service (SES) has provided preliminary advice (Attachment 1) on the Planning Proposal. The SES advice makes reference to the Ministerial Direction for Flooding and the NSW Floodplain Development Manual and identifies the following issues with Planning Proposal:

- zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain
- the SES does not support early evacuation as a strategy for future development
- evacuation must not require people to drive or walk through flood water
- development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation
- shelter in place is not a flood management strategy endorsed by the SES for future development, such an approach is only suitable to allow existing dwellings that are currently at risk to reduce their risk
- SES is opposed to imposition of development consent conditions requiring private flood evacuation plans rather than application of sound land use planning and flood risk management
- SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to the SES and/or increase capability requirements of the SES
- consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources.

The proponent submitted a memorandum by Calibre dated 16 September 2022 in response to issues raised by the SES in its preliminary advice. Upon review of this further information, the SES advised it does not have any further comment.

Council's Floodplain Planning unit does not support the Planning Proposal and has indicated the proposal is not compliant with Local Planning Direction 4.1, identifying the following issues:

- the applicant has not demonstrated that the proposed development will not result in significant adverse impacts to other properties;
- land filling to raise the roads and building platforms appears to result in a net loss of flood storage in the mainstream flood lagoon floodplain;
- no volumetric figures showing the cut and fill balance have been provided;
- Council must be satisfied that the proposed development will convey water and have the same flood storage function as existing;

- it is not appropriate for Council to support future development (via rezoning) that uses shelter in place as a management strategy that will increase the flood risk and the number of people exposed to flooding
- the applicant has not demonstrated that the proposed development will not result in a significantly increase requirement for government spending on emergency management services, flood mitigation or emergency response measures.

In addition to the non-compliance with Local Planning Direction 4.1, the Floodplain Planning unit also identified inconsistencies with:

- principles of the NSW Floodplain Development Manual 2005
- the Australian Disaster Resilience Handbook Collection
- Pittwater LEP Clause 5.21 Flood Planning

Given the level of filling proposed, loss of flood storage, exposure of people and property to flood risk, and the reliance on a shelter in place strategy with a private alarm system, the Planning Proposal is inconsistent with Pittwater Local Environmental Plan (LEP) clause 5.21 in that it will:

- result in significant adverse impacts to other properties or adverse cumulative impacts on flood behaviour in a way that results in detrimental increases in the potential flood affectation of other properties;
- adversely affect the safe occupation and efficient evacuation of people; and
- place people and property at risk or in intolerable conditions in the event of a major flood.

The imperative for Council to carefully consider the risks associated with development on flood prone land has increased markedly in recent years on account of extreme weather and flood events on the Northern Beaches and elsewhere in NSW and Queensland. Council recently adopted the Northern Beaches Resilience Strategy. A key priority and associated action of the Resilience Strategy is:

Priority 1. Avoid intensification of development, inappropriate development and incompatible land uses in areas exposed to natural and urban hazards.

Action 1a. Establish planning controls that limit intensification, inappropriate development and incompatible land uses to reduce or avoid risks from natural hazards.

This is a logical shift in policy toward a more considered and cautious approach to managing the risk posed by natural hazards, particularly in the context of climate change.

Response - Local Planning Direction 4.3 Planning for Bushfire Protection (Direction 4.3)

The referral response from Council's Bush Fire Management Coordinator highlights the following deficiencies in the Strategic Bush Fire Study submitted with the Planning Proposal:

- *"There is minimal consideration of the likelihood of a bush fire impacting the site and its potential severity on a landscape scale.*
- *The study relies on site specific protection measures rather than assessing the appropriateness of the proposal in the context of the surrounding landscape.*
- *The suitability of the proposal on the landscape should have stronger logical connections to informing the siting and layout of the proposed development.*
- *There is no assessment on the capacity of the road network either internally or externally to sufficiently handle evacuating residents and responding emergency services to/from the proposal; nor identification of evacuation routes or assessment of the potential for the development to become isolated during a fire event.*

- *There is no assessment of the development impact on the provision or capacity of emergency services, other than minor references to the proximity of surrounding fire stations.*
- *There is no assessment of the provision of infrastructure services to the proposal as the study suggests that this should be the subject of a separate study.*
- *There is limited assessment of the impact of the proposal on neighbouring lands, and no consideration for managed lands to the south of the proposal to remain such in perpetuity.*
- *Site specific APZs are not contained within the development relying on adjoining road verges. Should any land with the proposal be vested to Council, Council may be burdened with the ongoing APZ management of these and/or adjoining road verges.*
- *The study indicates that perimeter roads within the proposal rely on a performance solution. Performance solutions should be accompanied with the appropriate Bush Fire Design Brief and/or Bush Fire Management Plan which has not been supplied."*

If the Planning Proposal proceeds through Gateway Determination, it will be formally referred to the Rural Fire Service for comment.

SITE-SPECIFIC MERIT

Section C – Environmental, social and economic impact

Q8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?*

The Applicant's report states that the Biodiversity Certification process will manage the potential impacts on identified threatened species, habitat, ecological communities, and that the masterplan for the proposal has been guided by the site's ecological constraints and bush fire management requirements with the perimeter road network providing a managed edge to the ecological values of the adjacent Wetland and a defensible perimeter for the development.

Response

The site contains significant biodiversity values including Threatened Ecological Communities, mapped Coastal Wetland and Proximity Area for Coastal Wetland, records of threatened species, threatened species habitats and fauna connectivity.

Areas along the site's western boundary and the south-western corner of the site are mapped on the Department of Planning and Environment's Biodiversity Values map which identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing. The mapping is part of the Biodiversity Offsets Scheme (BOS) thresholds and any vegetation clearing as part of future development will trigger entry into the BOS. The applicant has made application for BioCertification to the State Government and the Biodiversity Certification Assessment Report and accompanying Conservation and Vegetation Management Plans have been formally submitted to Council for comment.

The two identified Endangered Ecological Communities (EEC) on the site are:

- Bangalay Sand Forest
- Swamp Oak Floodplain Forest

The six identified threatened fauna species are:

- Grey-headed Flying-fox (*Pteropus poliocephalus*)
- Large Bent-winged Bat (*Miniopterus orianae oceanensis*)
- Eastern Cave Bat (*Vespadelus troughtoni*)

- Southern Myotis (*Myotis macropus*)
- Little Bent-winged Bat (*Miniopterus australis*)
- Powerful Owl (*Ninox strenua*).

Earthworks and clearing for the proposed development will directly impact all the Bangalay Sand Forest which covers around 0.23ha and is entirely within the proposed R3 zone residential area. The complete removal of this vegetation represents the loss of approximately 50% of the mapped extent of this EEC on the Northern Beaches. Nine hollow-bearing trees, some with hollows suitable for the recorded Southern Myotis will be removed. Whilst this vegetation is degraded, intact mature canopy remains. The layout of the proposed development fails to avoid or minimise impacts to this EEC. The BioCertification application recommends retirement of biodiversity credits or more likely payment into the State Government's Biodiversity Conservation Fund to offset the impact.

The Swamp Oak Floodplain Forest (SOFF) covers 0.44ha of the site and 0.18ha would be directly impacted by the proposed development. The remainder is located within the portion of the site proposed to be zoned C2 Environmental Conservation.

The six recorded threatened fauna species and their habitats will be significantly impacted and clearing will remove existing wildlife corridors through the site between core habitats in Warriewood Wetlands to the west and corridors along Narrabeen Creek to the east of the site.

In addition to the direct removal of vegetation, altered surface and groundwater flow regimes have potential to adversely impact ground water dependent ecosystems on the site and in the wetland.

Other potential impacts relate to 'edge effects' to the wetland and remaining SOFF associated with maintaining a 24m wide Bushfire APZ along the site's western boundary. The required 15m wide extensively landscaped buffer to the wetland should be outside of the APZ.

The referral response from Council's Biodiversity and Planning unit states:

"...the Planning Proposal is not supported for the following reasons:

- *Lack of measures to avoid and minimise impacts to threatened biodiversity, including the complete removal of Bangalay Sand Forest. It is noted that the BCAR states that the proposal will lead to the avoidance of the majority of mapped biodiversity values within the subject lots, however this is not correct as the full extent of BSF on site will be directly impacted, as well as impacts to six threatened fauna species and other native flora and fauna species.*
- *Regardless of the reduced development footprint, it appears that the development within the proposed R3 zone intersects the BV map / Coastal Wetland and as such, the current concept proposal for 10 & 12 Boondah Road would require an EIS.*
- *The current design is not sited and designed to avoid and minimise impacts to biodiversity. The proposal would result in a direct net loss of biodiversity. Potential impacts that would result from the proposal include locating dwellings, associated infrastructure, excavation and filling, and APZs within the mapped coastal wetland. Further impacts to biodiversity include the clearing of native vegetation and endangered ecological communities, impacts to threatened species habitats, reduction in local wildlife connectivity, indirect impacts associated within increased light and noise pollution, and impacts to ground water dependent ecosystems within the site and adjoining Warriewood wetlands.*
- *The requirement for the retention and enhancement of an ecological buffer to protect the mapped coastal wetland on site and to the adjoining Warriewood Wetlands needs amendment to achieve a suitable biodiversity outcome and reduce potential impacts to the adjoining wetland;*

- *The lack of a 15 metre wide extensively landscaped buffer strip adjoining Warriewood Wetlands, exclusive of bushfire asset protection zone, and consisting of landscaped mounds with mass plantings of native trees and shrubs, locally indigenous canopy trees with native shrubs, locally indigenous canopy trees with native shrubs and groundcovers as required by the P21 DCP control 6.6 Landscape treatment of the Buffer Strip. ...*
- *Flooding, flood storage and water flows are of concern, and the areas of significant vegetation (trees), fauna habitats and wetland buffers should be retained must not be subject to any excavation / filling.*
- *The removal of wildlife corridors through and surrounding the site including direct connection to core habitats within Warriewood Wetlands, as well as connections to the east that form part of a wildlife corridor that extends further north along the Narrabeen Creek catchment. It is recommended that a corridor is provided in the northern boundary of the site, thereby retaining, enhancing and protecting areas of the TEC BSF.*
- *Potential for indirect and prescribed impacts to TECs, threatened species and their habitats*
- *Likelihood of altered surface and groundwater flow regimes, and therefore potential direct and indirect impacts to Groundwater Dependent Ecosystems (GDE) on the subject site and in the locality.*
- *A reliance within the BCAR that an appropriate storm water management plan will be prepared to avoid impacts on the TEC, and is not expected to impact on groundwater resources or groundwater dependent ecosystems.*

Therefore, the range of issues described above, as well as the loss of native tree canopy, will result in a future development that does not satisfy the applicable planning controls, and is not supported by Council's Biodiversity Planning section.

In addition, the offset obligations calculated as part of the Biodiversity Certification Assessment Report for the TECs and threatened species are not available on the Northern Beaches, and therefore will result in net loss of biodiversity within the Northern Beaches LGA."

Council's Catchments unit also raised concerns in relation to impacts on groundwater dependent ecosystems, earthworks in the buffer to the wetland, and the need for water quality monitoring and further groundwater and hydrological investigations to demonstrate that impacts on the downstream environment and the wetland can be suitably managed. The Catchments unit does not support the Planning Proposal as it is not in accordance with Local Planning Direction 4.2 Coastal Management or SEPP (Resilience and Hazards) 2021.

Q9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The proponent's report identifies potential impacts associated with flood and bushfire hazard, acid sulphate soils and contamination, and makes reference to various aspects of the design and layout of the proposed development and studies undertaken for the Planning Proposal as evidence that these potential impacts can be minimised and are within acceptable levels.

Response

As discussed earlier, in relation to flood hazard, the SES has raised significant concerns and does not support shelter in place or private alarm systems as a strategy to manage flood risk for future development on land not currently zoned for housing. Extensive filling of the site to achieve flood planning levels will result in net loss of flood storage in the floodplain and insufficient information has been provided to demonstrate that the proposed development will not result in significant adverse impacts to other properties, place people and property at risk or in intolerable conditions in the event of a major flood, adversely affect the safe occupation and efficient evacuation of people, or significantly increase the requirement for government spending on emergency management, flood mitigation and emergency response measures.

As discussed earlier, in relation to bushfire hazard, Council's Bush Fire Management Coordinator has identified deficiencies in the Strategic Bush Fire Study submitted by the proponent.

The applicant's submissions in relation to acid sulphate soils and contamination are accepted.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The applicant's report describes the proposed affordable housing, traffic impact assessment and access road network, and provision of open space with a playground and pedestrian link between Boondah Road and Warriewood Wetlands in relation to addressing social and economic effects.

Response

As discussed earlier, the Planning Proposal fails to include a suitable mechanism to give effect to an affordable housing contribution in accordance with Council's Policy and Contributions Scheme. Dwellings secured for affordable housing are meant to come into Council ownership in perpetuity. Any residential uplift will require 10% of the dwellings to be affordable housing stock transferred into Council ownership. Amendments to Council's Affordable Housing Scheme and to Pittwater LEP to secure this contribution would need to be made in conjunction with a Planning Proposal being progressed to Gateway Determination, and eventually published as part of the rezoning.

Council's Transport Network Manager has provided a referral response on the Planning Proposal which indicates that the road design is acceptable subject to certain requirements which can be resolved at the more detailed application stage. Although the impact on the local road network is acceptable, the applicant is still required to provide confirmation that the modelling requirements of the RMS (now Transport for NSW) have been met, particularly with regards to potential impacts on the intersections of Mona Vale Road/ Pittwater Road and Pittwater Road/Warriewood Road. If the Planning Proposal proceeds through Gateway Determination, it will be formally referred to Transport for NSW for comment.

The proposed open space area including the playground will provide for the recreation needs of the new resident population. The playground and open space would form part of a community title and be constructed and maintained by the landholders. The playground and open space are not suitable for Council ownership as a park asset.

The proposed pedestrian pathway connection between Boondah Road and Warriewood Wetlands would be required to be constructed by the developer and dedicated to Council to ensure public access. The location of the pathway through the southern end of the site is potentially acceptable, however it should be separate to the internal road network and not cross any internal roads.

There are potential economic effects associated with the proposed C2 zoned land. While the applicant has stated that the proposed C2 zoned land is intended to remain in private ownership, without legal advice to indicate otherwise, there is a possibility that the C2 zoning could trigger acquisition and there is no funding mechanism for Council to purchase the land.

Section D – Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

The referral response from Council's Infrastructure unit identifies the following local infrastructure requirements if a rezoning to permit an additional 45 dwellings on the site were to proceed:

- Reconstruction of Boondah Road

The applicant's report acknowledges the requirement for raising of Boondah Road to the level of 1% AED plus climate change. If the Planning Proposal is to proceed, it will be a condition of any development consent that the applicant reconstruct the full width of Boondah Road for the entire length of the site's frontage up to the level required for flood evacuation (1% AED plus climate change) including suitable transitions to the existing carriageway alignments.

- Payment of development contributions towards open space infrastructure and community facilities in accordance with the applicable Development Contributions Plan.

An additional 45 dwellings will represent around 120 additional residents, or an increase of around 2.2% in the total population forecast for Warriewood Valley. Council's Parks unit has advised that this will place additional pressure on active recreation facilities, but in and of itself does not justify further augmentation of existing facilities in Warriewood Valley or the acquisition of additional ones.

The approved design of a new community facility in Warriewood Valley will once constructed provide sufficient floorspace to accommodate the additional resident population if the Planning Proposal were to proceed.

Section E - State and Commonwealth interests

Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The NSW SES was the only agency consulted and their preliminary advice is not supportive of the Planning Proposal.

Part 4 – Mapping

The Planning Proposal includes a map indicating the proposed zones. If the Planning Proposal is to proceed, the precise boundaries of the new zones will need to be verified and other draft maps prepared to reflect the proposed amendments to the Pittwater LEP Height of Buildings, Minimum Lot Size maps, and Urban Release Area Maps. The matter of whether the proposed C2 zoned land overlaps mapped Coastal Wetland under SEPP (R&H) would need to be resolved.

Part 5 – Community Consultation

A non-statutory (Pre-Gateway) public exhibition of the Planning Proposal was undertaken from 29 July 2022 to 12 August 2022.

A total of seven (7) submissions were received. The issues raised are summarised in Attachment 2. The main issues raised relate to:

- loss of green space;
- impact on wildlife and environment, including wetland;
- traffic and road safety;
- building height out of character;
- potential increase in run-off and flooding of nearby properties;
- negative impact on property values;
- need for master planning for development of other properties along Boondah Road, Warriewood;
- disruption from construction; and
- opposition to affordable housing.

Part 6 – Project Timeline

As the Planning Proposal is not recommended for endorsement to be submitted for Gateway Determination, a Project Timeline is not required. The following reporting dates are anticipated:

Local Planning Panel: 16 November 2022

Ordinary Council: 13 December 2022

The Planning Proposal was lodged via the NSW Government's ePlanning Portal. The applicant is able to request a rezoning review if Council has not indicated support for the proposal within 90

days of the proponent submitting the request. The proponent paid the application fees on 18 July 2022 and Council completed its initial check of the material submitted on 22 July 2022. Based on the completeness check date, the 90 day deadline would be 20 October 2022. The Proponent provided written confirmation to Council that they were wanting additional time to be taken in the assessment to seek clarity/negotiate in relation to Council's concerns with the Proposal. This occurred however, several issues remain unresolved. At the time of writing this report, the proponent has not sought a rezoning review.



Our Ref: ID 1708
Your Ref: PEX2022/0001

31 August 2022

Paula Moretti
Northern Beaches Council
PO Box 82
Manly NSW1655

email: paula.moretti@northernbeaches.nsw.gov.au

Dear Paula,

Planning Proposal for 10-12 Boondah Road Warriewood – preliminary advice

Thank you for the opportunity to provide comment on the Planning Proposal for 10-12 Boondah Road Warriewood. It is understood that the planning proposal seeks to:

- rezone the site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation
- increase the maximum building height from 8.5m to 15m over the R3 zoned land
- remove the minimum subdivision lot size
- amend the Urban Release Area Map and clause 6.1(3) to apply a dwelling yield range of 40-45 dwellings.

The NSW State Emergency Service (NSW SES) is the agency responsible for dealing with floods, storms and tsunamis in NSW. This role includes, planning for, responding to and coordinating the initial recovery from floods. As such, the NSW SES has an interest in the public safety aspects of the development of flood prone land, particularly the potential for changes to land use to either exacerbate existing flood risk or create new flood risk for communities in NSW.

The consent authority will need to ensure that the planning proposal is considered against the relevant Ministerial Section 9.1 Directions, including 4.3 – Flood Prone Land and is consistent with the NSW Flood Prone Land Policy as set out in the NSW Floodplain Development Manual, 2005 (the Manual). Attention is drawn to the following principles outlined in the Manual which are of importance to the NSW SES role as described above:

- **Zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain.** The proposal indicates the floor level is intended to be at the Flood Planning Level of 1% with climate change impacts plus 0.5m freeboard (4.4m AHD), with upper floor levels above the PMF.



STATE HEADQUARTERS

93 - 99 Burelli Street, Wollongong 2500
PO Box 6126, Wollongong NSW 2500
P (02) 4251 6111
F (02) 4251 6190
www.ses.nsw.gov.au
ABN: 88 712 649 015



- A significant portion of the site at 10-12 Boondah Road is subject to frequent inundation, that is, in a 50% Annual Exceedance Probability (AEP) flood. With the provided Water Management Report indicating that the road remains flood free to the north up to and including the 1% AEP event (contradicting the Narrabeen Lagoon Flood Study 2013).
- 6 Jacksons Road is almost entirely inundated in a 50% AEP flood, and the Reserve Fields 2, 3, 4, 6 and 7 are isolated by such event and completely inundated by the time the level of a 1% AEP flood is reached by high hazard flood water. This appears to be in line with the draft Ingleside, Elanora and Warriewood overland flow flood study referred to in the Flood Planning Assessment provided.
- **Risk assessment should consider the full range of flooding, including events up to the Probable Maximum Flood (PMF) and not focus only on the 1% AEP flood.** Although the PMF is considered in the risk assessment, the Flood Planning Assessment should consider the risk from incremental floods below and above the 1% AEP flood, up to and including the PMF. It is identified that the velocity generally remains under 0.5m/s on the site, but increases to 0.5-1.0m/s on Boondah Road.
- Noting the proposal includes cut and fill and development in a floodway and flood storage area, this may have significant impacts on the flood behaviour and adjacent community. This should be consulted with the Environment and Heritage Group of the Department of Planning.
- **Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration should also be given to the impacts of localised flooding on evacuation routes.** The Flood Planning Assessment identifies 4.5 hour travel time as “significant”. Based on research, including [Opper et al 2010](#) and a number of [publications](#) on the NSW SES website, 4.5 hours is generally an insufficient amount of time to enact evacuation successfully.
- This site is also not an area that is warned to by the Bureau of Meteorology. It is noted that a sensor is proposed to warn the community (Water Management Report). However, NSW SES does not support early evacuation as a strategy for future development.
- It is noted that the proposal includes an upgrade of the road to 3.2m AHD to allow evacuation north in a 1% AEP flood. This is based on the revised flood information in the Water Management Report provided, which identifies Boondah Road is not affected by 50% AEP flooding. However this does not appear to include climate change impacts (as noted in the Water Management Report).
- **In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES’s principles for**



evacuation. Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community.

- **Evacuation must not require people to drive or walk through flood water.**
- **Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation.** Section 7.4 of the Flood Planning Assessment identifies the option for shelter in place and a complex and high risk strategy detailed on page 54 of the Water Management Report. 'Shelter in place' strategy is not an endorsed flood management strategy by the NSW SES for future development. Such an approach is only considered suitable to allow existing dwellings that are currently at risk to reduce their risk, without increasing the number of people subject to such risk. The flood evacuation constraints in an area should not be used as a reason to justify new development by requiring the new development to have a suitable refuge above the PMF. Allowing such development will increase the number of people exposed to the effects of flooding. Other secondary emergencies such as fires and medical emergencies may occur in buildings isolated by floodwater. During flooding it is likely that there will be a reduced capacity for the relevant emergency service agency to respond in these times. Even relatively brief periods of isolation, in the order of a few hours, can lead to personal medical emergencies that have to be responded to. IN addition, this particular site is adjacent to the sewer treatment works, which is likely to result in contaminated floodwater surrounding the development.
- Noting that this site is subject to flash flooding any development that does occur must be designed for the potential flood and debris loadings of the PMF so that structural failure is avoided during a flood. This should include not only velocity (as identified in the Water Management Report), but also depth. In addition, adequate services should be provided so people are less likely to enter floodwaters. This includes access to ablutions, water, power and basic first aid equipment. Consideration must be given to the availability of on-site systems to provide for power, water and sewage services for the likely flood duration of surrounding areas (which may exceed several hours) plus a further period to provide allowance for restoration of external services.
- **Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.**
- **The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.** It is noted that an evacuation plan will be prepared for this. NSW SES encourages businesses and residences to be prepared through the creation of business and home emergency plans and kits and exercising them regularly. However, we have no role in reviewing or approving these, in accordance with sections 3.6, A-5, L-5, L-6.9.6 and N-7 of the NSW Floodplain



Development Manual, 2005. NSW SES has resources available on the [NSW SES website](#) that may assist.

- **NSW SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to NSW SES and/or increase capability requirements of the NSW SES.**
- **Consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources in the future.**

You may also find the following Guidelines, originally developed for the Hawkesbury Nepean Valley and available on the NSW SES website useful:

- [Reducing Vulnerability of Buildings to Flood Damage](#)
- [Designing Safer Subdivisions](#)
- [Managing Flood Risk Through Planning Opportunities](#)

Please feel free to contact Elspeth O'Shannessy via email at rra@ses.nsw.gov.au should you wish to discuss any of the matters raised in this correspondence. The NSW SES would also be interested in receiving future correspondence regarding the outcome of this referral via this email address.

Yours Sincerely



Peter Cinque
Senior Manager, Emergency Risk Management
NSW State Emergency Service

Summary of Submissions Received - Pre-Gateway Exhibition

Planning Proposal 10-12 Boondah Rd, Warriewood PEX2022/0001

First Name	Surname	Issues Raised
Joe	Bloggs	Green space, population density, traffic, impact on wildlife and environment, disruption from construction
James	Okeefe	Impact on wildlife and environment including wetland, traffic and road safety, need for accessible footpaths
Soledad	Miceli	Green space, traffic, rural areas poor presentation
Aron	Fitzgerald	Building height, out of character, lack of cohesion with surrounding development and landscape
Helen	Sekulich (on behalf of Trbojevic family)	Potential increase in run-off and flooding of nearby properties, negative impact on property values, need for masterplanning for development of other properties along Boondah Rd to fulfil housing and ageing in place
Johan	Kamminga	Potential increase in run-off and flooding of nearby properties, negative impact on property values and amenity, need for masterplanning for development of other properties along Boondah Rd
Alena	Henkel	opposed to affordable housing

ITEM 4.2**DA2022/0971 - SYDNEY ROAD, MANLY - DEMOLITION OF AN EXISTING CHILD CARE CENTRE BUILDING AND INSTALLATION OF LANDSCAPING.**

AUTHORISING MANAGER Adam Richardson
TRIM FILE REF 2022/692115
ATTACHMENTS 1 [↓ Assessment Report](#)
2 [↓ Site Plan](#)

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No DA2022/0971 for Demolition of existing child care centre building and installation of landscaping on land at Lot 2502 DP 1143032, Ivanhoe Park, Sydney Road, Manly, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0971
Responsible Officer:	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Land to be developed (Address):	Lot 2502 DP 1143032, Ivanhoe Park, Sydney Road, MANLY NSW 2095
Proposed Development:	Demolition of existing child care centre building and installation of landscaping
Zoning:	RE1 Public Recreation
Development Permissible:	Yes – Recreation area
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council
Application Lodged:	8 July 2022
Integrated Development:	Yes (Section 58 of the Heritage Act 1977)
Designated Development:	No
State Reporting Category:	Other
Notified:	22/07/2022 to 19/08/2022 and 14/09/2022 to 12/10/2022
Advertised:	22/07/2022 and 14/09/2022
Submissions Received:	18
Clause 4.6 Variation:	No
Recommendation:	Approval
Estimated Cost of Works:	\$50,000.00

EXECUTIVE SUMMARY

This application seeks consent for the demolition of an existing redundant child care centre building, the turfing of that area with grass (so as to facilitate future landscaping subject to separate approval). Separately, the proposal includes the provision of paving, interpretive signage, lighting, bench seats, and associated landscaping works at the north-western corner of Ivanhoe Park.

The proposal is permissible with consent within the RE1 Public Recreation zone. There are no development standards that apply to the land under MLEP 2013.

Ivanhoe Park is listed on the State Heritage Register (listing No. 02029). The site comprises two heritage items listed in MLEP 2013: Ivanhoe Park (Item I162) and The Ivanhoe Loop (former tram track loop) (Item I161). The site is within the vicinity of a number of heritage items, including stone kerbs in Raglan Street (Item I2) and the group of houses at 62-72 and 76-84 Raglan Street (Item I219). The application is



accompanied by a Heritage Impact Statement and has been reviewed by Council's Heritage Advisor and NSW Heritage Office, who have both raised no objections to the proposal, subject to conditions included in the recommendation of this assessment report.

This application has been externally assessed and referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the applicant and owner is Northern Beaches Council.

The application was exhibited, including being advertised, in accordance with Council's Community Participation Plan and eighteen (18) submissions were received in response. The submissions are all in support of the proposal.

The proposal satisfies the relevant planning controls, enhances the heritage values of the relevant heritage items, enhances the amenity of the public open space, has no impact on the amenity of surrounding and nearby properties, and is considered to be in the public interest, and is therefore recommended for approval, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of two components (see Figure 1), with the first component including the demolition of an existing redundant child care centre building. The demolition works include the child care centre building, the metal picket fence around the building and play area, the timber deck adjacent to the child care building, the sandpit and the adjacent steps and paving. All existing trees are to be retained. Following demolition, the area will be turfed pending a final decision on the landscaping elements proposed for the area.

The second component proposes to carry out landscaping and install interpretative signage, seating, lighting, and interpretative paving. on a separate part of the site. The location of these works is in the north-western corner of Ivanhoe Park. This part of the site historically formed part of the Ivanhoe Loop (former tram track). The works will interpret the alignment of the tram tracks through the use of different coloured concrete slabs and exposed blue metal aggregate. Three interpretive signage panels, each 2.2m high and 4.0m – 4.8m long, will screen the existing water tank and four steel light poles are proposed, each 4.0m high. Two seating benches are to be installed.



Figure 1. Approximate location of proposed works



ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Heritage Act 1977 – Part 4 Divisions 2 and 3: item listed on the State Heritage Register

Manly Local Environmental Plan 2013 – Clause 5.10 Heritage Conservation

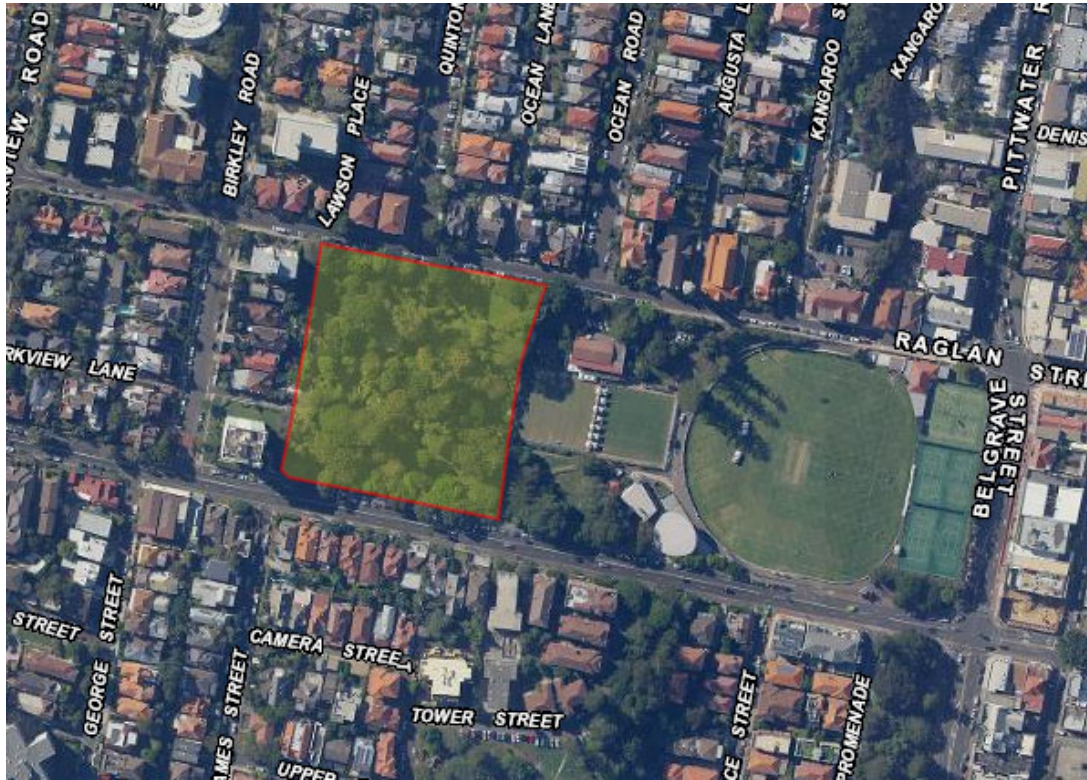
Manly Development Control Plan 2013 – Part 3.2 Heritage Considerations

SITE DESCRIPTION

Property Description:	Lot 2502 DP 1143032, Ivanhoe Park, Sydney Road, MANLY NSW 2095
Detailed Site Description:	<p>Ivanhoe Park comprises a number of separate allotments (eg: for the bowling club, the football oval, and the tennis courts). The proposed works are on the steeper, western part of the site known as the Ivanhoe Park Botanic Garden (Lot 2502, DP 1143032). It is located on the southern side of Ragland Street, the eastern side of Park Avenue and the northern side of Sydney Road.</p> <p>Lot 2502 has an area of 1.552 hectares (by title). It is irregular in shape.</p> <p>The site is located within the RE1 Public Recreation zone and accommodates public open space, a child care centre building and a scout hall. The child care centre building is single-storey whilst the scout hall is a 2-storey building.</p> <p>The site slopes steeply from the north-west down to the south-east and is densely landscaped.</p>



Map:



Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development to the north, west and south is characterised by a variety of residential development, including dwelling houses, duplexes, and residential flat buildings ranging from 2-storeys to 10-storeys in height, interspersed with other land uses such as a place of public worship, age care facility, and neighbourhood shop. Adjoining the site to the east are outdoor recreation facilities including bowling greens, a playing field, and tennis courts, together with a bowling club.

Nearby development includes the Manly commercial centre and the Kangaroo Street Child Care Centre.

SITE HISTORY

A search of Council's records has revealed the following relevant history:

- **PLM2020/0165**
Pre-Lodgement Meeting for Demolition of former childcare building in Ivanhoe Park and landscaping works.
Meeting held on 6 August 2020.
The meeting notes concluded: *The proposal is acceptable and may be supported subject to the lodgement of all required documentation, comments and considerations by Council's Referral Bodies.*

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

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 2021 and the Northern Beaches Community Participation Plan 2019.

As a result of the public exhibition process Council is in receipt of 18 submissions who were all in support of the proposal from:

Name:	Address:
Mr Alan Fredericks	21 / 80 Evans Street, FRESHWATER NSW 2096
Mr Lloyd Keen on behalf of the Friends of Ivanhoe Park Botanic Garden	29 / 80 Evans Street, FRESHWATER NSW 2096
Dr Tony Lewis	3 / 71 Sydney Road, MANLY NSW 2095
Mr Christopher Milne	16 / 15 Laurence Street, MANLY NSW 2095
Mr Ron Mobbs	13 / 41-42 East Esplanade, MANLY NSW 2095
Ms Susan Moore	12 Birkley Road, MANLY NSW 2095
Mrs Catherine Willis	4 Malvern Avenue, MANLY NSW 2095
Mrs Lois Clarke	118 Sydney Road, MANLY NSW 2095
Mr David Drage	2 / 2 Fairlight Street, MANLY NSW 2095
Ms Elizabeth Howe	1 / 28 The Crescent, MANLY NSW 2095
Ms Tania Landsdorff	27 Waratah Street, BALGOWLAH NSW 2093
Ms Susan Robertson	16 Thornton Street, FAIRLIGHT NSW 2094
Mrs Jacklyn McCauley	6 / 42-44 Victoria Parade, MANLY NSW 2095
Mrs Jennifer Paterson	2 / 133 Sydney Road, FAIRLIGHT NSW 2094
Ms Antoinette Stevenson	2 / 21-25 Woods Parade, FAIRLIGHT NSW 2094
Ms Linda Sutton	2 / 65 Addison Road, MANLY NSW 2095
Ms Jenni Ellard	2 / 14 Birkley Road, MANLY NSW 2095
Mr Chris Wallis Smith	6E / 1-7 George Street, MANLY NSW 2095

REFERRALS

Internal Referral Body	Comments
Environmental Health – Contaminated Lands	<p>Supported - subject to recommended conditions</p> <p>Proposal for the demolition of an existing childcare centre in Ivanhoe Park includes a hazardous building materials assessment report. It is known that the demolition will cause disturbance of asbestos containing materials and PCBs, thus the report provides recommendations on how to manage these hazardous materials to protect health and safety outcomes for workers and</p>

Internal Referral Body	Comments
	<p>park users. We have no objections to the proposal providing the below conditions are implemented for the works.</p> <p>The proposal is therefore supported.</p>
Engineering	<p>Supported - no conditions recommended</p> <p>Development Engineering has no objection to the removal of the existing building.</p> <p>The proposal is therefore supported.</p>
Landscape	<p>Supported - subject to recommended conditions</p> <p>The development application is for the demolition of the existing childcare centre located in Ivanhoe Park, and the installation of interpreting paving and landscape works at the Park Ave entrance to the park, as described and illustrated in the Reports and Plans. An Arboricultural Impact Assessment titled Arboricultural Management Assessment accompanies the application and is assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan for the land zoned as RE1 Public Recreation, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation <p>The objectives of Manly LEP2013 - Land zoned RE1 Public Recreation, are satisfied as the proposed works are recognised under the Council endorsed Ivanhoe Park Landscape Masterplan and Plan of Management. The area of existing structures to be demolished are to be replaced with soft landscaping.</p> <p>No significant alteration to the existing landscape character of Ivanhoe Park is proposed and all existing trees in proximity to the demolition works are to be retained, and the Arboricultural Impact Assessment recommends appropriate tree protection measures including fencing, as well as trunk and ground protection. Minor pruning as noted in the Arboricultural Impact Assessment is required.</p> <p>Landscape Referral raise no objections to the development proposal.</p>
NECC (Biodiversity)	<p>Supported - subject to recommended conditions</p> <p>The proposal has been assessed against Manly LEP Clause 6.5 - Terrestrial Biodiversity. The proposed works will not require removal of any native trees or wildlife habitat. There are no objections to the development, subject to conditions.</p> <p>The proposal is therefore supported.</p>
NECC (Flood)	<p>Supported - no conditions recommended</p> <p>The application proposes to demolish the existing childcare Centre and landscaping at the Park Ave entrance to the park.</p>

Internal Referral Body	Comments
	<p>There are no flood related objections.</p> <p>The proposal is therefore supported.</p>
NECC (Water Management)	<p>Supported - subject to recommended conditions</p> <p>NECC Water Management raise no objections to the development proposal. Subject to conditions.</p> <p>The proposal is therefore supported.</p>
Parks, Reserves and Foreshores	<p>Supported - subject to recommended conditions</p> <p>The development application is for the demolition of the existing childcare centre located in Ivanhoe Park, and the installation of interpreting paving and landscape works at the Park Ave entrance to the park, as described and illustrated in the Reports and Plans. An Arboricultural Impact Assessment accompanies the application and is assessed as part of this Landscape Referral.</p> <p>In review of all relevant plans and reports that provide guidance on the open space recreational character to be provided following demolition of the existing childcare centre, no objections are raised by Parks, Reserves and Foreshores.</p> <p>The proposal is therefore supported.</p>
Strategic and Place Planning (Heritage Officer)	<p>Discussion of reason for referral</p> <p>This application has been referred as the subject site is a local heritage item and contains local heritage items:</p> <p>Item I162 - Ivanhoe Park (bounded by Sydney Road, Belgrave Street and Raglan Street), Manly</p> <p>Item I161 - The Ivanhoe Loop (former tram track route), Ivanhoe Park, Manly</p> <p>Both are listed in Schedule 5 of Manly LEP 2013.</p> <p>The site is also a listed State heritage item under the provisions of the Heritage Act, 1977:</p> <p>SHR #02029 - Ivanhoe Park (including Manly Oval) cultural landscape, Manly</p> <p>Details of heritage items affected</p> <p>Details of the heritage item, as contained within the Heritage Inventory, are:</p> <p>Item I162 - Ivanhoe Park (bounded by Sydney Road, Belgrave Street and Raglan Street) - (excerpt)</p> <p><u>Statement of Significance:</u></p> <p>Ivanhoe Park has historical significance at a Local level because it is a physical remnant of a nineteenth century pleasure garden from the period when the Manly village area was a seaside resort and an embodiment of local entrepreneurs who provided recreation (both leisure and sporting) facilities for prospective residents as well as for day-trippers from Sydney. It is also significant at a Local level as the site of the first Manly Council chambers building and the site of part of the Spit to Manly tram line. It is of historical significance at a Local level, and possibly at a State level, as one of the oldest cricket grounds still in use within the Sydney area, second only to the Garrison Cricket Oval, the Domain and the University Oval and</p>

Internal Referral Body	Comments												
	<p>one of the first to be formalised within in a suburban park. As the site of the renowned Manly Wildflower show held from 1881 onwards until 1893, the park still retains some of the ferns for which the park (and the area) was once known.</p> <p>Item 1161 - The Ivanhoe Loop (former tram track route), Ivanhoe Park, Manly</p> <p><u>Physical Description:</u> The tramline from Manly to the Spit left Manly via Raglan Street, entering Ivanhoe Park near the entrance to the Bowling Club, and then formed a reserved track curving around the north east corner of the Park as a passing loop or duplication. The site of the Loop survives at the northern end of Park Avenue, up which the original line continued until it reached Sydney Road.</p> <p>SHR #02029 - Ivanhoe Park (including Manly Oval) cultural landscape, Manly (excerpt)</p> <p><u>Statement of Significance:</u> Ivanhoe Park (including Manly Oval) cultural landscape, is important in the course of New South Wales cultural history combining a 'pleasure garden' park, a traditional 'village green' community and sporting venue, and a passive recreational garden, demonstrating the principal characteristics of a Victorian-era park adapted to the Australian setting. This landscape is unique within New South Wales as a place with a combined history of Aboriginal heritage and 150 years of recreation, sport and community use. Ivanhoe Park (including Manly Oval) cultural landscape, is a diverse and complex site with its natural sandstone outcrops and watercourse, Victorian 'gardenesque' plantings, rich diversity of native and planted tree species, war memorial garden, traditional 'village green' oval, and sporting complex. Combined, it demonstrates an unusual yet pleasing aesthetic.</p> <p>Other relevant heritage listings</p> <table> <tr> <td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td></tr> <tr> <td>Australian Heritage Register</td><td>No</td></tr> <tr> <td>NSW State Heritage Register</td><td>Yes</td></tr> <tr> <td>National Trust of Aust (NSW) Register</td><td>No</td></tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td></tr> <tr> <td>Other</td><td>No</td></tr> </table> <p>Consideration of Application</p> <p>This application is for demolition of the existing former child care building in the Botanic Gardens precinct of Ivanhoe Park (western end) as well as new landscaping works comprising the installation of interpretive paving and landscaping at the Park Ave entrance to the Park.</p> <p>As the works affect a State heritage item, the application is an Integrated DA and comments under the Heritage Act, 1977 are required from Heritage NSW. Heritage NSW responded by letter dated 28 October 2022 and provided a number of General Terms of Approval, pursuant to Section 4.47 of the EP&A Act, 1979. This advice has been reviewed and all General Terms of Approval should be applied to any consent.</p>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Australian Heritage Register	No	NSW State Heritage Register	Yes	National Trust of Aust (NSW) Register	No	RAIA Register of 20th Century Buildings of Significance	No	Other	No
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No												
Australian Heritage Register	No												
NSW State Heritage Register	Yes												
National Trust of Aust (NSW) Register	No												
RAIA Register of 20th Century Buildings of Significance	No												
Other	No												

Internal Referral Body	Comments
	<p>A Heritage Impact Statement (HIS) by Edwards Heritage Consultants (April 2021) was submitted with the application. This report concluded that the building proposed to be demolished does not satisfy the criteria for local heritage significance. Additionally, it concluded that while the building is located within the State listed Ivanhoe Park, it does not significantly contribute to the identified fundamental heritage features of the Park. It can be seen from the Statement of Significance for Ivanhoe Park that it is listed as a cultural landscape, rich in history as an area used for the last 150 years by the community for passive and active recreation. The former child care building does not greatly contribute to this historical significance. The HIS report has been reviewed and its conclusions agreed with.</p> <p>While the building dates to 1963 and was designed by Edwards, Madigan & Torzillo Architects, the building has been deemed unsuitable for use as a child care centre due to issues with damp and black mould, as a consequence of the building being built over a natural watercourse. Alternative uses have been considered, however it has been determined that the building is unfit for continued use and is at the end of its useable life. It is also located in the centre of the Botanic Gardens area of Ivanhoe Park, making vehicular access difficult and intrusive on park users.</p> <p>Ivanhoe Park is subject to an adopted Conservation Management Plan (CMP) prepared by GML Heritage (April 2021). This CMP graded this former kindergarten building as having little heritage significance and noted that it was proposed to be demolished. As an element identified as having little significance, the CMP policies allow for the buildings removal, as it will not have an adverse impact upon the identified heritage significance of Ivanhoe Park. The CMP also identifies the primary function of Ivanhoe Park as an active and passive recreational space. Therefore removal of this building, now unfit for purpose, and recovery of the land for recreational use, will enhance the primary function of the Park. Policy 10.1 of the CMP specifically allows for the removal of building elements of lower significance, to provide opportunities for change. The area where the building is to be demolished will be replaced with soft landscaping. Heritage NSW do not have any objections to the demolition of this building.</p> <p>The proposed landscaping works are in accordance with the adopted Ivanhoe Park Landscape Masterplan. The works involve the construction of a pathway and landscaping to interpret part of the former tram route which curved through this part of the Park. It is considered that the works will enhance the heritage significance of this part of Ivanhoe Park and add to the historical interpretation of the park former tram route, which is separately heritage listed.</p> <p>Therefore no objections are raised on heritage grounds subject to photographic archival recording of the building to be demolished and its setting and the inclusion of all General Terms of Approval conditions required by Heritage NSW.</p> <p>Further Comments:</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No</p>

Internal Referral Body	Comments
	Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes
External Referral Body	Comments
Aboriginal Heritage Office	<p>Supported - subject to recommended conditions</p> <p>Development Application No. DA2022/0971</p> <p>Description: Demolition of an existing child care centre building and installation of landscaping</p> <p>Address: & Sydney Road MANLY</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Ausgrid (SEPP Infra.)	<p>Supported - subject to recommended conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Heritage Council of NSW	<p>Supported – General Terms of Approval issued</p> <p><i>“As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application. In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the following general terms of approval are granted:”</i></p> <p>See Conditions 1, 8, 13, 14, 15 and 27 and the Advice and Right of Appeal notifications in the recommendation of this assessment report.</p>

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2021 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 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Division 4.8 Integrated development

The site is listed on the NSW State Heritage Register. The proposed development requires an approval under section 58 of the *Heritage Act 1977* and is therefore “integrated development” as identified in section 4.46 of the EPA Act.

Under s. 4.47 of the EPA Act, the Consent Authority must obtain General Terms of Approval from the Heritage Council of NSW before granting consent, and any consent that is granted must be consistent with those general terms of approval. By letter dated 28 October 2022, the Heritage Council of NSW provided General Terms of Approval, including recommended conditions of consent. The recommendation below is consistent with those General Terms of Approval and includes the conditions supplied by the Heritage Council of NSW.

It is noted that under s. 4.48 of the EPA Act, the Consent Authority cannot refuse to grant consent on heritage grounds that is the subject of a heritage approval.

Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022

This Regulation was published on 30 September 2022. The explanatory note to the Regulation states that its objective is “to impose requirements on councils to manage conflicts of interest that may arise in connection with council-related development applications because the council is the consent authority.”

It introduces various requirements for council-related development applications, including the submission of a conflict management strategy with the development application, a 28-day public exhibition period, and consideration of a conflict of interest policy before determining such an application.

Clause 2 of the Regulation specifies that it commences on 3 April 2023. Consequently, the Regulation is not a matter for consideration with this development application.



ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Bushland in Urban Areas

The site is located on land zoned for public open space. Therefore, Chapter 6 of this SEPP is applicable to the assessment.

For land zoned or reserved for public open space, the Consent Authority shall not grant development consent unless it has taken into account:

- a) the need to retain any bushland on the land,*
- b) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- c) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*



Comment:

The proposed development does not result in the removal of vegetation on the public open space. Suitable conditions are recommended with this consent to alleviate impacts upon the reserve. Overall, the proposal is considered to align with the requirements of this chapter.

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

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

A Destructive Hazardous Building Materials Assessment report has been submitted with the development application. It identifies low risk non-friable asbestos within the existing building and makes recommendations to address this risk. Council's Environmental Health Officer has reviewed the proposal with regards to the presence of asbestos and PCBs on the site and raised no objections subject to conditions which are included in the recommended conditions of consent.

MANLY LOCAL ENVIRONMENTAL PLAN 2013

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

Compliance Assessment

There are no development standards in LEP 2013 relevant to this proposal.

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed assessment

5.10 Heritage conservation

The proposal has been reviewed by the Heritage Council of NSW and by Council's Heritage Officer. Both bodies have raised no objections to the proposal subject to conditions which are included in the recommendation of this assessment report.



Subject to the imposition of those conditions the proposal is considered to satisfy the objectives of clause 5.10 of MLEP 2013:

- (a) *to conserve the environmental heritage of Manly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The proposal was notified to the Heritage Council of NSW in accordance with clause 5.10(9) of MLEP 2013, and their response has been taken into consideration and adopted as part of the recommendation of this assessment report.

6.5 Terrestrial biodiversity

The site is identified as an area of biodiversity on the Terrestrial Biodiversity Map.

Clause 6.5(3) of MLEP 2013 require the following matters to be taken into consideration:

- (a) *whether the development is likely to have—*

- (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

Comment: The proposed development will remove a building and introduce landscaping into the area that is consistent with this matter for consideration.

- (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

Comment: The proposed development will remove a building and introduce landscaping into the area that is consistent with this matter for consideration.

- (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

Comment: The proposed development will reduce fragmentation of the biodiversity structure, function and composition of the land.

- (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*

Comment: The proposed development will not have an adverse impact on habitat elements.

- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: No additional measures are considered necessary in this regard.

Clause 6.5(4) of MLEP 2013 require that development consent must not be granted unless Council is satisfied that:

- (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

Comment: The proposed development will remove a building and introduce landscaping into the area and satisfies this matter for consideration.



- (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*

Comment: The proposed development will remove a building and introduce landscaping into the area. There are no impacts that need to be avoided and the proposal satisfies this matter for consideration.

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

Comment: The proposed development will remove a building and introduce landscaping into the area. There are no impacts that require minimisation and the proposal satisfies this matter for consideration.

It is noted that Council Biodiversity Officer has reviewed the proposal and raised no objections subject to conditions that are included in the recommendation below.

MANLY DEVELOPMENT CONTROL PLAN 2013

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.2.1 Consideration of Heritage Significance	Yes	Yes
3.2.2 Alterations or Additions to Heritage Items or Conservation Areas	Yes	Yes
3.2.3 Fences for Heritage Items and Conservation Areas	Yes	Yes
3.2.5 Exceptions to Parking Requirements and FSR Development Standards for Heritage Developments	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential development	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

Ivanhoe Park Plan of Management

Council adopted the Ivanhoe Park Plan of Management at its meeting on 21 October 2021. Council also adopted a Landscape Master Plan for Ivanhoe Park at the same time.

The proposal is consistent with these plans. In particular:

- The replacement of the child care centre with a central lawn is specified as an Action for Implementation in the Plan of Management and identified in the Landscape Master Plan.
- The interpretation of the tramway pathway is specified as an Action for Implementation in the Plan of Management.
- Upgrades to park lighting and park furniture are specified in the Plan of Management.

7.12 CONTRIBUTIONS

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

However, no contribution is required for the proposed development because the proposed cost of works (\$50,000) is less than \$100,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.



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

PLANNING CONCLUSION

This proposal, for demolition works and installation of landscaping, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to it being a council-related application (Council is the applicant) and because Council has received ten (10) or more submissions.

The submissions are all in support of the proposal.

The critical assessment issue is the listing of the site as a heritage item on the State Heritage Register and other heritage listings in MLEP 2013. The proposal has been reviewed by the Heritage Council of NSW and by Council's Heritage Advisor, both of which support the proposal subject to conditions. Those conditions are included in the recommendation of this assessment report.

The proposal is consistent with the detailed planning for Ivanhoe Park as documented in the Ivanhoe Park Plan of Management and the Landscape Master Plan for Ivanhoe Park, both of which were adopted by Council on 21 October 2021.

Overall, the development will result in an enhancement of the heritage values of Ivanhoe Park and to its amenity and utility as an area for public recreation.

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

RECOMMENDATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0971 for Demolition of existing child care centre building and installation of landscaping on land at Lot 2502 DP 1143032, Ivanhoe Park, Sydney Road, Manly subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 – Site / Location Plan (Rev B)	Feb 2022	Northern Beaches Council
DA02 – Floor Plan (Rev B)	Feb 2022	Northern Beaches Council
IDIE-DD-01 – Specified Notes (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd

IDIE-DD-02 – Existing Conditions Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-03 – General Layout Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-04 – Access, Protection & Demolition Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-05 – Setout Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-06 – Level, Grading and Drainage Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-07A – Concrete Surfaces Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-07B – Concrete Details (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-08 – Section AA (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-09 – Planting Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-10 – Paving Details (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-11 – Poles Details (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-12A – Coreten Screen Key Plan (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-12B – Coreten Internal Structure Details A (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-12C – Coreten Internal Structure Details B (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-12D – Coreten Internal Specified Notes (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd
IDIE-DD-13 – Typical Details (Rev T2)	11/06/2020	Thompson Berrill Landscape Design Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Heritage Impact Statement	April 2021	Edwards Heritage Consultants
Arboricultural Management Assessment for Demolition of Ivanhoe Park Pre School	July 2021	Growing My Way
Destructive Hazardous Building Materials Assessment	July 2021	Prensa Pty Ltd
Ivanhoe Park Landscape Masterplan (Rev 05)	July 2021	NBRS and Partners
Ivanhoe Park Plan of Management	10 May 2021	Northern Beaches Council
Preliminary Landslip Assessment for Ivanhoe Park	25 March 2022	Crozier Geotechnical Consultants
Statement of Environmental Effects	October 2021	Northern Beaches Council

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

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



Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Northern Beaches Council

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	25 August 2021
NSW Heritage Office	General Terms of Approval	28 October 2021

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

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

3. Prescribed Conditions

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

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



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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of



the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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



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

5. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

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

6. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

7. **Photographic Archival Record**

A photographic archival record the former child care building (including interiors and exteriors) and its setting within Ivanhoe Park, is to be prepared generally in accordance with the guidelines issued by the Heritage NSW, Department of Planning and Environment. This record must be submitted to Council's Heritage Officer for approval, prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.



Reason: To provide an archival photographic record of the building to be demolished and its setting, prior to any works.

8. Photographic Archival Record (Heritage Council of NSW General Terms of Approval)

A photographic archival recording of the former kindergarten building must be prepared prior to the commencement of works. This recording must be in accordance with the Heritage NSW publication 'Photographic Recording of Heritage Items using Film or Digital Capture' (2006). The digital copy of the archival record must be provided to Heritage NSW, Department of Planning and Environment.

Reason: To capture the condition and appearance of the place prior to, and during, modification of the site which impacts significant fabric.

9. Section 60 Application (Heritage Council of NSW General Terms of Approval)

An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

10. Working and Access on Reserves Permit

Works (undertaken by principal contractors working without Council supervision) on land owned or managed by Council require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

Reason: Public safety and the protection of Council infrastructure.

11. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

12. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment report, to supervise, implement and approve arboricultural works in accordance with the recommendations of the report.

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



All tree protection measures specified must:

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

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

Reason: Tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. Site Protection (Heritage Council of NSW General Terms of Approval)

Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: To ensure significant fabric including vegetation is protected during construction.

14. Unexpected Finds Protection (Heritage Council of NSW General Terms of Approval)

The Applicant must ensure that if substantial intact archaeological deposits and/or State significant relics or any other buried fabric are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: All significant fabric within a State Heritage Register curtilage should be managed according to its significance. This is a standard condition to identify to the applicant how to proceed if historical archaeological relics, or other unexpected buried discoveries such as works are identified during the approved project.

15. Aboriginal Objects (Heritage Council of NSW General Terms of Approval)

Should any Aboriginal objects be uncovered by the work which is not covered by a valid Aboriginal Heritage Impact Permit, excavation or disturbance of the area is to stop immediately and Heritage NSW is to be informed in accordance with the *National Parks and Wildlife Act 1974*. Works affecting Aboriginal objects on the site must not continue until Heritage NSW has been informed and the appropriate approvals are in place. Aboriginal objects must be managed in accordance with the *National Parks and Wildlife Act 1974*.

Reason: This is a standard condition to identify to the applicant how to proceed if Aboriginal objects are unexpectedly identified during works.

16. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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



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

Reason: Protection of the receiving environment.

17. Wildlife Protection

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

Reason: To protect native wildlife.

18. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works.

Reason: To protect wildlife habitat.

19. Control of Hazardous Materials

At all times during demolition works, operators must implement the site-specific recommendations of the report "Destructive Hazardous Building Materials Assessment, Job No: 96631S", dated July 2021 by Prensa Ptd Ltd.

Reason: to minimise the risk of exposure to environmental and health hazards identified in the hazardous building materials report.

20. Protection of Council's Public Assets

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: To protect and/or restore any damaged public asset.

21. Tree and Vegetation Protection

a) All existing trees shall be retained and protected in accordance with the Arboricultural Impact Assessment, including:

i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

iv) no demolition material, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,



v) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, vi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

b) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

22. No Weeds Imported On To The Site

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

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

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

23. Priority Weed Removal and Management

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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

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

24. Asbestos Clearance Certificate

Prior to occupation certificate being issued, an asbestos clearance certificate must be provided to the Principal Certifier by an Occupational Hygienist.

Reason: to ensure the site is safe and suitable for use, SEPP (Resilience and Hazards) 2021 compliance.

25. Removal of All Temporary Structures/Materials and Construction Rubbish



Once demolition and any construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.

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

Reason: To protect reserve amenity and public safety.

26. Condition of Retained Vegetation - Project Arborist

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

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

Reason: Tree protection.

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

27. Compliance (Heritage Council of NSW General Terms of Approval)

If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

Advice (Heritage Council of NSW General Terms of Approval)

Section 148 of the *Heritage Act 1977* allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

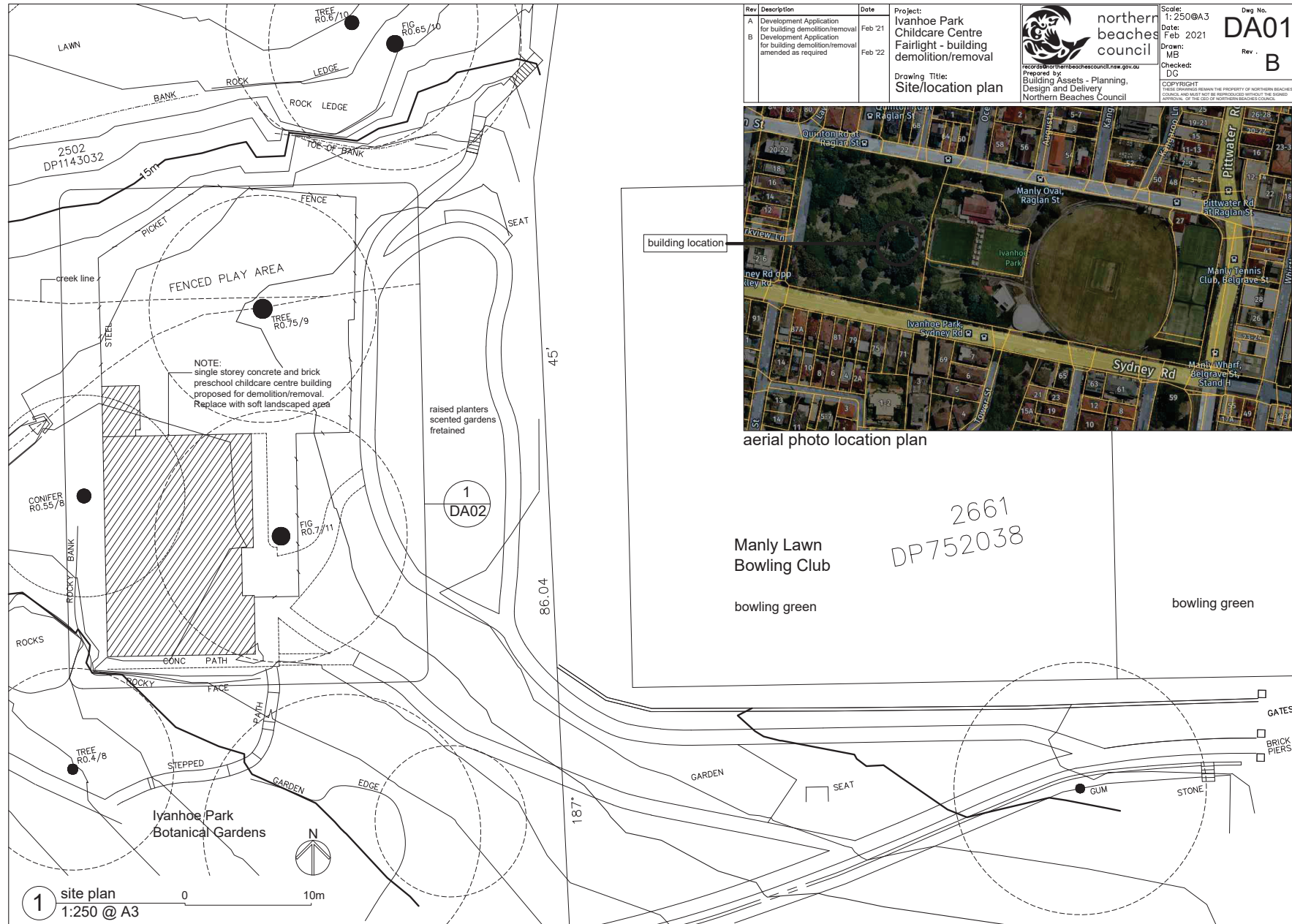
Right of Appeal (Heritage Council of NSW General Terms of Approval)

If you are dissatisfied with this determination, section 70A of the *Heritage Act 1977* gives you the right of appeal to the Land and Environment Court.

FINAL DECLARATION

Consultant Name: Geoff Goodyer

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.



ITEM 4.3

**DA2022/0753 - 160 CRESCENT ROAD, NEWPORT -
DEMOLITION WORKS AND CONSTRUCTION OF A
DWELLING HOUSE INCLUDING SWIMMING POOL AND
BOATSHED.**

AUTHORISING MANAGER Adam Richardson

TRIM FILE REF 2022/692124

ATTACHMENTS

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site Plans & Elevations
- 3 [↓](#) Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Limited Development on Foreshore Area of Clause 7.8 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0753 for Demolition works and construction of a dwelling house including swimming pool and boatshed on land at Lot B DP 27567, 160 Crescent Road, Newport, Lot PO 174230, 160 Crescent Road, Newport subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0753
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot B DP 27567, 160 Crescent Road NEWPORT NSW 2106 Lot PO 174230, 160 Crescent Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and boatshed
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peter William Wainberg Stephanie Joy Wainberg
Applicant:	Robert Furey
Application Lodged:	23/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	06/06/2022 to 20/06/2022
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,035,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house including swimming pool.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variation to the non-numerical development standard contained within Clause 7.8 Limited Development on Foreshore Area of the PLEP 2014. Components of the proposed development encroach into the foreshore area relate to the swimming pool, roof eave, waterway access stairs, retaining walls, a small portion of the rear lower-level terrace, garden beds and planter boxes.

The swimming pool and waterway access stairs are exempt in the foreshore area under Clause 7.8(2)(b) of the PLEP 2014, with the remaining components of the development being sustained by a written Clause 4.6 objection. The encroachments are attributed to both the steep topography of the site and the irregular form of the rear boundary.

Five (5) submissions were received in relation to the application, including three (3) submissions in support of the proposed works. The issues raised in the remaining submissions relate to view loss, height of buildings, setbacks, foreshore building line encroachments, landscaped open space, the chimney, glare, retaining walls adjacent to property boundaries, and stormwater management.

Critical assessment issues included height of building, foreshore building line, setbacks, and building envelope.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Demolition of the existing dwelling;
- Construction of a two-storey detached dwelling house, comprised of:
 - i Lower ground floor: Kitchen, dining room, living rooms, fireplace, rumpus room, games room, powder room, laundry and terrace
 - i Upper ground floor: Double garage, entry, storage spaces, main bedroom suite including walk-in robe and ensuite, three bedrooms (one of which with ensuite), main bathroom, and terrace.
- Construction of a swimming pool;
- Landscaping works including garden beds, retaining walls and stairs; and
- Driveway works.

In September 2022, in response to concerns raised by Council, the Applicant provided amended plans reducing building height, increasing landscaped area, and reducing built elements beyond the foreshore building line (including deletion of the boat storage and terrace above). In accordance with Council's Community Participation Plan, re-notification of the application considering the amended plans was not required, as the proposed amendments result in a lesser environmental impact.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	<p>Lot B DP 27567, 160 Crescent Road NEWPORT NSW 2106</p> <p>Lot PO 174230, 160 Crescent Road NEWPORT NSW 2106</p>
Detailed Site Description:	<p>The subject site consists of one battleaxe allotment located on the northern side of Crescent Road, Newport.</p> <p>The site is irregular in shape with a frontage of 4.7 metres to the battleaxe handle along Crescent Road and a maximum depth of 67.9 metres. The site has a surveyed area of 1,281m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two-storey detached dwelling house with swimming pool and jetty.</p> <p>The site slopes approximately 17 metres from Crescent Road (south) down to the mean high water mark at the rear of the property (north). The site is landscaped and contains mature vegetation including trees, hedges and lawn.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached dwelling houses in landscaped settings.</p>

PITTWATER

NEWPORT

CRESCENT ROAD

154A
154B
154
155
156
157
158
159
160
161
162
163

NORTHERN BEACHES COUNCIL
IMAGE © 2015
JACOBS SUPERMETER

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

- DA2020/1562 for use of existing waterfront structures, jetty, ramp, pontoon, mooring pile, stabilising piles and berthing area was approved by Council on 13 April 2021.

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

70

	<p>building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height, landscaped area, and view loss. Satisfactory information was provided by the Applicant in September 2022.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/06/2022 to 20/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Timothy Andrew Anderson	158 Crescent Road NEWPORT NSW 2106
Mr Peter Anthony Sanders	Bomers Station TAMBAR SPRINGS NSW 2381
Paul Robert Moulston	162 Crescent Road NEWPORT NSW 2106
Mr Richard Henry Harper Ms Roslyn Margaret Matthews	37 Beaconsfield Street NEWPORT NSW 2106
Mr Martin Lloyd Payne	39 Beaconsfield Street NEWPORT NSW 2106

Of the five submissions received, three were in support of the development, and the remaining two raised objections. The following issues were raised in the objecting submissions:

- Concern regarding view loss to Nos. 162 and 164 Crescent Road, due to building height and proposed landscaping.
- Excessive building height.
- Encroachment into the foreshore building line.
- Concern regarding the visual impact and air quality impact of the proposed chimney.
- Concern that the proposed roof will result in unreasonable glare.
- Concern regarding the proposed retaining walls along the common boundaries between the subject site and Nos. 162 and 164 Crescent Road and that cars may topple onto No. 162 from the driveway.
- Concern that there will be unreasonable stormwater runoff impacts to No. 164 Crescent Road.

The above issues are addressed as follows:

View Loss

Comment:

The proposed development is addressed in relation to view loss in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

Building Height

Comment:

The proposed development is compliant with the applicable development standard under Clause 4.3 Height of Buildings of the PLEP 2014, as detailed in the section of this report relating to that clause.

Foreshore Building Line

Comment:

The encroachments into the foreshore area have been reduced by way of amended plans and through

recommended Conditions. The remaining encroachments are addressed in the sections of this report relating to Clauses 4.6 Exceptions to Development Standards and 7.8 Limited Development on Foreshore Area of the PLEP 2014.

Impacts of the Chimney

Comment:

The proposed chimney has been reduced in height and is now lower than the maximum roof height. The amended chimney does not present an unreasonable visual imposition. The chimney is associated with a gas heater that does not burn solid fuel, so will not result in smoke or impact upon air quality.

Roof Glare

Comment:

A condition of consent requiring that the external finish to the roof have a medium to dark range and not be of a metallic steel finish has been included in the recommendation of this assessment.

Retaining Walls

Comment:

No change is proposed to the driveway or retaining walls along the driveway handle adjoining No. 162 Crescent Road. The proposed development includes a new retaining wall along the site's southern boundary adjoining Nos. 162 and 164 Crescent Road, to a maximum height of RL 10.150, being below the existing garden walls on No. 162 and No. 164. As such, the retaining walls to the south of the subject site are set below Nos. 162 and 164 Crescent Road and will not be visible from those properties.

Stormwater Runoff

Comment:

The proposed development has been reviewed by Council's Development Engineer, including in relation to stormwater management and runoff. The proposal is supported by stormwater management plans that are acceptable in this regard.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported without conditions</p> <p>Fireplace to be installed as part of the new dwelling construction is a gas fireplace (stated in the Plans) and does not require Council's approval under the solid fuel heater provisions of the <i>Local Government Act 1993</i>.</p>
Landscape Officer	<p>Supported, subject to recommended conditions</p> <p>The development application is for demolition of existing structures and construction of a new dwelling including a swimming pool, boat shed and landscape works, as described and illustrated in the Reports and Plans. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (DCP) controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping

	<p>• D10 Newport Locality</p> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The property contains limited canopy tree planting and otherwise the landscape character is a managed landscape with garden planting and boundary hedges. All existing trees prescribed (ie. protected) under the DCP, within the property shall be retained. All existing trees and vegetation within adjoining properties including within Crescent Road Reserve, irrespective of species type shall be protected and conditions of consent shall be applied for tree protection measures, should the application be approved. Additionally, as no Arborist report is submitted a Tree Protection Plan, as applicable, shall be submitted to ensure protection of all existing trees within adjoining properties.</p> <p>The Landscape Plan submitted, following updated information, provides an enhanced landscape outcome including planting to the boundary areas consisting of native vegetation as well as low height native trees. Updated Plans are submitted including a Landscape Control plan that demonstrates the proposed development achieves a total landscape area of less than the required 60% by 17.74m² or 1.39% and the matter shall be determined by the Assessing Planning Officer. The Landscape Plan as updated provides adequate landscape treatment with tree and other planting to satisfy the intent of the C4 landscape objectives and the C1.1 DCP control, subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>Supported, subject to recommended conditions</p> <p>The proposed development has been assessed against the following applicable terrestrial biodiversity-related provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) - Coastal Environment Area • Pittwater LEP Clause 7.6 – Biodiversity Protection <p>The submitted plans and documentation do not propose removal of any locally native vegetation. However, the proximity of works to significant native trees in the north-eastern corner of the lot, and the adjoining bushland reserve, requires tree protection measures to be implemented in accordance with the Landscape referrals team's recommended conditions.</p>
NECC (Coast and Catchments)	<p>Supported, subject to recommended conditions</p> <p>The application is supported subject to conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016;

	<ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10, 2.11 & 2.12); and • Relevant LEP and DCP clauses. <p>The yoga terrace and kayak/boat storage have been deleted from the amended plans and replaced with landscaping elements including above-ground garden beds. All structural additions proposed on the amended plans remain landward of the foreshore building line (at ground level) and will be constructed above the calculated estuarine planning level (EPL) of 2.41m AHD.</p> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>Applicable conditions:</p> <ul style="list-style-type: none"> • Installation and maintenance of erosion and sediment controls (prior to commencement) • Stockpiling materials (during works)
NECC (Development Engineering)	<p><i>Supported, subject to recommended conditions</i></p> <p>Applicant seeks approval to construct a new dwelling and a swimming pool. Access is via reciprocal rights of carriageway. Geotechnical engineer has certified that an acceptable risk can be achieved. No Development Engineering objections subject to recommended conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><i>Supported without conditions</i></p> <p>The development proposes to demolish the existing building and construct a double storey house with pool.</p> <p>The proposed development generally complies with the flood controls in the DCP and LEP.</p>
Parks, reserves, beaches, foreshore	<p><i>Supported, subject to recommended conditions</i></p> <p>The development site adjoins Pittwater foreshore that is located downslope of the property, and Crescent Road Reserve along the side boundary.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Pittwater foreshore and Reserve, and conditions shall be imposed to satisfy this requirement.</p> <p>Public access to the Pittwater foreshore and Reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to recommended conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<i>Supported, subject to recommended conditions</i> The Aboriginal Heritage Office have advised that they have no objection, subject to standard conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1276941S, dated 3 February 2022). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	59

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the

electricity infrastructure exists).

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 9 Hawkesbury-Nepean River

Chapter 9 of the SEPP applies to land within the catchment of the Hawkesbury Nepean River. The general aim of Chapter 9 is to ensure that development and future land uses within the catchment are considered in a regional context. The Chapter includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The proposed development achieves the relevant aims of the Chapter and the 'General planning considerations' in Part 9.2 as compliance with the provisions in Council's Water Management Policy is achieved and the proposal is unlikely to result in pollution of nearby waterways as an appropriate condition with respect to erosion and sediment control have been included in the recommendation.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - b) *coastal environmental values and natural coastal processes,*
 - c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - f) *Aboriginal cultural heritage, practices and places,*

- g) the use of the surf zone.*

Comment:

The proposed development is supported by architectural plans and a geotechnical risk assessment report that demonstrates that the proposed development is of acceptably low risk. The proposed development has been reviewed by Council's Coast & Catchments and Bushland & Biodiversity teams, who are supportive of the proposal, subject to conditions of consent. It is considered that the proposed development will not significantly impact upon the matters at (1).

- 2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

As demonstrated by the architectural plans and supporting reports, the proposed works are demonstrated to be designed, sited and management so as not to result in any adverse impact.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- a) has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) existing, safe access to and along the foreshore, beach, headland or rock*
 - ii) platform for members of the public, including persons with a disability,*
 - iii) overshadowing, wind funnelling and the loss of views from public places to*
 - iv) foreshores,*
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
 - b) is satisfied that:*
 - i) the development is designed, sited and will be managed to avoid an adverse*
 - ii) impact referred to in paragraph (a), or*
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is supported by architectural plans and a geotechnical risk assessment report that demonstrates that the proposed development is of acceptably low risk. The proposed development has been reviewed by Council's Coast & Catchments and Bushland & Biodiversity teams, who are supportive of the proposal, subject to conditions of consent. The consent authority can be satisfied that the proposed development will not significantly impact upon the matters at (1)(a), and has been designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a). The assessment of the application has taken into account the surrounding coastal and built environment, and

the bulk, scale and size of the proposed development, as demonstrated throughout this report.

Division 5 General

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

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

Comment:

The proposed development is not anticipated to result in any increased risk of coastal hazards on the subject site and adjoining sites. The proposed development has been reviewed by Council's Coast & Catchments Officer, who is supportive of the application, subject to recommended conditions of consent.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	%	Complies
Height of Buildings:	10m	Max. 9.5m	-	Yes
Foreshore Building Line:	Development within the FSBL, except as permitted under Clause 7.8(2)	Works up to 1 metre beyond the FSBL, other than as permitted under Clause 7.8(2)	100%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The objectives of the C4 Environmental Living zone are addressed as follows:

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Comment:

The proposed development is predominantly located on already disturbed land, with the required excavation being supported as low risk by the submitted geotechnical report. In this way, the proposed development does not rely on unreasonable removal of vegetation and planting, or significant earthworks, and is low impact. The proposed works result in redevelopment and retention of the land for residential purposes.

To ensure that residential development does not have an adverse effect on those values.

Comment:

The proposed development is designed and sited so as not to adversely impact upon the special ecological, scientific or aesthetic values of the subject site.

To provide for residential development of a low density and scale integrated with the landform and landscape.

Comment:

The proposed works support residential development, being the low-density dwelling house. The proposed works are acceptable regarding all applicable built form controls, demonstrating that the works, are of a scale anticipated for the subject site. The submitted geotechnical report demonstrates that the proposal, while relying on excavation, is acceptable in relation to landslip risk. The proposed built form and excavation are softened with the inclusion of suitable planting. The proposal is therefore reasonably integrated with the landform and landscape of the site.

To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment:

The proposed development is supported by a suitable landscape plan that demonstrates an enhancement of the vegetation on site. The subject site is not classified as part of a wildlife corridor, though the proposed landscaping and works retain suitable habitat to support nearby wildlife corridors.

4.3 Height of buildings

Clause 4.3(2D) provides that development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment:

Recent caselaw (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*) establishes that height of building is measured to ground level (existing), as per the definition in the Dictionary of the *Pittwater Local Environmental Plan 2011* to the highest point of the ridge above. The portion of the development above 8.5 metres is set well below 10 metres, with the maximum height being 9.5 metres. The portion of the development in question is for the purpose of the northeastern-most corner of the first floor roof, as shown below highlighted in yellow and circled in blue:

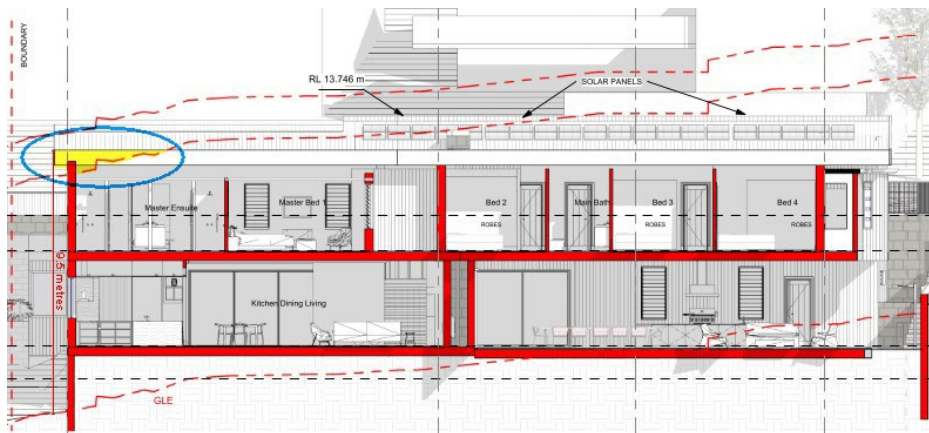


Figure 1: Excerpt from the section highlighting the extent of building height above 8.5 metres.

(b) the objectives of this clause are achieved, and

Comment:

The objectives of Clause 4.3 Height of Buildings are addressed as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The proposed dwelling house employs floor to ceiling heights of 3 to 3.1 metres, being greater than the minimum 2.4 metres requirement under the National Construction Code. However, the predominant structure is set below the expected 8.5 metre building height, thereby demonstrating height and scale appropriate for the site, particularly when considered with the site topography. The proposed non-compliant elements (being side and rear setbacks and building envelope) are acceptable on merit for the reasons detailed in the sections of this report relating to Clauses D10.8 Side and Rear Building Line and D10.11 Building Envelope of the P21 DCP. As such the proposed development is of a height and scale anticipated for the site and is therefore consistent with the overall character of the locality. Clause A4.10 Newport Locality is addressed in the section of this report of the same name.

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

Comment:

The proposed development is for construction of a two-storey detached dwelling house, being of a size and scale anticipated by the built form controls applicable to the subject site (as detailed throughout this report). The proposed development achieves compliance with the numerical

requirement of this control. As such, the proposed development is compatible with nearby development.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development is compliant with the requirements of Clause C1.4 Solar Access of the P21 DCP.

(d) to allow for the reasonable sharing of views,

Comment:

The proposed development is acceptable in relation to the requirements of Clause C1.3 View Sharing of the P21 DCP, as detailed in the relevant section of this report.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The proposed development relies on earthworks for its design. However, the overall extent of excavation is not dissimilar to existing and recently approved developments in the vicinity. As such, the natural topography of the site has already been generously disturbed. The proposal is supported by a geotechnical assessment report addressing the excavation required, which establishes that the earthworks are of acceptable low risk in relation to site stability. Further, the height of building does not exceed 10 metres at any point, including in those areas where excavation is deepest.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment:

The subject site is visible from the Pittwater Waterway, though is of acceptable design and character in this regard. The subject site is not a heritage item, adjacent to a heritage item, or in a heritage conservation zone.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

Comment:

The proposed development is situated on a slope of approximately 23.2 degrees, being 42.86%.

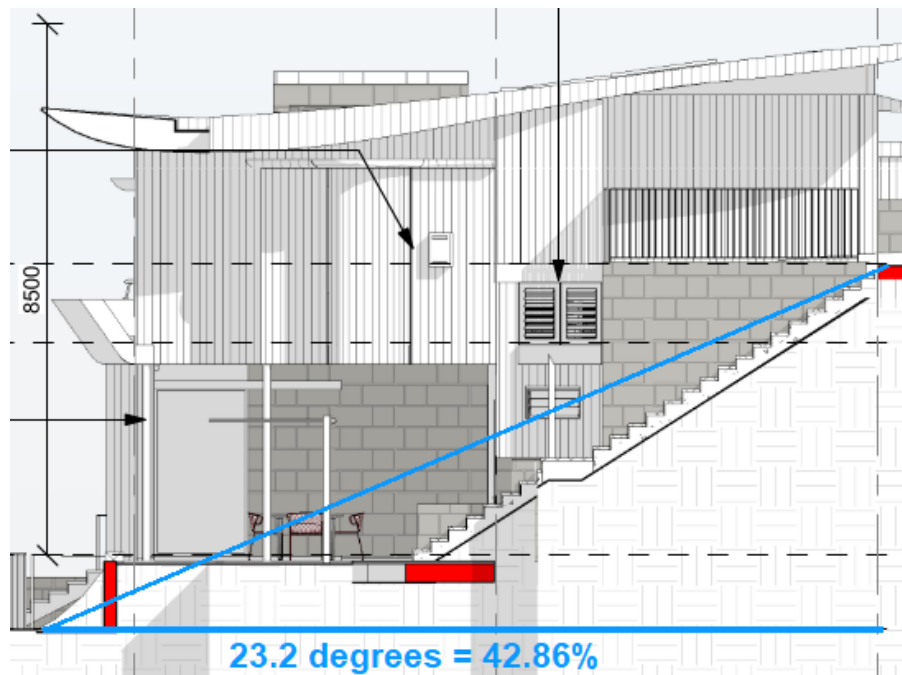


Figure 2: The slope of the land under the building footprint.

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment:

The proposed development relies on earthworks for its design. However, the overall extent of excavation is not dissimilar to existing and recently approved developments in the vicinity. The proposal is also supported by a geotechnical assessment report addressing the excavation required, which establishes that the earthworks are of acceptable low risk in relation to site stability. Further, the height of building does not exceed 10 metres at any point, including in those areas where excavation is deepest.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 7.8 Limited Development on Foreshore Area (FSBL)
Requirement:	Development within the FSBL, except as permitted under Clause 7.8(2)
Proposed:	Works up to 9.3 metres beyond the FSBL, other than as permitted under Clause 7.8(2)

The works that protrude into the foreshore building are comprised of a swimming pool, roof eave,

waterway access stairs, retaining walls, a small portion of the rear lower level terrace, garden beds and planter boxes. The roof eave, rear lower level terrace, retaining walls, garden beds and planter boxes are not expressly excepted by Clause 7.8(2) and are considered to be a variation to the development standard contained within the clause. The encroachments are highlighted below at Figures 3, 4 and 5, with allowable elements shown in yellow, and non-compliant elements shown in pink.

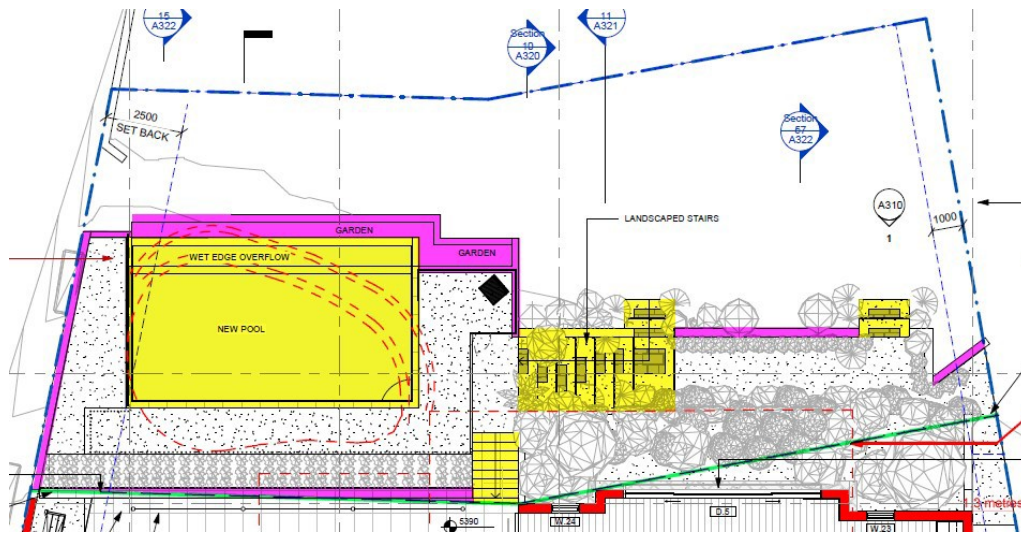


Figure 3: Foreshore Building Line encroachments at ground level.

At the ground level, the encroachments consist of the rear terrace, waterway access stairs, retaining walls, swimming pool, and the garden beds. The retaining wall to the north-west can be excluded from assessment, as it is ancillary to and necessary for the construction of the swimming pool. While the maximum numerical variation appears significant (being 9.3 metres for the garden bed), no individual non-compliant element is more than minor in nature.

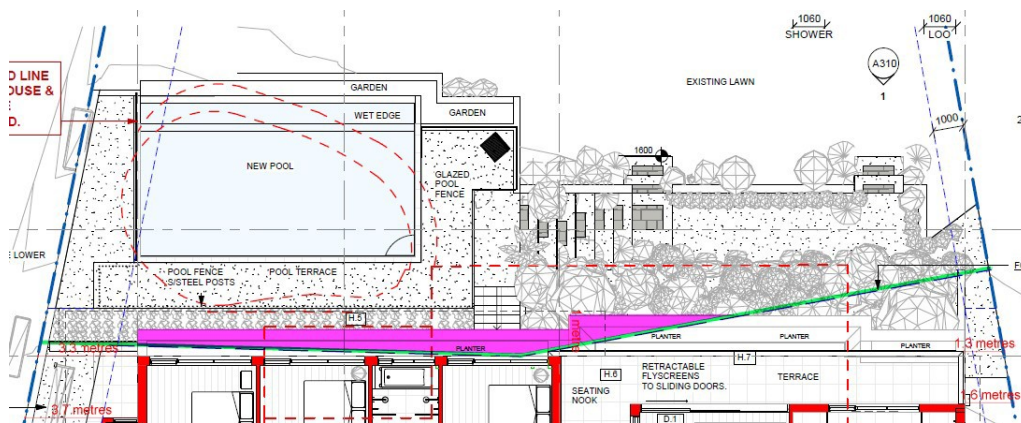


Figure 4: Foreshore Building Line encroachment at the upper level.

At the upper level, the encroachment is for the planter box.

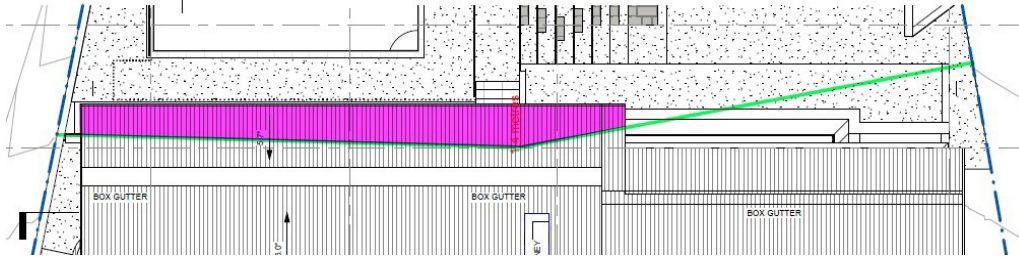


Figure 5: Foreshore Building Line encroachment at the roof level.

Assessment of request to vary a development standard:

The following assessment of the variation to the development standard contained within Clause 7.8 Limited Development on Foreshore Area has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 7.8 Limited development on Foreshore Area is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

- *"The raised above ground garden beds/recreation overhang the Foreshore Building Line by an area of 13.25m² with dimensions varying from 549mm to 1035mm.*
- *They will not impact natural foreshore processes or affect the significance and amenity of the area or restrict public access along the foreshore or the waterway.*
- *We consider that as these are garden structures (recreation) they are permissible within the FBL and that a Clause 4.6 application is not required.*
- *The raised garden beds are below the height control and add aesthetic value to the dwelling and the foreshore area when viewed from adjoining properties and the Pittwater Waterway.*
- *There are no negative impacts on public views and or private views.*
- *Bulk and scale are consistent with the locality; it being noted that existing dwellings in the locality vary in architectural style, size, bulk and scale."*

...

- *"The raised garden beds form part of the architectural integrity, landscaping and recreation and are critical elements to the architectural style and aesthetic overall and when viewed from adjoining lands and the Pittwater Waterway.*
- *The objectives for PLEP clause 4.6, Land zone and Foreshore development are achieved.*
- *This is a quality residential development which will result in a dwelling, facilities and landscaping appropriate to the locality and the foreshore of the Pittwater Waterway.*
- *The development does NOT propose development on land forward of the FBL (other than pool and landscaping).*
- *The projecting planters are ABOVE the land and in no way impact public use, views, or access .*
- *All the PLEP clause 7.8 objectives and foreshore development are met.*
- *The "encroachments" above the FBL constitute architectural modulation of the primary northern façade, offering green landscaped elements which ameliorate the impact of the proposal to the adjoining public reserve.*
- *The PLEP and Dictionary provides that active recreation and other recreation including gardens and raised garden beds are, permitted within the FBL.*
- *There are no solid fence structures proposed, a continuous foreshore lawn which if anything visually extends the public adjoining foreshore land.*
- *The objectives for PLEP clause 4.6, the Land zone and for Foreshore development are achieved."*

The above matters are generally agreed with, with the exception of the statements that the works are permissible in the foreshore area without variation to the development standard. It should also be noted that the site is subject to an irregular rear boundary alignment which distorts the FBL, in that it is not a straight line for prospective development of high and useable amenity on the site to easily follow. The elements that protrude into the foreshore area provide a suitable design response to the site, and the protrusions are a product of the site's irregularity. Notwithstanding the following points are also noted:

- With regard to the roof eave, the protruding element provides shade and shelter to the dwelling house, and provides compliance with Clause C1.23 Eaves of the P21 DCP and are required by BASIX.
- The upper level planter boxes provide articulation and softening to the dwelling house.
- The garden beds surrounding the pool provide articulation and softening to the compliant pool structure and function as retaining structures necessary on a site of this steepness.
- The lower level terrace provides a point of outdoor recreation to the occupants of the site and the protruding element is located on land already disturbed by existing development.

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

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

However, notwithstanding the arguments within the Applicant's written request, there are simple design amendments that can be made to remove the protrusions into the foreshore building line, without compromising the design outcome of the development overall. A condition of consent has been included in the recommendation accordingly.

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard:

The underlying objectives of the standard, pursuant to Clause 7.8 Foreshore Building Line of the PLEP 2014 are addressed as follows:

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:

The proposed works within the foreshore area are set well above and away from the existing seawall to the north of the property (minimum 8.8 metres) and do not require significant earthworks. As such, the work are not expected to impact upon the (already disturbed) foreshore processes. The works are well-designed and are ancillary to the reconfigured pool area, providing enhances amenity to the users of the site. The proposed works within the foreshore building line do not result in any unreasonable impacts on the significance or amenity of the subject site, adjoining sites, or the foreshore area.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The proposed works are located entirely on private land and do not impact upon public access along the foreshore area or to the waterway.

Objectives of the Zone:

The underlying objectives of the C4 Environmental Living zone are addressed as follows:

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Comment:

The proposed development involves demolition of the existing dwelling and construction of a new two-storey detached dwelling house, equating to low density. The proposed works do not require unreasonable earthworks and are low-impact with respect to built form controls and amenity, as described throughout this report.

To ensure that residential development does not have an adverse effect on those values

Comment:

The proposed works are designed and sited so as not to have an adverse impact on the special ecological, scientific or aesthetic values of the subject site and surrounds.

To provide for residential development of a low density and scale integrated with the landform and landscape.

Comment:

As above, the proposed works are low impact. The works within the foreshore area maintain the existing density of the subject site and do not require unreasonable earthworks. As such, the works are adequately integrated into the landform and landscape.

To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment:

The proposal includes compliant landscaped open space and is supported by a suitable landscape plan that details sufficient new planting, thereby retaining existing riparian and foreshore vegetation and wildlife corridors. As demonstrated in response to the *State Environmental Planning Policy (Resilience and Hazards) 2021*, and within the referral comments from Council's Biodiversity and Coast & Catchments officers, the proposed works are acceptable with regard to biodiversity and the foreshore nature of the site.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the development standard within Clause 7.8 Foreshore Building Line is assumed by the Northern Beaches Local Planning Panel.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The subject site is partially classified as flood prone land (low to medium risk). The proposed development has been reviewed by Council's Stormwater and Floodplain Engineering team, who are supportive of the proposal, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is acceptable in relation to the matters above at (a) through (e).

In deciding whether to grant development consent on land to which this clause applies, the consent

authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The subject site is partially classified as flood prone land (low to medium risk). The proposed development has been reviewed by Council's Stormwater and Floodplain Engineering team, who are supportive of the proposal, subject to recommended conditions of consent. As such, it is considered that the proposed development is acceptable in relation to the matters above at (a) through (d).

7.2 Earthworks

The objective of Clause 6.2 Earthworks requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

- (e) the source of any fill material and the destination of any excavated material*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (f) the likelihood of disturbing relics*

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment:

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:*

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse

impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for demolition works and construction of a dwelling house, including works that protrude into the foreshore building area, comprised of a swimming pool, roof eave, waterway access stairs, retaining walls, a small portion of the rear lower level terrace, garden beds and planter boxes. The roof eave, rear lower level terrace, garden beds and planter boxes are not expressly excepted by Clause 7.8(2) and are considered to be a variation to the development standard contained within the clause. The Applicant has provided a written request to vary the development standard. The variation is assessed as being acceptable on merit for the reasons detailed in the section of this report relating to Clause 4.6 of the PLEP 2014. However, notwithstanding the arguments within the Applicant's written request, there are simple design amendments that can be made to remove the protrusions into the foreshore building line, without compromising the design outcome of the development overall. A condition of consent has been included in the recommendation accordingly.

This clause states:

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - i *pollution or siltation of the waterway, or*
 - i *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - i *an adverse effect on drainage patterns, or*
 - i *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the C4 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
--------------------	-------------	----------	-------------	----------

Front building line	Min. 6.5m	41.5m		-	Yes
Rear building line	FSBL	Max. 1m encroachment		100%	No
Side building line	W: Min. 2.5m (west)	Lower:	Stairs: 0m	100%	No
			Terrace: 1.6m	36%	No
			Dwelling: 2.5m	-	Yes
		Upper:	Stairs: 0m	100%	No
			Car Space: 1.7m	32%	No
			Dwelling: Min. 1.8m	28%	No
	E: Min. 1m (east)	Lower:	Dwelling: 1.3m	-	Yes
		Upper:	Dwelling: Min. 1.3m	-	Yes
Building envelope	W: 3.5m	Max. 1m outside envelope		18.87%	No
	E: 3.5m	Max. 4.2m outside envelope		82.35%	No
Landscaped area	Min. 60% (768.6m ²)	60.9% (780.66m ² , incl. 6% hard space)		-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes

C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.15 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

The submissions from Nos. 162 and 164 Crescent Road raised concern that the proposed development will result in unreasonable view loss impacts. The development is considered against the underlying outcomes of the control as follows:

A reasonable sharing of views amongst dwellings.

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The affected views for both Nos. 162 and 164 Crescent Road are of the Pittwater waterway towards the north and the interface between the waterway and the Newport foreshore. The view is partially obstructed by existing development (including the dwelling and carport of the subject site), and vegetation.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The affected views are available across the rear northern boundaries of Nos. 162 and 164 Crescent Road, from standing and seated positions, as follows:

- No. 162: Living room, kitchen and main bedroom.
- No. 164: Living room, dining room, kitchen and rear terrace.

The photographs below depict the views from Nos 162 and 164 Crescent Road, at the places where views are most impacted.



Figure 6: The view from the living room of No. 162 Crescent Road, from a standing position, towards the north across the subject site.



Figure 7: The view from the rear terrace of No. 164 Crescent Road, from a standing position, towards the northwest across the subject site.

3. Extent of impact

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

Comment to Principle 3:

The yellow lines marked on the photographs above at Figures 6 and 7 at Principle 2 indicate the height poles constructed during the assessment period. The poles depict the heights of the points shown below, indicated by the red spots, at Figure 8, below.

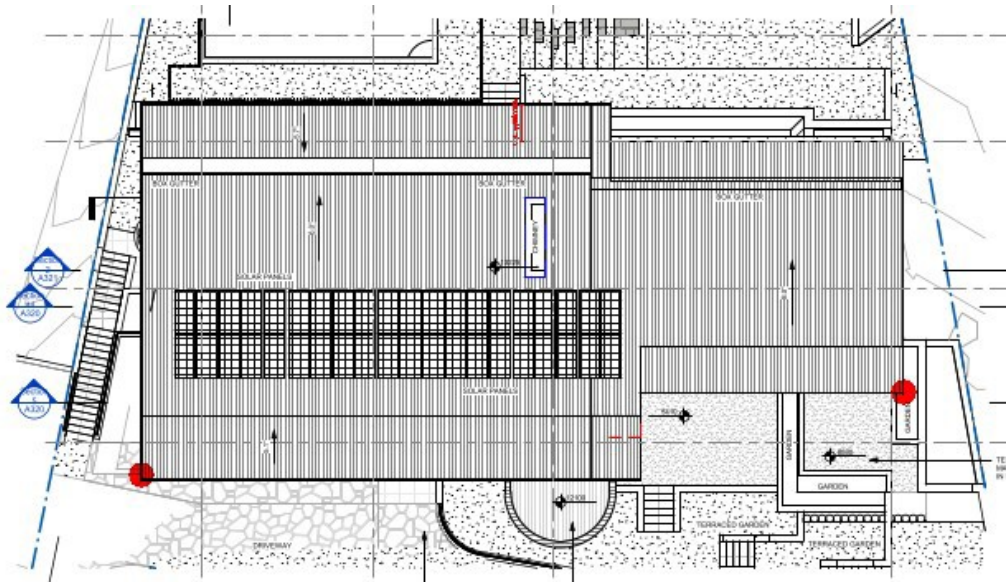


Figure 8: Location of height poles.

The poles are at heights of RL 14.250 AHD (left) and RL 13.990 AHD (right). The architectural plans have since been amended to lower those points to RL 13.746 AHD (left, being a 490 millimetre reduction) and RL 13.439 AHD (right, being a 550 millimetre reduction). For No. 162 Crescent Road, it is anticipated that the proposed development will result in the loss of a corridor view to the water and vegetation between the current dwelling and carport, and a small portion of the view to the existing vegetation to the north-east. For No. 164 Crescent Road, it is anticipated that the proposed development will result in a similar loss, plus loss of a small portion of the view to the dwelling at No. 158 Crescent Road. While the proposed new dwelling is wider than the existing dwelling and the points at which views may be lost for Nos. 162 and 164 are of importance, the overall extent of impact is assessed as minor, given the lost portions are not of great significance, and the most valuable portion of the view, being to the extended Pittwater waterway to the north-west, will be retained.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development includes non-compliant side setbacks to the west, due to the proposed side stairs, lower-level rear terrace, upper level car space, and upper level ensuite. The proposed non-compliant elements are acceptable on merit as detailed in the section of this report relating to Clause D10.8 Side and Rear Building Line of the P21 DCP. With regard to view sharing, the elements that are

not-compliant with the eastern side setback are of low impact as follows:

- The proposed side stairs and lower level terrace are low to the ground and will not generally be visible from Nos. 162 and 164 Crescent Road.
- The upper level car space is open in construction and unlikely to contribute to view loss for Nos. 162 and 164 Crescent Road.
- The portion of the upper level ensuite that is not compliant is minor in nature, and likely to be obscured from view from Nos. 162 and 164 Crescent Road by the compliant elements.

The proposed development also includes breaches to the building envelope control to the eastern and western side elevations. The proposed non-compliant elements are acceptable on merit as detailed in the section of this report relating to Clause D10.11 Building Envelope of the P21 DCP, particularly due to the steep topography of the land. Regarding view sharing, the elements that are non-compliant with the building envelope are of low impact as they are set below the roof line, which is established as causing minor view loss, and are due to the steeply sloping nature of the topography.

Submissions received in relation to the application raised concern that the proposed development is higher than the existing dwelling house and is non-compliant with the height of building development standard. The proposed development is a maximum of 376 millimetres higher than the existing dwelling, being compliant with the height of building development standard, as detailed in the section of this report relating to Clause 4.3 Height of Buildings of the PLEP 2014. Submissions also raised concern that the northern roof eave extends into the foreshore building line. However, being the lowest point of the roof, and being furthest from the affected sites, the roof eave is not considered to be the point of the dwelling that would result in any loss of view.

Given the proposed development is compliant with the dispensation provided for within the maximum height of building development standard, side setback breaches are minor and acceptable, the breaches to the building envelope are predominantly due to topography, and the overall development is compliant with the required landscaped area, it can be established that the proposed dwelling is of a scale anticipated for the site by the applicable controls. As such, the proposed development is assessed as reasonable in its context regarding view loss.

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.

Comment:

Given the above, the proposed development provides for reasonable view sharing for surrounding sites towards the Pittwater waterway and foreshore, while allowing for redevelopment of the subject site.

Canopy trees take priority over views.

Comment:

Concern was raised in submissions that the proposal includes canopy tree planting to the north-west and that these trees may obscure views to the north-west. This is not unreasonable with regard to view loss, given that canopy trees take priority over views. The proposed development includes compliant landscaped area and reasonable planting of vegetation so as to provide softening of the proposed built form.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

The proposed development includes breaches to the side setbacks for the purpose of stairs, the rear terrace, and a small breach to the dwelling for the purpose of an ensuite. The proposal also includes an encroachment to the foreshore building line, which takes precedence over the rear building line under this control. The non-compliance with the foreshore building line is addressed in the sections of this report relating to Clauses 4.6 and 7.8 of the PLEP 2014. With respect to the side setback non-

compliances, the underlying outcomes of the control are addressed as follows:

To achieve the desired future character of the Locality.

Comment:

The proposed development is compliant with the requirements of Clause A4.10 Newport Locality of the P21 DCP, which details the desired future character of the site and surrounds.

The bulk and scale of the built form is minimised.

Comment:

The proposed development is generally compliant with the applicable built form controls, including building height, or is acceptable on merit as detailed throughout this report. The proposal includes breaches to the building envelope control, which are addressed in the section of this report relating to Clause D10.11 Building Envelope of the P21 DCP. The proposal is generally of a built form, bulk and scale anticipated for the subject site.

Equitable preservation of views and vistas to and/or from public/private places.

Comment:

The proposed development is acceptable in relation to the requirements of Clause C1.3 View Sharing of the P21 DCP, as detailed in the relevant section of this report.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

As above, the proposed development allows for suitable view sharing via its design and siting.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment:

The proposed development is consistent with the amenity requirements of the P21 DCP, including in relation to Clause C1.4 Solar Access and C1.5 Visual Privacy.

Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment:

The proposed development includes a compliant landscaped area, suitably retains vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting.

Flexibility in the siting of buildings and access.

Comment:

The proposed development demonstrates flexibility in the siting of the dwelling, without resulting in any unreasonable impacts to the subject site or adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

The proposed development suitably retains existing vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting to soften and screen the proposed built form.

A landscaped buffer between commercial and residential zones is achieved.

Comment:

Not applicable. The subject site is within a residential zone and does not adjoin land in a commercial zone.

D10.11 Building envelope (excluding Newport Commercial Centre)

The proposal includes breaches to the building envelope control of up to 1 metre to the western elevation and up to 4.2 metres to the eastern elevation. The underlying outcomes of the control are addressed as follows:

To achieve the desired future character of the Locality.

Comment:

The proposed development is compliant with the requirements of Clause A4.10 Newport Locality of the P21 DCP, which details the desired future character of the site and surrounds.

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment:

The proposed development includes a compliant landscaped area, suitably retains vegetation, and is supported by a landscape plan that adequately demonstrates proposed planting. The proposal is compliant with the maximum building height permissible on the subject site, being below the height of surrounding trees, and suitably presents as a two-storey dwelling.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment:

The proposed development relies on earthworks for its design. However, the overall extent of excavation is not dissimilar to existing and recently approved developments in the vicinity. As such, the natural topography of the site has already been generously disturbed. The resultant development is of a bulk and scale anticipated for the site by the applicable built form controls.

The bulk and scale of the built form is minimised.

Comment:

The proposed development is generally compliant with the applicable built form controls, including building height, or is acceptable on merit as detailed throughout this report. The proposal includes breaches to the side building line control, which are addressed in the section of this report relating to Clause D10.8 Building Envelope of the P21 DCP. The proposal is generally of a built form, bulk and scale anticipated for the subject site.

Equitable preservation of views and vistas to and/or from public/private places.

Comment:

The proposed development is acceptable in relation to the requirements of Clause C1.3 View Sharing of the P21 DCP, as detailed in the relevant section of this report.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment:

The proposed development is consistent with the amenity requirements of the P21 DCP, including in relation to Clause C1.4 Solar Access and C1.5 Visual Privacy.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

The proposed development suitably retains existing vegetation and is supported by a landscape plan that adequately demonstrates proposed planting to soften and screen the proposed built form.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$50,350 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,035,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

- Consistent with the objectives of the DCP

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house including swimming pool, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposed variation to the non-numerical development standard contained within Clause 7.8 Limited Development on Foreshore Area of the PLEP 2014.

Five submissions were received in relation to the application, including three submissions in support of the proposed works. The issues raised in the remaining submissions relate to view loss, height of buildings, setbacks, foreshore building line encroachments, landscaped open space, the chimney, glare, retaining walls adjacent to property boundaries, and stormwater management.

Critical assessment issues included height of building, view loss, foreshore building line, setbacks, and building envelope. These matters are acceptable on merit for the reasons detailed throughout the assessment report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary the development standard contained within Clause 7.8 Limited Development on Foreshore Area pursuant to Clause 4.6 of the PLEP 2014, as the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3), and the proposed development will be in the public interest, and the proposed development is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly, the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0753 for Demolition works and construction of a dwelling house including swimming pool and boatshed on land at Lot B DP 27567, 160 Crescent Road, NEWPORT, Lot PO 174230, 160 Crescent Road, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A101 Site Plan Revision E	12 September 2022	Walter Barda Design
A200 Lower Ground Floor Plan Revision E	12 September 2022	Walter Barda Design
A201 Upper Level Plan Revision E	12 September 2022	Walter Barda Design
A203 Roof & Site Ingress/Egress Revision E	12 September 2022	Walter Barda Design
A204 Pool Revision E	12 September 2022	Walter Barda Design
A310 Long Elevations Revision E	12 September 2022	Walter Barda Design
A311 Short Elevations Revision E	12 September 2022	Walter Barda Design
A320 Sections Revision E	12 September 2022	Walter Barda Design
A321 Sections Revision E	12 September 2022	Walter Barda Design
A322 Sections Revision E	12 September 2022	Walter Barda Design

Engineering Plans		
Drawing No.	Dated	Prepared By
SWDA 1.1 Stormwater Drainage Services Drawing List, Locality Plan & Drawing Legend	5 April 2022	Partridge Hydraulic Services
SWDA 1.2 Stormwater Drainage Services Stormwater Management Plan & General Notes	5 April 2022	Partridge Hydraulic Services
SWDA 1.3 Stormwater Drainage Services Erosion & Sediment Control Plan & Details	5 April 2022	Partridge Hydraulic Services
SWDA 1.5 Stormwater Drainage Services Lower Level Layout	5 April 2022	Partridge Hydraulic Services
SWDA 1.6 Stormwater Drainage Services Upper Level Layout	5 April 2022	Partridge Hydraulic Services

SWDA 1.7 Stormwater Drainage Services Roof Layout and Detail	5 April 2022	Partridge Hydraulic Services
SWDA 1.8 Stormwater Drainage Services Details Sheet	5 April 2022	Partridge Hydraulic Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
NatHERS Certificate No. 7013147	3 February 2022	Walter Barda Design
BASIX Certificate No. 1276941S	3 February 2022	Efficient Living
Estuarine Risk Management Report	12 April 2022	Bluecoast Consulting Engineers
Geotechnical Assessment	29 April 2022	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
A111 Landscape Plan Revision B	12 September 2022	Walter Barda Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	20 April 2022	Robert Furey

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	27 June 2022

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- i. 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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

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

5. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$50,350.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as

amended).

The monetary contribution is based on a development cost of \$5,035,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

7. **Security Bond**

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

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

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

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

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

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

8. **Tree Protection Plan**

A Tree Protection Plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect all trees within 5 metres of development works located within adjoining residential lots and within Crescent Road Reserve, such as demolition, excavation or construction works, and scaffolding works.

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

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes throughout the site for construction activity,
- iv) plan documentation of tree protection measures including: location of tree protection fencing /

barriers, and/or; root protection in the form of mulching or boards proposed within the tree protection zone, as required; and trunk and branch protection within the tree protection zone, as required,

- v) location of stockpile areas and materials storage,
- vi) inspection hold points,
- vii) other general tree protection measures.

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

Reason: Tree protection.

9. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "Water Management for Development Policy" in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Water Management for Development Policy" are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 29 April 2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Amendments to the Approved Plans**

The following protrusions into the foreshore building line are to be deleted from the plans:

- The garden beds to the north of the pool and coping;
- The northern portion of the rear ground level terrace that extends beyond the foreshore building line;
- The planter boxes to the northern elevation of the first floor level; and
- The northern portion of the roof eave that extends beyond the foreshore building line.

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

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

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

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

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

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Works on Land Owned or Managed By Council**

No encroachments are to be carried out on Land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

16. **Protection of Trees Within Land Owned or Managed by Council**

All existing trees and vegetation within Land owned or managed by Council shall be protected in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: Tree protection and management.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Tree Protection Plan. The Project Arborist shall be in attendance and supervise all works as nominated in the Tree Protection Plan. Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

19. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties, including Crescent Road Reserve,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Principal Certifier must ensure that:

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

20. **Road Reserve**

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

Reason: Public safety.

21. **Wildlife Protection**

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

Reason: To protect native wildlife.

22. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

23. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

24. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, vegetation, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: To protect and/or restore any damaged public asset.

25. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

26. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

27. **Stockpiling Materials**

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed

as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

28. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

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

29. **Landscape Completion**

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

- i) all tree planting shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

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

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained as listed in the Arboricultural Impact Assessment, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,

- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

31. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

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

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

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

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

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

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

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

35. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

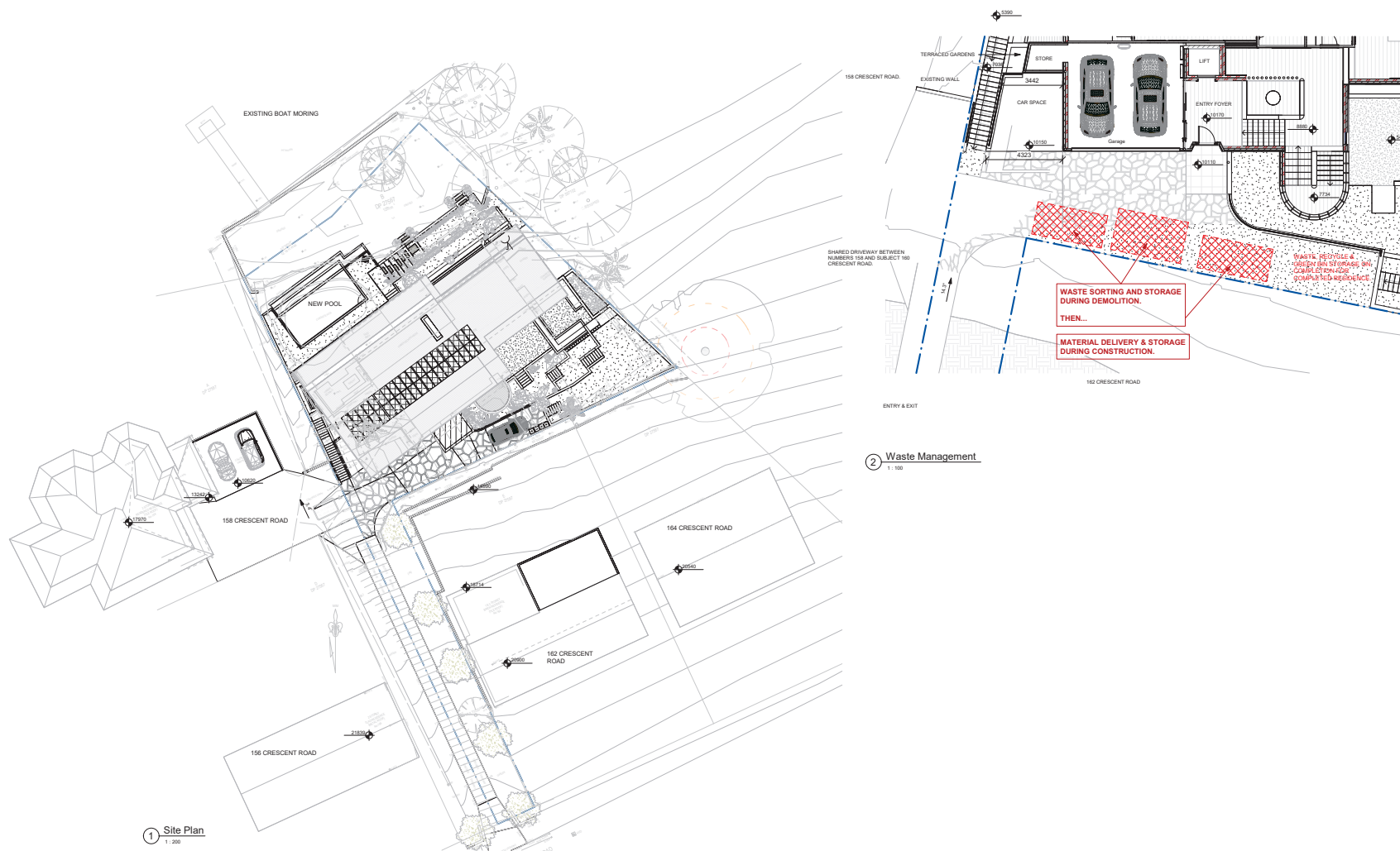
The approved landscape areas as shown on the Landscape Plan/Site Plans/Landscape Control calculations plan shall remain as planting.

Reason: To maintain local environmental amenity.

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

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

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



Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2/24 15-15 Wentworth Avenue, Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9284 4240

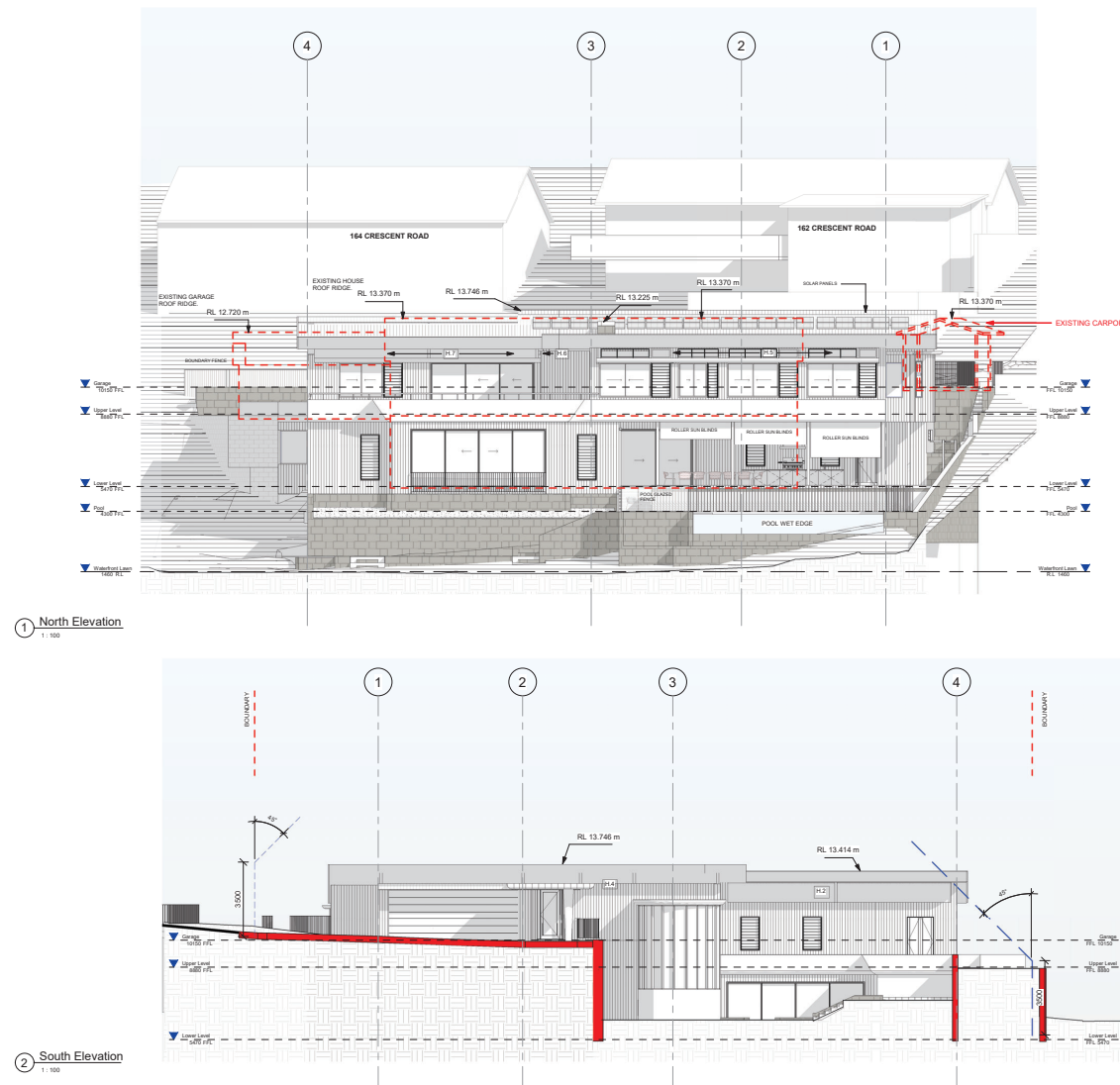


No.	Description	Date
A	Consultant Issue	25.11.21
B	Consultant Update	21.12.21
C	Development Application Issue	08.04.22
D	Development Application - Amended Set	07.05.22
E	DA - Amended Set - Revised Master Set	12.05.22

WAINBERG RESIDENCE
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purposes for which it was commissioned and in accordance with the terms of engagement for the commission.

Project Number	2021_27
Project Status	DEVELOPMENT APPLICATION
Drawn By	RF
Checked By	WB
Approved By	WBD
Sheet	Site Plan

Print Date & Time	12/05/2022 4:04:04 PM
File Path	C:\Users\Walter\Documents\Projects\2021_27\Wainberg Residence\Drawings\Site Plan.dwg
Scale	Scale @ A1 As indicated
Drawing Number	A101
Issue	E



Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2/24 13-15 Wentworth Avenue, Sydney NSW 2000
www.walterbardadesign.com.au ABN: 48 072 136 513
Office: 02 9284 4240



No.	Description	Date
A	Consultant Usage	25.11.21
B	Consultant Update	21.12.21
C	Development Application Issue	08.04.22
D	Development Application - Amended Set	07.09.22
E	DA - Amended Set - Revised Master Set	12.09.22

WAINBERG RESIDENCE

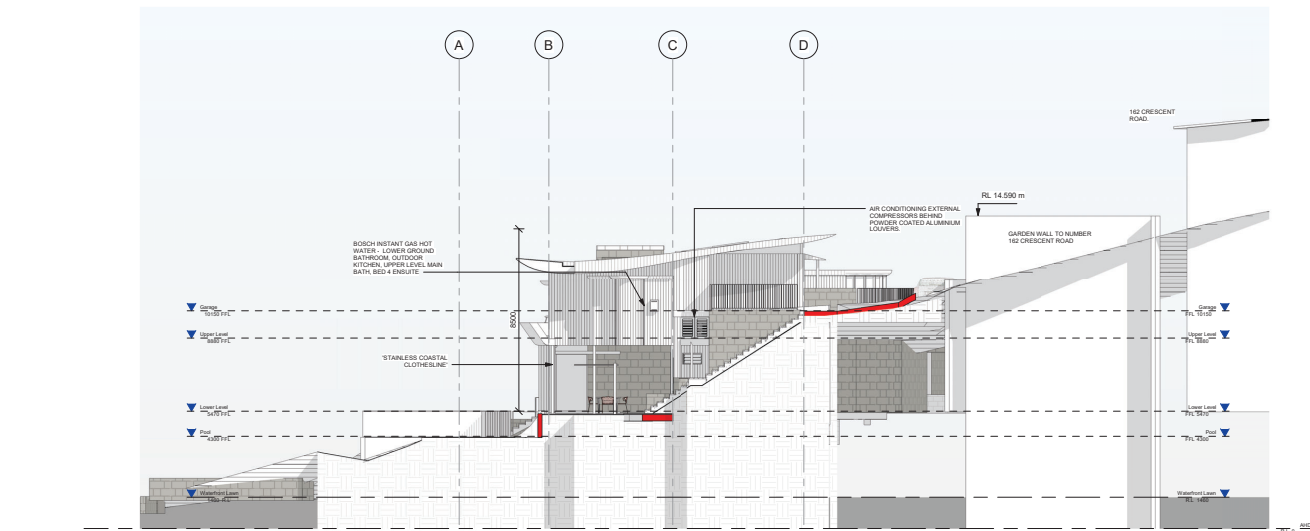
This Drawing must not be used for Construction unless signed as Approved

© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.

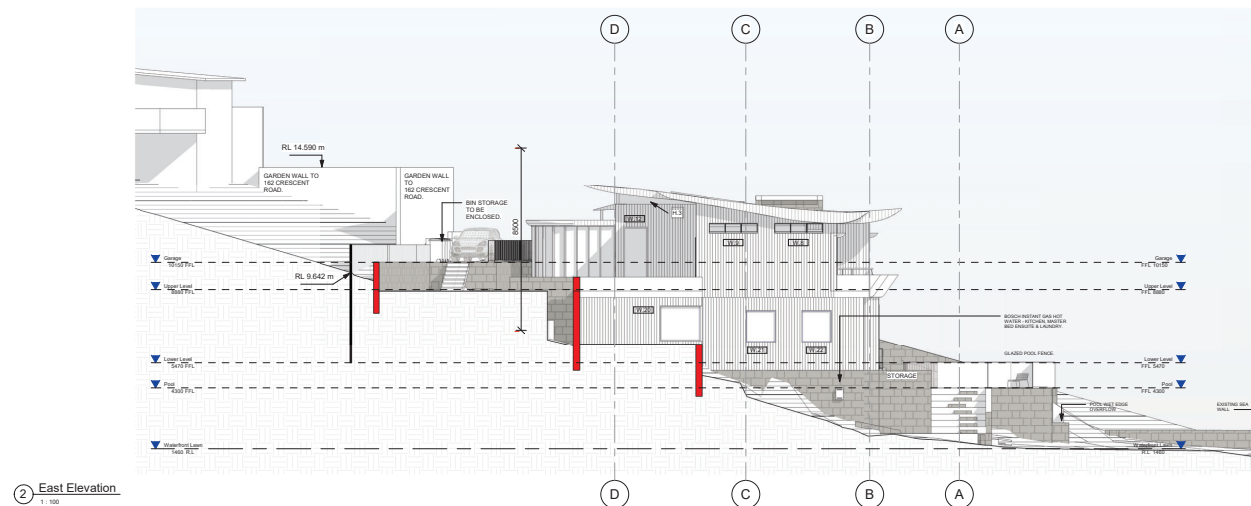
Walter Barda Design Conditions of Use: This Document may only be used for the purposes for which it has commissioned and in accordance with the terms of engagement for the commission.

Project Number	2021_27
Project Status	DEVELOPMENT APPLICATION
Drawn By	WB
Checked By	WB
Approved By	WBD
Scale	Long Elevations

Print Date & Time	12/09/2022 4:40:43 PM
File Path	C:\Users\Walter\Documents\Projects\2021_27\Wainberg Residence\Drawings\A310 Long Elevations.dwg
Scale	A1 1:100
Drawing Number	A310
Issue	E



① West Elevation
1:100



② East Elevation
1:100

Walter Barda Design
architecture
landscape
interiors
Nominated Architect: Adrian Ball 7745
2/24 15-15 Wentworth Avenue, Sydney NSW 2000
www.walterbardadesign.com.au ABN: 48 072 136 513
CRICOS: 02 9284 4240



No.	Description	Date
A	Consultant Issue	25.11.21
B	Consultant Update	21.01.22
C	Development Application Issue	08.04.22
D	Development Application - Amended Set	07.09.22
E	DA - Amended Set - Revised Master Set	12.09.22

WAINBERG RESIDENCE
This Drawing must not be used for Construction unless signed as Approved
© Copyright - This document is and shall remain the property of Walter Barda Design Pty Ltd.
Walter Barda Design Conditions of Use: This Document may only be used for the purposes for which it was commissioned and in accordance with the terms of engagement for the commission.

Project Number	2021_27
Project Status	DEVELOPMENT APPLICATION
Short Elevations	

Print Date & Time	12/09/2022 4:50:03 PM
File Path	C:\Users\Walter\Documents\Projects\2021_27\2021_27_Short Elevations.dwg
Drawn By	RF
Checked By	WB
Approved By	WBD
Scale @ A1	1:100
Drawing Number	A311
Issue	E

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

Attachment 1 – Clause 4.6 Application to Vary the height control – PLEP 2014

Colco Consulting Pty Ltd

Planning and Development Consultants
ABN: 33 106 423 303
29a Amiens Road Clontarf NSW 2093
Ph/Fx: 61-2-9949 6304 Mb: 0404 805 671
email: wayne.collins3@bigpond.com

2 May 2022

To Northern Beaches Council

Clause 4.6 Application to Vary Pittwater LEP Development Control for breach of the 8.5m maximum height control – Property 160 Crescent Road Newport being Lot B in DP 27567 – a battle-axe allotment of 1281m². Proposed construction of a new two (2) storeys dwelling including - parking, swimming pool, boat shed, recreation yoga terrace, and landscaping.

1.0. Introduction and Summary

1.1. Authority - the authority to contravene a development standard is contained in clause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP). This clause 4.6 application is submitted to support the development application and Vary Development Standards as stated – Exceptions to Development Standards for non-compliance with the numerical control for maximum height - PLEP Clause 4.3.

1.2. Objectives of Clause 4.6. The objectives and purpose of clause 4.6 are:

- Provide an appropriate degree of flexibility in applying LEP numerical development standards on a merit basis provided the consent authority is satisfied there are good reasons to substantiate a variation and that the application appropriately justifies the varying of the control/s.
- Achieve better outcomes from development by allowing flexibility in particular circumstances.

The clause requires a written submission to justify the contravention of the development standard by demonstrating that compliance with the standard is unreasonable or unnecessary; and there are sufficient environmental planning grounds to justify contravening the development standard.

1.3. The subject site is - Zoned C4 Environmental Living.

Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

1.4. Proposal

The existing dwelling, pool and terraces are to be demolished and replaced with a new two-storey split level dwelling, with vehicle parking, swimming pool and terrace, boatshed, and recreation yoga terrace. The development is partly excavated into the slope of the land to ensure the dwelling sits well below the 8.5metre height plane – with small exceptions. Breaches in the numerical height control is the purpose of this application to vary the control and allow the relatively minor breaches.

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.



Above – Fig. 4.6-01 Existing from waterway



Above – Fig. 4.6-02 – Proposed – architect's perspectives

1.5. Breach of numerical Height control.

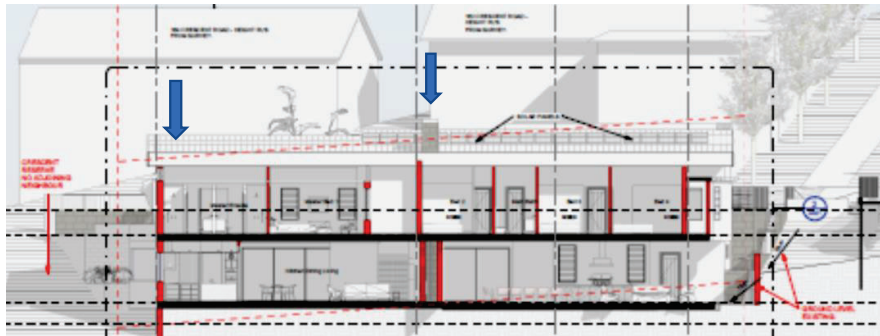
1.5.1. This application seeks to vary the clause 4.3 numerical control for maximum 8.5 metre height of the Pittwater Local Environmental Plan of non-compliance of proposed height as outlined in the DA drawings, accompanying Statement of Environmental Effects and clause 1.5.2 below. The proposal is mostly below the 8.5m height control throughout, other than minor elements of the roof and chimney as demonstrated in the following height plane drawings 4.6-03 and 4.6-04.

1.5.2. Height Summary.

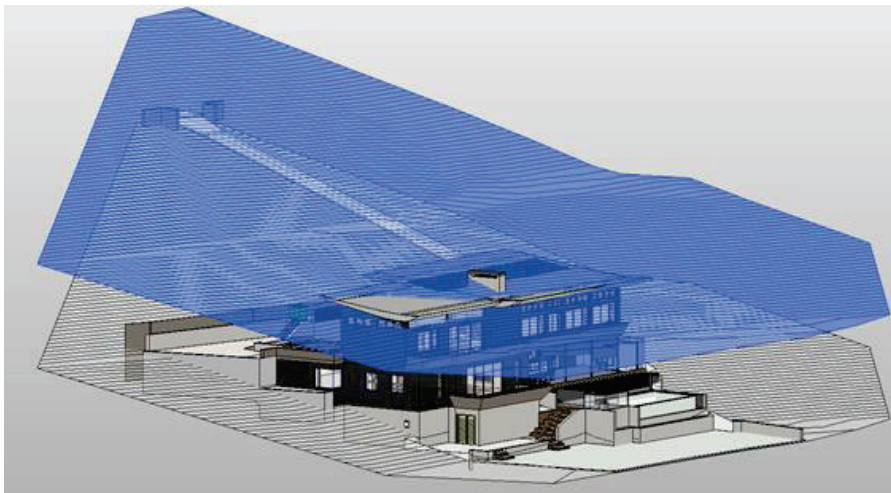
Building Height – Ground levels (existing) and PLEP control and proposed heights. The site falls steeply from Crescent Road, levels out at the foot of the battle-axe handle and then slopes steeply towards the water where it levels out again at the rear and the licensed reclaimed land. The Pittwater Local Environmental Plan PLEP clause 4.3 and the related height map permits a height of 8.5metres above ground level existing.

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

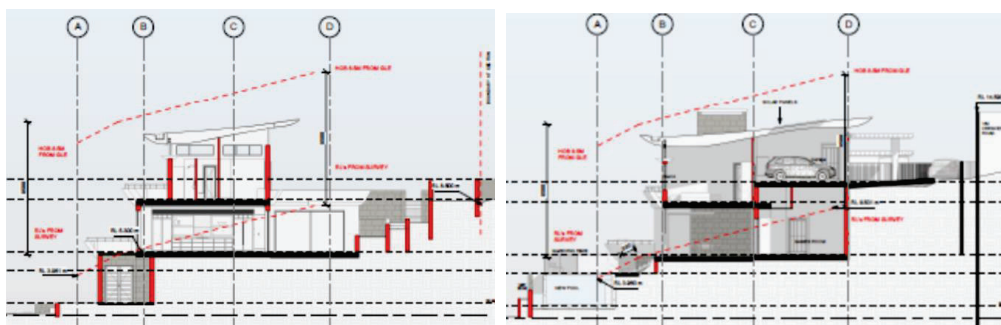
The roof design is complex and is an essential component of the architectural style. The development generally sits well below the 8.5 metre height control as indicated on the architect's drawings except for a part of the eastern roof and the chimney as indicated below – Fig. 4.6-03 and 04. Section drawings 4.6-05 and 06 show the generous compliance in other locations.



Above – Fig. 4.6-03- Blue arrow indicates the location of the height breach



Above – Fig. 4.6-04- Grey protrusions indicate the height breach – Roof varies up to 1300 and chimney 1500mm



Above – Fig. 4.6-05 and 06 - Section drawings shows height compliance mostly throughout.

1.5.3. A comparison of existing and proposed heights –

- The existing dwelling roof height is established at RL11.84
- The proposed roof height varies up to RL14.56 with most of the roof being significantly below that height as related to ground levels existing.
- The proposed height is below the roof height of the adjoining dwelling which is RL17.98..

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

1.5.3. The height breaches are relatively minor, over small areas towards the east, and do not result in negative impacts. They contribute significantly to the dramatic architectural design of the dwelling and should be accepted.

1.5. Concurrence of the Director-General

NSW Department of Planning Circulars, advise 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. Given the consistency of the variation to the objectives of the zone, we consider the concurrence of the Director-General may be assumed in accordance with authority delegated to Council.

2.0. Site and locality.

2.1. Details are contained in our Statement of Environmental Effects submitted with the development application. The property is known as – 160 Crescent Road Newport being Lot B in DP 27567 – a battle-axe allotment of 1281m². The property is located on the north-western side of Crescent Road and is an irregular shaped steeply sloping battle-axe allotment with measurements and site slope as shown in the Table below.

Street Frontage – Axe-handle - 4.57m	Axe-handle length – 38.1m
Main site south-eastern boundary – 35.525m	North-western boundary (MHW) – 12.18 +14.385= 26.565m
Northern side boundary – 40.095m	Southern side boundary – 38.1m
Site area – 1281m ² by survey - includes access handle	
Slope of land – from the front boundary to mean high water mark is significant at approximately 18.49 metres and a slope of 26% (from RL20.75 to RL2.26) The main area of the site falls from RL9.57 to RL1.46 (8.11metres) along the north-eastern side boundary – 20.22%).	

2.2. The locality comprises an eclectic mix of medium to large two storey dwellings and multi-level homes some with overlaps on steep sites presenting as three storeys in part. There are a variety of architectural styles on reasonably large allotments. Properties along the low side of the road include waterfront facilities including boat jetties, moorings, boatsheds, swimming pools and facilities. The dwellings along the low side of the road adjoining the waterway enjoy waterfrontage to The Pittwater with those in the immediate locality geared to extensive water based recreation activities. Development along the immediate high side of Crescent road are generally located up the slope of the land.



Above – Fig. 3.0-2 – Google aerial photo

2.3. Foreshore Building Line (FBL) - means the line shown as the foreshore building line on the Foreshore Building Line Map. A Foreshore Building Line applies across the rear of the land as ascertained from Council maps and the NSW E Planning Spatial Viewer. This FB significantly impacts on the development of the site. Refer to Fig. 6.02 below and also Fig. 3.0-2:

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.



Above – Fig. 6.0-2 – Foreshore Building Line shown Red – site outlined in yellow

2.3. The site is located within the Northern Beaches Council area and subject to the Pittwater Local Environmental Plan 2014 with the applicable land use zone C4 Environmental Living. There are no threatened species on the site. Adjoining/Surrounding Development is characterised by sloping allotments and dwellings of a variety of sizes and styles, generally characterised as either elevated on the high sides of the roads or on the low sides. The land adjoining to the east is a public reserve.

2.4. The proposed development has been assessed in our Statement of Environmental Effects with the conclusion that the proposal complies with applicable statutory planning objectives and numerical height controls – except for what we consider minor breaches as outlined in this application. In our opinion, there are no negative amenity or environmental impacts resulting from the breach in height.

3.0. Exceptions to LEP development standards – NSW Land and Environment Court Judgements.

In preparing this clause 4.6 application we had regard to relevant L&E Court judgments including –

Winton Property Group Limited v North Sydney Council [2001] NSWLEC 46; and Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; and judgement Randwick City Council v Micaul Holdings Pty Ltd [2016]; and Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118; and Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 ('Al Maha'); and L&E Court judgement in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61; and the NSW Court of Appeal in RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

We are not lawyers, and our understanding of these judgments is they related to confusion and tension as to the matters that must be addressed and satisfied in a clause 4.6 application and the extent of satisfaction in the eyes of a consent authority. We understand that the legal principles were settled in the 2019 Court of Appeal judgement (RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.). We note the advice stated in an article published by Lindsay Taylor Lawyers on 5 August 2019 which appears to summarise the legal situation. We quote in part as follows (our Italics):

"On appeal, the applicant argued that Moore J had misconstrued and misapplied cl 4.6 by finding that to 'adequately address' the matters required to be demonstrated in cl 4.6(3), the request had to actually demonstrate those matters, rather than merely seek to demonstrate those matters. The Court rejected this argument. After setting out Preston CJ's conclusions in Baron Corp, the Court reaffirmed (at [51]):

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

... in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).

"In our view, the decisions in Baron Corp and RebelMH make clear that the position set out in Al Maha is now the settled law on cl. 4.6 requests. A request under cl. 4.6 will only adequately address cl. 4.6(3) if the consent authority is satisfied that the matters have in fact been demonstrated. This is, in our view, a different test and a higher standard than was required under the test in Initial Action."

4.0. PLEP 2014 Height Non-Compliance and Justification

4.1. PLEP Clause 4.3 – Maximum Height – 8.5 metres above ground levels existing. The proposal generally complies with the maximum height control over a considerable part of the development other than the breaches near the eastern portion of the roof and the chimney as outlined in detail in paragraphs 1.4 of this application.

4.2. The height plane has been measured in accordance with the definition of ground level existing and has been determined by surveyed levels (RLs) by a registered surveyor and cross checked by the project architects. Similarly, the RLs of the neighbouring buildings have been determined and related to the subject proposal.

4.3. Impact on Views - View sharing. The topography of the site and the locality varies due to the landform sloping from Crescent Road above towards the Pittwater waterway. Existing dwellings and development varies on the high side and low side of the road, and again along the waterfront. The proposed height breaches in our assessment do not interfere with views. The view analysis assessment in our Statement of Environmental Effects concludes –

- Compliance with the principles and the objectives of view sharing are achieved - maintenance of reasonable view sharing to owners and neighbouring dwellings with views and vistas from roads and public places to water, headland, beaches, and bush views maintained.
- The majority of existing views will be maintained, and the principles of view sharing achieved.

4.4. Proposed variation Summary - Table

LEP Requirement	8.5 metres
Proposed	1. . The southern and western parts of the proposal fully comply with the numerical height control with the breaches varying as the land drops down to the east. The breach for the roof varies from NIL up to 1300mm, and up to 1500mm for the chimney - over limited areas. 2. The proposed chimney breaches the height control varying up to 1500mm
Is the planning control in question a development standard?	Yes
Is the non-compliance relating to the clause requirement a Numerical and/or Performance based variation?	Numerical
Numerical variation as a % variation to the requirement	1. Roof sections at the eastern part varying by up to 1300mm = 15.29% over a small area. 2. The chimney varying by up to 1500mm = 17.64% over a small area.

4.5. Relevant Questions and Assessment

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 Pittwater Local Environmental Plan 2014. Relevant questions and response follow.

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

Q1. Is the planning control in question a development standard?

Yes - the prescribed Height of buildings limitation pursuant to Clause 4.3 of the PLEP 2014 is a development standard.

Q2. 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 PELP 2014 and response are shown in the Table below:

The objectives of clause 4.3 are:	Response
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</p> <p>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</p> <p>(c) to minimise any overshadowing of neighbouring properties,</p> <p>(d) to allow for the reasonable sharing of views,</p> <p>(e) to encourage buildings that are designed to respond sensitively to the natural topography,</p> <p>(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.</p> <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p>(2A) Despite subclause (2), development on land—</p> <p>(a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and</p> <p>(b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.</p> <p>(2B) Despite subclause (2), development on land—</p> <p>(a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and</p> <p>(b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map, may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.</p> <p>(2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.</p> <p>(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—</p> <p>(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and</p> <p>(b) the objectives of this clause are achieved, and</p> <p>(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and</p> <p>(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.</p>	<p>1. Compliance with the PLEP maximum height of 8.5 metres above ground levels existing complies throughout most of the proposal with breaches of the eastern part of the roof and chimney as shown on the elevation drawings and 3D drawing in Fig. 4.6-03 to 06 in paragraph 1.5.2 above. The breaches are over limited areas.</p> <p>2. The southern and western parts of the proposal fully comply with the numerical height control with the breaches varying as the land drops down to the east. The breach for the roof varies from NIL and up to 1300mm, and up to 1500mm for the chimney - over limited areas.</p> <p>3. The breaches occur due to the slope of the land both down and across the site (towards the east).</p> <p>4. There are no negative impacts on either public or private views and the proposal complies with the planning objectives for view sharing.</p> <p>5. Bulk and scale are consistent with the locality; it being noted that existing dwellings in the locality vary considerable in architectural style, size, bulk and scale.</p> <p>6. Conclusion: The complex roof design is a critical element to the architectural style and the proposal complies with the objectives. There are no neighbouring dwellings to the east and the height breaches have no negative impacts on neighbours or the adjoining public reserve.</p>

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

Q3. What are the underlying objectives of the zone?

Objectives and response are shown in the Table below:

The objectives of the zone C4 Environmental Living are:	Response
<p>Objectives of zone</p> <ul style="list-style-type: none"> To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. To ensure that residential development does not have an adverse effect on those values. To provide for residential development of a low density and scale integrated with the landform and landscape. To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors. 	<ol style="list-style-type: none"> The development is permissible and consistent with the aims and objectives of the Pittwater LEP 2014 and the Land Zone objectives and provides for the housing needs of the community in a low-density and low-impact environment. The bulk and scale of the building is low-impact and consistent with the planning objectives of the zone, the locality and neighbouring properties. The proposal provides a residential dwelling and character with building structures at a height, bulk and scale consistent with the sloping site and locality. The proposed height and bulk are reasonably similar to the existing dwelling and below adjoining dwelling heights. The dwelling will sit comfortably in a landscaped setting and is compatible with the existing visual character of the area. The southern and western parts of the proposal fully comply with the numerical height control with the breaches varying as the land drops down to the east. The breach for the roof varies from NIL and up to 1300mm, and up to 1500mm for the chimney - over limited areas. The proposal makes excellent use of this battle-axe site with the carparking area readily accessible and designed to provide 3 phase electricity charging station for the owner's electric vehicles. <p>7. Conclusion: The proposal minimises any adverse effects of bulk and scale on the land and in the locality. The relatively minor height breaches are at the eastern part of the dwelling, do not interfere with views or amenity and would not be apparent to an observer.</p>

Q4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of PLEP 2014?

Objectives and response are shown in the Table below:

The objectives of clause 4.6 are:	Response
<ol style="list-style-type: none"> The Objectives are: <ul style="list-style-type: none"> 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. Consent for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. 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: <ul style="list-style-type: none"> a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and 	<ol style="list-style-type: none"> The proposal with its exciting and dramatic roof design is worthy of an appropriate degree of flexibility in applying the numerical height control for the reasons stated in this application. The bulk and scale of the building is low-impact and consistent with the planning objectives of the zone, the locality and neighbouring properties. The proposal provides a residential dwelling and character with building structures at a height, bulk and scale consistent with the sloping site and locality. The proposed height and bulk are reasonably similar to the existing dwelling and below adjoining dwelling heights. The dwelling with its dramatic roof design will sit comfortably in a landscaped setting and is compatible with the existing visual character of the area. The southern and western parts of the proposal fully comply with the numerical height control with the breaches varying as the land drops down to the east. The breach for the architecturally significant roof varies from NIL and up to 1300mm, and up to 1500mm for the chimney - over limited areas at the eastern part of the dwelling The proposal makes excellent use of this battle-axe site with the carparking area readily accessible and designed to provide 3 phase electricity charging station for the owner's electric vehicles.

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

<p><i>b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p>7. Conclusion:</p> <p><i>- The proposal minimises any adverse effects of bulk and scale on the land and in the locality. The relatively minor height breaches are at the eastern part of the dwelling, do not interfere with views or amenity and would not be apparent to an observer. The proposal is worthy of an appropriate degree of flexibility in applying the numerical height control.</i></p> <p><i>- Flexibility is appropriate and should be applied in this circumstance to achieve excellence in architectural design and amenity for the residents while resulting in no negative impacts on neighbours and locality</i></p> <p><i>- The application has adequately addressed the matters required to be demonstrated by subclause (3). In this circumstance strict compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the standard.</i></p>
---	--

Q5. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Response:

1. The proposal is specifically designed to respond to this sloping site with dramatic architecture. The breach in height is in the eastern area of the dwelling due to the slope of the land across the site to the east. The southern and western sections of the proposal are fully compliant with the numerical height control. The eastern breaches do not cause loss of views or amenity. The architecture is an excellent response utilising the slope to advantage.
2. Strict compliance with the height control would serve no useful purpose and require the dramatic roof design to be modified unnecessarily to the detriment to the architecture resulting in an outcome of a lesser architectural standard.
3. The proposal does not result in environmental or amenity negatives.

Conclusion: A requirement to strictly comply with the numerical controls is unnecessary and would result in negative architectural impacts with no apparent benefits being achieved. The variations sought result in no loss of views or negative environmental impacts, and achieves a better outcome. The proposal is worthy of consent.

Q6 .Does the noncompliance with the development standard raise any matter of significance for State or Regional Environmental Planning?

Conclusion: The non-compliances do not raise any matter of significance.

5.0. Conclusion

1. This application submits that the variations for the minor breach of height are justified in the circumstances and should be accepted. The complex roof design is architecturally significant and an important element to the architectural integrity of this new dwelling and location. The breaches of the PLEP height for sections of the roof and chimney are reasonable, appropriate, and justified in achieving the planning objectives and architectural outcome. The breaches achieve a desirable outcome.
2. The variation is minimal over small areas and the breaching portions of the roof form are important architectural element to the proposed new dwelling and will not result in any negative environmental or amenity outcomes. Strict compliance is unnecessary in the circumstances of the case as:
 - The proposal is consistent with the objectives of the building height standard, the zoning of the land when assessed against each individually, and as a whole.

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

- The proposal is in the public interest for the reason that it achieves the relevant planning objectives, and has no negative environmental impacts.
- The clause 4.6 application adequately address cl. 4.6(3) and the consent authority should be satisfied that the matters have in fact been demonstrated.

3. It is necessary for the consent authority to determine that the written application request has “adequately addressed” the matters required to be demonstrated by cl 4.6(3). It is a matter for the consent authority to form such opinion that this Clause 4.6 application justifies acceptance of the noncompliance. We respectfully suggest the consent authority should have no difficulty in being satisfied that this application demonstrates:

- Compliance with the PLEP Objectives and Maximum Height objectives.
- The development standard is unnecessary and unreasonable in this circumstance, and results in a desirable architectural outcome.
- There are sufficient environmental planning grounds to justify contravening the standards, and
- The development is in the public interest because it complies with the Zone objectives, and the height objectives and there would be no public benefit derived from maintaining the numerical development standard.

Yours faithfully,

Yours faithfully,



Wayne Collins
Director

Qualification/Disclaimer

This report, Statement of Environmental Effects (SEE), is based on information provided by the instructing party and relates only to the information provided at the date of issue of this report and planning legislation applicable at that date. Colco has made what it considers reasonable enquiries in preparing this report; however, it cannot confirm the accuracy of architectural drawings or supporting consultant's specialist reports. Colco accepts these documents in good faith. The Statement of Environmental Effects is for the benefit of the client in regard to a development application for development on the subject site and not for any other purpose. Colco cannot forecast an outcome of a consent authority.

Colco, officers, and staff were required to make judgements on matters which are or may be incapable of precise assessment – being subjective in which others may reach a different conclusion. The statements, opinion and conclusions expressed in this report are made in good faith, reasonable belief they are correct and not misleading; and always subject to the limitation of accuracy of instructions and documents provided. Colco disclaims all liability to the extent permitted by law.

Statement of Environmental Effects and Clause 4.6 Application – Wainberg Residence-160 Crescent Road Newport.

5.0 Non Public Meeting Items

ITEM 5.1	DA2022/1526 - 27 THE CORSO, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING PUB.
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2022/692128
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Clause 6.16 Gross Floor Area in Zone B2 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1526 for Alterations and additions to an existing pub on land at Lot 2 DP 877793, 25 The Corso, Manly, Lot CP SP 12989, 19 - 23 The Corso, Manly, Lot 1 DP 877793, 27 The Corso, Manly, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1526
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 DP 877793, 25 The Corso MANLY NSW 2095 Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095 Lot 1 DP 877793, 27 The Corso MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing pub
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Iris Ivanhoe Property Pty Ltd
Applicant:	Iris Capital
Application Lodged:	21/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	06/10/2022 to 20/10/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Yes
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,808,853.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing pub, known as the Ivanhoe Hotel, which is located on the Corso, Manly.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the works to the Hotel result in a variation of more than 10% to the development standard contained within Clause 6.16 Gross Floor Area in Zone B2 of the MLEP 2013. Specifically, subclause 4 of Clause 6.16 of the MLEP limits the gross floor area of a retail premises to no more than 1000m², with the existing Hotel already exceeding this threshold and being a type of retail premises by definition. The alterations associated with the Hotel, reduce the amount from retail gross floor area from 1580m² to 1540m². However, due to the reconfiguration of the retail floor area, result in a technical breach of the development standard.

Concerns raised within in the objections predominantly related to consideration of the Manly Place Plan and an inaccuracy within the submitted Waste Management Plan.

Critical assessment issues included the variation to the development standard contained within Clause 6.16 Gross Floor Area in Zone B2 of the MLEP 2013, and non-compliance with the signage controls of the MDCP 2013. These elements are acceptable on merit. The proposal does not seek to alter approved patron numbers or hours of operation.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the Ivanhoe Hotel as follows:

- Ground floor and first floor reconfiguration including removal of the ground floor kitchen;
- Removal of the bottle shop from within No. 25 The Corso and replacement in No. 23 The Corso.
- Inclusion of Sports Bar at 25 and 27 The Corso;
- Reconfiguration of voids;
- Some minor structural modifications;
- Signage to the Corso and Market Place frontages;
- Change of use of Level 1 from storage to ancillary office;
- Amendments to building access and services, including stairs and floor finishes; and
- Minor modifications to access, services, flooring and structure;
- Replacement of the Corso and Market Place facades, including new windows.

The proposal does not seek to alter approved patron numbers or hours of operation.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

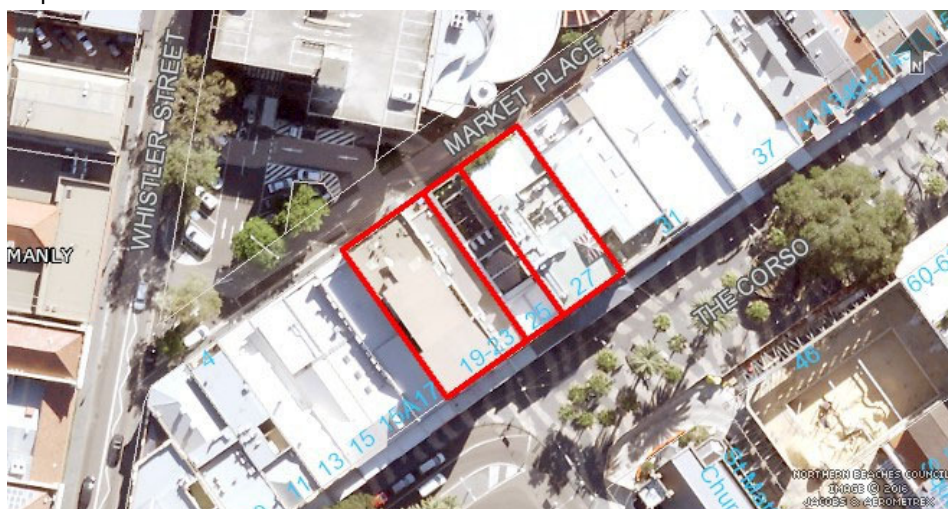
Manly Local Environmental Plan 2013 - 5.21 Flood planning

Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 877793, 25 The Corso MANLY NSW 2095 Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095 Lot 1 DP 877793, 27 The Corso MANLY NSW 2095</p>
Detailed Site Description:	<p>The subject site consists of three allotments located on the north-western side of The Corso, Manly, comprising Nos. 19-23, 25 and 27.</p> <p>The site is regular in shape with frontages of 36.885 metres along The Corso and 36.69 metres along Market Place, and a depth of 31.215 metres. The site has a surveyed area of 1,143.7m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a two- to four-storey pub known as the Ivanhoe Hotel.</p> <p>The site is level and contains no vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed use and commercial premises.</p>

Map:



SITE HISTORY

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

- DA196/2008 for alterations and additions to the Ivanhoe Hotel was refused by Council on 9 October 2008. A subsequent appeal via the NSW Land and Environment Court was upheld on 17 December 2008.
- DA196/2008 Part 2 for modification of Development Consent DA196/2008 was approved by Council on 7 July 2009.
- Pre-lodgement meeting PLM2018/0134 was held on 26 June 2018 to discuss alterations and additions to existing building.
- DA2019/0211 for alterations and additions to a hotel, including new signage was approved by Council on 11 June 2019.
- DA2019/0574 for change of use to a pub, alterations and additions to the premises, fit out and signage was approved by Council on 3 October 2019.
- Mod2019/0558 for modification of Development Consent DA2019/0574 was approved by Council on 20 December 2019.
- DA2019/0512 for alterations and additions to an existing shop top housing development was refused by the Northern Beaches Local Planning Panel on 1 April 2020.
- DA2020/1711 for alterations and additions to an existing shop top housing development was approved by the Northern Beaches Local Planning Panel on 7 April 2021.
- DA2021/0019 for termination of the existing strata plans and subdivision of one lot into two was approved by the Northern Beaches Local Planning Panel on 19 May 2021.
- Pre-lodgement meeting PLM2021/0112 was held on 3 June 2021 to discuss alterations and additions shop top housing development
- Pre-lodgement meeting PLM2021/0234 was held on 22 October 2021 to discuss alterations and additions and change of use of an existing commercial/retail building
- DA2022/0643 for alterations and additions to the existing building to allow for shop top housing and a pub is currently under assessment.
- Mod2022/0103 for modification of Development Consent DA2008/196 was withdrawn by the Applicant on 12 August 2022.
- Mod2022/0104 modification of Development Consent DA2019/0574 was withdrawn by the Applicant on 12 August 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions	None applicable.

of any planning agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the variation to the development standard that limits gross floor area of retail premises in the B2 Local Centre zone. The required information was provided on 24 October 2022.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/10/2022 to 20/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Catherine Gai Griffin	67 Stuart Street MANLY NSW 2095
Mr Paul Robert Jules Gilet	12 / 38 - 42 The Corso MANLY NSW 2095

The following issues were raised in the submissions:

- Assessment of the application should consider the Manly Place Plan.
- The Waste Management Plan refers to North Sydney Council and does not detail management of bins outside the building in Market Place, which currently impacts on amenity and pedestrian movements.
- The use of the pub results in unreasonable noise impacts to nearby residential premises.

The above issues are addressed as follows:

Manly Place Plan

Comment:

The Manly Place Plan is currently being developed by Council and has not yet been drafted or placed on public exhibited. As such, it is not a matter for consideration under this assessment.

Waste Management Plan

Comment:

A condition of consent requiring amendment of the Waste Management Plan to refer to Northern Beaches Council has been included in the recommendation. The recommended condition has also specified that waste bins are to remain in the garbage room until such time as waste collection is scheduled and are to be replaced into the garbage room immediately after collection. The Waste Management Plan is otherwise sufficient in addressing the requirements for the proposed development, being for alterations and additions only, rather than an intensification of the pub use. Concerns of nuisance created by bins can be reported to Council for investigation.

Noise Impacts

Comment:

The proposed development does not result in intensification of the Ivanhoe Hotel use, rather its rationalisation of use as such, it is not anticipated to result in additional noise impacts. The proposed development has been reviewed by Council's Environmental Health Officer (including in relation to noise generation), who is supportive of the works, subject to recommended conditions of consent. Concern about specific events of unreasonable noise because of the Ivanhoe Hotel operation can be reported to NSW Police or Council for investigation, as are unrelated to this development application, rather the operation of the existing, lawful Hotel.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to recommended conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Supported, subject to recommended conditions</p> <p>Noise related comments: The acoustic assessment by Renzo Tonin & Associates 29 August 2022 advises (partial extracts):</p> <p>1. Current trading restrictions are;</p> <ul style="list-style-type: none"> - Trading hours are as follows: The premises may trade 24 hours per day Monday to Saturday and 5am on midnight on Sundays. Subject to the following: <ul style="list-style-type: none"> i The first floor bar and outdoor areas shall be closed to patrons between 3am and 7am Tuesday to Sunday and between midnight Sunday and 7am the following day, other than for the purposes of egress by patrons to and from the upper levels, and i Entry to the Hotel through the TAB must not be permitted from the Corso between 11pm and 9am the following day. - The bottleshop may trade between 9am and midnight, daily - The Coffee Shop may trade between 7am and 2.30am the following day, 7 days a week, but from 1am daily, only patrons of the Hotel are permitted to access these facilities. - From 1am daily the Pizza Shop shall serve only patrons of the Hotel and no takeaway service is permitted. <p>2. Treatments required: The acoustic treatments necessary to ensure that compliant noise</p>

	<p>emissions from the operation of the new Sports Bar and Gaming Area are as follows:</p> <ul style="list-style-type: none"> - Acoustic lining (minimum NRC 0.8) to be installed to underside of 70% of ceiling area in new Indoor Gaming and Sports Bar areas. - New glazed elements to the Sports Bar façade to be minimum 6.38mm laminated (Rw 33). Any operable element to have acoustic seals (q-lon or equal). - Gaming area to have background music only (70dB(A)L10 noise limit) when measured at the Market Place external louvres. Noise levels on gaming machines are to be set such that the 70dB(A)L10 noise limit is not exceeded. Gaming machines not to have coin drop trays. - Sports bar can have moderate music noise levels (77dB(A)L10 noise limit). Base/low frequency contribution to music to be limited as per table below. - Allowable music noise spectrums: <p>Table 12: Music Noise Limits Noise Source Permissible Music Noise Level Within Bar(table not reproduced here)</p> <ul style="list-style-type: none"> - The inside face of the chimney/ventilation voids are to be lined with noise absorptive material (other than where they are louvred for ventilation purposes). Lining to consist of 50mm Echosoftware similar material suitable for outdoor use with NRC no less than 0.8. - Any new mechanical plant that is installed as part of the refurbishment works is to be acoustically treated such that compliance with the noise emission goals in section 4.1 are achieved. Detailed review should be conducted at CC stage once plant selections are finalised. - No queuing in external areas after midnight. - Bar should trade with windows and doors closed on the Corso façade after midnight. - Garbage/bottles should not be taken outside for disposal after 10pm. - Signage to be installed reminding patrons to be quiet when entering or leaving the premises. <p>Essentially the issues for EH are noise related:</p> <ul style="list-style-type: none"> - No impact on original operating conditions/hours. - Review of plant at CC stage - Compliance with all recommendations at OC stage - Any ongoing conditions required. <ul style="list-style-type: none"> - Therefore Environmental Health supports the proposal subject to conditions.
--	--

Environmental Health (Food Premises, Skin Pen.)	Supported, subject to recommended conditions Environmental Health supports the proposal subject to conditions					
NECC (Stormwater and Floodplain Engineering – Flood risk)	Supported without conditions The proposed DA generally complies with the flood controls in the LEP and DCP. The works involve internal alterations and alterations to The Corso and Market Lane elevations. The lower level switch and bin room at No 23 adjacent to Market Lane are proposed to be raised 700mm above existing footpath. The finished floor level will be 6.08m AHD. The site is not flood effected in the 1% AEP however in the PMF can have depths up to 300mm.					
Strategic and Place Planning (Heritage Officer)	Supported, subject to recommended conditions <table><tr><td>HERITAGE COMMENTS</td></tr><tr><td>Discussion of reason for referral</td></tr><tr><td><p>The proposal has been referred to Heritage as the site is part of a group listed heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso. The site is also located within the C2 - Town Centre Conservation Area and in the vicinity of a number of heritage items:</p><p>Item I113 - St Matthews Church and church hall - 44 The Corso (corner The Corso and Darley Road)</p><p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p></td></tr><tr><td>Details of heritage items affected</td></tr><tr><td><p>Item I106 - Group of commercial buildings</p><p><u>Statement of significance:</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p><p><u>Physical description:</u> The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the site is part of a group listed heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso. The site is also located within the C2 - Town Centre Conservation Area and in the vicinity of a number of heritage items:</p> <p>Item I113 - St Matthews Church and church hall - 44 The Corso (corner The Corso and Darley Road)</p> <p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p>	Details of heritage items affected	<p>Item I106 - Group of commercial buildings</p> <p><u>Statement of significance:</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description:</u> The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.</p>
HERITAGE COMMENTS						
Discussion of reason for referral						
<p>The proposal has been referred to Heritage as the site is part of a group listed heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso. The site is also located within the C2 - Town Centre Conservation Area and in the vicinity of a number of heritage items:</p> <p>Item I113 - St Matthews Church and church hall - 44 The Corso (corner The Corso and Darley Road)</p> <p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p>						
Details of heritage items affected						
<p>Item I106 - Group of commercial buildings</p> <p><u>Statement of significance:</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description:</u> The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.</p>						

Item C2 - Town Centre Heritage Conservation Area

Statement of significance:

The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.

Item I113 - St Matthews Church and church hall

Statement of Significance:

The church is a well consistently detailed but sombre example of Interwar Gothic style. The interior detailing and fittings are of a high quality of design, exhibiting a contrasting lightness to the exterior. As this building is seen in the round, the spatial effect on the north eastern side is of significance and it makes an important landmark and identifies the junction of the Corso with Darley Road. It makes a major contribution to the Corso.

Physical Description:

The building is Inter-War Gothic style with set back buttresses. The walls are dark purple/brown face brick on coursed rubble sandstone base. Window sills, heads and tracery, door architraves, copings and parapets are in ashlar sandstone. The main windows are in figurative stained glass by John Radecki set in mullions of sandstone in bas tracery style. The smaller windows are in patterned coloured glass. The roofs are slate with copper rainwater heads and downpipes. The front garden beds, flanking the sandstone entrance steps, are bordered with brick. These are thought to date from the 1864 church.

Item I104 - Street trees

Statement of significance:

Part of earliest planting on The Corso c.1850's by H.G. Smith. Historic and aesthetic importance to the streetscape.

Physical description:

Centre planting of Ficus Macrophylla (Moreton Bay Fig) Remnant Palm planting (Phoenix Canariensis) of 1928.

Other relevant heritage listings

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	

NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A	
Consideration of Application		
<p>This application seeks consent for alterations and refurbishment works to the existing buildings at 23 - 27 The Corso to make changes to the approved DA 2019/0574 and DA 2008/196 to improve the internal layout along with some changes to the approved elevations to both The Corso and Market Lane. The proposal includes; the demolition of the existing improvements within 23, 25 and 27 The Corso, relocation of the bottle shop, reconfiguration to the internal layout, removal of the approved voids contained within No. 23 The Corso and creation of new voids within No 25 The Corso, creation of new openings into the existing wall between No 23 and 25 The Corso, structural alterations and additional signage to both The Corso and Market Place facades. Alterations to the approved front façade, facing The Corso, across No. 23, includes two additional glazed openings and replacement of the existing ground floor windows with Annetta windows at No. 25 and 27 The Corso, which are proposed to have frosted film applied to the bottom glazing panel.</p> <p>Alterations to the approved rear facade, facing Market Place, includes a new large panel and entry door with metal louvres for the gaming room replacing a large portion of the approved rendered facade. New works in the laneways within the conservation area must improve and enhance the remaining historic fabric and character, whilst allowing for appropriate change and activation. Metal louvres are not considered compatible with the heritage values of the conservation area, therefore, the metal louvers must be replaced with a compatible material.</p> <p>It is noted that, there is an existing suspended identification sign on the front facade of No 25 The Corso and a new additional suspended sign has been proposed. Also, a new suspended sign has been proposed for No 27 The Corso to the front facade in addition to the existing two suspended identification signs. The proposed additional suspended signs are not consistent with the following controls of Manly DCP 2013:</p> <p><i>Clause 4.4.3.1 Controls for all Development Types</i> <i>Maximum number of Signs</i> <i>a) In relation to shopfronts, a maximum of 2 identification signs will be permitted per frontage (for example 1 fascia and 1 hamper sign)</i></p> <p><i>4.4.3.2 Signage on Heritage listed items and in Conservation Areas</i></p>		

	<p>4.4.3.3 Controls for Particular Development Types</p> <p>Therefore, the additional suspended signs must be deleted and the requirement of signage for the subject site must be limited to the replacement of the existing signs.</p> <p>Therefore, no objections are raised on heritage grounds, subject to two conditions.</p> <p>Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>
--	--

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to recommended conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Police - Licensing (Clubs, Hotels, Pubs)	<p>Supported without conditions</p> <p>The application was referred to NSW Police with reference to the licensed premises. As no comment was received within 14 days in accordance with the Memorandum of Understanding between Council and NSW Police dated 2 January 2020, it is assumed no objections are raised.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the SEPP and to assess the proposal against the assessment criteria of Schedule 5. The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

A condition of consent has been recommended to delete the proposed new signage on the Corso frontage. The remaining signage is assessed as follows:

Matters for Consideration	Comment	Complies
1. Character of the area		
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The subject site is zoned B2 Local Centre. The proposed development is permissible within this area. The subject site is located on the pedestrianised Corso and Market Lane, characterised by commercial premises, including shops, cafes and bars. As such, the signage associated with the proposed development is consistent and compatible with the existing and desired future character of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	No specific theme for outdoor advertising exists in the locality. However, the proposed signage is anticipated to be complementary to the colours and finishes of existing development in the street.	YES
2. Special areas		
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is not classified as, or within the vicinity of environmentally sensitive areas, or rural landscapes. The subject site forms part of heritage-listed Item 106 Group of Commercial	YES

	Buildings and is within the Town Centre Conservation Area. The proposed signage will not detract from the amenity or visual quality of nearby open space areas, waterways, or residential areas.	
3. Views and vistas		
Does the proposal obscure or compromise important views?	The proposed signage does not obscure or compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage does not project beyond the building area and therefore does not impact upon the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage does not unreasonably obscure any other advertisements.	YES
4. Streetscape, setting or landscape		
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is consistent with other existing comparable uses within the street, and within the zoning of the site, and is therefore appropriate in the streetscape and setting.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed development and associated signage have been designed in a clear and modern manner, and therefore create visual interest within the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage is located only at key points on the building (being adjacent to pedestrian entries) and therefore do not create visual clutter.	YES
Does the proposal screen unsightliness?	The proposed development does not give rise to unsightliness. The proposed signage is neat and limited to key points on the building.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage does not protrude beyond the building.	YES
Does the proposal require ongoing vegetation management?	The proposed signage does not require vegetation management.	YES
5. Site and building		
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is of compatible scale and proportion to the building and the existing buildings in the street.	YES
Does the proposal respect important features of the site or building, or both?	The proposed signage does not detract from important features of the site or building.	YES
Does the proposal show innovation and	The proposed signage is located	YES

imagination in its relationship to the site or building, or both?	logically to achieve an adequate level of exposure, while remaining visually compatible with the building and the streetscape.	
6. Associated devices and logos with advertisements and advertising structures		
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage will not require safety devices, platforms or lighting devices, as the signage is lit internally.	YES
7. Illumination		
Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	Illumination of the proposed signage will not result in unreasonable or unacceptable glare or affect safety.	YES
Can the intensity of the illumination be adjusted, if necessary?	Illumination of the proposed signage can be adjusted by technicians, as required.	YES
Is the illumination subject to a curfew?	The proposed signage will be illuminated for the hours of operation of the pub only.	YES
8. Safety		
Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage will not reduce the safety of any public road, pedestrian or cyclist.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage does not obscure any sightlines and will therefore not reduce pedestrian safety.	YES

Accordingly, the proposed signage is of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives. It should be noted that the proposed two under awning signs fronting the Corso are not deemed acceptable from a heritage perspective and have been recommended to be deleted from the plans.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10m	No. 19-23: 9.8m	-	Yes
		No. 25: 9.4m	-	Yes
		No. 27: 13.8m	NA	No - Existing
Floor Space Ratio	2.5:1 (2,859.25m ²) Plus 0.5:1 per Clause 4.4(2A) of MLEP 2013 Total: 3:1 (3,431.1m ²)	2,668.2m ² 2.33:1	-	Yes
Gross Floor Area in Zone B2	Min. 25% GFA as Commercial	1,832.7m ² (68.7%)	-	Yes
	Max. 1,000m ² per premises	No. 19-21: 287.7m ²	-	Yes
		Ivanhoe: 1,540.2m ²	54.02%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.16 Gross floor area in Zone B2	No

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 6.16 Gross Floor Area in Zone B2
-----------------------	---

Requirement:	Max. 1,000m ² per premises
Proposed:	Ivanhoe Hotel: 1,540.2m ²
Percentage variation to requirement:	54.02%

Assessment of request to vary a development standard:

The following assessment of the variation to the development standard contained within Clause 6.16 Gross Floor Area in Zone B2 has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 6.16 Gross Floor Area in Zone B2 is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the*

circumstances of the case, and

Comment:

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

"The objective of cl. 6.16 is as follows:

- (1) The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to the economic growth, retention of local services and employment opportunities in local centres.*

The existing and proposed GFA that exceed the maximum permitted are entirely consistent with the above objective, as the works will continue the diversity of business activity and enhance the economic contribution that this site provides, in the context of the Manly Town Centre. The reconfiguration of the

GFA (despite the minor reduction), will enhance the viability of the premise and aid the diversity of business activity within the existing building. This will also provide for continued employment opportunities in a venue which is proposed to be renovated to meet the desired standards for a premises of this type and in this location.

Therefore, despite exceeding the maximum permitted retail space, the objective of this clause is upheld."

...

"There are sufficient environmental planning grounds, despite non-compliance with cl. 6.16 as:

- *there is no change to the building envelope that would otherwise adversely impact the amenity or solar enjoyment of properties neighbouring the site*
- *the affected parts of the building will enhance the activation of the premises to the streetscape, providing an active composition to the Town Centre to aid the vibrancy of this*
- *there is no visible evidence of the non-compliant retail area of the building that would otherwise offend the streetscape or context of the site, nor any discernible impacts to the surrounds*
- *the non-compliant retail GFA does not alter any views within the vicinity of the site, nor does it alter any existing landscape characteristics*
- *the public domain surrounding the site will be enhanced with the quantum of GFA that will allow for visible activation to the context, as well as direct overlooking which will assist to ensure public safety through opportunities for passive surveillance.*

On balance, the proposed GFA breach achieves a planning purpose by continuing the use of the premises for a retail purpose as desired in this location. The planning purpose of cl. 6.16 is achieved by promoting the continued diversity of retail offering that this site provides to the precinct, as well as aiding the continued economic growth of the premises and extending continued employment opportunities, particularly for those proximate to the site.

Therefore, having regard to the above, there are sufficient environmental planning grounds to permit variation to cl. 6.16."

The above justification is agreed with by the Assessing Officer. Specifically, the following is noted:

- While the proposal results in reconfigured floor plates, the overall development results in a reduction in overall gross floor area.
- The proposed amendments do not result in any unreasonable impact with respect to the amenity of the locality, in that there is no intensification of the hotel use.
- The alteration to the floor area is not visible from the streetscape or public domain.
- The proposed alterations allow for re-development of the hotel without unreasonable impact.

In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration

must be given to the underlying objectives of the Gross Floor Area in Zone B2 development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objective of the Development Standard

The objective of Clause 6.16 Gross Floor Area in Zone B2 is addressed as follows:

The objective of this clause is to provide for 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.

Comment:

The proposed development retains the use of the site as pub (Ivanhoe Hotel). The resulting development provides for the viability of the B2 Local Centre zone, retains the existing diversity of business activity, ensures economic growth, and retention of local services and employment in the Manly Town Centre.

Objectives of the Zone

The objectives of the B2 Local Centre zone are addressed 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.

Comment:

The proposed development retains the use of the site for the purpose of a pub (Ivanhoe Hotel). The use services the needs of the people who live in, work in, and visit the local area.

To encourage employment opportunities in accessible locations.

Comment:

The proposed development retains the existing employment opportunities in an accessible location.

To maximise public transport patronage and encourage walking and cycling.

Comment:

The subject site is located on the pedestrianised portion of Manly, being The Corso, thereby encouraging walking and cycling.

To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.

Comment:

The proposed works retain the existing amenity levels (noise, odour, delivery arrangements or use of machinery) of the Ivanhoe hotel use.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the the development standard contained within Clause 6.16 Gross Floor Area in Zone B2 is assumed by the Local Planning Panel.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The subject site is partially classified as flood prone land (medium risk). The proposed development has been reviewed by Council's Stormwater and Floodplain Engineering team, who are supportive of the proposal, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is acceptable in relation to the matters above at (a) through (e).

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The subject site is partially classified as flood prone land (medium risk). The proposed development has been reviewed by Council's Stormwater and Floodplain Engineering team, who are supportive of the proposal, subject to recommended conditions of consent. As such, it is considered that the proposed development is acceptable in relation to the matters above at (a) through (d).

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The subject site is supplied with the above essential services, except for vehicular access, as the site abuts pedestrianised land at its two frontages (The Corso and Market Place). The proposed development retains and relies upon these existing services.

6.16 Gross floor area in Zone B2

Subclause (3) of Clause 6.16 requires that development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises, and Subclause (4) requires that development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres.

Comment:

In the case of Subclause (3), it is noted that the proposed modifications do not result in the erection of a building, rather modification to an existing building and does not strictly apply. In the case of Subclause (4), as was discussed in the Clause 4.6 section of the development, the total retail (pub) floor space is 1,540.2m², being a reduction from the existing 1,560.88m², due to the inclusion of additional voids and is acceptable as is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,143.7m ²	Requirement	Proposed		% Variation	Complies
4.2.3 Setbacks Controls in LEP Zone B1 and B2	0m	0m		-	Yes
4.4.3 Signage	Max. 2 signs per frontage	The Corso	No. 23: 3	NA	As approved (DA2019/0574)
			No. 25: 1	-	Yes
			No. 27: 1	-	Yes
		Market Place	3	50%	No
4.4.3 Signage - Under Awning Signs (The Corso) *	Min. 3m from other under awning sign	Sign 1: >3m		-	Yes
		Sign 2: >3m		-	Yes
	Min. 2.6m above ground	Sign 1: 2.6m		-	Yes
		Sign 2: 2.6m		-	Yes
	Max. 2.5m length	Sign 1: <2.5m		-	Yes
		Sign 2: <2.5m		-	Yes
	Max. 400mm width	Sign 1: 400mm		-	Yes
		Sign 2: 400mm		-	Yes
	Max. 500mm depth	Sign 1: 400mm		-	Yes
		Sign 2: 400mm		-	Yes
	90 degrees from building face	Sign 1: 90 degrees		-	Yes
		Sign 2: 90 degrees		-	Yes
Secured by post(s) no more than 50mm diameter	Sign 1: <50mm		-	Yes	
	Sign 2: <50mm		-	Yes	
4.4.3 Signage - Flush Wall Signs (Market Place) **	Min. 2.6m above ground	Sign 3: 2.2m		15.38%	No
		Sign 4: 3m		-	Yes
		Sign 5: 3.7m		-	Yes

	Must not project beyond wall laterally or vertically	Sign 3: Wholly on wall	-	Yes
		Sign 4: Wholly on wall	-	Yes
		Sign 5: Wholly on wall	-	Yes
	Area: Max. 3 x distance to ground	Sign 3: <3 x height	-	Yes
		Sign 4: <3 x height	-	Yes
		Sign 5: <3 x height	-	Yes
Schedule 3 Parking and Access	Commercial: 1 space per 40m ² of gross floor area 287.7m ² = 8 spaces	0 spaces	NA	No - Existing
	Residential: 0.6 spaces per 1-bed = 2.4 1 space per 2-bed = 6 = 9 spaces Visitor: 0.25 spaces per dwelling = 3 spaces	0 spaces	NA	No - Existing
	Pub: 1 space per 4m ² of licensed floor area 1,540.2m ² = 385 spaces	0 spaces	NA	No - Existing

* One under awning sign proposed fronting No. 25 The Corso (Sign 1), and one under awning sign fronting No. 27 The Corso (Sign 2).

** Signs are all located at the portion of the site known as 23 The Corso. Signs are assessed from top to bottom as they appear on the proposed plans. One sign in the approximate location of Sign 3 was approved under DA2019/0574.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.2.5.6 Late Night Venues	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.9 Mechanical Plant Equipment

Conditions have been included in the recommendation relating to certification of the mechanical ventilation works. Such works are internal at the ground and first floors relating to reconfiguration of the existing ventilation voids, with no works to external facades, Level 2 or the roof. Works are not anticipated to result in any unreasonable visual or acoustic imposition.

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

The proposed development includes a minor reduction in floor space due to internal voids and does not lead to additional parking requirements. It should be noted that the existing development does not provide for any vehicular parking, as the site is located on The Corso and Market Lane, which are both accessed by pedestrians only.

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment:

The proposed development results in no increase to traffic generation when compared to the existing development. Further, the existing development on site provide for no off-street parking or loading facilities. Finally, given the existing pedestrianised portion of land the site is located on, the provision of off-street parking or loading facilities would impact negatively on pedestrian amenity in the vicinity.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

Comment:

As no vehicular parking is proposed or existing in this instance, the proposed development will not result in any conflict between pedestrian and vehicular movement in the B2 Local Centre Zone.

4.2.5.4 Car Parking and Access

Vehicular parking is addressed in the section of this report relating to Clause 4.2.4 of the MDCP 2013.

4.4.3 Signage

The proposed development includes three signs on the Market Place frontage (being three flush wall signs), where the maximum is two. Additionally, one of the proposed signs is 2.2 metres above ground, where the minimum height required is 2.6 metres above ground. The proposed modifications are addressed in relation to the objectives of the control as follows:

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.

Comment:

A condition of consent has been recommended to delete the two proposed under awning signs on The Corso frontage, with respect to the comments provided by Council's Heritage Advisor. The remaining signage is consistent with the design and style of the existing Ivanhoe Hotel to the northeast of the subject site, as the development proposes to extend the hotel to the subject site. This demonstrates that the signage is complementary to existing development along the Corso and Market Place and contributes to the visual quality of the area.

Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.

Comment:

The subject site is not located within a residential area. The proposed signage (as recommended to be

amended by a condition of consent, detailed above) serves the purpose of way-finding by identifying the use of this proposed modified portion of the Ivanhoe Hotel and for the residential component of the building. The signage is of small dimensions so as not to cause excessive, unnecessary, cluttered or confusing signage.

Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

Comment:

The proposed signage (as recommended to be amended by a condition of consent, detailed above) serves the purpose of identifying the use of this proposed modified portion of the Ivanhoe Hotel and for the residential component of the building.

Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.

Comment:

As above, the proposed signage (as recommended to be amended by a condition of consent, detailed above) is consistent with the style and design of the remainder of the Ivanhoe Hotel. As such, the proposed signage is suitable with respect to the visual quality of the streetscape along Market Place.

Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.

Comment:

The proposed signage (as recommended to be amended by a condition of consent, detailed above) is consistent with the remainder of the signage on the heritage item, so does not unreasonably impact on the presentation of the heritage item.

Objective 6) To ensure all signage is of high standards of graphic and textural content.

Comment:

The proposed signage is of a high quality design, is clear, and assists in identifying the use of the site.

Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Comment:

Not applicable. The subject site is zoned B2 Local Centre.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$18,089 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,808,853.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing pub, known as the Ivanhoe Hotel has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the development standard contained within Clause 6.16 Gross Floor Area in Zone B2 of the MLEP 2013.

Concerns raised with in the objections relate predominantly to consideration of the Manly Place Plan and the correction of an error within the Waste Management Plan. Despite these concerns and unrelated concerns about existing noise, the proposal is considered to be acceptable.

Critical assessment issues included the variation to the development standard contained within Clause

6.16 Gross Floor Area in Zone B2 of the MLEP 2013, and non-compliance with the signage controls of the MDCP 2013. These elements are acceptable on merit.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary the development standard contained within Clause 6.16 Gross Floor Area in Zone B2 pursuant to Clause 4.6 of the MLEP 2013, as the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3), and the proposed development will be in the public interest, and the proposed development is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly, the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1526 for Alterations and additions to an existing pub on land at Lot 2 DP 877793, 25 The Corso, MANLY, Lot CP SP 12989, 19 - 23 The Corso, MANLY, Lot 1 DP 877793, 27 The Corso, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA GD 1 00B Ground Floor Proposed Plan Revision P5	19 August 2022	Paul Kelly Design
DA GD 1 02 Ground Floor Proposed Plan P6	18 October 2022	Paul Kelly Design
DA L1 1 00B Level 1 Proposed Plan P4	19 August 2022	Paul Kelly Design
DA L1 1 02 Level 01 Proposed Plan P5	19 August 2022	Paul Kelly Design
DA RF 1 02 Roof Proposed Plan P5	19 August 2022	Paul Kelly Design
DA GD 2 02 Corso Elevation Proposed P5	18 October 2022	Paul Kelly Design
DA GD 2 04 Market Lane Elevation Proposed P4	19 August 2022	Paul Kelly Design

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

Building Code of Australia and Accessibility Compliance Assessment Report	25 August 2022	AE&D Group
Acoustic Assessment of Alterations and Additions	29 August 2022	Renzo Tonin & Associates
Structural Engineering Report	26 August 2022	James Taylor & Associates
Fire Engineering DA Statement of Support	26 August 2022	GHD
Heritage Impact Statement	24 August 2022	City Plan

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

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

Waste Management Plan		
Drawing No.	Dated	Prepared By
Demolition & Construction Waste Management Plan	August 2022	Waste Audit

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	19 October 2022

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent

unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$18,088.53 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,808,853.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

6. **Security Bond**

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

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

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

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

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

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

7. **Amendments to the Waste Management Plan**

The following amendments are to be made to the Waste Management Plan:

- i All references to North Sydney Council are to be corrected to refer to Northern Beaches Council.
- i In order to reduce the placement of bins in Market Place, the Waste Management Plan is to be amended to specify that:
 - Waste bins are to remain in the garbage room until such time as waste collection is scheduled; and
 - Waste bins are to be replaced into the garbage room immediately after collection.

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

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

8. **Mechanical Ventilation**

No external mechanical ventilation works are approved as part of this consent. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure consistency with this consent.

9. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA & Accessibility Compliance Assessment Report prepared by the AE&D Group, dated 25 August 2022, Report Ref No. 11784.2 Rev 1. and the Fire Engineering DA Statement prepared by GHD dated 26 August 2022 Ref 12553045 Revision 0 are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for health, amenity, access and fire safety for building occupant health and safety.

10. **Access and Facilities for Persons with Disabilities**

Access to and within the building are to be provided for Persons with a Disability in accordance with the Building Code of Australia and AS1428 are to be included as part of the Construction Certificate assessment. Details are to be provided to the Certifier prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

11. **Signage**

The proposed suspended under awning signs fronting The Corso must be deleted from plans. Details demonstrating compliance are to be submitted to the satisfaction of the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure signage is compatible with the heritage values of the conservation area and The Corso.

12. **Metal Louvres**

The proposed metal louver screens on the Market Place frontage are to be deleted and replaced with a material that is compatible with the heritage values of the conservation area. Details demonstrating compliance are to be submitted to the Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.

Reason: To ensure the proposed works are compatible with the heritage values of the heritage conservation area.

13. **Plans of Kitchen Design, Construction and Fitout**

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

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

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

14. **Mechanical Ventilation Plans**

Where Mechanical ventilation is required to be installed in the food premises, prior to any Construction Certificate being issued, detailed plans must be submitted to and approved by the Certifier that demonstrate compliance with the following:

- i Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings".

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

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

15. **Acoustic Review of Mechanical Services Prior to Construction Certificate**

An acoustic review of mechanical services shall be carried out prior to the issue of a Construction Certificate to ensure acoustic recommendations of Renzo Tonin & Associates (29 August 2022) will be compliant and respective fixtures fittings and finishes are incorporated into plans, this is to include:

- i The inside face of the chimney/ventilation voids are to be lined with noise absorptive material (other than where they are louvred for ventilation purposes). Lining to consist of 50mm Echosoftware or similar material suitable for outdoor use with NRC no less than 0.8.
- i Any new mechanical plant that is installed as part of the refurbishment works is to be acoustically treated such that compliance with the noise emission goals in section 4.1 of the report are achieved. Detailed review should be conducted at CC stage once plant selections are finalised.

Reason: To ensure an acoustic review is undertaken before work commences.

16. **Amendment to Plan of Management**

The Plan of Management shall be updated to specify the following:

Indoor Gaming and Sports Bar Areas:

- i New glazed elements to the Sports Bar façade to be minimum 6.38mm laminated (Rw 33). Any operable element to have acoustic seals (q-lon or equal).
- i Gaming area to have background music only (70dB(A)L10 noise limit) when measured at the Market Place external louvres. Noise levels on gaming machines are to be set such that the 70dB(A)L10 noise limit is not exceeded. Gaming machines not to have coin drop trays.
- i Sports bar can have moderate music noise levels (77dB(A)L10 noise limit). Base/low frequency contribution to music to be limited as per table below.
- i Allowable music noise spectrums: Refer to acoustic assessment table 12 in the acoustic report by Renzo Tonin & Associates (29 August 2022) referenced as TM424-01D02 Acoustic Report for DA Gaming (r3)

General Operation:

- i No queuing in external areas after midnight.
- i Bar should trade with windows and doors closed on the Corso façade after midnight.
- i Garbage/bottles should not be taken outside for disposal after 10pm.
- i Signage to be installed reminding patrons to be quiet when entering or leaving the premises.

Details demonstrating compliance with this condition are to be provided to the satisfaction of Council prior to the issue of the Construction Certificate.

Reason: To ensure operations will continue ongoing to meet noise reduction measures.

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 Certifier prior to the issue of the Construction Certificate.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**18. Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

19. Food Hygiene and Safety During Construction Activity

Where the food business is to continue operating in any form during work being carried out, controls and a food safety plan are to be implemented to ensure food safety is not compromised during this time including contamination by dust/debris.

Reason: To maintain food standards as appropriate during works

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**20. Kitchen Design, Construction and Fitout of Food Premises Certification**

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

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

21. Mechanical Ventilation Certification

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

- i Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings".

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

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

22. **Acoustic Review of Mechanical Services Prior to Occupation Certificate**

An acoustic review of mechanical services shall be carried out by suitably qualified person to determine that all recommendations contained within the acoustic report of Renzo Tonin & Associates dated 29 August 2022 and referenced as TM424-01D02 Acoustic Report for DA Gaming (r3) have been implemented before occupation is permitted.

Reason: To ensure compliance with acoustic requirements to prevent a nuisance to residential receivers.

23. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Each year the owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement that confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

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

24. **Acoustic Mitigation Measures**

Acoustic mitigation measures noted in the Acoustic Report by Renzo Tonin & Associates dated 29 August 2022 apply with respect to mechanical services only. Operational noise mitigation measures must continue to be managed in accordance with previous consents.

Reason: To ensure appropriate mitigation of noise relating to operation and mechanical services.

25. **Related Consents**

This consent relates to the following previous consents for the Ivanhoe Hotel:

- i DA196/2008
- i DA196/2008 Part 2
- i DA2019/0211
- i DA2019/0574

Mod2019/0558

Reason: To ensure consistency with previous consents.

26. **Operation**

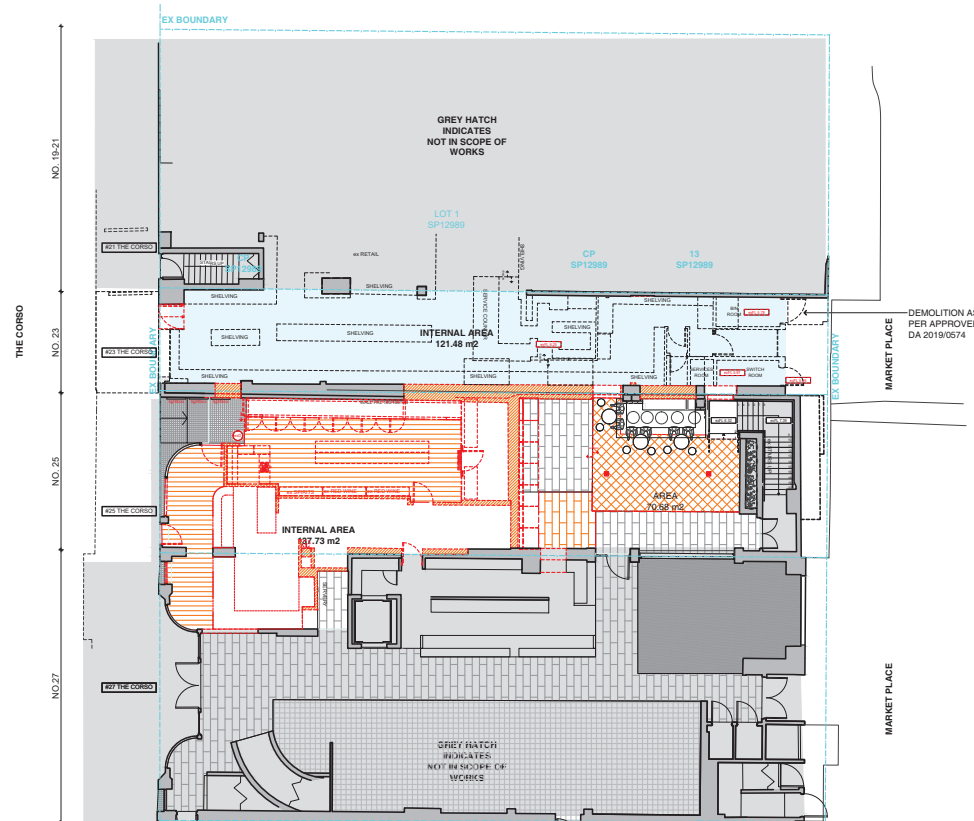
Indoor Gaming and Sports Bar Areas:

- New glazed elements to the Sports Bar façade to be minimum 6.38mm laminated (Rw 33). Any operable element to have acoustic seals (q-lon or equal).
- Gaming area to have background music only (70dB(A)L10 noise limit) when measured at the Market Place external louvres. Noise levels on gaming machines are to be set such that the 70dB(A)L10 noise limit is not exceeded. Gaming machines not to have coin drop trays.
- Sports bar can have moderate music noise levels (77dB(A)L10 noise limit). Base/low frequency contribution to music to be limited as per table below.
- Allowable music noise spectrums: Refer to acoustic assessment table 12 in the acoustic report by Renzo Tonin & Associates (29 August 2022) referenced as TM424-01D02 Acoustic Report for DA Gaming (r3)

General Operation:





- No queuing in external areas after midnight.
- Bar should trade with windows and doors closed on the Corso façade after midnight.
- Garbage/bottles shall not be taken outside for disposal after 10pm.
- Signage to be installed reminding patrons to be quiet when entering or leaving the premises.

Reason: To ensure operations will continue ongoing to meet noise reduction measures.



COPYRIGHT
All rights reserved. This work has copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying) without the written permission of Paul Kelly Design.
All houses, represented or implied, in use this document for any purpose whatsoever is restricted to the terms and agreement or implied agreement between Paul Kelly Design and the building party.

NOTE
Only use written dimensions. Do not scale. If in doubt, consult with Paul Kelly Design. Check all dimensions on site before fabrication or set out.

Legend	
	PROPOSED CHANGE OF USE AS PER DA2019/0574
	EXISTING HOTEL GAMING
Demolition Legend	
	EXISTING WALLS TO BE RETAINED
	EXISTING TO BE DEMOLISHED

PS	19.08.22	ISSUE TO PLANNER	PK
PA	18.02.22	ISSUE TO CLIENT	PK
PS	09.02.22	PRELIMINARY ISSUE TO CLIENT	PK
P2	13.01.22	PRELIMINARY ISSUE TO CLIENT	PK
P1	14.12.21	PRELIMINARY ISSUE TO CLIENT	PK
Rev	Date	Description	Checked

IVANHOE HOTEL
19-27 The Corso, Manly NSW 2095

Ground Floor
Existing and Demolition Plan

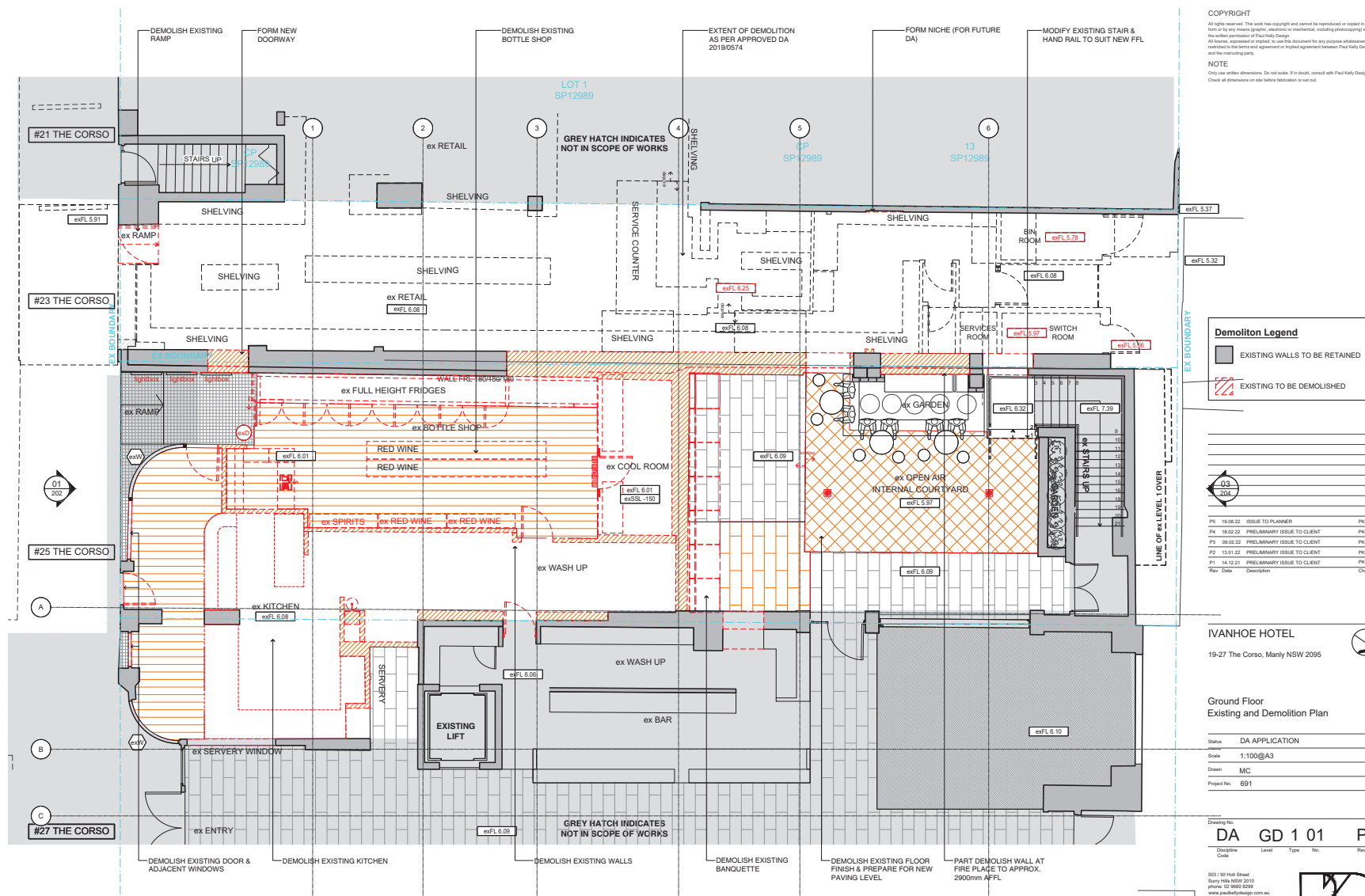
Status	DA APPLICATION
Scale	1:200@A3
Drawn	MC
Project No.	GB1

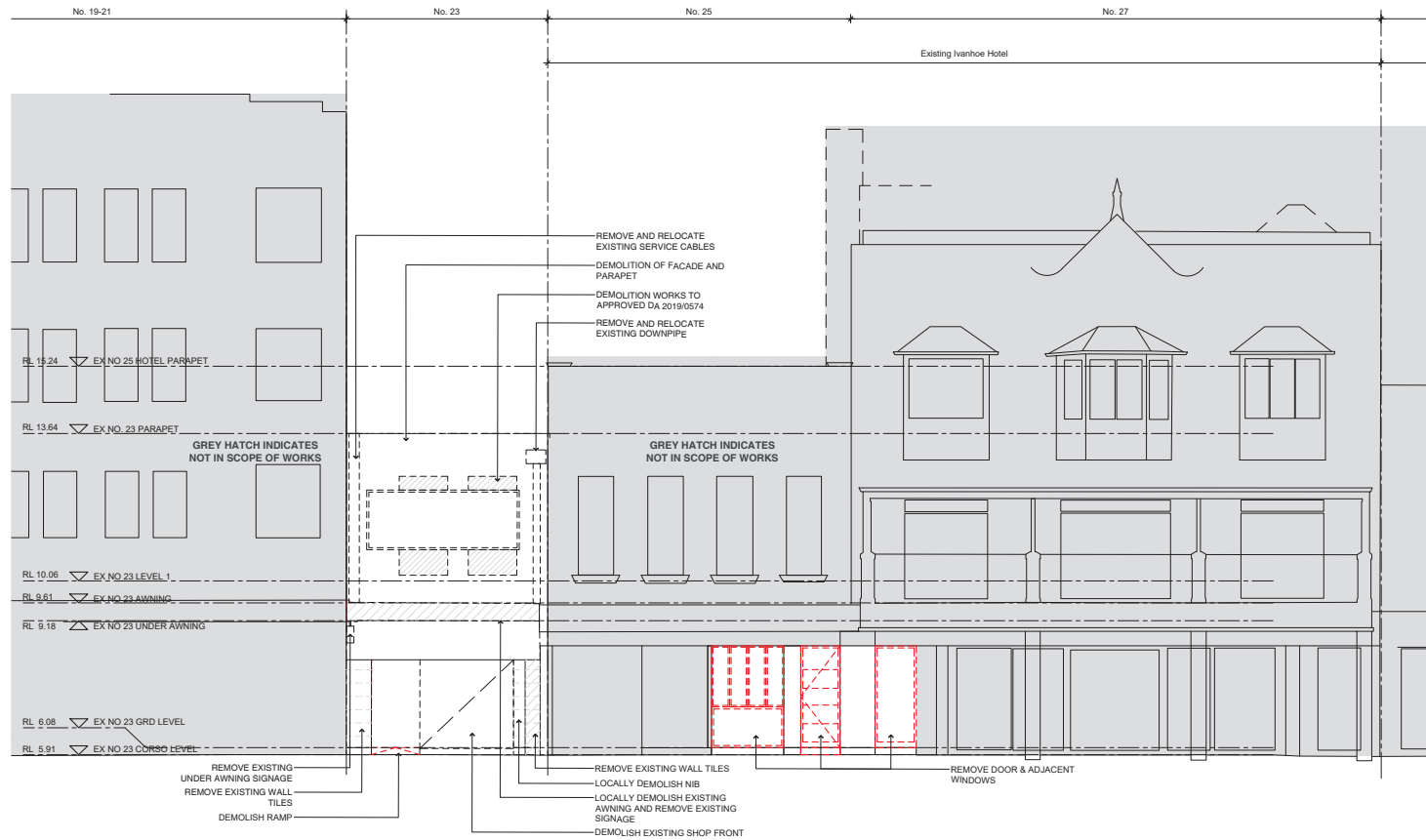
Drawing No.				
DA	GD 1 00A	P5		
Discipline	Level	Type	No.	Revision

553 / 55 Holt Street
Burrumbidgee NSW 2515
phone: 02 9460 5209
www.paulkellydesign.com.au



DEVELOPMENT APPLICATION





01 Corso Elevation
Existing 1:100 @ A3

COPYRIGHT
All rights reserved. This work has copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying) without the written permission of Paul Kelly Design.
All names, represented or implied, in use this document for any purpose whatsoever is restricted to the terms and agreement or implied agreement between Paul Kelly Design and the building party.

NOTE
Only use written dimensions. Do not scale. If in doubt, consult with Paul Kelly Design. Check all dimensions on site before fabrication or set out.

Demolition Legend

EXISTING WALLS TO BE RETAINED

EXISTING TO BE DEMOLISHED

PN	19.08.22	ISSUE TO PLANNER	PK
PS	18.01.22	ISSUE TO CLIENT	PK
P2	13.01.22	PRELIMINARY ISSUE TO CLIENT	PK
P1	14.12.21	PRELIMINARY ISSUE TO CLIENT	PK
Rev	Date	Description	Checked

IVANHOE HOTEL
19-27 The Corso, Manly NSW 2095

**Corso Elevation
Existing**

Status	DA APPLICATION
Scale	1:100@A3
Drawn	MC
Project No.	691

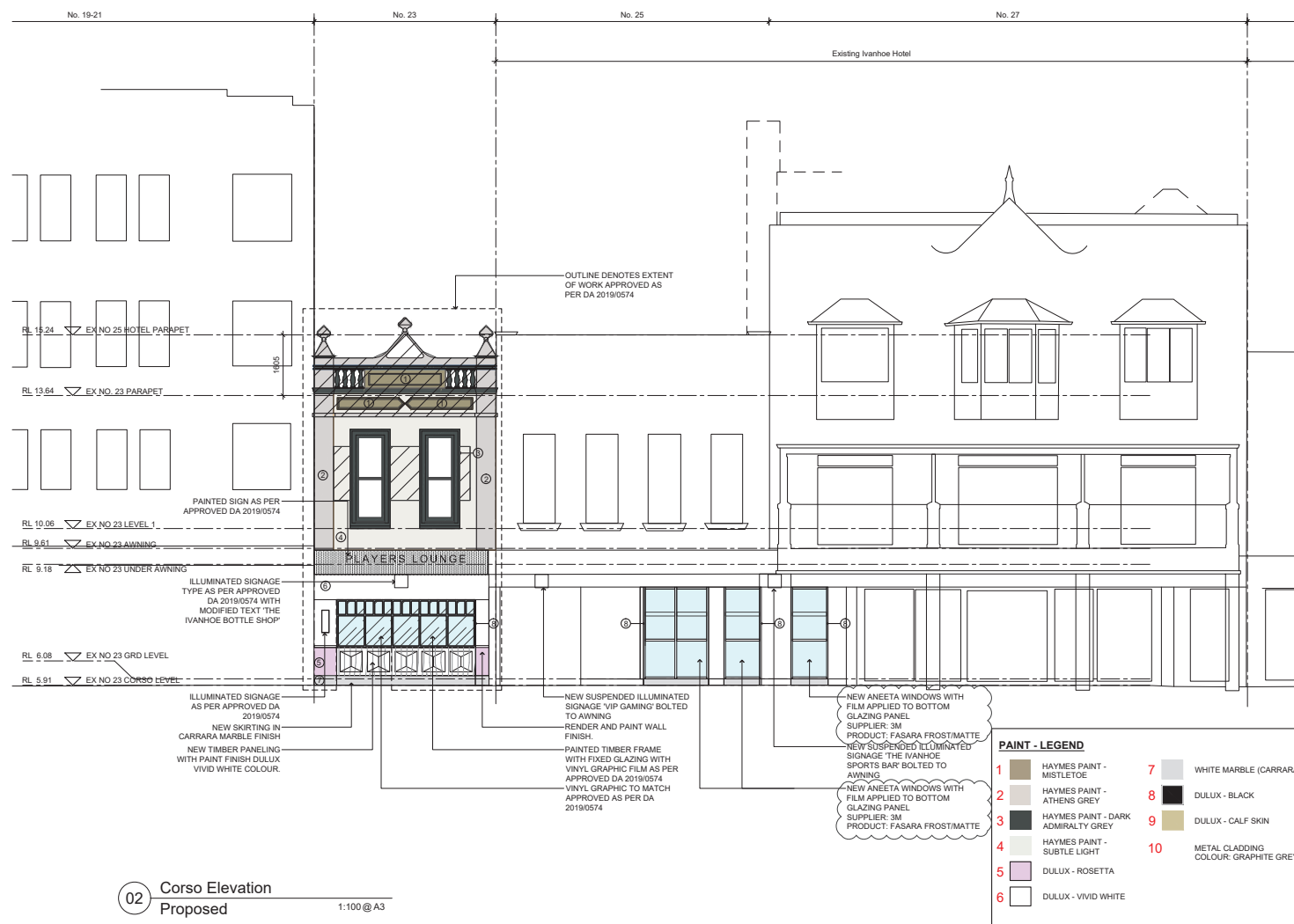
Drawing No.

DA	GD	2	01	P4
Discipline Code	Level	Type	No.	Revision

553 / 551 Holt Street
Burry Hills NSW 2112
phone: 02 9660 8599
www.paulkellydesign.com.au



DEVELOPMENT APPLICATION



COPYRIGHT
All rights reserved. This work has copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying) without the written permission of Paul Kelly Design.
All licenses, expressed or implied, in use this document for any purpose whatsoever is restricted to the terms and agreement or implied agreement between Paul Kelly Design and the instructing party.

NOTE
Only use written dimensions. Do not scale. If in doubt, consult with Paul Kelly Design.
Check all dimensions on site before fabrication or set out.

PS	18.10.22	ISSUE TO CLIENT: FILM NOTED	PK
PA	19.09.22	ISSUE TO PLANNER	PK
PS	18.02.22	PRELIMINARY ISSUE TO CLIENT	PK
PS	09.02.22	PRELIMINARY ISSUE TO CLIENT	PK
PS	14.12.21	PRELIMINARY ISSUE TO CLIENT	PK
Rev	Date	Description	Checked

IVANHOE HOTEL

19-27 The Corso, Manly NSW 2095

Corso Elevation Proposed

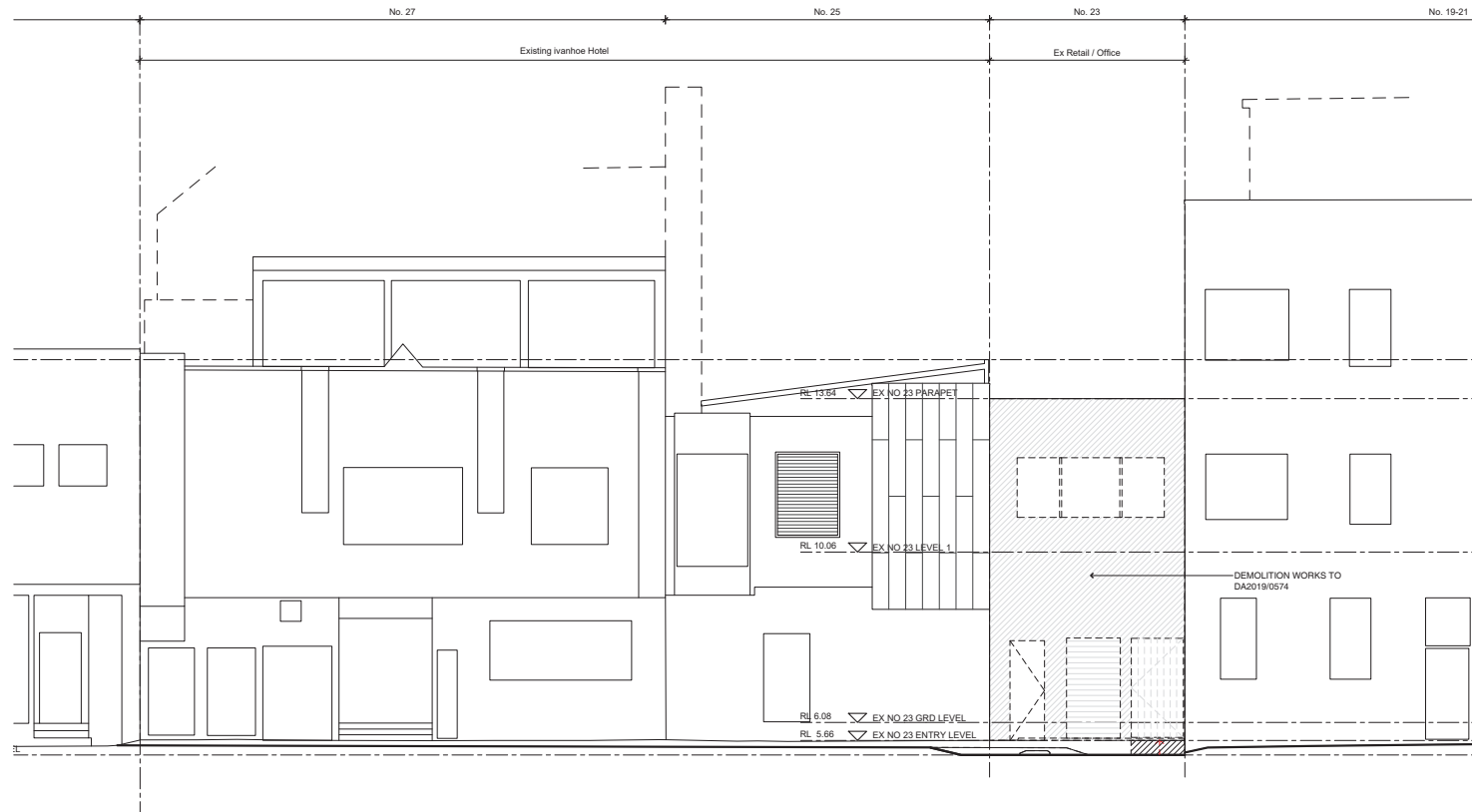
Discipline	DA APPLICATION
Scale	1:100@A3
Drawn	MC
Project No.	GB1

Drawing No.	DA	GD	2	02	P5
Discipline Code		Level	Type	No.	Revision

553 / 551 Holt Street
Surry Hills NSW 2010
phone: 02 9660 5209
www.paulkellydesign.com.au



DEVELOPMENT APPLICATION



COPYRIGHT
All rights reserved. This work has copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying) without the written permission of Paul Kelly Design.
All names, expressed or implied, in use in this document for any purpose whatsoever is restricted to the terms and agreement or implied agreement between Paul Kelly Design and the relevant party.

NOTE
Only use written dimensions. Do not scale. If in doubt, consult with Paul Kelly Design.
Check all dimensions on site before fabrication or set out.

Demolition Legend
[Solid Grey Box] EXISTING WALLS TO BE RETAINED
[Hatched Box] EXISTING TO BE DEMOLISHED

PS	19.08.22	ISSUE TO PLANNER	PK
P2	18.12.21	ISSUE TO CLIENT	PK
P1	14.12.21	PRELIMINARY ISSUE TO CLIENT	PK
Rev	Date	Description	Checked

IVANHOE HOTEL

19-27 The Corso, Manly NSW 2095

Market Lane Elevation Existing

Status	DA APPLICATION
Scale	1:100@A3
Drawn	MC
Project No.	GB1

Drawing No.	DA	GD 2 03	P3
Discipline Code	Level	Type	No.
Revision			

553 / 50 Holt Street
Burry Hills NSW 2112
phone: 02 9665 5059
www.paulkellydesign.com.au



01 Market Place
Existing 1:100 @ A3

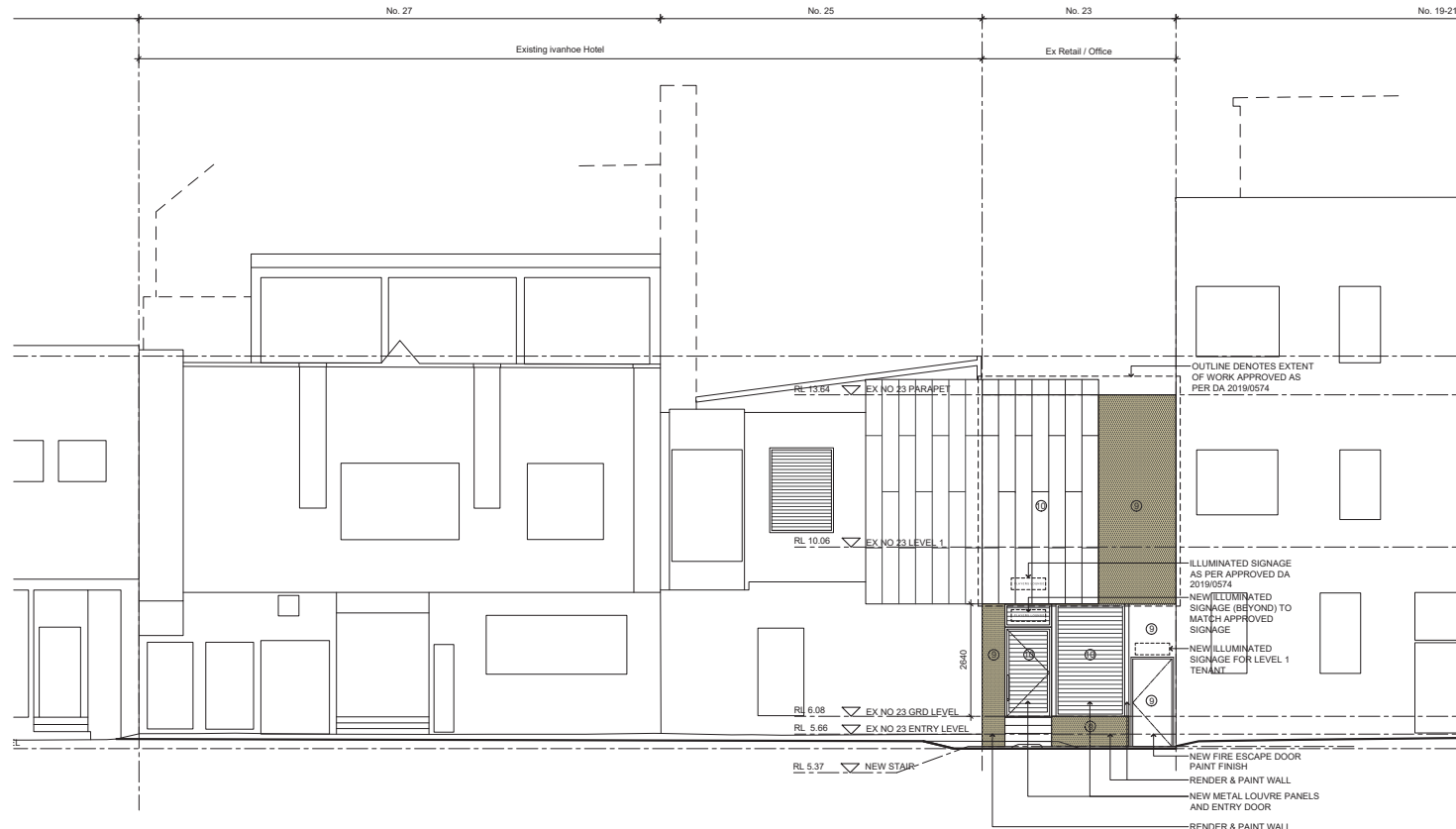
DEVELOPMENT APPLICATION

COPYRIGHT

All rights reserved. This work has copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying) without the written permission of Paul Kelly Design.
All names, represented or implied, in use in this document for any purpose whatsoever is restricted to the terms and agreement or implied agreement between Paul Kelly Design and the relevant party.

NOTE

Only use written dimensions. Do not scale. If in doubt, consult with Paul Kelly Design.
Check all dimensions on site before fabrication or set out.



PK	19.08.22	ISSUE TO PLANNER	PK
PK	18.02.22	ISSUE TO CLIENT	PK
PK	09.02.22	PRELIMINARY ISSUE TO CLIENT	PK
PK	14.12.21	PRELIMINARY ISSUE TO CLIENT	PK
Rev	Date	Description	Checked

IVANHOE HOTEL

19-27 The Corso, Manly NSW 2095

**Market Lane Elevation
Proposed**

Status	DA APPLICATION
Scale	1:100@A3
Drawn	MC
Project No.	691

Drawing No.	DA	GD	2	04	P4
Discipline Code					
Level					
Type					
No.					
Revision					

553 / 55 Hall Street
Surry Hills NSW 2015
phone: 02 9660 8209
www.paulkellydesign.com.au

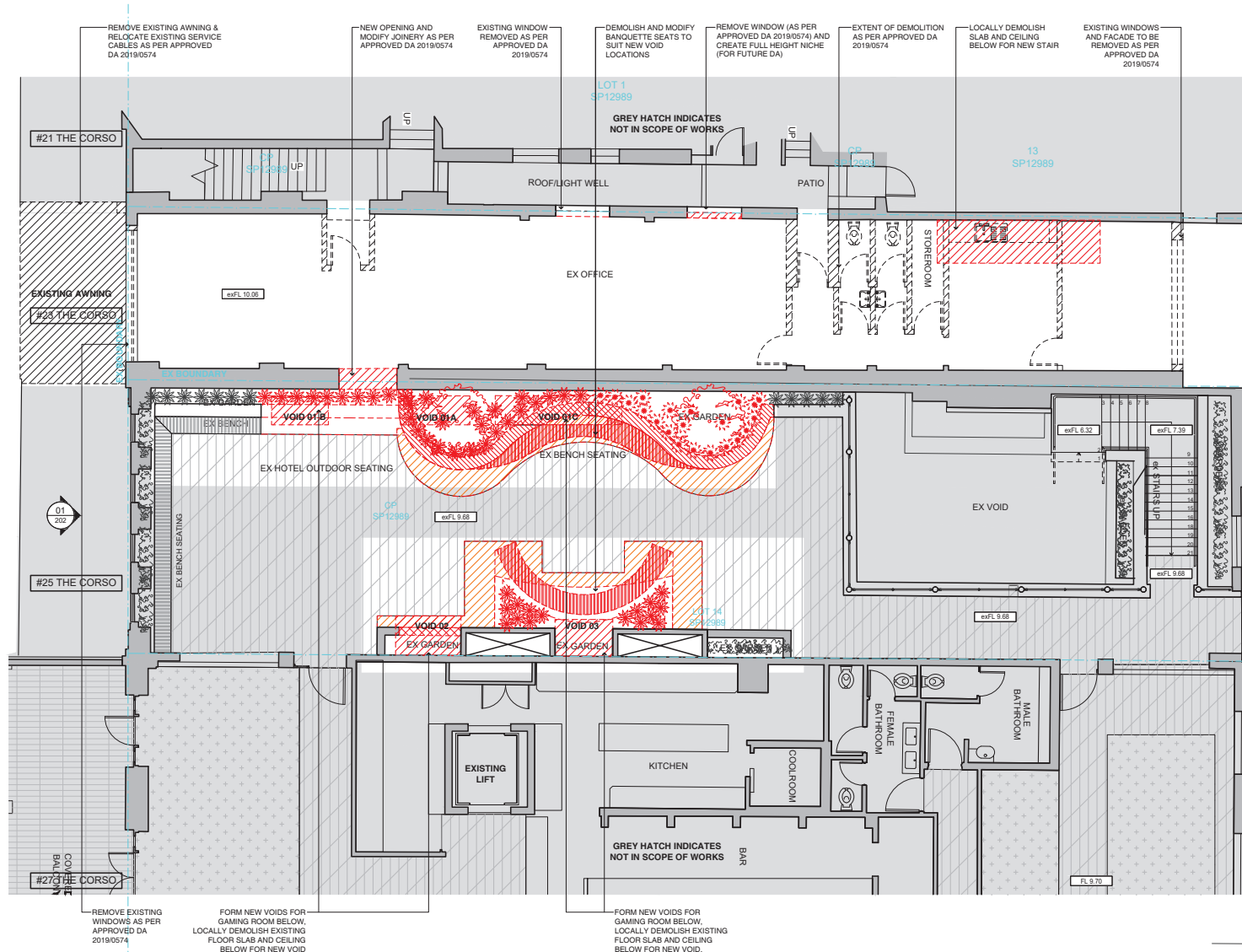


**02 Market Place
Proposed**

1:100 @ A3

PAINT - LEGEND	
1	HAYMES PAINT - MISTLETOE
2	HAYMES PAINT - ATHENS GREY
3	HAYMES PAINT - DARK ADMIRALTY GREY
4	HAYMES PAINT - SUBTLE LIGHT
5	DULUX - ROSETTA
6	DULUX - VIVID WHITE
7	WHITE MARBLE (CARRARA)
8	DULUX - BLACK
9	DULUX - CALF SKIN
10	METAL CLADDING COLOUR: GRAPHITE GREY

DEVELOPMENT APPLICATION



COPYRIGHT
All rights reserved. This work has copyright and cannot be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying) without the written permission of Paul Kelly Design.
All names, represented or implied, in use in this document for any purpose whatsoever is restricted to the terms and agreement or implied agreement between Paul Kelly Design and the relevant party.

NOTE
Only use written dimensions. Do not scale. If in doubt, consult with Paul Kelly Design.
Check all dimensions on site before fabrication or set out.

Demolition Legend

EXISTING WALLS TO BE RETAINED

EXISTING TO BE DEMOLISHED

PK	19.08.22	ISSUE TO PLANNER	PK
PK	19.08.22	ISSUE TO CLIENT	PK
PK	19.08.22	PRELIMINARY ISSUE TO CLIENT	PK
PK	19.08.22	PRELIMINARY ISSUE TO CLIENT	PK
PK	14.12.21	PRELIMINARY ISSUE TO CLIENT	PK
Rev	Date	Description	Checked

IVANHOE HOTEL

19-27 The Corso, Manly NSW 2095

Level 01
Existing and Demolition Plan

Status: DA APPLICATION

Scale: 1:100@A3

Drawn: MC

Project No: 691

Drawing No: DA L1 1 01 P5

Discipline Code Level Type No Revision

553 / 59 Holt Street
Surry Hills NSW 2010
phone: 02 9660 8599
www.paulkellydesign.com.au



DEVELOPMENT APPLICATION



Variation to the Development Standard for Floor Space Ratio (FSR), pursuant to clause 4.6 of
the Manly Local Environmental Plan 2013 (MLEP)
19-27 The Corso, Manly

This request to vary the permitted gross floor area for retail purposes is lodged in conjunction with the development application (DA) DA2022/1526, for 19-23, 25 and 27 The Corso, Manly. The request is lodged having regard to cl. 4.6 of the MLEP 2013, which allows for a development standard to be varied. The DA seeks to vary cl. 6.16 of the MLEP for the permitted amount on retail space on the site.

This variation addresses the extent of retail floor space which occupies the site that exceeds 1,000m², as permitted by cl. 6.16 of the LEP that deals with Gross floor area in Zone B2.

Existing and Proposed Gross Floor Area

The existing retail premises occupying the site has a gross floor area (GFA) of 1,560.88m². The proposed retail GFA is 1,540.2m². While the GFA is to be reduced in the existing building, it does not fall below the threshold established by cl. 6.16, which states at subclause (3):

Development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres.

The existing non-compliance with cl. 6.16 is historical and will remain, despite being reduced, in association with this application.

The Site

The site is located at 19-23, 25 and 27 The Corso, Manly and is legally described as Strata Plan 12989, Lot 1 and 2 in Deposited Plan 877793. The site has a total area of 1,143.7m².

The Development Application

The development application is as set out in the Statement of Environmental Effects.

The Development Standard

Cl. 4.4 of the MLEP states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The permitted FSR is 2.5:1.

The proposed FSR is 2.17:1. The proposal therefore complies with cl. 4.4 of the MLEP.

However, it is cl. 6.16 which is offended by the proposed development, with a GFA greater than 1,000m².



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

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

Postal Address: PO Box 954 | Edgecliff 2027

☎ 02 9386 7000 🌐 www.hamptonspropertyservices.com

Hamptons Property Services Pty Ltd | ABN 66 141 622 433

Definitions

The Dictionary to the WLEP provides the following in relation to how the gross floor area is to be measured:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

The Proposal's Non-Compliance with the Gross Floor Area

The permitted GFA for retail space is 1,000m². The existing GFA is 1,560.88m² and the proposed retail GFA is 1,540.2m². Therefore, the existing building exceeds the amount of retail space permitted by cl. 6.16, both in the existing and proposed circumstances.

Variation to the Development Standards

Clause 4.6(3) of the MLEP states:

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



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

These matters are addressed below.

- (a) that compliance with the development standard is unreasonable or unnecessary

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

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

Table 1: The *Wehbe* Principles

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

Achievement of the objectives of the development standards

The objective of cl. 6.16 is as follows:

- (1) *The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to the economic growth, retention of local services and employment opportunities in local centres.*

The existing and proposed GFA that exceed the maximum permitted are entirely consistent with the above objective, as the works will continue the diversity of business activity and enhance the economic contribution that this site provides, in the context of the Manly Town Centre. The reconfiguration of the GFA (despite the minor reduction), will enhance the viability of the premise and aid the diversity of business activity within the existing building. This will also provide for continued employment opportunities in a venue which is proposed to be renovated to meet the desired standards for a premises of this type and in this location.

Therefore, despite exceeding the maximum permitted retail space, the objective of this clause is upheld.



Abandonment of the development standard

The limitation on retail space for this site has been abandoned, given its continued use for a retail purpose that has continued for some time, pre-dating the prescriptive control around GFA.

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

There are sufficient environmental planning grounds, despite non-compliance with cl. 6.16 as:

- there is no change to the building envelope that would otherwise adversely impact the amenity or solar enjoyment of properties neighbouring the site
- the affected parts of the building will enhance the activation of the premises to the streetscape, providing an active composition to the Town Centre to aid the vibrancy of this
- there is no visible evidence of the non-compliant retail area of the building that would otherwise offend the streetscape or context of the site, nor any discernible impacts to the surrounds
- the non-compliant retail GFA does not alter any views within the vicinity of the site, nor does it alter any existing landscape characteristics
- the public domain surrounding the site will be enhanced with the quantum of GFA that will allow for visible activation to the context, as well as direct overlooking which will assist to ensure public safety through opportunities for passive surveillance.

On balance, the proposed GFA breach achieves a planning purpose by continuing the use of the premises for a retail purpose as desired in this location. The planning purpose of cl. 6.16 is achieved by promoting the continued diversity of retail offering that this site provides to the precinct, as well as aiding the continued economic growth of the premises and extending continued employment opportunities, particularly for those proximate to the site.

Therefore, having regard to the above, there are sufficient environmental planning grounds to permit variation to cl. 6.16.

The Public Interest

Clause 4.6(4) states as follows:

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

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

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



The next element that the Council needs to be satisfied with to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the zone objectives.

Table 2: Compliance with the zone objectives

1 Objectives of zone	Comment
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 GFA accommodated on the site allows for a diversity of retail use within an existing venue that serves the needs of people who live in, work in and visit the area. The site has a long-standing position in the hospitality space of Manly that is consistent with this zone objective, as part of the B2 Local Centre zone.
To encourage employment opportunities in accessible locations.	The proposed uses will continue to provide local employment within the area, if anything which is promoted by a GFA that exceeds that permitted by cl. 6.16, therefore entirely fulfilling this objective.
To maximise public transport patronage and encourage walking and cycling.	There is no car parking proposed to service that part of the site that exceeds the permitted GFA, or indeed any car parking at all. Therefore, the site continues to promote the maximisation of public transport, 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.	The additional GFA that exceeds cl. 6.16 and is, in fact, less than the existing GFA exists without resulting in adverse amenity impacts on surrounding properties and is suitably mitigated based on the consultant advice accompanying this application.

Therefore, the proposed development will comprehensively meet the objectives of cl. 6.16 and the zone objectives.

Accordingly, the Council can be satisfied that it is in the public interest to vary cl. 6.16 for the purpose of this DA. The implementation of the development, despite the exceedance of GFA, will ensure that existing resources are utilized without placing undue pressure on the surrounding environment, both natural and built, while complying with the relevant objectives and producing a better outcome for the development, due to its own site constraints.

Secretary's concurrence

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

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



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

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

Conclusion

The development application does not comply with cl. 6.16 of the MLEP. However, the proposal achieves the requirements of cl.4.6 of the MLEP, which allows for variation.

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

ⁱ ground level (existing) means the existing level of a site at any point



ITEM 5.2**AUTHORISING MANAGER****TRIM FILE REF****ATTACHMENTS**

**DA2022/1036 - 126 PARKES ROAD, COLLAROY PLATEAU
- ALTERATIONS AND ADDITIONS TO A DWELLING
HOUSE.**

Adam Richardson

2022/692453

1 [↓](#) Assessment Report

2 [↓](#) Site Plans & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1036 for Alterations and additions to a dwelling house on land at Lot 16 DP 24705, 126 Parkes Road, Collaroy Plateau, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1036
Responsible Officer:	Natalie Richter – Consultant Planner
Land to be developed (Address):	Lot 16 DP 24705, 126 Parkes Road COLLAROY PLATEAU NSW 2097
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP 2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Andrew Pigott Louise Elizabeth Pigott
Applicant:	SKY Town Planning
Application Lodged:	12/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/08/2022 to 12/09/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval subject to conditions
Estimated Cost of Works:	\$ 462,000.00

EXECUTIVE SUMMARY

Council is in receipt of a development application (DA2022/1036) which seeks approval for additions and alterations to the existing dwelling at 126 Parkes Road, Collaroy Plateau.

The Development Application is being referred to the Northern Beaches Local Planning Panel under the Local Planning Panels Direction made pursuant to section 9.1 of the *Environmental Planning and Assessment Act 1979* (EPA Act), as an employee of Northern Beaches Council who is the owner of the land and is principally involved in the exercise of Council's functions under the EPA Act.

The Application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2021* (EP&A Regulations 2021), Relevant Environmental Planning Instruments (EPIs), and Council policies.



Minor non-compliances with the Warringah Development Control Plan 2011, arise. In particular a breach of the side building envelope control. These non-compliances with the DCP as a consequence of the proposal are either justifiable in the circumstances of the case (as detailed in the assessment) or satisfied through recommended conditions of consent.

The Application was notified for a period of 14 days in accordance with Council's Community Participation Plan and 1 submission was received during that time, which was later withdrawn by the objector. Following the assessment of the application, it is recommended the application be approved subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing primary dwelling – primarily at the rear Including the following specific changes:

- Addition to the rear of the house of around 62.70m² of floor area, taking total to 232.7m².
- New porch roof over existing deck to the front of the dwelling.
- Upgrade existing windows, doors and cladding.
- Removal of external wall and steps near the existing kitchen to allow for the small extension to the east corner of the dwelling.
- Extension to the west corner of the dwelling.
- Internal reconfiguration of the dwelling.
- Repositioning of the deck to south-west corner of the dwelling with access through to kitchen and master bedroom.
- The following comments were made by the applicant in describing the works within the *amended* SEE: *'On the south-east corner of the dwelling, it is proposed to remove the steps and replace with a new extension proposed behind of the existing master bedroom. Access to this deck is from the repositioned laundry.'*

A new open porch over the existing deck is proposed to the entrance of the dwelling.

The internal configuration of the dwelling has been altered to suit the needs of a growing family. The existing kitchen is proposed to be converted into a family room along with the removal of existing stairs and extension of the external wall.

The existing bedroom in the south-west end of the dwelling is to be demolished and replaced with an extension to include the main living area, including an open kitchen and dining area that will include the repositioning and extension of the existing deck.

The new deck is on the south-west side of the home with access via French doors to the kitchen and secondary access via the master bedroom.

The windows, doors and the external cladding of the dwelling facing the street is proposed to be upgraded to enhance the streetscape quality as well improve the amenity of the dwelling.'

The proposed construction/materials are noted to match the existing house. The new rear elements are proposed over new footings, as a cantilevered structure at the rear (as is existing – above the slope down). The proposed addition is to be constructed of matching cladding, with a similar skillion style flat roof.

Sensitive windows are proposed where they face the sides (eg. Highlight windows along the north-western elevation and the rear deck has been set back from the side boundaries to resolve privacy concern comments and to provide physical and visual separation between the side adjoining properties.



Further to this, a fixed 1.8 metres side privacy screen is proposed to the south-eastern elevation to direct views to the rear and minimise viewing to that side.

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 on 9 September 2022 and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties; The inspection considered the comments initially made by the objector to the notification and the further comments made following the amendment;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Height, privacy (resolved via re-design), water collection and site coverage/landscaping.

SITE DESCRIPTION

Property Description:	Lot 16 DP 24705, 126 Parkes Road COLLAROY PLATEAU NSW 2097
Detailed Site Description:	<p>The subject site is a residential allotment which is located on the south-western side of Parkes Road, on the low side of the street.</p> <p>The site has an irregular shape with a frontage of 22.25 metres along Parkes Road, a rear boundary width of 15.24 metres and side boundary lengths of 46.98 metres (north) and 45.985 metres. The site has a surveyed area of 859.2m².</p> <p>The site is located within the R2 (Low Density Residential) zone under the WLEP 2011 and accommodates a single storey fibro dwelling with a corrugated metal roof which sits at the top of the site, near the street. The house is elevated at the rear where the topography of the site drops away. Below and behind the main dwelling house is a single storey clad secondary dwelling with a metal roof.</p> <p>An existing concrete driveway extends from Parkes Road</p>

	<p>down the north-western side of the site to the existing open style carport which adjoins the northern side of the house.</p> <p>A landscaped, private and useable open space exists at the front of the house, where there is a level and landscaped area connected with a front deck/entry. As this area is well below street level, and due to the fencing and front landscaping, this is a private recreation area.</p> <p>Trees exist at the front of the site and at the rear/side boundaries.</p> <p>The site falls from the street to the rear. The front boundary is around RL 70 AHD and the rear boundary is around RL 55 AHD. The slope rating under the property mapping is Area D - Collaroy Plateau Area Flanking Slopes 5 to 15.</p> <p>The site is residentially developed and does not contain biodiversity classified vegetation and is not flood or bushfire prone.</p> <p>The site views over treetops and is screened by vegetation from rear properties.</p> <p>The side adjoining homes are in a similar position on properties. Some, like the adjoining property at No. 128 Parkes Road have secondary dwellings and outbuildings within the rear garden areas.</p> <p>Refer to the detail of the site and adjoining development within the photographs below.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses which are varied in style in a low density/well -separated/landscaped/escarpment setting.</p>
--	--

Site/Locality Map:



DA2022/1036

Page 4 of 30



Figure 1: Locality Map



Figure 2: Streetscape, character opposite the site



Figure 3: Streetscape, subject side of the road, looking north



Figure 4: Streetscape, subject side of Parkes Road



Figure 5: Streetscape, showing the frontage of the subject site with fence and driveway



Figure 6: Subject site, looking down the eastern side of the house



Figure 7: Rear elevation of the existing house and existing deck of the subject dwelling



Figure 8: Eastern side of the dwelling from the front patio area



Figure 10: From the driveway showing the house, carport and garden



Figure 11: Front of the house showing the eastern setback

DA2022/1036



Figure 12: Front perspective, showing the western side setback



Figure 13: Looking toward the rear of the house



Figure 14: Looking toward the rear of the house from the carport area
DA2022/1036



Figure 15: Looking towards the rear boundary showing secondary dwelling on the subject and the western adjoining property



Figure 16: Rear aspect showing the primary and secondary dwelling on the subject site

SITE HISTORY

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

[Development Application DA2022/1036](#)

Alterations and additions to a dwelling house (Submitted: 12/07/2022)

[Principal Certifier OC2022/0184](#)

Secondary Dwelling - CDC21/1979 (Submitted: 30/03/2022)

[Principal Certifier NOC2021/0917](#)

Secondary Dwelling - CDC21/1979 (Submitted: 16/07/2021)

[Complying Development Certificate CDC2021/0582](#)

Secondary Dwelling - CDC21/1979 (Submitted: 25/06/2021)

[Development Application DA2010/2131](#)

Alterations and additions to a dwelling house and construction of a swimming pool (Submitted: 22/12/2010)



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to stormwater, plan dimensions/scales. The details were received on 27 September 2022.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.



Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application. Concerns have been resolved and the proposal is largely compliant with planning controls and is in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/08/2022 to 12/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received one initial submission was received from No. 128 Parkes Road concerning setback and potential overlooking (due to the elevation). This submission was reviewed by the applicant and the concerns were resolved between the neighbours leading to amended plans increasing the setback of the rear setback from that side. Privacy to both sides has been considered in the design and setbacks (spatial separation and placement of privacy screen). The amendments were reviewed and supported by the neighbour and the submission was withdrawn via email as the concern has been resolved.

REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Comment from the Office was received on 29 July 2022.



ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A447616_02 dated 9 August 2022).

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

Commitment	Required Target	Proposed
Water	40	Complies
Thermal Comfort	Pass	Complies
Energy	50	Complies

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections and made the following comments:



'Ausgrid does not have any objections for the proposed development.'

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets. Overhead Powerlines Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction.

Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding. The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual.

This document can be sourced from Ausgrid's website, www.ausgrid.com.au. It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite. "Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site." Underground Cables.

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.'

The recommendations of Ausgrid have been incorporated into the recommended Conditions of Consent.

SEPP (Resilience and Hazards) 2021

The subject site is not mapped as having flood or fire hazards and is consistent with the provisions of the SEPP. A Geotechnical comment has been made having regard for the capacity of the site for the proposed construction and standard conditions are recommended in this regard.

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard		Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:		600m ² (no change)	N/A	N/A	N/A
Height of Buildings:		8.5m	m	N/A	Yes < 8.5m
Rural Subdivision:		N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:		N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
Clause	Compliance with Requirements
5.3 Development near zone boundaries	N/A
5.8 Conversion of fire alarms	N/A
5.9 Dwelling house or secondary dwelling affected by natural disaster	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.11 Affordable housing	N/A



Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	< 7.2m (single storey)	N/A	Yes
B2 Number of storeys	2	1	N/A	Yes
B3 Side Boundary Envelope	4m	Refer to plan extract in the discussion below showing envelope line and variations.	N/A	Refer to discussion below.
	4m	m	N/A	Yes
B4 Site Coverage	N/A	N/A	N/A	Yes
B5 Side Boundary Setbacks	0.9m	NW = 1.581m - 3.306m	N/A	Yes
	0.9m	SE = 1.9m - 3.437m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6m (no change to the established front line, new pergola over existing non-elevated deck), extension of front line to the side at the same setback.	N/A	No change to existing – achieves the existing setback. Refer to assessment below.
B9 Rear Boundary Setbacks	6m	>20m	N/A	Yes, minimal change to existing, substantial spatial separation is available, and landscaped space. Consistent with surrounding dwellings.
B11 Foreshore Building Setback	N/A	N/A	N/A	N/A
B12 National Parks Setback	N/A	N/A	N/A	N/A
B13 Coastal Cliffs Setback	N/A	N/A	N/A	N/A
B14 Main Roads Setback	N/A	N/A	N/A	N/A

D1 Landscaped Open Space (LOS) and Bushland Setting	40%	57%	N/A	Yes
---	-----	-----	-----	-----

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights 7.2m	Yes	Yes, single storey, setbacks tapered away from the sides. Low roof profile. Designed to minimise scale. Consistent with merit controls. Provides residential amenity in terms of separation, scale, light and sun and privacy (as discussed within this table).
B3 Side Boundary Envelope	No	<p>The proposal involves a minor variation of this control having regard partly for the design challenge presented by the rear drop in the topography and the elevation of the house at the rear.</p> <p>The applicant has indicated in the SEE in this regard:</p> <p><i>'The minor non-compliance to the building envelope control arises due to a number of site constraints. In particular, the building envelope which is determined relative to the side boundary, is in this case impacted by the irregular perpendicular allotment shape where the north west side boundary is on an acute angle to the front boundary, thereby creating a restrictive envelope control. Further constraining the site is the steep topography and uneven terrain, which limits the buildable area available for the proposal.'</i></p> <p>Under the circumstances, given the modest scale and height of the existing house and the proposed single storey alterations, the reasonable set ins of the proposed rear deck area (to address articulated privacy concerns), the variation to the envelope is reasonable. As submitted, this envelope variation is created in part by the drop of the topography at the rear.</p> <p>The proposal is consistent with the objectives in that the amended design is modest in nature, not visually dominant, maintains adequate light, solar access and privacy to the adjoining dwellings.</p> <p>The proposal is considered to be site and area responsive and consistent with the intentions of the control which</p>

		include the protection of against scale and amenity impacts.
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Existing minor variation, changes match the existing setback.	No change to the existing front building line and porch (re-roofing). The existing front setback is landscaped, and the house is recessed from view, below street level. The existing setback is consistent with houses in the line on the subject side of the street. The front setback is consistent with the DCP controls and objectives of the controls. No change to the streetscape.
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes, no change	Yes, existing driveway and parking to be maintained as is.
C3 Parking Facilities	Yes, no change	Yes
C4 Stormwater	Yes	Yes, stormwater details have been provided as requesting details. New downpipes to exist water into an existing inter-allotment drainage system. Standard conditions recommended in relation to appropriate water management.
C6 Building over or adjacent to Constructed Council Drainage Easements	N/A	N/A, away from drainage easement.
C7 Excavation and Landfill	Yes	Yes, minimal to support the piers. The design is not considered to create unreasonable excavation.
C8 Demolition and Construction	Yes	Yes, conditions recommended.
C9 Waste Management	Yes	Yes, as existing.
D1 Landscaped Open Space and Bushland Setting	Yes	Yes. The SEE submission indicates that: <i>'The proposal results in an increase of site coverage by 62.7sqm, which is 30.83% of the total site area.'</i> The plans indicate that 57% landscaped open space would be retained on site (with consideration of the primary and secondary dwellings) which is compliant and reasonable. The proposal essentially utilises existing altered areas and provides similar landscaped setbacks to the existing situation. These are contiguous with the setbacks and open spaces of the adjoining dwellings along the subject side of Parkes Road and protects spatial separation and the area character. The proposal is reasonable and consistent with the DCP controls and objectives.
D2 Private Open Space ('POS')	Yes	Yes, POS provided for the dwelling with the front and rear decks. No change for the secondary dwelling/space at the

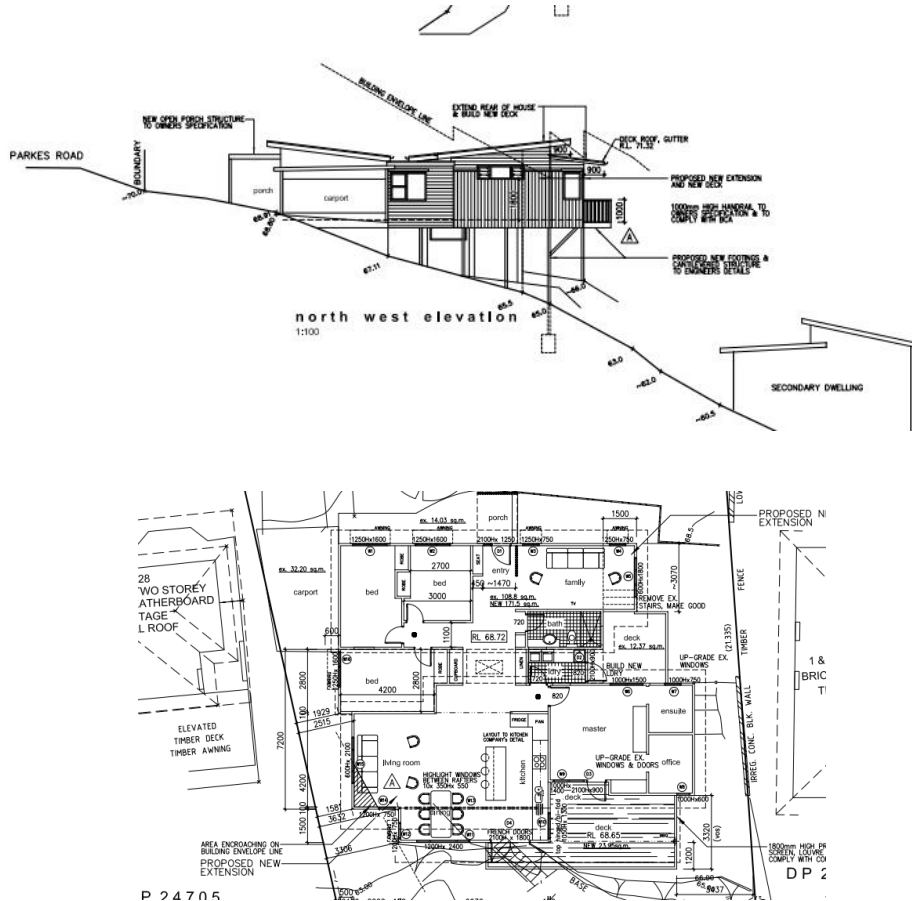
		rear of the site.
D3 Noise	Yes	Yes, the proposal would not introduce any unreasonable noise, only as would be expected within a low density residential setting.
D6 Access to Sunlight	Yes	Yes, solar access diagrams have been provided to indicate solar access is available to the subject site and adjoining to comply with the DCP merit objectives. Solar access remains available to rear elevations and private open space areas.
D7 Views	Yes	Yes, low form and adjusts the rear of the existing form, which is not considered to obstruct views. The SEE indicates that the rear addition steps in from the side boundaries to maintain side views of the side adjoining properties.
D8 Privacy	Yes	Yes.
D9 Building Bulk	Yes	Yes, modest in scale, matches existing house and others in the area.
D10 Building Colours and Materials	Yes	Indicated to match the existing house.
D11 Roofs	Yes	The roof design and scale match the existing house and is minimised in terms of presentation and any potential impact on adjoining houses.
D12 Glare and Reflection	Yes	The proposal is not considered to create glare and reflection. Standard conditions are recommended in this regard.
D14 Site Facilities	Yes	No change. Site facilities are available on site in line with the merit objectives for low density residential development.
D20 Safety and Security	Yes	Consistent with safety and security measures.
D21 Provision and Location of Utility Services	Yes	As existing.
D22 Conservation of Energy and Water	Yes	BASIX consistent.
E1 Preservation of Trees or Bushland Vegetation	Yes	No trees to be removed.
E2 Prescribed Vegetation	Yes	As above.
E6 Retaining unique environmental features	Yes	The alterations involve an essentially already altered area and maintain the unique environmental qualities of the site.
E10 Landslip Risk	Yes	Yes. The Geotechnical Report (amended) indicates that the proposed development is supportable in relation to landslip/geotechnical aspects. Refer to the White Geotechnical Group dated 10 August 2022.

Compliance Assessment

One variation is proposed (building envelope). The following plan extract shows the line of the envelope control. The extract shows the variations in the envelope line relative to the various topographical drops (from the amended plans).

DA2022/1036

Page 19 of 30



As can be seen, the variation is not extensive or excessive and the form and roof profile are deliberately designed to be low. The above plan extract shows a hatched area at the south-western rear corner where the proposal seeks to vary the side boundary envelope control above the slope.

The topography does provide intermittent drops which provides a design challenge in terms of consistent numerical compliance with this control. The DCP allows for some site-specific consideration in circumstances such as these. The proposal works with/extends the already elevated cantilevered form which sits above the slope. This cantilevered form is consistent with other similar forms in the area which address the slope of the hillside and minimises land alteration.

The acceptability of the proposal (against the objectives of the control) is addressed in detail within the above table. The merit variation has been considered, is minor and the proposal demonstrates reasonable scale and separation. On balance with other development controls, the addition would not create a dominating or excessive scale. Reasonable side setbacks have been provided to ensure the protection of the side adjoining neighbours and the form remains effectively single storey in rear scale. The proposed additions also are minor and relate to the existing position of the house on the site (working with existing setback lines).

The proposal has been designed to consider spatial separation, solar access and privacy for the adjoining properties (via proposed stepping/boundary off-sets and built privacy measures as detailed). The proposal is assessed as acceptable being generally consistent with the LEP and DCP controls.



THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,620 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$462,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- 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

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, as the consent authority grant Development Consent to DA2022/1036 for Alterations and additions to a dwelling house on land at Lot 16 DP 24705, 126 Parkes Road, COLLAROY PLATEAU, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS



1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-120 Sheet 1, Rev A (with stormwater notes) (site plan)	9 August 2022	Anna Henry Design
A-120 Sheet 2, Rev 2 (elevations and section)	9 August 2022	Anna Henry Design
SHAD-120 (shadow diagram)	August 2022	Anna Henry Design
Sed- 120 (sediment plans)	August 2022	Anna Henry Design

Reports / Documentation – All recommendations and requirements contained within:		
Report	Dated	Prepared By
Statement of Environmental Effects (Amended)	15 August 2022	Sky Town Planning
BASIX Certificate No. A447616_02	9 August 2022	
Waste Management Plan	Undated	
Geotechnical comment (amended)	10 August 2022	White Geotechnical Group

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	25 July 2022

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

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

3. Prescribed Conditions



- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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



Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls



Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,620.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2022. The monetary contribution is based on a development cost of \$462,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

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

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

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

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

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



7. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. 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 Principal Certifier prior to the issue of the Construction Certificate.

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

9. External Materials

The proposed additions shall match (as best it can) to the colours and finishes of the existing dwelling so as to achieve visual continuity.

Reason: To ensure minimal impact upon amenity of adjoining properties and visual continuity of the existing dwelling.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and



- i The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

11. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

13. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

14. **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.

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

**15. Stormwater Drainage Disposal Certification**

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

16. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

17. Waste Management Confirmation

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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



18. Geotechnical Recommendations

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

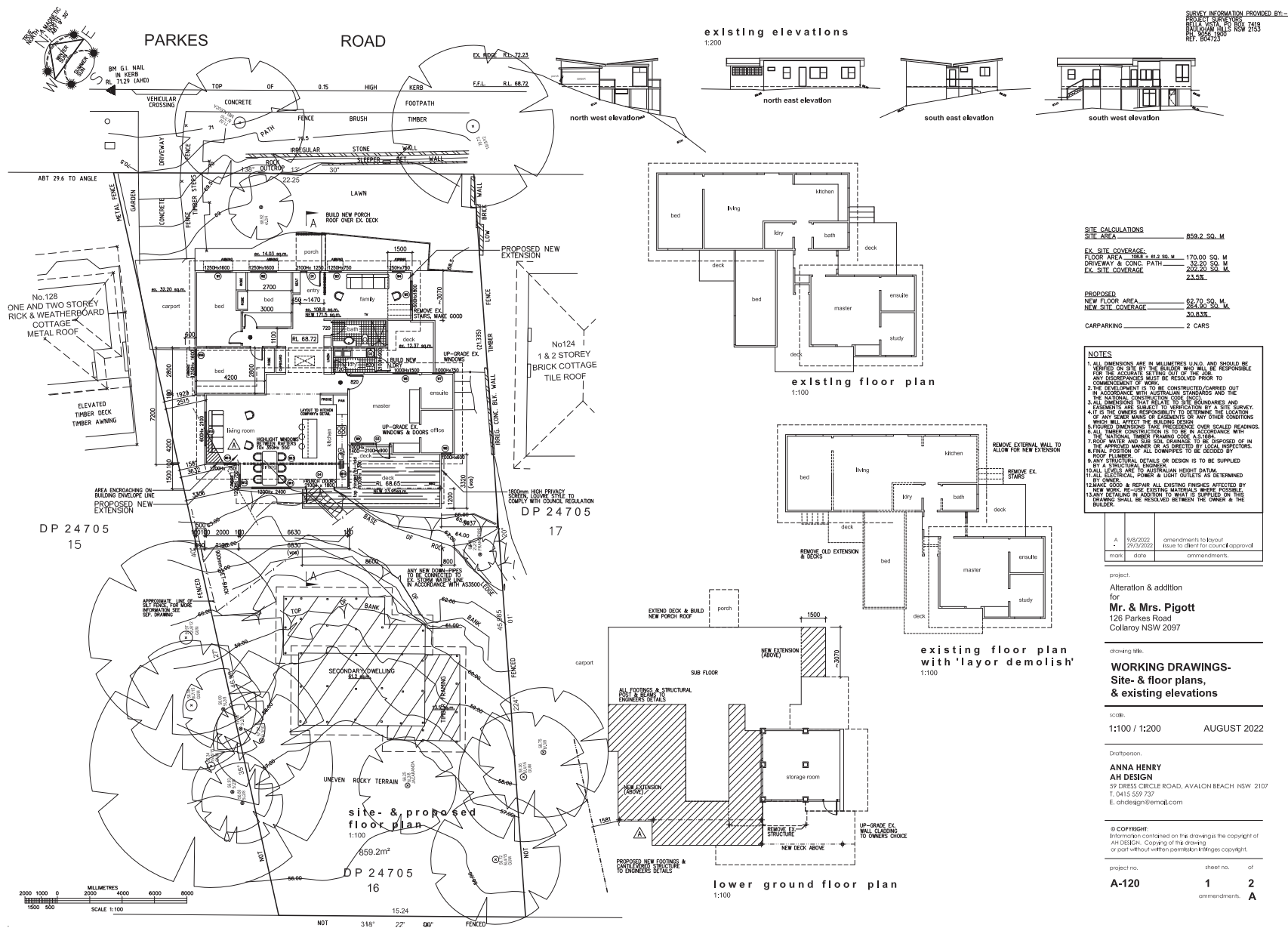
Reason: To ensure geotechnical risk is mitigated appropriately.

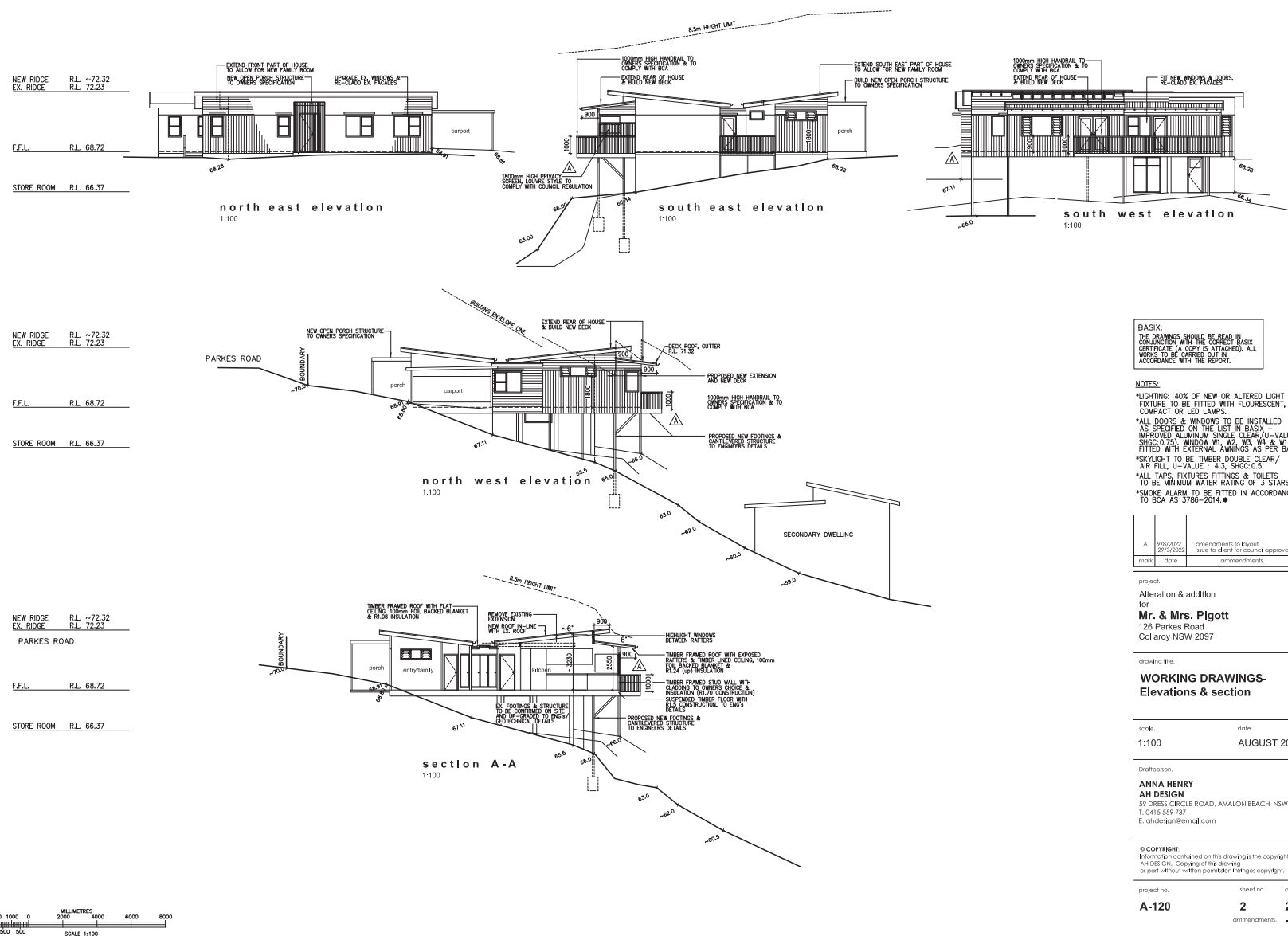
In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Natalie Richter, Independent Consultant Town Planner, 19 October 2022





ITEM 5.3**DA2022/1500 - 8/122 BOWER STREET, MANLY -
ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT
BUILDING.****AUTHORISING MANAGER** Adam Richardson**TRIM FILE REF** 2022/692464**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan & Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1500 for Alterations and additions to a residential flat building on land at Lot 8 SP 1717, 8 / 122 Bower Street, Manly, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1500
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 8 SP 1717, 8 / 122 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Bravo Futura Capital Pty Ltd
Applicant:	Manfredini McCrae Architects Pty Ltd
Application Lodged:	16/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/09/2022 to 10/10/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 33.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 20,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing residential flat building. The works comprise internal alterations and minor works to the north-east facing windows of Unit 8/122 Bower Street located on the second floor of the residential flat building

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as it proposes a variation of greater than 10% to Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 and is a Class 2 building. The existing building currently breaches the height limit significantly, with the extent of works being replacement of windows and doors midway up the building. Specifically, the new window represents a 33% variation to the height of buildings development standard. It is noted that a number of other windows and doors have been replaced in other apartments, in a similar way, in the last few years

No public submissions were received during the notification period.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application DA2022/1500 for alterations an existing residential flat (Unit 8). The works comprise;

- Internal reconfiguration of kitchen and dinning.
- Replacement of existing northeast facing windows, replicating window arrangement of flat above.
- Removal of existing northwest facing windows to the balcony, replacing it with bi-fold doors.
- Removal of the existing northwest door to the balcony, replacing it with a fixed window.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone C4 Environmental Living
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 8 SP 1717 , 8 / 122 Bower Street MANLY NSW 2095
-----------------------	---

Detailed Site Description:

The subject site consists of one (1) allotment located on the eastern side of Bower Street.

The site is irregular in shape with a frontage of 30 metres along Bower Street and a depth of 50 metres. The site has an area of 1468m². The site is located within the C4 Environmental living zone and accommodates an eight (8) storey residential flat building with associated outbuildings.

The site slopes to the north-east towards the ocean and includes a crossfall of 4 metres.

The site is heavily developed and does not contain any significant landscape features.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised residential accommodation including residential flat buildings, semi-detached dwellings and dwelling houses.

Map:



SITE HISTORY

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

DA2018/0084

Development application for unit 14/122 Bower Street Manly, legally known as Lot 14 SP1717 for alterations and additions to the existing residential flat building was approved by Northern Beaches Council under delegation on the 27 March 2018.

DA2022/0641

Development application for unit 17/122 Bower Street Manly, legally known as Lot 17 SP1717 for alterations and additions to the existing residential flat building was approved by Northern Beaches Local Planning Panel on 06 July 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and a clause 4.6 variation request.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental</p>

Section 4.15 Matters for Consideration	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/09/2022 to 10/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>SUPPORTED WITHOUT CONDITIONS</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i> and State Environmental Planning Policy (Resilience & Hazards) 2021. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment</p>

Internal Referral Body	Comments
	<p>Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Planik Pty. Ltd. dated August 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site adjoins two heritage items</p> <p>I2 - All stone kerbs - Manly Municipal Area</p>

Internal Referral Body	Comments		
	190 - Street Trees (Acaucaria heterophylla) - Bower Street		
	Details of heritage items affected		
	All Stone Kerbs <u>Statement of Significance:</u> Stone kerbs are heritage listed <u>Physical Description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent to lower slopes of Eastern Hill and Fairlight		
	Street Trees <u>Statement of Significance</u> Listed for its aesthetic importance to the streetscape. Continuity with the earlier street tree plants of Manly 'Village' area. <u>Physical Description</u> Norfolk Island pines (Araucaria Heterophylla). Appear to have been planted in the early 1900's.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
<p>The proposal seeks consent to change windows and doors in a unit at the subject site. The two heritage items are located in front of the property in Bower Street. As the works are minor and relate to the building only, the proposal is considered to not impact the heritage items or their significance.</p> <p>Therefore, Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No</p>			

Internal Referral Body	Comments
	Has a Heritage Impact Statement been provided? No

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the construction of new windows and minor internal alterations to Unit 8. Overall, it is considered that the proposal does not involve a substantial redevelopment or the substantial refurbishment of the existing building.

As per the definition of a residential flat building and 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.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal has an estimated cost of works of \$20,000 and therefore, is not BASIX development, as per the Environmental Planning and Assessment Regulation 2021.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
 - ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
 - iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The proposed alterations and additions are within the existing building footprint and as such, the works will not have any adverse impacts on any of the above.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposed alterations and additions are not expected to cause an adverse impact on the above.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The works are sited within the existing footprint of the building and will not have any adverse impacts on the coastal environment area.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The works are within the footprint of the existing building and will not result in any adverse impacts on any of the above.

Division 5 General

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

hazards

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

Comment:

The proposed alterations and additions are not likely to cause increased risk of coastal hazards on that land or other land.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.3m (height of windows above approximate ground level)	33.3%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone C4 Environmental Living

Zone objectives

The underlying objectives of the C4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed works are minor internal and external alterations, which are considered to be a low-impact residential development.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposal will maintain the existing built form and will not involve the removal of any significant vegetation.

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

Comment:

The proposal involve minor alterations to an existing flat building and will maintain the amenity of the adjoining foreshore areas.

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

Comment:

The proposal is largely internal works and will not extend beyond the existing the footprint. In this regard, the immediate foreshore areas will not be adversely impacted by the development.

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

Comment:

The proposed development is minimal in scale and has been suitably integrated with the landform and landscape

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

4.6 Exceptions to development standardsDescription of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.3m
Percentage variation to requirement:	33.3%



Figure 1. Building height non-compliance.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra*

Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are

achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

Flexibility is sought to permit modifications to existing windows within a non-compliant building. The works will lead to a better outcome for the residents without negative impacts to any other residents in the vicinity of the site or any public views.

Council agrees with the applicants argument that the works are consistent with the objectives and strict compliance with the control in these circumstances is considered unnecessary. The breach to the development standard is a technicality, insofar that the overall height of the building does not increase.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The built form of the residential flat building remains unchanged, with the alterations and additions limited to the windows of unit 8. The works are consistent with the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The built form of the building remains unchanged.

c) to minimise disruption to the following:

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

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

Comment:

The proposal will not result in the loss of any views to and from residential development and public spaces and views 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:

Adequate solar access will be maintained.

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

Comment:

The existing height of the residential flat building remains unchanged.

Zone objectives

The underlying objectives of the C4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed works are minor internal and external alterations, which are considered to be a low-impact residential development.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed works are contained within the existing footprint and will not adversely impact the values of the surrounding area.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposal will maintain the existing built form and will not involve the removal of any significant vegetation.

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

Comment:

The proposal involves minor alterations to an existing flat building and will maintain the amenity of the adjoining foreshore areas.

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

Comment:

The proposal is largely internal works and will not extend beyond the existing the footprint. In this regard, the immediate foreshore areas will not be adversely impacted by the development.

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

Comment:

There are no proposed changes to the overall built form of the existing residential flat building.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

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

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

There are no proposed changes to the overall built form of the existing residential flat building and the proposed alterations and additions to unit 8 is consistent with the above objectives.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1468m ²	Requirement	Proposed	% Variation*	Complies
4.1.4.4 Rear Setbacks	8m	6.9m	13.8%	Existing non compliance, no further variation sought

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

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

It is considered that the matters pertaining to the acceptability of building height is discussed and covered with the '4.6 Exceptions to development standards' section of this report. For those reasons, it is considered that the variation to the height controls are acceptable, particularly as the overall height of the building is unaltered.

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

The existing development on the site is non-compliant with the rear setback control of the Manly DCP 2013. The proposed modification to the window will not result in any further variation to this control. The

proposed alteration to the window is to the rear of the building and will overlook the ocean and as such, the proposal will not result in any unreasonable impacts on the streetscape or amenity of the locality and will maintain the natural features of the site. The proposal is consistent of the control and the requested flexibility is satisfactory in this circumstance. Furthermore, as the position and footprint of building to which the window relates is not being altered, it is not considered necessary to consider the variation to the DCP against the objectives of the control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

- 1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013

seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

The subject site currently contains a eight storey residential flat building. This development application seeks consent for alterations and additions to an existing residential flat building. The works involve minor modifications to the north-east facing windows of Unit 8.

The development includes a breach of the height of buildings standard.

No public submissions were received during the notification period.

This assessment has concluded that the non-compliances are reasonable and the Clause 4.6 variation to the height of buildings development standard can be supported based on the applicants written request.

Overall, the proposal will be an upgrade to the existing dwelling, while satisfying the objectives of the zone and being consistent with character of the locality.

Accordingly, the application is recommended for approval subject to conditions.

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1500 for Alterations and additions to a residential flat building on land at Lot 8 SP 1717, 8 / 122 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DAP02 - Issue B: Site plan & elevation	16 August 2022	MM + J Architects
DAP03 - Issue B: Demolition & floor plan	16 August 2022	MM + J Architects
DAP04 - Issue B: Demolition elevations	16 August 2022	MM + J Architects
DAP05 - Issue B: Proposed elevations	16 August 2022	MM + J Architects
DAP06 - Issue B: Sections	16 August 2022	MM + J Architects
Schedule of exterior colours and materials	26 August 2022	MM + J Architects

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	26 August 2022	David McCrae

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

erection of any fences, hoardings or other temporary works.

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

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

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

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of

residents and the community.

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

4. **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 Certifier prior to the issue of the Construction Certificate.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

5. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

6. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

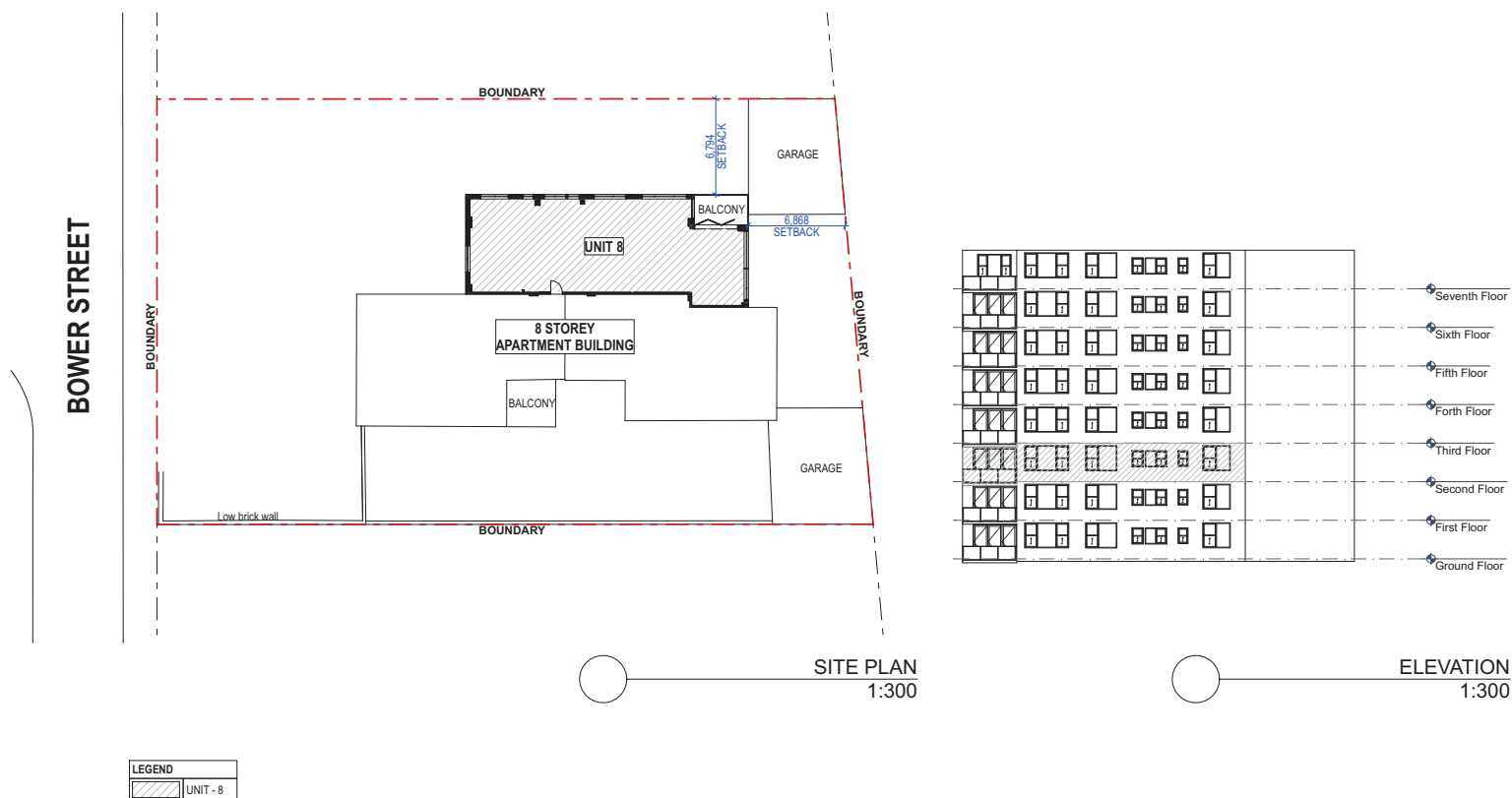
Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.



7. **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 Certifier.

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



	NOTES:	REV	DATE	DESCRIPTION		Clients:	CRAIG BUTCHER PROJECT: ALTERATIONS & ADDITIONS TO RESIDENTIAL UNIT 8/122-124 BOWER STREET, MANLY 2095 SITE PLAN & ELEVATION	SCALE: 1:300	DRAWING NO:
	This drawing is and remains copyright and is the property of mm+ architects pt. l. It may not be used or copied in whole or in part without written consent. All dimensions to be verified on site. This drawing is not to be used for construction purposes.	A	12.08.2022	Development Application issue		SUITE 8, 21 SYDNEY RD, MANLY NSW 2095 9929 1279 admin@mmjarchitects.com.au nominated architect Luisa Manfredini ANS 6696		DATE: 16/8/22	DAP02
		B	16.08.2022	Existing windows on floors above & below updated				JOB NO: 2044	
DEVELOPMENT APPLICATION - PREPARATION									



Kye Miles
Northern Beaches Council
Dee Why
NSW 2099

manfredini mccrae pty ltd

mmjarchitects.com.au
suite 8, 21 sydney road
manly, nsw 2095

m 0425 245 223

Nominated architect:

david mccrae nsw architect 8352
abn 79153579867



24 October 2022

Dear Kye

Re: Unit 8 122 Bower Street Manly

THE CLAUSE 4.6 VARIATION – BUILDING HEIGHT

GENERAL

Clause 4.3 of MLEP 2013 provides for the maximum height of a building on this land to be 8.5 metres.

Our existing 8-storey residential flat building is substantially higher, with a height of nearly 28 metres to the top of lift overrun. Our proposed window modifications involve works up to a height of approximately 11.35 metres above existing ground level.

Clause 4.6 of MLEP 2013 provides for exceptions to development standards including building height if a written request is received from the Applicant justifying contravention of the development standard.

REQUIREMENT

Objectives of Clause 4.6 of MLEP 2013 (4.6(1)) are:

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

Our proposal is consistent with these objectives. Flexibility is sought to allow modifications to the existing windows situated within a non-compliant building. These works will provide a better outcome for all residents without any negative impacts to other residents near the site or any public views.

Clause 4.6(3) provides:

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:

- 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.*

We believe that compliance with the current development standard is unreasonable as, it requires the existing building's demolition, thus reducing local housing stock. This option is contrary to the principles of environmentally sustainable development as resources would be needlessly

consumed in the demolition and rebuilding of the current structure.

The grounds that we believe will justify contravening the current development standard are improved residential amenity for the current and future residents of the dwelling which will enhance local housing stock with no negative impacts.

Clause 4.6(4) of MLEP 2013 provides:

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

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

Matters in subclause (3) are addressed

above. The objectives of the building

height control are:

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

The proposal satisfies all of the above objectives as our building envelope does not change, there will be no change to overall building height, roof form, the bulk or the scale of the building. There are also no impacts to current views or solar access and there is no impact on the existing surrounding vegetation.

The objectives of the E4 Environmental Living zone are:

- a. *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- b. *To ensure that residential development does not have an adverse effect on those values.*
- c. *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*



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

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

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

This design satisfies these objectives as the proposed minor scale of the work ensures that there are no adverse effects on ecological, scientific and aesthetic values of this area, the tree canopies are retained, there is no vegetation affected, and no change to the height or the bulk of the existing 8-storey residential flat building.

We understood that Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

By summary, this proposal satisfies all the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is thus reasonable and appropriate for the circumstances of this proposed work.

Regards,

David McCrae
Principal