AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 19 APRIL 2023

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



Rodney Piggott
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 19 April 2023

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 5 April 2023 3

3.0 CATEGORY 3 APPLICATIONS

4.0 PUBLIC MEETING ITEMS 5

4.1 DA2022/1443 - 90 Queenscliff Road, Queenscliff - Demolition works and construction of a residential flat building and strata subdivision. 5

4.2 DA2022/1193 - 20 Avon Road, Dee Why - Demolition works and construction of a residential flat building including strata subdivision. 115

5.0 NON PUBLIC MEETING ITEMS 272

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. These applications do not satisfy that criterion.

5.1 Mod2022/0664 - 398 Sydney Road, Balgowlah - Modification of Development Consent REV2021/0012 granted for Demolition works and Construction of a Shop Top Housing Development. 272

5.2 DA2022/1468 - 26 Wandella Road, Allambie Heights - Demolition works, Subdivision of one lot into two, construction of a dwelling house upon each lot and one swimming pool. 313

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 5 APRIL 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 5 April 2023 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	**DA2022/1443 - 90 QUEENSCLIFF ROAD, QUEENSCLIFF - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING AND STRATA SUBDIVISION.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/219959**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan & Elevations** **3 ⇩Design & Sustainability Advisory Panel Report**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1443 for Demolition works and construction of a residential flat building and strata subdivision on land at Lot 22 DP 8373, 90 Queenscliff Road, QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1443

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 22 DP 8373, 90 Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction of a residential flat building and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Paul Oates
Applicant:	Paul Oates

Application Lodged:	07/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	15/12/2022 to 20/01/2023
Advertised:	Not Advertised
Submissions Received:	23
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 3,049,200.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition work and the construction of a residential flat building with basement parking in the R2 Low Density Residential Zone.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal receiving more than 10 objections.

Concerns raised in the objections predominantly relate to non-permissibility of the use (due to existing use rights) in constructing a new flat building to replace the existing flats. Other principal objection concerns were raised regarding streetscape appearance, overshadowing, privacy, building bulk, traffic

and carparking, setbacks, building height, excavation impacts and landscaping works. No view loss objections were raised.

Critical assessment issues included stormwater drainage, visual and noise amenity, building aesthetics, landscaping, side setback non-compliance, wall height compliance and existing use rights considerations. The proposal was reviewed by Council's *Design and Sustainability Advisory Panel (DSAP)* and this ensured that the Applicant made amendments to the plans to address submission issues as well as DSAP recommendations.
Technical design changes or additional information was also submitted to address engineering, waste services and landscaping referral requirements during the assessment period.

The site has been investigated with respect to existing use rights and is consistent with previous development applications made for alteration and additions to the existing flat building on this site.

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 demolition work including the construction of a residential flat building containing 3 apartments with landscaping basement parking and ancillary site works. Details (as per amended plans, dated 5.12.2022) include:

RL 30.9 Basement Level

- Carparking for 6 cars, driveway ramp, storage, lift and stair access, bike storage, services room.

RL 34.1 Ground Level

- Lobby area, lift and stair access, services space, Apartment "1" with 3 bedrooms, 4 bathrooms, laundry, kitchen living dining area, storage, terrace / deck and landscape garden areas.

RL37.05 First Floor Level

- Lobby area, lift and stair access, services space, Apartment '2" with 4 bedrooms, 4 bathrooms, laundry, kitchen living dining area, storage, balcony space.

RL40.0 Second Floor Level

- Lobby area, lift and stair access, services space, Apartment "3" with 3 bedrooms, 2 bathrooms, laundry, kitchen living dining area, storage, balcony space.

Ancillary site works, demolition, excavation, stormwater and drainage works, landscaping, bin / letterbox / entry structure, fencing and incidental works.

Future strata subdivision may be undertaken subject to State planning legislation.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C7 Excavation and Landfill
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 22 DP 8373 , 90 Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The site has an area of 598.1 square metres (sqm) with a frontage of 13.42 metres (m) to Queenscliff Road and a maximum depth of 37.9m. The site is located on the southern side of Queenscliff Road between Greycliffe Street and Bridge Road and is currently occupied by a two-storey residential building containing two (2) dwellings in duplex arrangement, with a converted rear (connected) section previously approved and constructed for a "Flatette". There is a carport adjacent to the rear boundary accessed

	by a driveway that runs along the eastern side boundary. Lawns and shrub planting provide landscaping to the front and rear of the building. The surrounding precinct within Queenscliff has been developed for a mix of dwelling types of varying ages and styles. The site has convenient access to public bus transport, to local and regional shops, services, schools and public open space. The site is not within the "coastal zone" (but is in the "coastal management area"). The land is not situated on potential acid sulfate soils or flood affected by natural drainage or low lying land. The site is not a heritage item but No.49 Greycliffe Avenue, adjoining the south-west corner of the site is listed as a heritage item (dwelling). The land is within "Area B" for geotechnical slope risk and does not contain any unique environmental features, substantial canopy trees or rock outcrops and the like. The surrounding area is characterised by residential flat development to the north east of the site and low density residential housing to the immedate south, west and east. Views of the coastal area are common for residential development above first storey level in Queenscliff.

Map:



SITE HISTORY

Historical Development circa 1943 - Aerial photo records show that a building was constructed on the site (current Lot and DP) with a footprint of a similar shape to the original Duplex shown on a set of original plans used for the site. The plans are consistent with later plans prepared for alterations and additions to the building in 1962. The plans submitted for this later approval in 1962, however also show

a third dwelling, being a "Flattette" at the rear of the Duplex. No approval between 1943 and 1962 has been located after a thorough search of Council property records. However, the later building approval in 1962 raises no issues from Council regarding the lawfulness of this detached "flatette" on the 1962 building approval at that time.

Building Approval No.C904/62 for "2 Flats" was granted by Council in 1962. The proposed alterations and additions included the renovation work to the flatette containing a living room, bed room, kitchen sink, bathroom and sundeck. The plans show the flatette was intended to become used for the purpose of a single car garage with the conditions of approval, dated 12 September 1962, requiring "*compliance with Ordinance 71 of the Local Government Act*" and Council's special conditions of approval that "*domestic fittings and fixtures being removed from converted garage*".

Development Application No.87/217 was granted approval by Council on 19 June 1987 to "*carry out alterations and additions to the residential duplex building".* This application proposed renovation work to the duplex building including alterations and additions to extend the top floor over the detached "flatette" to create a larger single building and convert the [previous] flatette / garage to a garage and storeroom. The garage space was 4.7m wide which is insufficient to comply as a double car garage (which requires a minimum 5.4m width).

The introduction to Council's development assessment report for DA 87/217 stated:
"The existing duplex was constructed in 1962 under Building Approval C904/62. Pursuant to Clause 41 (2) of the County of Cumberland Planning Scheme Ordinance this approval may be deemed to be a development consent for the erection of the duplex. In the absence of any evidence to the contrary, it is concluded that development consent was issued under Approval C904/62 and that the property therefore has the benefit of existing use rights".

In summary, the land use records and consent documents provided and available to Council show the building was actually already there in 1962 and the 1962 approval was for internal renovation work, including alterations and additions. Residential use of the land has continued since that time to the current date. Aerial photos from circa 1943 show a substantial building on the site, but without the "flatette" additions at the rear.

Development Application No.DA2017/1252 for alterations and additions to an existing residential building containing two (2) dwellings to create three (3) dwellings, was received on 18 December 2017 to regularise the use of the premises for three (3) dwellings, by-way-of those provisions applicable to *existing use rights*. This application was approved by Council (having reviewed the existing use right situation) on 20 September 2018. Construction certificate No.CC2022/0144 has been lodged with Council for this DA however the documentation is incomplete.

Development Application No.2020/0684 for alterations and additions to a Residential Flat Building and Strata Subdivision (3 dwellings) was withdrawn by the applicant.

Development Application No.2021/0863 for alterations and additions to a Residential Flat Building and Strata Subdivision (3 dwellings) was refused by Council on 20 October 2021.

Consideration of the Current Application
Council has previously accepted that the site benefits from existing use rights. In assessment of this application Council again concludes that existing use rights still exist for the current proposed to completely demolish all existing structures and construct a new residential flat building.

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 Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement for flat building with 4 or more apartment that are also 3 storeys or more. This documentation is not required as the proposal does not trigger assessment pursuant to SEPP 65 and the ADG (being less than 4 apartments). However, the proposal has sought to follow the principles of good design outcomes recommended by the Apartment Design Guide (ADG). No assessment of the ADG is required, however the proposal has been reviewed by DSAP and details are provided within this report under the heading "Internal Referrals" Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. The DA was notified in accordance with the *Community Participation Plan*. Additional information was requested in association with DSAP review and referral issues as well as considerations about existing use rights. The applicant also sought to address public issues raised in submissions (as relevant). The amended architectural plans (dated 5.12.2022) were notified and made viewable online to those persons who raised submission issues with the original plans. Further technical information was also sought regarding driveway gradients and arborist information. Subsequent notification (by email) is appropriate for the amendments as the changes sought to improve amenity and reduce overall impacts on the surrounding environment. The DA documents are readily accessible to view via Council's website and have been publicly available for an extended period of time. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions.
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

- **Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the ‘Act”)?**

Section 4.65 of the Act defines an existing use as meaning:

> *"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*
>
> *(b) the use of a building, work or land:*

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered.

1. **Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?**

Comment:
The following summary establishes the sequence of approval dates, as evidence of existing use rights:

(a) The approved plans under C904/62 included the following conditions of approval:

"Approved, subject to:-

1. Work generally being in accordance with Ordinance 71, Local Government Act, and Council's Rules and conditions.

2. Any alterations which may be shown on a stamp as special conditions of approval.

SPECIAL CONDITIONS OF APPROVAL

Approved subject to domestic fittings and fixtures being removed from the converted garage."

(b) In effect, the building approval C904/62 provided for the conversion of three (3) flats into two (2) flats.

(c) As at the date of the issuing of the building approval C904/62, the site was located within the "*Living Area*" zone pursuant to the *County of Cumberland Planning Scheme Ordinance* ("CCPSO"), proclaimed 2 August 1957. The approval under the CCPSO predates the *Shire of Warringah Planning Scheme Ordinance*, (SWPSO) proclaimed on 5 June 1963. The later SWPSO introduced some new land use definitions, including "duplex flat building" being a "*a residential flat building of two storeys containing two flats*". However, the subject use predates this environmental planning instrument.

(d) Clause 41(2) of the CCPSO deemed the building approval to be a development consent or land use consent under the CCPSO, despite the building approval / deemed land use consent not specifying the approved "use" of the site. That use had already commenced by the building having already been present in the form shown on the plans, dated 28 February 1962. Aerial land use records show a building present in 1943, matching the building footprint of the "original" plans.

(e) Pursuant to the land use table in clause 26 of the CCPSO, the use of the site for a *dwelling-house* was permitted without consent and the use of the site for a *residential building* was permitted with consent.

(i) *Dwelling-house* was defined in clause 24 of the CCSPO as follows:

> "Dwelling-house" *means a building designed for use as a dwelling for a single family, together with such out-buildings as are ordinarily use therewith, and includes a dwelling in a row of two or more dwellings attached to each other such as are commonly known as semi-detached or terrace buildings*.

(ii) *Residential building* was defined in clause 24 of the CCSPO as follows:

> "Residential building" *means a building, other than a dwelling-house, designed for use of human habitation together with such out-buildings as are ordinarily use therewith, a residential flat building, a hostel, an hotel designed primarily for residential purposes and, a residential club, but does not include any building mentioned, whether by inclusion or exclusion, in the definition of "places of instruction" and "institution".*

(f) The building being the subject building approval under C904/62 is correctly and appropriately characterised as a *residential building,* as opposed to a *dwelling-house*.

(g) The approved plans, together with the description of the building in the *building card records*, demonstrate that the building contained two (2) flats designed for the use of human habitation. This is consistent with the definition of a *residential building* in the CCSPO. The plans also shows a "flatette" already behind the 2 flats, that was intended to be subject to conversion work to use the "flatette" as a car garage, subject to Council conditions. The conversion was never fully completed throughout the "flatette".

2. **Was the use of the building or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?**

Comment:
Yes. The use of the land for two (2) flats was lawfully approved by Council in 1962, prior to the coming into force of the current *Warringah Local Environmental Plan 2011* (WLEP) on 9 December 2011, that has the effect of prohibiting the use. This approval though is associated with the third dwelling that appears as a "flatette" at the rear that was intended to be also be subject to works. A search of Council records has not revealed the original consent of the "flatette" and has not been found by the applicant (such as by an external records search i.e. historical research / property research). The Appeal case of *Jojeni Investments Pty Ltd v Mosman Municipal Council [2015] NSWCA 147* has been considered in this regard in context with the current proposal where appropiate / relevant.

3. **Has the use of the building or land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?**

Comment:
Yes. The applicant has provided evidence in the form of a subsequent consent No.87/217, issued on 19 June 1987 to carry out "alterations and additions to the residential duplex building" which reveals that the use of the building in its form at the time and demonstrates the land use was continuing after the 1962 approval was granted. Records demonstrate the site has been used for residential purposes commenced prior to the planning provision having the effect of prohibiting the use and the building continues to be used as a residential building containing "flats".

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2)**

(b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: "*that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*".

Comment:
Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

Section 163 of the *Environmental Planning and Assessment Regulation 2021,* makes provision for existing uses to be able to be enlarged, expanded or intensified, altered or extended, rebuilt, or changed (subject to the land use type).

The following four principles adopted by the court in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71* will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:
The existing building is 9.1m high and does not comply with the building height of *Warringah LEP 2011*. The new building will be lower by virtue of a flat roof design but in a 3 storey configuration. The development proposes to completely demolish the existing flat building and construct a new flat building containing 3 flats and a basement carpark. Non-compliances with the *Warringah DCP 2011* controls concerning the relevant controls including side boundary setback, wall height and landscaping and side boundary envelope are addressed in detail within this report.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:
The setbacks and the relationship of setbacks evident on surrounding land is not inconsistent with the pattern of development nearby. The new building will have comparable landscape open space, compliant front and rear setbacks and (above ground) side wall setbacks similar to a dwelling house. Car parking for each Unit will be in a basement that allows for landscaped open space to be concentrated across toward the front and rear setbacks. The general amenity impacts are sought to be minimised in terms of changes to overshadowing, views and privacy amenity for the residential surroundings. The basement area requires a nil setback to the east and 0.77m setback to the west which is addressed under the Warringah DCP assessment.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:
The proposal seeks to construct a new flat building with a modern open plan layout, but uses an 'art-deco' styling for the building (in a contemporary interpretation). The balcony spaces and window fenestration maintain reasonable levels of amenity for the adjacent residents in terms of solar access, privacy and noise. Landscaping is used for provide wide lawn spaces with border planting for privacy and to complement adjacent open space. Compliant solar access is maintained to adjacent land for 21 June as shown for the (amended design) shadow diagrams DA-600 to DA-602.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:
The re-development of the existing flat building to the new flat building seeks to follow the ADG as far as practicable and respond to the local built form controls to achieve good internal amenity, including basement carparking, internal lift access, suitable private open space areas for all units, solar access, domestic storage and a landscape setting for the building. The buildings setbacks are consistent with the built form controls for a dwelling house (except for the basement) despite being a 3 storey flat building within the low density residential zone. In this regard, the proposal seeks to protect or ensure no unreasonable amenity impact on residential surrounding land, including views, privacy, overshadowing, landscape setting and car parking. As stated, the building design utilises an "art deco" styling (in a contemporary format) for visual interest and to provide a streetscape presentation. While this compares differently to the historical character of the existing building the visual change imposed on the street is considered acceptable with curved shaping of walls, expressed brickwork, window / balcony shapes and the colours and materials schedule selected.

Conclusion
The applicant has previously provided evidence in the form of the original building plans (undated) and later building plans (dated 28 February 1962) for a building application No.C904/62 which proposed "alteration and additions". Building application No. C904/62 was approved on 12 September 1962, subject to conditions, and is notated on Council's building card records as "2-Flats". This approval was subject to conditions, and included the apparent conversion of an existing detached dwelling (shown as

a "flatette" containing a living room/kitchette, bedroom, bathroom and sundeck) at the rear of the duplex, to change the number of existing dwellings on the site from 3 to 2. The plans show that the "flatette" and the two duplex flats shared a common laundry room at ground level within the duplex building. This is relevant to the "flatette" being dependent on the main building for ancillary purposes that would otherwise not occur with a conventional "dwelling house".

The approved plans associated with building application C904/62 reveal that the use of the land for a residential building comprising flats, had commenced as a lawful purpose prior to 1962, pursuant to clause 41(2) of the *County of Cumberland Planning Scheme Ordinance* (CCPSO). This is prior to the coming into force of the *Warringah LEP 1985*, *Warringah LEP 2000* and the current *Warringah Local Environmental Plan 2011* prohibiting a residential flat building on the site.

It should be noted that under the CCPSO, a single detached dwelling did not require consent and the flatette was for some time a detached dwelling. However, the flatette/garage building was later joined to the main building following the issue of development consent No.87/207. Except, the 1987 conversion works from flatette to garage / storeroom appear to have never been fully completed, despite the room being used for vehicle parking. The current development application is seeking to return the approved garage back to a habitable dwelling (flatette).

Evidence has been provided demonstrating the "original" building (on the balance of probability) was on the site prior to the gazettal of the *Town and Country Planning (General Interim Development) Ordinance*, proclaimed on 9 November 1945. On the balance of the regularity between the evidence provided, it is apparent that the property benefits from existing use rights characterized as a "residential building" being "a building, other than a dwelling-house, designed for use of human habitation together with such out-buildings as are ordinarily use therewith, a residential flat building" that included "flats" for habitable purposes granted by development approval under the *Council of Cumberland Planning Scheme Ordinance.*

Subsequently the use can be retained under the current Warringah LEP 2011 as an "existing use" which is currently prohibited within the R2 Low Density Residential Zone. Pursuant to *Division 4.11 Existing uses* of the *Environmental Planning and Assessment Act 1979,* relevant NSW case law and Council's has considered the existing use matters. In conclusion, the proposal is supportable for approval as "*Demolition of existing brick and tile triplex for construction of new 3 level triplex (residential flat building), construction of new basement car parking for 6 vehicles and Strata subdivision into 3 lots."* For simplicity of descriptive understanding and handling purposes the application has been notified / described as "*Demolition works and construction of a residential flat building and strata subdivision".*

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 15/12/2022 to 20/01/2023 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 23 submission/s from:

Name:	Address:
Steven Nicholas Kelly	8 / 73 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Andreas Ulrich Faeste	88 Queenscliff Road QUEENSCLIFF NSW 2096

Name:	Address:
Mrs Jenny Elizabeth Sillar	14 Kangaroo Street MANLY NSW 2095
Mrs Julie Maree Blick	69 Queenscliff Road QUEENSCLIFF NSW 2096
Mr William Peter Marynissen	5 Florence Avenue COLLAROY NSW 2097
Mr Chris Liell-Cock	94 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Geoffrey John Burnie	92 Queenscliff Road QUEENSCLIFF NSW 2096
Mr David Peter Steindl	72 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Dean McGrath	82 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Paul James Mitchell	6 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Robert Joseph Mather	78 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Michael Bruno Sumner	49 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Nathan Joel Krieger	84 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Mary Geraldine Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Bret Stephen Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Gavin James Bradley	40 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Timothy Edgeworth Andrews	86 Queenscliff Road QUEENSCLIFF NSW 2096
Dr Caroline Victoria Warne West	86 Queenscliff Road QUEENSCLIFF NSW 2096
Sue-Elyn Millson	82 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Terrence Thomas Blick	69 Queenscliff Road QUEENSCLIFF NSW 2096
Deborah Christine Bingham	47 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Andrew William Glance	50 Seaview Street BALGOWLAH NSW 2093
Mrs Jennifer Jane Steindl	72 Queenscliff Road QUEENSCLIFF NSW 2096

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

1. R2 Low Density Residential Zone
2. Notification
3. Parking and traffic
4. Inadequate landscape open space
5. Dilapidation risk
6. Building height and roof
7. Non-compliance with side boundary envelope
8. Overdevelopment and building bulk
9. Solar access / overshadowing
10. Front and rear setbacks
11. Privacy (noise and visual amenity)
12. Streetscape character
13. Previous DA refusal
14. Wall height non-compliance
15. Tree protection to adjacent land
16. Prior illegal works
17. Lift core and entry location
18. Public interest

The matters raised within the submissions are addressed as follows:

- *1. Concern is raised that the land is zoned R2 Low Density Residential which prohibits two or more dwellings (not being a Secondary dwelling) on the land and the site is being used as if it were zoned R3 Medium Density Residential.*

  Comment:
  The site has the benefit of "existing use rights" as detailed within this report, under the assessment of existing use rights. In summary, the site has an historical approval for "2 Flats" which establishes the difference between other surrounding properties in the same zone that have only a single dwelling house approval. The use as "flats" was approved and had commenced under the *Cumberland Planning Scheme Ordinance* prior to 1962 when an approval for two or more attached dwellings was a development for a residential flat building, as opposed to a dwelling house.

  While the approval of two dwellings on a Lot remained permissible under Warringah LEP 2000 this was subject to housing density (land area) controls. The gazettal of the Warringah LEP 2011 prohibited the development of two dwellings (other than a Secondary dwellings, by-way of *SEPP Affordable Rental Housing 2009)* within the R2 Low Density Residential Zone. Since the use of the building for "2 Flats" has continued since it was first established and has not been discontinued for more than 12 months, since the gazettal of *Warringah LEP 2011*, then the *EP&A Act 1979* ("the Act") allows for changes; including alterations, extension, enlargement, expansion or intensification of an "existing use". Details of existing use provisions are established pursuant to *Division 4.11 Existing Uses* of the Act. The circumstances of the case have been reviewed in the context of relevant case law, including *Jojeni Investments Pty Ltd v Mosman Municipal Council [2015] NSWCA 147, Auburn Council v Nehme [1999] NSWCA 383,* and *Jeblon Pty Limited v North Sydney Municipal Council (1982) 48 LEGRA 113.*

  In consideration of the development the proposal was the use of the land in terms of existing use rights matters has been considered by Council, including use as "flats" and particulars of a residential flat building, that was permitted with consent under the *County of Cumberland Planning Scheme Ordinance*. Evidence of later development consents and building approvals issued to the property are consistent with the use of the land for residential flats having continued to the present day. (Further detail is provided under the headings "Site History" and "Existing Use Rights" within this report.

  Following consideration of these matters, it is concluded that the applicant has demonstrated existing use rights on the balance of probabilities and Council is satisfied the use has not been discontinued since becoming prohibited. Therefore, while the zoning of the land is a relevant factor, the proposal benefits from 'existing use rights', whereby the zoning and strict compliance with the numerical development controls of that zone, including density standards, do not apply as they would to a permitted use. A merit assessment against the objectives of the relevant controls however is applicable to ensure no unreasonable impact on the surrounding environment. Previous consents are detailed under the heading "site history" which outline recent approvals for alterations and additions to create "3 flats" on the site by changes to the existing building. In terms of the current proposal, the applicant seeks to retain "3 flats" on the site based on past approvals and the new building design that seeks to provide a better outcome for off-street parking, landscaping, general amenity and the long term livability of the new apartments.

  Having considered the circumstances of the case, including; the relevant development consents for the subject land and the applicable planning controls, this issue does not warrant refusal of

the application.

- *2. Concern that only adjoining and adjacent neighbours were notified and all home owners on this [south] side of Queenscliff Road should be notified.*

  Comment:
  Notification was made in accordance with Council's *Community Participation Plan*. As part of the initial notification period, a sign visible to the public domain was also placed on site with the details of the development application enabling other persons living near / passing by the site to be informed of the application details. All submissions received have been considered in detail with respect to any relevant issues raised. This includes any subsequent submissions, based on amended plans that remain viewable online via Council's website.

  This issue does not warrant refusal of the application.

- *3. Concern that the additional Unit will generate further traffic and parking demand in the surrounding streets, including Queenscliff Road.*

  Comment:
  The existing building as a whole does not comply with parking requirements pursuant to the WDCP 2011, and an assessment of the new basement carparking is detailed under *Part C3 Parking facilities* within this report. While no visitor space is provided, the new basement parking can accommodate six (6) cars which may include 2 per unit or 5 resident spaces and a visitor space. The site is within an established residential area with reasonable access to public transport and local centres of Manly, Brookvale and Dee Why. In summary, the proposal will not create an unreasonable impact on parking and traffic in the surrounding area, including impacts on streetscape amenity, by the inclusion of six (6) new off street parking spaces. The building being limited to 3 Units does not require a disabled persons parking space. Council's Traffic engineer is satisfied with the parking and traffic impacts and detailed traffic engineering assessment comments are provided under the heading "Internal referrals".

  This issue does not warrant refusal of the application.

- *4. Concern that there is a significant lack of landscaped open space and site works will affect adjacent trees and vegetation along the boundary area.*

  Comment:
  This issue is addressed in detail under the *Part D1 Landscaped Open Space* within this report with regard to the variation in landscaped open space. In summary, the proposal will not create an unreasonable impact on landscaping amenity for adjacent land including the streetscape. In this regard, the landscaping design was refined with amended plans to increase the overall landscaping components. The applicant has also provided an Arborist report to address tree protection and excavation work along the eastern boundary. The overall landscape open space on site will be increased from that present with the current flat building. Council's landscape officer has reviewed the plans and provided detailed comments under the heading "Internal referrals" within this report. The applicant has also included suggested changes by the DSAP review for improved landscaped areas.

  This issue does not warrant refusal of the application.

- 5. *Concern that there may be damage to adjacent property from excavation works and other*

dilapidation risks during demolition or site works

Comment*:*
This issue is addressed by standard conditions to require pre-construction and post construction dilapidation reports as well as standard construction related conditions for excavation works, compliance with *Australian Standards*, *WorkCover* and implementing the recommendations made within the applicants Geotechnical Report by *Crozier Geotechnical Consultants.*

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

- *6. Concern that the overall building height and scale of the development is larger than that of the surrounding houses in the vicinity with a boarder flat roof form which is indifference to the existing pitched roof building.*

  Comment
  The proposal is not bound by the LEP height control due to existing use rights applying to the development. However, the building proposed is marginally lower than the existing maximum height of the present flat building on the site and complies with the 8.5m height control. The configuration of the building with a flat roof and as 3 storeys, does cover a broader building footprint although. However, by the use of a basement carparking and changes to refine to the building design during the assessment period the proposal has produced an acceptable height and scale in context with the particular circumstances of being a development that is responsive to existing use rights and the building height development standard. The flat roof format enables the building to comply with the building height control and minimise view impacts. The height and scale of the building has not attracted any submissions of objection about view loss. Visual impacts on the streetscape, from building height, is addressed in detail under the heading *Clause 4.3 Height of buildings* within this report.

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

- *7. Concern that the proposed building does not comply with the side boundary envelope, which would create a wider building setback for a flat building in the R3 Zone.*

  Comment:
  This issue is addressed in detail under the heading *Part B3 Side Boundary Envelope* within this report. As outlined in *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*, the planning controls within the relevant local planning instruments do not strictly apply to developments that rely on existing use rights. This does not mean such development is "unfettered" since the controls still have have relevance in responding to those controls due to associated impacts, such as carparking, shadowing, overlooking, view and the like in situ with surrounding land uses. In the adjacent R3 zone along Queenscliff Road a new residential flat building would be required to have a 4.5m side setback, however variations are commonly sought for "constrained" single or narrow sites within a medium density environment. The non-compliance with the side boundary envelope has been demonstrated to not create unreasonable amenity impacts and is considered in context with the existing flat building in terms of the new larger building. The non-compliance with the side boundary envelope has been reduced by setting the floor level lower (similar to the rear yard level) rather than raising the building footprint.

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

- *8. Concern that the proposal is an overdevelopment of site and introduces more building bulk*

when viewed from adjacent land and the street.

Comment
Consideration of building bulk is detailed under the heading *Part D9 Building Bulk* within the report. In summary, The proposed building is sufficiently articulated to reduce the building mass as viewed from the streetscape and surrounding properties. The use of the site for 3 flats is consistent with past consents limiting those development approvals to 3 flats only. The massing of the building design is reduced at the upper floor and uses distinctly different materials and colours as a technique to visibly breaking up building bulk. Overdevelopment of a site is often represented by a lack of car parking, lack of landscaping, overshadowing, view loss, excessive height, reduced front or rear setbacks and the like which is symptomatic of trying to "fit" too much residential floor space or units into a development for extra yield. The proposal demonstrates minimal non-compliance with these issues and has been refined following DSAP review to address DCP design issues raised during the assessment period.

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

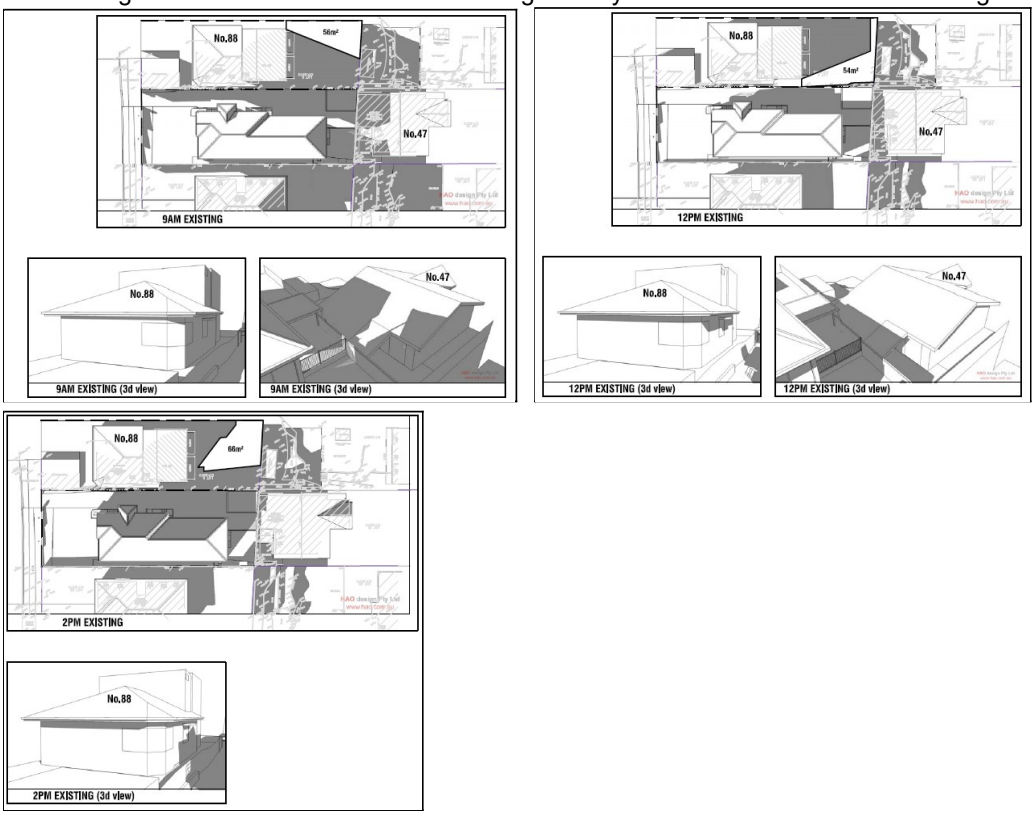
- *9. Concern that the proposal will contribute to further overshadowing of adjacent land and reduce solar access to living areas, including No.88 Queenscliff Road and No.92 Queenscliff Road.*

Comment
Consideration of this issue is addressed in detail under the heading *Part D6 Access to Sunlight* within this report. In summary, solar access / overshadowing is shown on the drawings DA600 to 602. The diagrams show that in the morning period on 21 June the main shadow will reach across to No.92 Queenscliff Road as well as the rear of No.47-49 Greycliffe Street. By 11am no overshadowing affects No.92 Queenscliff Road and minimal change to existing shadows across No.49 Greycliffe Street. By midday on 21 June overshadowing begins to affect No.88 Queenscliff Road and it is noted the front living room / sun room has a 'bay' windows but receives northern sun during the morning period and by 2 pm these bay windows are principally in shadow. The changes in overshadowing is demonstrated on drawing No.602. A marginal reduction in overshadowing to the front bay window of No.88 Queenscliff Road has been achieved by amendments made to the front of the building during the assessment period.



Image: Front area and side windows of adjacent land of site and No.88 Queenscliff Road.

The bulky additions at the rear of No.88 Queenscliff Street creates substantial self shadow across the rear yard of that property during the middle part of the day. The main solar access in the rear POS is received between 9am to 10am then in the afternoon between 12m and 3pm for No.88 Queeenscliff Road. The shadow diagrams show that 50% of direct sunlight is retained for 2 hours in total, spread between the morning and afternoon period. The existing shadow diagrams (image below) are of assistance in understanding the shadow regime in relation to surrounding land in so far as the current building already casts substantial overshadowing.



Source: Existing shadow regime 9am,12midday and 2pm.At 3pm the rear of No.88 Queenscliff Road is overshadowed already. (Source: Council file)

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

- *10. Concern that the front and rear setbacks are not aligned with the current dwellings adjacent and therefore impact the spatial relationship of the street and rear yards for the pattern of surrounding development.*

Comment

The proposal has a compliant front and rear setback distance with landscaping concentrated in these open spaces. Border landscaping is used to provide trees to compliment the pattern of landscaping along the street to allow for small and medium size dense native planting. Trees in the road reserve will be retained, except for changes to construct the ramp and new awing entry. The setbacks along the street are punctuated by garage structures for various houses whereas this building will rely on a basement for carparking and therefore the front setback space will remain similar for the front wall plane, however the front balcony elements allow for a residential outlook and additional landscape elements to be integrated in to the facade in terms

of planter boxes and shaping the "art deco" styling of the building.

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

- *11. Concern that the proposal will impact adjacent land by visual and acoustic privacy, including overlooking, pedestrian movement and traffic.*

  Comment
  This issue is addressed in detail under the heading *Part D8 Privacy* within this report. In summary the applicant made refinements to the design during the assessment period to better protect privacy and reduce overlooking to adjacent land. At ground level standard side boundary fencing allows for reasonable acoustic and visual privacy for the residential environment, including casual passing of pedestrian movement and vehicles along the excavated driveway ramp. The basement also has a part covering over the entry roller door, created by Unit 2 (bedroom 4).

  The upper level balconies are not excessively large in relation to the minimum private open space requirement for apartment and fixed privacy screens have been included to restrict overlooking within 3.0m of a side boundary. Additionally, the overall site levels across the property are to be graded down at ground level which assists to maintain privacy for ground level along the side and rear setbacks. Window spaces for Units 2 and 3 above ground floor along the side elevations are generally small or utility (bathroom) windows, or corner windows to limit direct overlooking. Screens are also shown for selected windows for living areas and bedrooms where those windows also assist to provide internal natural light to Unit 2 and 3.

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

- *12. Concern that the proposal does not provide a good fit to the streetscape character.*

  Comment
  This issue has been addressed in detail by DSAP review and recommendations. The existing flat building on site has simple art-deco feature and the applicant has sought to design the proposed new building in a contemporary interpretation reflective of the art-deck style also. The building does however include modern apartment styling and layout, including sustainable design features. The proposal is generally consistent with the built form controls that otherwise apply to the R2 Low density zone and therefore despite some variations "fits" on the site without unreasonable view impacts, without unreasonable additional shadow impacts, without unreasonable loss of landscaping or and maintains appropriate articulation with an identifiable residential character. Refer to the heading Internal Referrals - DSAP for additional streetscape comments in addressing this issue.

  
  Image: Residential (R2) character of streetscape and building scale and appearance (site is on far left).

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

- *13. Concern that previous development applications on the site have been refused regarding concepts to create 3 units from the existing building.*

  Comment:
  This issue is addressed in detail under the headings "Site History" and "Existing use rights". The redevelopment of the site to 3 units seeks to abandon previous approval for alterations and additions of recent development consents issue for the site to substantially renovate and alter the existing building. Overall the proposal is assessed on its merits and reliance on past refusals or approvals do not have determining weight in the assessment of the current proposal.

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

- *14. Concern that the proposal includes variations to the 7.2m wall height control and therefore has associated amenity impacts on surrounding land and the streetscape.*

  Comment
  This issue is addressed in detail under the heading *Part B1 Wall heights* within this report. In summary, the non-compliance with the wall height is limited to a marginal sections across the top of the side walls and across the front and rear elevation due to the 3 storey format of the building. The non-complying sections of walls height is limited is influenced 3 storey format of the residential flat building (noting that the site relies on existing use rights) and the minor cross slope of the land and variable existing ground level. Impacts on views from public domain are not unreasonably impacted in the context of the pattern of surrounding development. The proposal uses an 'art-deco' retro styling to break up the wall planes with curved and recessed sections, including terraces and planter box elements.

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

- *15.Concern that the proposal has inadequate landscaping area with the excavation, site works will impact adjacent trees and garden planting.*

  Comment
  This issue is has been considered in detail by Council's Landscape Officer and under the heading *Part D1 Landscape Open Space.* In summary, an arborist report has been provided to address tree protection measures and excavation impacts. This applies particularly to the eastern boundary with No.88 Queenscliff Road and for site works close to the boundary with No.92 Queenscliff Road. The applicant has provided a comprehensive landscape plan that includes a range of native species to restore a landscape setting to the site, enable screen planting and assist with maintaining a landscape setting for the streetscape. The variation to landscape open space has been addressed within this report and included revisions to the plans in accordance with DSAP recommendations for appropriate landscaping elements.

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

- 16. *Concern that the property was investigated for prior illegal works to the building associated with the rear "flattette".*

  Comment:
  This issue was investigated by Council's Building Compliance service in 2017 and appropriate action taken. The current proposal requires the complete demolition of all structures on site so any previous works are not relevant the proposed structure / layout of the building. The history of the "flatette" (3rd Unit) has been addressed in detail under the heading "site history" within

this report which includes identifying the past incomplete conversion work. In summary, the categorization of the land use under the CCPS and prior consent documents before WLEP 2011 have revealed the situation of existing use rights for continuing use on the land. The complete demolition of the building made any *Building Information Certificate* renewal or compliance / fire safety issues obsolete that currently may apply to the old "flatette" additions completed circa 1950-60's.



Image: Copy of original approval C904/62 which includes "alterations and additions to existing first floor". Plan is folded over to show Council consent stamp.

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

- 17. *Concern that the lift core and entry location will affect the amenity of adjacent land.*

  Comment
  The existing building has vehicular driveway, parking and pedestrian entry on the eastern side of the site. The new proposal seeks to place all carparking underground with the driveway relocated to the western side of the site. The site level will be regraded and therefore marginally lower in the area where the pedestrian entry porch is proposed. Standard side boundary fencing will also provide casual visual and acoustic privacy for pedestrian movement to and from the front door. The internal lift for the building allows for direct access to the basement which the current flat building does not have and requires occupants to use the front or side doors to reach on-site carparking for any vehicle trips. The lift is a low profile lift and does not create any unreasonable overshadowing, bulk, height, or visual impact with its position as part of the roof space.

  This issued is addressed and does not warrant refusal of the application.

- *18. Concern that the proposal is not in the public interest due to non-compliance with the DCP and other planning control as well setting a precedent for a RFB in the low density residential zone.*

  Comment:
  The public interest is considered throughout this report in applying and objective assessment of

the proposal with regard the Warringah LEP, Warringah DCP and the circumstances of the site benefitting from existing use rights. General environmental amenity concerns have been addressed, including engineering, building, landscaping, design, traffic, waste, and water management. The proposal has been refined during the assessment period in response to public submission issues and DSAP review. The issue of precedent is limited by circumstances of existing use rights applicable to the site and therefore cannot be applied to surrounding properties where such particulars do not apply, based on site history or current zoning rules.

This issued is addressed and does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	**Summary of Design + Sustainability Advisory Panel Meeting Report – Date 27 October 2022** <u>Panel Conclusion</u> *"The Panel commends the client and their team on their continued efforts to improve the proposal for this site and supports the new direction, however it is the Panel's view that the amount of development is excessive and the breaching of controls is not justified. In any re-design consideration should be given to the recommendations."* **Strategic context, urban context: surrounding area character** *The new proposal is consistent with the mix of residential flat buildings and single occupancy development in the area. Its art deco style has been inspired by others in the neighbourhood. Its relationship to the street and neighbours improves on the previous submissions.* *With only 3 apartments, the proposal does not need to comply with the ADG. Nevertheless, the design has been informed by these guidelines.* <u>Assessment Comment on Applicants Response to DSAP:</u> • The applicant has used the NSW Apartment Design Guide (ADG) to try and achieve the desirable amenity outcomes and design objectives of the ADG. The ADG however is not applicable because the proposal does not trigger *State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development.* No detailed assessment under the SEPP is required. DSAP comments are concurred with that context, styling and character of the building in its setting is acceptable and the use of the ADG has assisted the applicant in proposing a building that achieves a more suitable built form than the 2 most recent development approvals on the site.

Internal Referral Body	Comments
	Scale, built form and articulation *While the proposal does not exceed the maximum height of 8.5m and generally complies with front, and rear setbacks it does not comply with wall height and side setbacks.* *Where noncompliance is proposed, it is the Panels view that the proposal must be justified by comparison with a fully compliant benchmark scheme to show:* *• a demonstrable improvement in amenity within the proposal, (overshadowing, privacy, access to rooftop open space etc.)* *• a reduced impact on adjoining sites (either existing or in relation to future development potential)* *• contributions to the public domain or other public benefits (affordability, environmental performance)* *In this case, in the absence of a floor space ratio to control the amount of development on the site the Panel considers the amount of development and the resulting bulk excessive.* *The Panel accepts that 3 units may be accommodated but that does not imply that these should or could be 3-4 bedrooms and even less that there should be 3 bathrooms in each.* *A side boundary envelope control in the WDCP determines that a building must be defined by a 45-degree plane projecting inwards once walls reach 5m in height. The proposed development is not compliant with this control.* *It is the Panels view that while minor breaches of the height may be acceptable breaching of the 45degree height plane is not, particularly given that the drawings do not show the breach:* *The design needs to demonstrate how it addresses neighbour concerns about bulk and scale given the non-compliance.* *Most buildings in the street have a two-storey presentation and although there is a change in material for the third storey and a small setback, the third storey could be setback much further to emphasis the two-storey form. This could be easily achieved by reducing the size or number of bathrooms on the top level.* *It is difficult to achieve 2.7m floor to ceiling clearances (for good internal amenity) within the proposed 2.95m floor-to-floor heights with DBP Act obligations for waterproofing This is particularly relevant where wet areas/terraces/planters are above habitable rooms. Depending on the vertical relationship of internal layouts between each level, it is not unusual to find 3.1m becoming insufficient height where additional structure, insulation, and waterproofing is made effective, particularly where accessible paths of travel may be required between internal and external spaces.* *Particular care is required to assist Design and Building Practitioners to comply with the Design and Building Practitioners Bill and*

Internal Referral Body	Comments
	Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. DA assessments should consider compliance with this new legislation to assist designers manage the increased risk they are now expected to carry. *The documentation does not indicate appropriate falls (1:80) in roof slab to allow for effective drainage of rainwater and watering of roof planters. See previous comment re: DBP Act.* *The Panel does not consider 'market expectations' a sufficient reason for non-compliance with controls.* **Recommendations** 1. Revise the upper-level apartment plans to reduce the number and/or size of bathrooms to provide a generous setback from the street 2. Revise floor to floor heights and/or provide more detail in relation to water proofing, falls and insulation 3. Drawings should indicate the 45deg height from 5m height plane on sections and provide detailed analysis of the impact if it is proposed to exceed the height plane. As noted, this may be achieved by a significant reduction in the internal floor area that might be achieved by a reduction in the number of bedrooms or bathrooms or both, and a different planning strategy for the apartments overall. Assessment Comment on Applicants Response to Items 1-3: • One bathroom is deleted and the top floor reconfigured and reduced in size. Presentation to the street for the upper storey includes narrow balcony and smaller side and an increased setback. Overall building bulk has been reduced. • The floor to ceiling heights are the same at 2.7 which follows the ADG for internal amenity. The building height complies with the R2 Residential zone which is assisted by using 2.95m floor to floor rather than 3.1m. The proposal achieves BASIX requirements for thermal insulation. • Height plane blanket and envelope diagrams have been provided to clearly show the building position in context to those controls. **Access, vehicular movement and car parking** *The basement for the carparking goes right to the eastern boundary which will have implications for the neighbouring property. Normally a residential flat building is required to have 2.0m setback from the boundary. No parking for visitors has been allowed at this stage.* *The Panel questions the need and rationale for the sloped section of the carpark and the efficacy of the downturn in the beam to allow for deep soil in a location that would not support trees. Refer to comments in landscape.*

Internal Referral Body	Comments
	Recommendations 4. Reconsider basement plan (around the storage areas and car park) in order to reduce the extent of excavation required and set back from the eastern boundary. The drawings should clearly show any non-compliance. 5. Remove slab downturns and provide a level floor for the carpark. Assessment Comment on Applicants Response to Items 4-5: • The basement plan has been revised with a simplified practical layout. Excavation area has been reduced on the eastern side. Encroachment on side setbacks is clearly shown on the plans and allow for cavity drainage. • Slab down turn is removed and floor level simplified. **Landscape** *Calculations include deep soil over the basement – this area should not be counted as part of the deep soil, despite the 1m soil depth it is over the basement. The folds in the basement and costs associated is not worth the provision of the 1m soil depth as it is wasted when only planted with lawn or small species.* *The division of private open space is very unbalanced. Unit one gets all the ground floor which is extensive, and others get minimal POS. The unit one private space is not well integrated in the design as a private garden for indoor / outdoor amenity and is overlooked by the upper units.* *The ground level landscape is lawn and bushes to the edges, with a few minimal trees. It is not well considered, does not create usable spaces for the resident, add value to biodiversity, offer canopy cover (while acknowledging the shading in winter). Given the shading it is also likely the lawn will struggle and is an ongoing maintenance requirement.* **Recommendations** 6. Engage an Arborist to report on the neighbouring trees. All trees impacted to be shown with TPZs on the architectural and Landscape Plans. 7. Remove the basement folds and reconsider where other areas of landscape can be provided to compensate where possible. Make all the landscape provided valuable in terms of shade, biodiversity and amenity. 8. Reconsider the landscape plan to positively contribute to amenity and the quality development for the residents. This should include reduced lawn, more usable 'paved' areas (which maximise permeability) and increased planting, utilizing shade tolerant native options in lieu of lawn. 9. Where possible endemic or native species should be used. An exception would be the use of deciduous trees to give summer shade and allow winter solar access to units and the private open spaces.

Internal Referral Body	Comments
	Generally, more trees should be provided in both the front and rear of the site. 10. The third level unit should utilise extra setback area from reduced floor plan for private open space 11. Consider green roof to reduce urban heat an improve PV for power generation performance 12. Consider slightly reducing the width of the entry path to allow for a narrow strip of soil along the eastern boundary to allow for climbing plants <u>Assessment Comment on Applicants Response to Item 6 to 12:</u> • An Arborist report was provided and Councils Landscape Officer is satisfied with the Landscape scheme and the arborist report recommendations. • Basement fold removed in the amended plans and landscaping revised. Deep soil landscape and additional landscape space along setbacks provided. • Landscaping is revised with suitable landscape and screen planting for privacy at ground level. • Landscape planting schedule uses majority native species suitable for coastal environment. Lawn areas limited to appropriate area for POS. • Third level Unit has front and rear balconies for open space options. • A Green roof not considered suitable as the parapet to retain soil / plants on the roof would add height (potentially impacting views) and adds building design complications for long term. Solar cells are included to sit flat / low profile on the roof. • Entry path narrower with side planting and bin / letterbox awning setback. **Amenity** *It is concerning that none of the apartments have their living areas located on the northern side of the site to optimise the available solar access. While views to the water might be achieved from the southern side of the upper floors, the ground floor location has no such benefit. The Panel acknowledges the construction advantages in stacked services, this is outweighed by solar access where there are no views or other reasons to have a south aspect.* *Switching the plan around would also enable better utilisation of the front garden area by connecting it with the living areas.* *As noted above the panel considers the size and number of bathrooms unnecessary and excessive.* *The arrangement of garbage bins at the entry is unattractive.* *The BBQ area on rear balconies overlook adjoining rear yard.* **<u>Recommendations</u>** 13. Reconsider the layout of the ground floor plan to enable solar access to the living rooms and direct connection with the front garden

Internal Referral Body	Comments
	14. Consider private high-level windows in the northwest walls of the living rooms on the first and second floors to enable solar access 15. Consider clerestory/monitor windows with vertical operable glazing in lieu of horizontal skylights for the upper unit. This would allow for greater solar control and natural ventilation. Locate the window to optimise passive solar and passive design performance The Panel considers any breaching of the height plane that would result as insignificant. 16. Consider re-orienting the garbage bin enclosure 17. Provide screen in to rear balconies to minimise overlooking <u>Assessment Comment on Applicants Response Item 13 to 17:</u> • Ground floor layout has access to front and rear yard providing amenity as this unit has no coastal views. Front bedrooms have the amenity of a streetscape outlook. POS is at the rear and consistent with adjacent dwellings / conventional pattern of development for the R2 Residential zone. Coastal views from upper storeys are toward the south. • Selected windows changes to maintain privacy and internal natural light amenity. • Compliance with the height plane is retained and all apartments achieve cross-ventilation. The proposed skylights are clarified as high performance double glazed skylights with insulation, glare and structural performance in the application. The front and rear balconies have full height glazed sliding doors for natural light and the side windows minimise privacy impacts with corner windows, bathroom windows or narrow slot windows. • Garbage bin are re-positioned and setback to allow for landscape screening. • Privacy screens added to corner of balcony along closest edge to neighbour to minimise overlooking. **Façade treatment/Aesthetics** *The articulated art deco style can be enriched with some of the changes recommended above. Additional landscaping in place of the reduced bulk will also enhance the aesthetics.* **Sustainability** *We are living in a climate emergency – all new dwellings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels.* *Arguably, the impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation. SEPP BASIX explicitly precludes the setting of either higher or lower targets by other Environmental Planning Instruments or Development Control Plans. It is noted that BASIX has not been updated to keep pace with*

Internal Referral Body	Comments
	changes in technology or with the overall need to decarbonise the grid nor to move away for fossil fuels. *The role of the Panel is to advise on 'design (quality) and sustainability' and is not confined to existing legislation or the approaches of the past. Accordingly, the Panel believes it is appropriate and necessary for it to provide 'forward-thinking advice' to both proponents and to council staff involved in the assessment of development. With the current massive spikes in energy from uncertain times, the advisability to build the comfort and energy resilience of projects is even more obvious.* *With the regulatory environment changing in the near future – for efficiency, electrification and mandatory disclosure – these investments at this time will be worthwhile both for future residents and the developers' reputation, market position and marketability of the units.* **Recommendations** 18. 2.2kW PV not shown on plans, consider significant increase to approach carbon neutrality 19. Energy performance could be significantly improved by installation of higher performance AC- currently 2.5* Assessment Comment on Applicants Response to Item 18-19: • An area of ~30 sqm has now been denoted on the roof plan. This area can accommodate an approximately 6.6kW solar array. Detailed design, orientation, capacity, demand and provision will all be provided with the construction certificate (CC). • Air conditioner (AC) performance will be taken up with the CC. The following aspects of design and servicing should be included: 20. Decarbonise energy supply • All services should be electric – gas hot water and heating should be avoided • Heat pump systems for apartments or other ways of providing electric hot water should be considered • The storage of hot water can be considered a defacto battery if heated by PVs during the day • Note the risk of gas reticulation becoming a 'stranded asset' and the possibility of additional costs to remove gas and rewire the building Assessment Comment on Applicants Response to Item 20 • Item 20 - Energy supply options (low carbon) will be taken up with the CC. • Roof space is denoted for PV. Basement storage areas are generous and oversized for the occupants use including adequate area for housing domestic batteries.

Internal Referral Body	Comments
	21. Install onsite power generation and storage • Unshaded roof space is a valuable resource for hosting PV panels to create onsite renewable energy • PVs over green roofs perform better due to the local lower ambient air temperature • On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid • Given the number of units and the extent of roof it should be possible to achieve carbon neutrality in operation <u>Assessment Comment on Applicants Response to Item 21</u> • Carbon neutral analysis is suitable to make at the detail design stage and specifications with CC phase. 22. Install EV charging • Provide EV charging points for each unit car space • Allow for bi-directional (2-way) charging of EV battery for powering the building. <u>Assessment Comment on Applicants Response to Item 22:</u> • EV charging points have been indicated on the amended basement drawing. Detail design including bi-directional capacity to follow at detail design stage. 23. Include passive design and thermal performance as essential part of building fabric: • The Panel notes that higher energy standards have been approved by the Department of Planning available here https://pp.planningportal.nsw.gov.au/BASIX-standards • The Department advises that the higher BASIX thermal performance standards will require 7 stars based on NatHERS rating system, consistent with the *National Construction Code* for 2022. It also has a number of other improvements that for future proofing of projects are advisable to be included in advance of them being enforced. <u>Assessment Comment on Applicants Response to Item 23:</u> • Item 23 - Appropriate annotations have been made on the plans to show inclusions. Relevant matters will be included at the detailed design and construction certificate stage BASIX, NatHERS, BCA, *National Construction Code* as well as future proofing as these items are managed at with detailed specifications at the CC phase. Aspects of thermal performance and passive design have been incorporated into the project and the design.

Internal Referral Body	Comments
	Overall Assessment Comment on Applicants Response to DSAP: In summary, the applicant states that: *"The advice and recommendations from the DSAP meeting on 27 October 2022 has been fully and comprehensively reviewed by the consultant team and all matters addressed in full. The public submissions are reflected in the comments and recommendations from DSAP and in Council's RFI. The public submissions have been read and understood by the applicant, Council and DSAP. The applicant and the applicant's consultant team have amended the drawings and the application to address all of the feedback and thereby the public submissions in full."* The applicant has provided a detailed amendment summary and structured response to DSAP comments. DSAP advice has been incorporated as far as practicable or alternative response provided (or detailed explanation as to how or why some are not suitable) with the amended plans. Overall the proposal has provided satisfactory changes and design response (including a written submission) to address the DSAP review of points "1" to "23" above.
Building Assessment - Fire and Disability upgrades	**Supported with conditions.** Review 14/12/2022 All previous comments and conditions are still applicable The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: *The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.*
Landscape Officer	**Supported with conditions.** The proposal is supported with regard to landscape issues. Additional Information Comment 04/01/23: The Arboricultural Impact Assessment (AIA) and amended plans are noted. The AIA indicates that the neighbouring trees can be successfully retained without any adverse effects if appropriate protective measures are implemented, and as such the recommended tree protection measures in the AIA are supported. A Project Arborist shall be engaged to supervise all work in the tree protection zone of trees

Internal Referral Body	Comments
	to be retained, subject to the imposed conditions. Three trees (trees 1,2 and 14) have been identified in the AIA for removal, of which tree 2 and 14 are exempt by species and height and do not require consent for removal. Tree 1 is located in the road reserve; however, it has been nominated for transplanting on the Landscape Plan. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscaping must meet Council's soil depth requirements. <u>Original Comment Summary:</u> • An Arboricultural Impact Assessment was requested to determine impact to the neighbouring vegetation.
NECC (Coast and Catchments)	**Supported with conditions.** The application is supported subject to conditions. This application was assessed in consideration of: • Supplied plans and reports; • *Coastal Management Act 2016*; • *State Environmental Planning Policy (Resilience and Hazards) 2021* (section 2.10 & 2.12); • Relevant LEP and DCP clauses. The Geotechnical Report prepared by *Crozier Geotechnical Consultants* (dated 10 August 2022) notes that a detailed Site Stability (Geotechnical) Report is required to satisfy conditions for design/construction. The application meets the requirements of the relevant Environmental Planning Instruments and policies. Applicable conditions: • Erosion and Sediment Control Plan (prior to commencement) • Installation and maintenance of erosion and sediment controls (prior to commencement)
NECC (Development Engineering)	**Supported with conditions.** **Additional Information Provided on 17/3/2023** No objections to approval subject to conditions as recommended. **Additional Information Provided on 15/3/2023** The amended stormwater plan proposes a boundary pit level of RL33.95 and "messaging" the verge grade to create a smooth fall west. The proposed weir on the boundary wall at RL33.95 is approximately 200mm lower than the verge level. Hence based on the proposed levels of the driveway at RL34.18 at the boundary and the footpath levels which will need to be raised to suit the new driveway level, the proposed change to the verge will create an approximately

Internal Referral Body	Comments
	200mm hole between the footpath and the driveway. This is a low point that will pond and create a hazard for pedestrians and the adjacent property which is not acceptable. By maintaining the boundary levels and setting Pit A1 at approximately RL34.16 then in case of blockage to the outlet pipe, the surcharge will run within the site as the internal pits are lower than the boundary pit. In this case, with the building floor level at RL34.10 and the surrounding lowest ground level at RL33.97, the site will flood up to 160mm and the building up to 60mm. This is a scenario that Council cannot approve. The solution is to not lower the existing ground levels within the site such that the boundary pit at RL34.16 is the lowest point and the overflow will be directed to the kerb. All internal upstream pits and grates must be higher than the boundary pit. <u>Other issues with the concept plans are:</u> The pump out line is not is not shown on the plans and it is unclear where it connects. The grated drain must be connected to the basement pump as it is the lowest pit in the whole system. **Additional Information Provided on 2/3/202**3 <u>Stormwater</u> The submitted stormwater plans are unsatisfactory. The plans show an area approximately 231m2 and 22m2 of driveway draining to an OSD system of 1.18m3 with a 220mm diameter orifice and it is unclear how this system is sufficient to control the flows to state of nature conditions. Similarly with the roof area draining to an system with only 2200m3 system. Additionally the details of the pits are not provided on the plans and it is unclear if the system will surcharge down the driveway. As previously commented no calculations are shown regarding the predeveloped and post developed site discharges. The plans are to be amended to provide the following details: The Full Computation Method shall be used to determine the required storage volume and permitted site discharge up to and including the 1 in 100 year AEP storm event in accordance with Clause 9.3.2.5. of Council's Water Management for Development Policy. The PSD shall be calculated on the maximum allowable impervious fraction of 0%. That is, the site discharge shall be restricted to the “state of nature” conditions. Calculations are to be shown on plan including: - Pre development site flows - Post development flows including bypass flows -OSD volume required -Outflow from each OSD tank The drains model shall be submitted for assessment. Pit details showing size, grate levels and invert levels

Internal Referral Body	Comments
	Section through OSD tank 1, Pit A1 and the outlet. the basement is the lowest point in the site and as such must include a permanent pump system in accordance with AS3500. **Review 6/02/2023** <u>Stormwater</u> No amended stormwater plan has been submitted. Previous comments have not been addressed. <u>Access</u> No amended plans have been submitted. The profile must be in accordance with Council's Standard Normal profile across the road reserve to prevent stormwater flows from the footpath area entering the site. Transitions are to be provided internally in accordance with AS2890.1. The applicant shall provide: Engineering long sections at both edges and centerline of the proposed vehicular crossing showing dimensions, existing and proposed levels and grades. Cross sections to show the regrading of the footpath to suit the new crossing levels. Footpath levels along the entire frontage is to be reconstructed to ensure the footpath is higher than the top of kerb in accordance with the normal profile. On the low side the footpath is to be regraded to suit the new driveway levels and transition to match the existing footbath beyond. **Original Referral Comments 2022** The proposal is for demolition of existing structures and the construction of a residential flat building. <u>Stormwater</u> The submitted stormwater plans are unsatisfactory. The proposal requires OSD, however the plans do not provide sufficient details for assessment. The size of the OSD, and the location of the system is unclear. Additionally no calculations are shown regarding the predeveloped and post developed site discharges. The plans are to be amended to provide the following details: The Full Computation Method shall be used to determine the required storage volume and permitted site discharge up to and including the 1 in 100 year AEP storm event in accordance with Clause 9.3.2.5. of Council's Water Management for Development Policy. The PSD shall be calculated on the maximum allowable impervious fraction of 0%. That is, the site discharge shall be restricted to the “state of nature” conditions. Calculations are to be shown on plan including: - Pre development site flows - Post development flows including bypass flows -OSD volume required <u>Access</u> The proposed driveway profile with the level profile across the road

Internal Referral Body	Comments
	reserve is not acceptable. The driveway design shall amended to: incorporate Council's Standard Normal profile across the road reserve from the kerb to the boundary. The first 6m of the internal driveway shall be at maximum 5% grade in accordance with current standards. The proposed application cannot be supported by Development Engineering due to lack of information to address: Stormwater drainage for the development in accordance with clause C4 Stormwater. Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety.
NECC (Water Management)	**Supported with conditions.** This application was assessed in consideration of: • Supplied plans and reports; • *State Environmental Planning Policy (Resilience and Hazards) 2021* (clauses 2.8 and 2.12); • *Northern Beaches Water Management for Development Policy* (WM Policy); and • Relevant LEP and DCP clauses. Rainwater tanks to comply with Basix certificates. Tailwater (surface water and rainwater): Please contact *catchment@northernbeaches.nsw.gov.au* for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.
Strategic and Place Planning (Heritage Officer)	**Supported without conditions.** HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject property adjoins a heritage item **I121 - House known as 'San Marino'** - 49 Greycliffe Street, Queenscliff Details of heritage items affected Details of the item as contained within the Warringah inventory are as follows: <u>Statement of significance:</u> A locally rare & representative example of an inter-war building in the mediterranean style. Historically shows the variety of architectural styles constructed in the inter-war years.

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
Physical description:
Two storey building with garage under & one projecting hipped roof garage. Stuccoed masonry walls with hipped tiled roof. Decorative treatment of wall elements. Recessed entrance with canopy capped with curved terracotta tiles.
<table>
<tr><th colspan="3">Other relevant heritage listings</th></tr>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>N/A</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for a new 3 storey residential building with a basement car park on the site. The proposal has been amended to resolve issues raised by other bodies. Heritage did not object to the original proposal and does not object to this amended proposal.

The heritage item is located diagonally to the south west of the subject property. The heritage item sits forward on its lot, being located closer to the Greycliffe Street frontage with a garden rising up to the rear. There is a fall in elevation from the subject property down to the heritage item. Given the physical separation and change in elevation, the proposal is considered to not impact upon the heritage item or its significance.

Therefore Heritage raises no objections and requires no conditions.

Consider against the provisions of CL5.10 of WLEP.

Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No
</td></tr>
<tr><td>Traffic Engineer</td><td>Supported with conditions.

Comments on Amended plans - 9/12/22

The changes to the plans do not result in any change to the comments lodged on 2/11/22. It is noted that bicycle parking for</td></tr>
</table>

Internal Referral Body	Comments
	visitors has been added to the basement parking area and that the basement is now on a flat grade. These changes are not opposed. Some adjustment to the wording of conditions to correct some errors and omissions has been made <u>Original comments - 2/11/22</u> The proposed development is for demolition of the existing 3 unit development on the site and construction of a new 3 unit residential development with basement parking for 6 vehicles. **Traffic Generation** The traffic generation from the development will differ little from the existing development on the site and is considered acceptable **Parking** The *Warringah DCP* requires offstreet parking to be provided at a rate of 1.5 spaces per dwelling for a 3 (or more) bedroom unit plus 1 visitor space for every 5 units (or part thereof). The development proposes 2 x 3 bedroom units and 1 x 4 bedroom unit and therefore requires 5.5 parking spaces. 6 parking spaces are proposed two of which are in a tandem arrangement, this is acceptable provided the tandem space pair is allocated to the one unit. One of the 6 spaces will need to be made available for visitor use. The carparking spaces are sized appropriately with an aisle width in excess of that required to meet AS2890.1 requirements. It is noted that the swept path plots reveal that egress from parking space No.3 is a little constrained and requires a 4 point turn however this is considered acceptable in this instance. Bicycle parking is to be accommodated within the basement storage units **Access** The basement carpark is accessed via a driveway of 3.m in width. This is sufficient for use by a single car at a time and does not allow for two vehicles to pass. For a residential unit development widening of the driveway to 5.5m in width for at least the first 6m inside the property boundary would normally be required. AS2890.1 clause 3.2.2 outlines circumstances where a driveway which is single width might be acceptable. In this case, the driveway serves only 3 units and is therefore classed as a driveway serving a "domestic" property. For domestic properties a driveway width down to 3.0m is permissible. As the traffic generated from the property is estimated to be 2-3 vehicle trips in peak hours i.e one vehicle every 20-30 minutes, the likelihood of two vehicles needing to use the driveway at the same time is low. The driveway is however steep which will restrict sight lines along the driveway and traffic volumes on this part of Queenscliff Road are estimated to be

Internal Referral Body	Comments
	around 200-300 vehicles per hour in peak periods. It is therefore undesirable for a vehicle to have to reverse back onto or prop on Queenscliff Road and traffic signal control on the driveway with priority for vehicles entering the site will therefore be be required. **Pedestrian sight lines** There is a footpath along the Queenscliff Road frontage of the site and there is therefore a need to cater for adequate sight lines to pedestrians at the Queencliff Road property boundary. The plans suggest that a solid wall will be present immediately adjacent to the eastern edge of the driveway which will prevent adequate sight lines to pedestrians approaching from east of the driveway. A condition will therefore be added requiring that plans be amended to provide pedestrian sight line triangles consistent with AS2890.1 clause 3.2.4
Waste Officer	**Supported with conditions.** <u>Revised Waste Management Assessment</u> Additional Information amended plans - Waste, submitted 9/12/2022 Recommendation - Supported, subject to conditions <u>Original Waste Management Assessment</u> Recommendation - Unsupported Please note that whilst the location, access and general design of the bin storage area are acceptable to Council Waste Services the following minor design issues will need to be addressed. Specifically: 1) The floor of the bin bay appears to level whilst the access path to the property falls to the south. This leaves a step of increasing height between the bins and the path as the path passes the bins. The path and bin bay floor must be flush (no step permitted). It will be acceptable to Council for the bin bay floor to fall at 1 in 20 to match the path. 2) Sliding security gate for property access. This gate must open a minimum of 1200mm. It is noted that the gate partially blocks the path adjacent to the bins when open. It would be preferable for the gate to have no or minimal protrusion onto the path when open. This gate must be unlocked from 6.00am to 6.00pm on the scheduled day of collection. It is suggested that a timer lock be fitted. Alternatively the gate could be relocated further inside the property beyond the bins. 3) Bin bay dimensions and doors. It appears that the bin bay is not deep enough to contain the bins.

Internal Referral Body	Comments
	Council will provide 5 x 240 litre bins for three residential units. Each bin is 600mm wide and 750mm deep. The internal depth of the bin bay must accommodate the bin (750mm) and the proposed doors. The internal width of the bin bay must accommodate the 5 bins (3 metres) and the door posts. When the doors are opened there must be unimpeded access to the bins for service staff - no manhandling of bins to avoid the gates/posts.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	**Supported with conditions.** The proposal was referred to Ausgrid who provided a response, on 25.7.2022, stating that the proposal is acceptable subject to compliance with the relevant power line clearances as per Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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.1320159M dated 2.8.2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	50

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.

Other Service Infrastructure Authorities
The application was referred not required to be referred to Transport for NSW and no other service infrastructure authority referral issues are raised pursuant to the SEPP. Requirements of *Sydney Water* are addressed by separate processes administered directly through *Sydney Water*.

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 proposal is consistent with considerations to maintain appropriate protection of the foreshore area, landscaping, water quality and natural features of the site. No known aboriginal relics are recorded on the site.

2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
   a) the development is designed, sited and will be managed to avoid an adverse impact referred to in 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 proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
The development work is situated well above the Manly Lagoon and beachside area and at the outer edge of the 'coastal use area'. The new flat building is styled in a retro "art-deco" form (contemporary interpretation). The proposal will remain consistent with the aims and considerations for the coastal

environment of Queenscliff Road and its surroundings.

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 proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, hazards and geotechnical safety for excavation and building works.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:
The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity.

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. Concern regarding potential asbestos or lead paint is managed by standard practice and statutory law for the safe handling of asbestos and demolition material, including compliance with Australian Standards, WorkCover and waste management conditions.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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	8.5m	N/A	Yes

The development application is made pursuant to the existing use rights provisions of the EPA Act and under established legal precedent made in the NSW *Land & Environment Court* the development standards in WLEP 2011 are not deemed to strictly apply. A detailed height plane from survey data has been provided to show the building complies with the building height plane measured from Existing Ground Level (EGL).

*Height of buildings measured by existing ground level, consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.*



Image: Height plane blanket from existing ground level in relation to 8.5m height limit for proposed building.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

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

Comment
The existing building contains 2 flats in a duplex arrangement with a third studio style flat at the rear. The building had been used for only 2 flats for a period of time and is within its present surroundings there are numerous larger apartment style developments, single houses and small scale flat buildings.

The southern side of Queenscliff road has a low density residential zoning and the proposal seeks to rely in existing use rights to construct a new residential flat building of 3 units. The new building will provide a modern flat building with carparking, modern layout and increased site landscaping to meet the housing needs of the community. Details of existing use rights implications are addressed within this report.

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

Comment
The proposal does not seek to provide additional (non-housing) land uses on the site or other commercial facilities not associated with residential use of the land.

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

Comment
The proposed flat building will increase the net area of landscaping to 40% (which is commensurate to low density areas) however this is less than 50% required in the medium density areas. A landscaped setting to street, with open style fencing, as well as rear yard landscaping is proposed. The building also includes landscape elements for the building (planter boxes) to maintain a landscape setting. The proposal is consistent with this objective and further details are provided pursuant to the Warringah DCP *Part D1 Landscaped Open Space*.

4.3 Height of buildings

The amended plans include a "height blanket" overlaid across the site to demonstrate that the proposal complies with the *Height of Buildings* development standards. The height line from existing ground level is also shown in section view. A merit assessment of this clause is provided as the proposal is for a new residential flat building in a 3 storey format which is an anomaly triggered by the historical development of the site for "flats" in a zone that is now R2 a low density residential zone ("R2").

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

- The site is in a location that does have other apartment buildings and multi-dwelling housing nearby, such as along the northern side of Queenscliff Road and along Pavillion Street. However, the site is bounded by properties with dwelling houses to the east, west and south. Dwelling houses also overlook the site from the northern side of Queenscliff Road. The streetscape character (within the immediate visual catchment) therefore contains a mix housing styles. The historical development of the site circa 1940s-1950 is associated with the "art-deco" style. The existing building exhibits some of these features however it is to be completely demolished.

  The new building is of a contemporary appearance but has been styled to express an "art-deco" style with the used of curved edges, brick banding and window fenestration. This building is 3 storey in height and scale compared to the existing building due to the different roof form. This building configuration is used to provide a smaller top storey however the upper storey is stepped in and differences along the side wall setbacks and front / rear balcony elements assist to break up the scale of the building. The surrounding terrain is a broad sloping hillside area and therefore height differences between site create a lot of variation in the height pattern of

surrounding development across the landscape.

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

- The by virtue of the existing flat building having a high pitched roof, the new building proposed has a marginally lower roof, however the new buildings footprint, massing and scale is larger due to the 3 storey configuration and larger apartment designs. The setting of the building in the street is proposed to comply with the front setback and each storey has a wider than minimum front setback. The building design uses a contemporary interpretation of "art deco" styling which provides a reasonable "fit" back into the street given that the existing building to be demolished but was constructed during the late "art-deco" period. The building design has been refined to reduce visual bulk, enhance the landscape setting, address privacy considerations and ensure compliant solar access to adjacent private open space. View loss impacts have not been raised in any submissions. The building height and scale is not considered to create unreasonable visual impact, view loss or unreasonable privacy and overshadowing to surrounding properties.

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

- Loss of scenic coastal views or bushland area is not raised as a critical concern with the redevelopment of the site. However, the applicant has responded to design and assessment considerations for the protection of adjacent trees (by providing an Arborist report), and by refining the landscape plans to increase landscape area and ensure an appropriate mix of native plant species to enhance the landscape setting of the building.

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

- The Queenscliff area is a densely developed location dominated detached dwellings, duplex building and residential flats. The broad topography and characterised by coastal views, including outlooks toward Freshwater or Manly. The position of the building will not be prominent when viewed from Manly beachfront or the Lagoon area. Due to the variety and scale of development in the immediate surroundings the proposal will not create an unreasonable visual impact when viewed from public places, roads or reserve areas. The establishment of a wide front setback and wide rear setback with perimeter native landscape planting will assist to maintain a landscape setting to the building.

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

6.2 Earthworks

Consent authority must consider the following matters:
(a) the likely disruption of, or any detrimental effect on, 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,

(c) the quality of the fill or the soil to be excavated, or both,
(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
(e) the source of any fill material and the destination of any excavated material,
(f) the likelihood of disturbing relics,
(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Comment:
The proposal include excavation for a single level basement which is setback 0.77m from the western boundary and 0.0m on the eastern boundary. The front and rear setback comply. In order to effect the development the entire site will be cleared of existing structures and therefore arrangements will be required prior to work for dilapidation surveys to be undertaken with regard to adjoining private property. The basement level plans show space allocated for cavity wall drainage, ramp access and services. Subject to conditions the proposal is consistent with sub-clauses (a) to (g) pursuant to this part of the LEP.

Warringah Development Control Plan

Built Form Controls

Built Form Control*	**Requirement***	**Proposed**	**% Variation***	**Complies***
B1 Wall height	7.2m	7.3m North wall	1.3%	No
		8.0m South wall	11.1%	No
		8.0m East wall	11.1%	No
		8.1m West wall	12.5%	No
B3 Side Boundary Envelope (eaves permitted to 0.625m)	45 degrees at 5m **East**	Breaches envelope by 1.0m	1.0m	No
	45 degrees at 5m **West**	Breaches envelope by 1.3m	1.3m	No
B5 Side Boundary Setbacks	0.9m **East**	0.0m to 1.0m Basement	100%	No
		1.2m to 2.09m Ground level main wall elements	N/A	Yes
		(bin storage roof 0.525m)	16%	No
		1.6m to 2.09m Level 1	N/A	Yes

		1.6m to 2.09m Level 2		
	0.9m **West**	0.77m Basement 0.9m to 2.5m Ground level main walls 0.9m to 2.5m Level 1 main walls 2.5 m to 3.1m Level 2 main walls	14% N/A N/A N/A	No Yes Yes Yes
B7 Front Boundary Setbacks (Bin facilities permitted in association with flat buildings)	6.5m	6.6m Basement 6.6m to 7.5m Ground level wall elements 7.5m to 9.5m Level 1 main walls 9.2m Level 2 main walls	N/A N/A N/A N/A	Yes Yes Yes Yes
B9 Rear Boundary Setbacks (50% of setback area to remain open and free of structures)	6.0m	7.0 to 7.5m Basement 8.9m to 9.8m Ground Level walls 8.9 to 9.8m Level 1 main walls 10.0m to 10.3m Level 2 main walls (Balcony elements 7.0m to 8.8m) >50% remains open	N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting (must be 2m wide, ground level and deep soil area)	40% (205sqm)	37.9% (195 sqm)	4.8%	No *

*The development application is submitted on the basis of *existing use rights* under the *EPA Act 1979* and therefore the numerical standards in the WDCP (and LEP) do not strictly apply (see the approach and reasoning taken by the NSW LEC in *Stromness Pty Limited v Woollahra Municipal Council* [2006] NSWLEC 587, including *Fodor Investments v Hornsby Shire Council [*2005*]*) . Consideration of the objectives of the controls is still made to address the merits of the DCP variations

shown in the above table (based on the amended plans, dated 5.12.2022).

Note: Within the R3 medium density residential zone (adjacent) a residential flat building would be subject to a 4.5m side setback, 50% landscaped open space, a 2m setback for excavation, a single height limit and SEPP 65 requirements if applicable. Front and rear setbacks are the same as the R2 zone. This creates a "crossover" circumstance being that of low density controls being considered against the design of a medium density development.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

• To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood
• To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome
• To inspire design innovation for residential, commercial and industrial development
• To provide a high level of access to and within development.
• To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained
• To achieve environmentally, economically and socially sustainable development for the community of Warringah

Comment:
The proposal is a prohibited use seeking to exercise existing use rights and therefore closer consideration of the DCP objectives is warranted.

- The existing building is characterised as a flat building with simple brick art-deco features and a pitched roof. The adjacent building are detached dwellings in landscape setting. The proposed development seeks to use 'art deco' styling but with a flat roof form and basement carparking. This allows for increased landscaping and a contemporary appearance that follows the art deco style but also responds to the ADG in terms of seeking to provide modern apartment design amenity. The surrounding neighbourhood has a wide range of building styles due to established development pattern of Queenscliff over the past 40 to 80 years.

- The proposal seeks to ensure no unreasonable loss of privacy or overshadowing to neighbouring land. Basement parking allows for adequate space for off-street parking and the building seeks to maintain wide landscape buffer to the street and rear boundary. Pedestrian access is clearly defined and provides and the front fencing is open style appearance to the street.

- The design of the building uses a modern open plan layout and the exterior seeks to be responsive to the built form controls in addressing height, setbacks, building bulk, wall materials and shape and landscape setting.

- The proposal provide a high level of access to the building, including internal lift access to parking for all 3 Units.

- The proposal seeks to provide 3 modern units on the site, and while larger than the historical use of the building for 2 flats and a "flatette", the building achieves suitable distribution of landscaping and compliant parking space underground with compliant POS for each apartment. Sustainable design elements are a feature of the building.

- The proposal has been reviewed by Councils *Design and Sustainably Advisory Panel* and the design has been revised to accommodate recommendations of DSAP achieve suitable environmentally, economically and socially sustainable development outcomes.

B1 Wall Heights

Description of non-compliance
The maximum wall height is up to 8.0m to 8.1m for the eastern and western side walls and 7.3m to 8.0 for the front and rear walls

Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).
Merit consideration:

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

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

  Comment:
  The non-compliance with the wall height control is subject to the existing ground line that varies and steps up across parts of the site, however the proposal will demolish and regrade the site levels for landscaping works. The proposal will clearly present as 3 storeys, whereas the existing building is 2 storeys. The non-compliance is influenced by the internal 2.7m floor to ceiling and floor structures that create and cumulative wall height. Amendments have been made to the plans to increase articulation along the side and front walls to provide articulation and visual interest. This includes the integration of landscape elements to minimise visual impact when viewed from adjacent land. Generally the building is not visible from the coastal zone (Manly Beach area) but is consistent with the height / scale and density of surrounding dwellings. The wall height (measured to the upper ceiling) given the compliant front and rear setback and smaller top floor element of the building will not create an unreasonable visual impact on surrounding land, or public areas.



Image: Wall height and streetscape presentation in context with ground levels and visual impact with adjacent dwellings outlined.

- *To ensure development is generally beneath the existing tree canopy level.*

  Comment:
  The steep nature of the site is part of the natural topography around Queenscliff and influences the pattern of surrounding development whereby houses are positioned to capitalise on views to the south and the the sandstone terrain allows limited opportunity for large canopy trees due to the shallow soil. The site is on a broad south facing slope with higher land to the north. Generally the higher topography to provides a backdrop for development along Queenscliff Street / Pavilion Street with buildings on the south side of Queenscliff Road having opportunity to view toward the south (over Greycliffe Avenue). A detailed landscape plan is provided that has various tree and

shrub planting of appropriate height for the building setting and that are suitable size for the front and rear setbacks. The proposal is consistent with this objective as planting of trees higher than the building is would riase view concerns from surrouding properties.

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

  Comment:
  The non-compliance with the wall height is limited to a marginal sections across the top of the side walls and across the front and rear elevation due to the 3 storey format of the building. The wall height will have no unreasonable impact on view sharing with regard to public land. Issues of view sharing from surrounding private property is addressed in detail under the heading *D7 Views* within this report.

- *To minimise the impact of development on adjoining or nearby properties.*

  Comment:
  The non-complying sections of walls height is limited is influenced 3 storey format of the residential flat building (noting that the site relies on existing use rights) and the minor cross slope of the land and variable existing ground level. Impacts on views from public domain are not unreasonably impacted in the context of the pattern of surrounding development. No unreasonable amenity impacts of overshadowing, privacy, or spatial separation impacts will result from the non-compliant wall height with regard to adjoining private properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

  Comment:
  The site is not steeply sloping and the new basement will require substantial excavation to create adequate parking for the building. The natural form of the front and rear setbacks will be retained with excavation limited to the main building footprint, but within the side setback in places. The basement area is not considered excessive for the size of the building.

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

  Comment:
  The proposal seeks to use a 'art-deco' retro styling and therefore a flat roof form with parapet sections is used for this period style architecture (in a contemporary interpretation). Variation and visual interest (including light and ventilation) is provided by the skylights, planter boxes, side articulation, brick detailing, and curved edging that provides an innovative functional feature of the wall height, and a flat roof format that complies with the maximum building height.

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

B3 Side Boundary Envelope

Description of non-compliance

The control allows for a building a side boundary envelope of 5 metres (m) and 45 degrees. The development breaches the control along the eastern and western elevation.

Merit consideration

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

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

  Comment:
  The proposed development has been subject to amendment to reduce its building bulk and minimise non-compliance along the side boundary envelope. Amendments to the plans were made to address concerns with the mid storey and upper level. Changes provided stepped in sections and change other elements (balcony / planter box areas) to reduce visual dominance and maintain consistency with *Part D9 Building Bulk*. The stepping-in for the side walls, art deco styling and articulation used assists to maintain natural light, visual interest, outlook and spatial separation to adjacent land and reduce visual dominance when viewed from the public domain of the lagoon reserve. In this regard the proposal is consistent with this objective.

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

  Comment:
  Adequate physical separation is achieved between buildings through the articulation and minor stepping in of the upper level and at mid level sections which ensures no unreasonable loss of privacy or unreasonable solar amenity impacts on the adjoining land. Submitted shadow diagrams (Drawing No.DA600 to 602) demonstrate compliant solar sunlight is provided to adjoining properties pursuant to Warringah DCP. The proposed development allows for a reasonable level of amenity, solar access and privacy to be obtained from adjoining or nearby dwellings. The proposal is consistent with this objective.

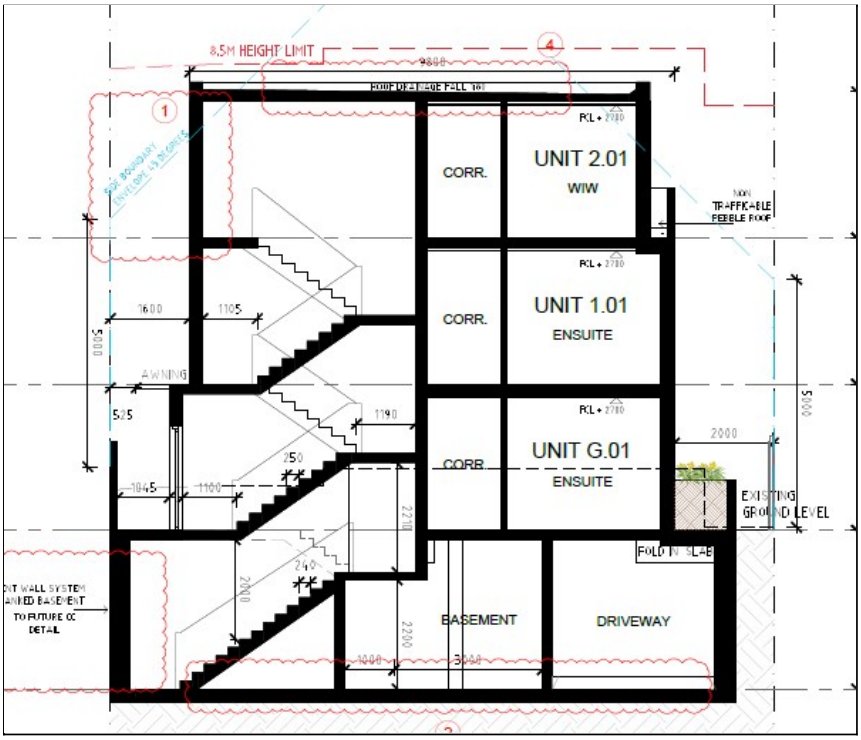


Image: Section demonstrating side boundary envelope breach and compliance with 8.5m height line.

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

  Comment:
  The proposed development responds to the site topography by the use of excavation to provide 2 off street parking spaces per dwelling. The excavated basement levels do no create unreasonable impact on the side boundary envelope by 'pushing up' the building for vehicle clearance. The site levels to be reinstated around the perimeter of the building are consistent with existing ground levels without excessive transitions to the adjacent surrounding land levels.

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

B5 Side Boundary Setbacks

Description of non-compliance
The proposal complies with the side setback except for the basement wall shown within the 0.9m side setback and roof eaves associated with the bin storage entry path structure / front foyer awning.

Merit consideration

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

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

  Comment:
  The non-compliance does not create any unreasonable loss of opportunity for deep soil landscaping space. Generally landscaped open space is concentrated at the front and rear setback. Minor (narrow) landscape elements are still retained along the side setback to the building and above the garage areas where appropriate. The proposed flat building maintains a compliant setback for all habitable rooms however this is accepted in context with the applicable R2 zone even though a residential flat building would normally seek to achieve a 4.5m setback in the R3 zone and a 2m basement setback. The overall landscape space for the site is being increased from the existing flat building on the site.

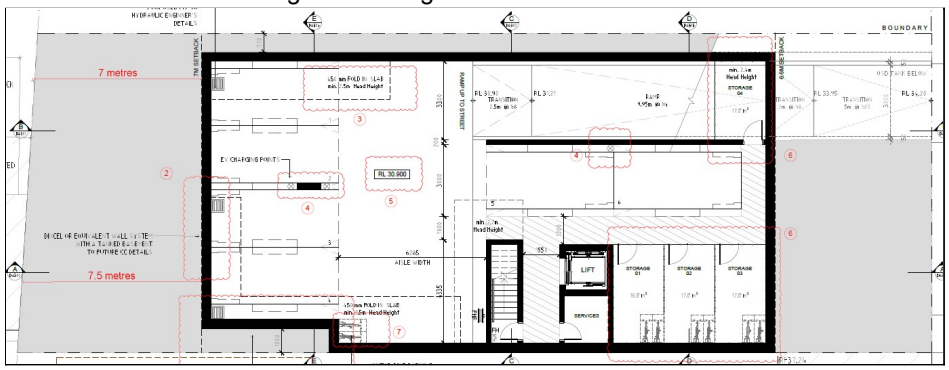


Image: Basement setback position shown in context with site boundary.

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

  Comment:
  The overall bulk and scale of the building is reliant on existing use rights and its current height and site coverage. In this regard the the proposed building seeks to a larger footprint, however on a more centralised position of the existing house. This has enabled the proposal to rely on the R2 zone setback however above ground level the proposal is articulated and complies with the 0.9m setback except for the minor entry cover that is a low profile structure (entry point of the building and front gate area). The basement non-compliance and building setback proposed still permit adequate landscaping to ensure the building does not become excessively dominant compared to adjacent dwellings and the pattern of surrounding development in Queenscliff Road (within its visual catchment).

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

  Comment:
  The non-compliance to the side setback for shoring walls and basement cavity drainage does not create any adverse building bulk or scale to the proposal. The main building element and minor structures are designed to have visual interest in the architectural style and wall variation.

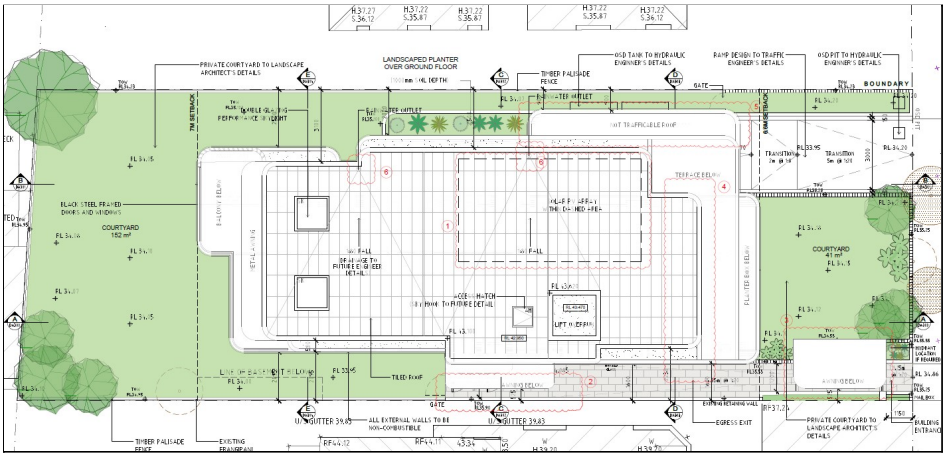


Image: Building setbacks in plan view, landscape spaces, foyer awning, bin / entry structure and adjacent dwelling setbacks,

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

  Comment:
  The non-compliance to the side setback for shoring walls and cavity drainage does not create any unreasonable level of privacy impact, or loss of amenity and solar access to surrounding land. The upper walls of the building have appropriately positioned windows and privacy screening with the principal outlook directed toward the street and rear yard. The building setback for each residential floor level demonstrate that complaint solar access can be maintained.

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

  Comment:
  The non-compliance to the side setback for shoring walls and cavity drainage does not create any adverse impacts on the sharing of views to and from public and private properties. Principal view lines are not gained along the side setbacks due to the density of surrounding development and existing ancillary structures and landscaping.

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

B7 Front Boundary Setbacks

Description of non-compliance
The proposal includes a minor structure for the entry pathway which contains bin storage, letterboxes adjacent the pedestrian gate. The main building and basement carpark complies with the 6.5m front setback.

Merit consideration:

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

- *To create a sense of openness.*

  Comment:
  The front yard has a landscaped open space area that maintains a sense of openness with open style fencing and landscape elements including lawn area. The bin alcove and associated structure is permitted in the front setback and meets Council's requirements for bin servicing. Space is also shown for fire hydrant connection. The proposed elongated bin storage along the site of the path with a flat roof form is consistent with this objective.

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

  Comment:
  The basement parking and landscaped front setback maintains the continuity of the existing pattern of buildings as there are a number of garage structures within the front setback in the vicinity of the site. However on this site the the carparking is in the garage and open style fencing with native landscape planting is will maintain the visual continuity of the site and the surrounding environment. The bin storage has open side walls with a flat roof and stonework is to be used to provide suitable visual appearance to the street. The proposal is consistent with this objective.

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

  Comment:
  The proposal has not sought to comply with the front setback for the basement and main building. Visual quality will be maintained by ensuring the front setback area includes open style fencing, native landscape planting, lawn and open style structures for the bin facility.

- *To achieve reasonable view sharing.*

  Comment:
  The front setback space and ancillary structures do not create any unreasonable impact on any coastal or district views from surrounding properties.

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

C2 Traffic, Access and Safety

Merit consideration

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

- *To minimise traffic hazards.*

Comment:
The proposal will comply with Australian Standards for the driveway access to ensure safe access, sight distances and vehicle access. The entry area will no cause unreasonable traffic hazard for the street.

- *To minimise vehicles queuing on public roads.*

  Comment:
  The existing driveway will be deleted for the new basement access and traffic control device in the basement will assist to ensure minimal queueing. The building contains only 6 car spaces and therefore queuing is unlikely to cause any unreasonable impact on vehicle access or passing traffic.

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

  Comment:
  The number of vehicle crossing for the site will remain as one (1) only.

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

  Comment:
  The proposal will comply with Australian Standards for the driveway access to ensure safe access, sight distances and vehicle access. The entry area will not cause unreasonable traffic hazard for the street. Council's traffic engineer and development engineer are satisfied with the access and parking arrangements, subject to conditions.

- *To minimise interference with public transport facilities.*

  Comment:
  The site has convenient access to public bus services and no change to existing bus stop facilities is required.

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

  Comment:
  The proposal has not allocated any 'visitor' parking but has provided sufficient parking in the basement for 2 cars per unit. If any unit has less than 2 cars space would be available for a visitor to that unit. In consideration of future vehicle use EV charging points are also shown in the basement area. While the area experiences congested overnight residential parking this is partly influenced by other houses / older style apartments not using their own garages for off street parking, but instead for storing domestic household items. Conditions are recommended that the proposal maintain all car spaces exclusively for car parking and that car access is not obstructed by miscellaneous items.

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

C3 Parking Facilities

Description of non-compliance
The proposal will have two (2) car spaces per dwelling. No visitor space is nominated however overall the proposal has sufficient parking for the occupants, including bicycle storage.

Merit consideration

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

- *To provide adequate off street carparking.*

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential Flat Building	· 1.5 spaces per 3 bedroom dwelling · 1 visitor space per 5 units or part of dwellings	3 x 1.5 (4.5) 1	6 0	1.5 -1.0
Total		5.5	**6**	+0.5

  The site has "existing use rights" being a development for "flats" that is no longer permissible in the *R2 Low Density Residential Zone*. While existing uses are not strictly required to meet numerical controls that otherwise apply to permitted uses this does not warrant expansion or intensification of the use to be "unfettered" in contrast to the surrounding residential character and planning controls. The provision of adequate car parking is a principal consideration in the surrounding area due to the density of existing development around Queenscliff. The proposal contains only 3 dwellings, with 6 new car spaces proposed and therefore has adequate parking space per dwelling. Disabled persons parking is not required for only 3 units. Council's Traffic engineer raise no issues or objection to approval of the proposal.

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

  Comment:
  The proposed parking facilities involve an excavated garage with ramped access below the building and landscaping across the majority of the front setback area. Therefore, the parking structures will therefore have a minimal visual impact on the street frontage.

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

  Comment:
  Parking facilities as shown on the submitted plans (in a basement arrangement) will not

dominate the street frontage and a landscaped setting to the streetscape is to be maintained.

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

C7 Excavation and Landfill

Merit consideration

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

- *To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*

  Comment:
  The proposal requires the construction of a basement down to 3.5m below existing ground level and as such a geotechnical assessment and detailed engineering plans will be required at construction certificate stage. Conditions are recommended to ensure safe engineering practices and appropriate excavation methods, dilapidation protection and like, to ensure no adverse impact on adjoining land.

- *To require that excavation and landfill does not create airborne pollution.*

  Comment:
  Standard work practices will apply to ensure dust suppression for excavation work to meet this objective as part of the pre-construction certificate phase, and during works.

- *To preserve the integrity of the physical environment.*

  Comment:
  The site does not have any significant natural landform features (rock outcrops, drainage lines, bushland or the like). Native landscaping will be used as the dominant planting regime for the site and the broad front and rear setback areas will be retained for landscape open space.

- *To maintain and enhance visual and scenic quality.*

  Comment:
  The basement area does not protrude out of the ground and landscaping is provided above the side areas to maintain visual setting post excavation.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The site will maintain 37.9% (195sqm) of the site area for landscaped open space. This is a 4.8% variation for the R2 residential zone (for a permitted dwelling house however the site has an existing flat building on it (base on historical approval under the Cumberland Planning Scheme).

Merit consideration

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

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

  Comment:
  The proposal will contribute to an increase in the net landscaped open space on the site with landscaping concentrated at the front and rear setback, with minor landscape elements along the site and with planter boxes integrated to the building. Overall the planting scheme will provide an acceptable streetscape presentation despite the numerical shortfall of landscape space (as per the definition). (It is noted that with the minor narrow landscape elements included, the site achieves 41% landscaped area).

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

  Comment:
  The overall landscape area allocated and design (including planting regime) will not have an unreasonable impact on existing trees and shrub vegetation within the site. An arborist report has been provided to assess adjacent trees (roots) close to the basement. Councils landscape officer is satisfied with the works proposed and associated landscape treatment, including tree assessment and new planting required. The topography of the site is gently sloping and does not create unreasonable impacts in terms of finished levels for landscaping.

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

  Comment:
  The new landscaping regime provided is of sufficient native species with a mix of appropriate mature height / size and dimensions to provide for trees and shrubs. Ancillary element such as fencing and entry areas have landscape elements to ensure landscaping is maintained as dominant feature to the street and assist to soften the building bulk and scale.

- *To enhance privacy between buildings.*

  Comment:
  The position of boundary planting and use of planter boxes as well as principal landscape setbacks assists to create reasonable buffer for privacy and reduce / screen overlooking for adjacent land at ground level, in conjunction with normal fencing structures. At the upper levels balconies face the street or the wide rear setback and privacy is assisted by balcony screens for L1 and L2.

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

  Comment:
  Sufficient space is retained for the outdoor recreational opportunities of the occupants. The proposal provides private open space for the ground level unit and balconies for L1 and L2. Private open space for ground level is also improved through the installation of doors to the front garden.

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

  Comment:
  Sufficient space is maintained for service functions, including domestic space for clothes drying for occupants.

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

  Comment:
  No augmentation for OSD to the existing stormwater management system is required within the property.

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

D2 Private Open Space

Description of non-compliance
The proposal includes ground level private open space and balcony space which is on the south side of the building.

Merit consideration

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

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

  Comment:
  Private open space is required to be located behind the 6.5m front setback however the proposal has allocated "coutyard" space in front of the ground floor unit. This unit also has its main POS at the rear with the front yard only accessible from the secondary bedrooms. The rear deck and ground level area is directly accessible from the kitchen living dining room and is in the order of 8m x 12m. The upper level terraces are in the order of 12sqm and 17sqm with an outlook toward Manly. The central areas of the upper level POS terrace are 2.5m or wider and appropriately shaped.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:
All 3 units proposed have suitable POS that are integrated with and directly accessible from the living areas. Each unit also has secondary open space at the front of each unit to enhance the amenity of the front (north facing rooms). Due to the low density residential setting the proposal conforms with the adjacent pattern of houses that have POS in the rear yard and not the front. Therefore POS in the front setback for the building would be less appropriate under the circumstances.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:
Due to the low density residential setting the proposal conforms with the adjacent pattern of houses that have POS in the rear yard and not the front. Therefore POS in the front setback for the building would be less appropriate under the circumstances.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:
The solar access diagrams (DA600 to DA602) demonstrate that the rear yard and POS areas will maintain adequate solar access for the outdoor areas. The proposal cannot achieve full internal direct sunlight due to consideration of privacy, however slot windows are used for living areas and floor to ceiling rear windows that assist to gain adequate natural light in association with 2.7m ceiling height. Each unit has north facing open space and bedrooms that will have good natural light for the occupants.

90 QUEENSCLIFF ROAD - QUEENSCLIFF
SOLAR COMPLIANCE CHECK

UNIT	POS								LIVING							
	9AM	10AM	11AM	12PM	1PM	2PM	3PM	TOTAL	9AM	10AM	11AM	12PM	1PM	2PM	3PM	TOTAL
G.01				Y	Y	Y	Y	3								0
1.01				Y	Y	Y	Y	3							Y	0
2.01				Y	Y	Y	Y	3			Y	Y	Y	Y	Y	4

Solar Access
No Solar Access
Compliant
Non-Compliant

UNIT COMPLIANT 1
TOTAL UNIT 3
Solar Compliance 33%

Image: ADG solar access comparison. Note the SEPP 65 requirements do not apply to the building.

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

D6 Access to Sunlight

Part D6 Access to Sunlight seeks that at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space (POS) of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

In this case the building bulk and height of the proposed dwelling will retain a similar shadow regime as demonstrated in the shadow diagrams (DA600 to DA 602) drawn by PBD Architects. Therefore, the proposal has better access to sun in the front yard than the rear and suitable natural light is maintained along the side setback for the residential environment. The use of smaller windows on the side setbacks for the proposal is intentional to assist in maintaining privacy to adjacent dwellings, but windows still assist in providing internal natural light amenity. Generally the proposal will create no unreasonable change to solar access between 9am and 3pm on the 21 June for neighbours private opens space, by comparison to the existing shadow regime.

In addressing the non-compliance outlined above, the following matters within *Benevolent Society v Waverley Council (2010) NSWLEC 1082* of relevance and have been factored in with the merit consideration of the WDCP objectives:

- *"The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*
- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*
  Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.
- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*
- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*
- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence. In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development."*

Merit consideration

With regard to the consideration of Part D6 of the Warringah DCP, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that reasonable access to sunlight is maintained.*

  Comment:
  The subject building design has been amended to reduce upper bulk and overall the building provides a wide front and rear setback which assists to maintain solar access to adjacent land.

The proposal demonstrates compliant In this regard access to sunlight is maintained to surrounding land similar to the existing shadow regime. The rear terrace provides private open space that has an open outlook toward Manly (from upper storey levels) whereby surrounding properties also seek to capitalise on a similar southerly outlook. The southerly slope of the land creates influences the shadowing toward the rear yard than what would otherwise occur less in flatter topography or and an east-west property orientation. Given the compliant building height of the proposal, replacement of the existing roof form and pattern of surrounding development, the proposal is considered to maintain reasonable access to sunlight, principally in that the existing flat building already casts the major shadow outline as shown and a the new building profile maintains reasonable solar access to surrounding land. This includes consideration of properties either side at No.92 and No.88 Queenscliff Road as well as No's 45 to No.49 Greycliffe Street (south). Hourly 'sun-eye' diagrams are used to show solar impact of the proposal. Change made in amended plans (5.12.2022) have not materially or manifestly changed solar access as the upper bulk was reduced rather than enlarged.

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

  Comment:
  The proposed design is responsive to the topography and site constraints and does not create an unreasonable impact on the surrounding urban environment. The proposal achieves good internal amenity for the occupants of the site in response to the sloping site (southerly outlook) and building height, setbacks and amended design to ensure no unreasonable impact on the adjacent properties which have a similar aspect in this section of Queenscliff Road.

  Within the subject site the position of the living area balcony / terraces allow for reasonable natural light and amenity despite the southerly aspect in that an open front (north facing) front yard acts as an alternative open space.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

  Comment:
  The proposal has been designed to ensure reasonable penetration of mid-winter sunlight within the building by the use of a garden/light/ventilation which enables direct natural light through the front windows to capture natural sunlight. The shadow diagrams demonstrate suitable mid winter solar access to adjacent private open space on the 21 June.

- *To promote passive solar design and the use of solar energy.*

  Comment:
  The proposal includes passive solar design elements and does not have an unreasonable impact of passive solar access to adjacent land. It is noted that adjacent sites have similar circumstances with southerly outlook over Manly as a 'trade off' to retaining an open front setback area given the configuration of site and its position within a low density residential zone. For the subject land the position of the wide street frontage maintains alternative access to sunlight with the front yard area that allows direct solar access for the ground floor apartment. On balance the proposal is considered to be consistent with this objective.

- *To minimise the need for artificial lighting.*

  Comment:
  The design of the proposal provides a suitable flat roof form that ensures no unreasonable impact on the need for artificial lighting given the density and pattern of surrounding

development, consistency with the built form controls (acceptability of some reduction in solar access for new buildings) and circumstances of the existing site constraints. "Sun-eye view" images are provided for hourly intervals between 9am and 3pm to demonstrate solar access across the site and for the rear POS of adjacent land including building structures.



Image: 11am 'sun-eye" of site and surroundings and 2pm on the 21 June.

Having regard to the above assessment, (including the planning principle established in the *Benevolent Society v Waverley Council (2010) NSWLEC 1082*) it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

As a result of the notification process, although no submissions were received raising view loss concerns a summary consideration of views is still outined below. (Internal access was not requested / available as residents did not raise view loss objections).

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

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. Note: No submissions of view loss were made with any public submissions however general consideration is made based on the surrounding pattern of development and coastal view setting evident for surrounding land (this include public views of the site).

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:
Views currently are limited in a southerly direction due to the existing height of buildings along the southern side of Queenslciff street. No. 69 Pavillion street has broad views at the upper level to the east south and west and east from the upper level. Coastal views from the rear of No.88 Queenscliff Road are unaffected. Focal points of interest include the North Head area, Manly beach interface and offshore area for properties looking south over the site. There is no public view corridor through the site (at street level) toward the coast.


Image: Street level view through the site obscured by existing pattern of development.

Site inspection include general viewing of the surrounding area from accessible vantage points along the street and within the site to consider various views across the site and for the broad surroundings as a whole. Properties on the south side of Queenscliff Road are at least in proximity of RL40 to RL44 at roof level. The parapet of the proposal is RL43.1 (and RL 43.6 for the lift overrun) but is under the overall height line of 8.5m above EGL.

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:

Queenscliff Road

Views from the living areas and balcony / terraces have a southerly outlook from properties opposite the site in Queensliff Road (or adjacent side views from No.88 Queenscliff Road or No.92 Queenscliff Road). Due to the much higher position of these dwellings associated with the slope, road alignment and higher land levels the proposal does not create any unreasonable view impact from the opposite (north) side of Queenscliff Road. Views from the ground floor (natural ground level) are partly obscured due to the height of the existing structures (fence / landscaping) and the height of No.69 Queenscliff Road. (See image below)



View across site from living level at No.69 Queenscliff.

PavilionStreet

From within No.69 Pavilion Street views are obtained across the site (and to the east, south and west) from upper level. The views are obtained from a standing and sitting position from the upper floor and mid level at the front living areas. Along the south side of Queesnscliff Road views are commonly provided with a view advantage from the rear, particularly upper storey level.



Image: Outlook from living area of 69 Pavilion Street. Site is on the far RHS of photo indicated.



Image: Properties overlooking in Pavilion Street substantially higher due to topography of ridgeline area to the north.

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:

Due to the higher position of dwellings on the northern side of Queenscliff Road and Pavilion Street the surrounding topography gives broad views to the south generally above RL40 to RL42 depending on the topography and viewing angle across surrounding development. The proposed building is lower than the maximum height of the existing building with the main roof expanse being RL42.95 and a lift protrusion at RL43.6. The building does not create an unreasonable overall view impact on the public domain or for properties that directly overlook the site.

Overall the view impact is negligible on private and public views.



Image: Pattern of development along Queenscliff Road toward southerly views. Site is on far right.

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 on Principle 4:

The proposal responds appropriately to the available views through the close analysis of view corridors using survey information, photos from submissions, site inspection and discussions regarding the DA plans. As a result the amended plans provide an acceptably skillful design to minimise view loss impacts on neighbouring properties that overlook the proposed building (including side views) with no unreasonable impact when taking in context of whole view and alternative upper level viewing positions available. The non-compliance with the wall height, side boundary setback, side boundary envelope does not create any unreasonable design issues with regard to view loss.

Warrigah DCP

• *To allow for the reasonable sharing of views.*

Comment

The built form of the proposal creates a centralised position for the building with living areas facing south to capitalise on views toward Manly area. The proposal is consistent with this objective to maintain the major views / outlook for surrounding dwellings with no unreasonable impact in the sharing of views.

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

Comment

The proposal seeks to use an art deco styling with a flat roof format and is positioned centrally on the site. Overall the building retains a landscape setting and allows for the views to be retained consistent with the existing overall outlook for properties that overlook the site (from the northern side of Queenscliff Road) with an innovative design for the urban area.

• *To ensure existing canopy trees have priority over views.*

Comment

The proposal does not seek to remove any significant trees on the site and new planting is proposed to retain consistency with this objective.

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

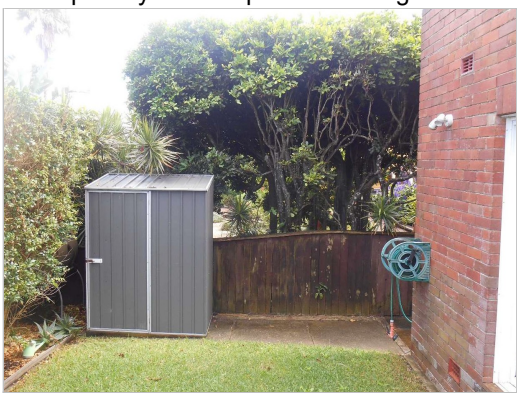
D8 Privacy

Merit consideration

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

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

  Comment:
  The proposal generally concentrates private open space areas toward the rear of the site which is consistent with that of a dwelling house. The balcony and terrace elements included provide suitable open space for the apartments and include screening elements to limit impacts on adjacent land for visual and acoustic privacy. At ground level standard height fencing and boundary screen planting provides suitable screening and privacy protection. The privacy of the pedestrian approach to the front door area is reasonable with the arrangement of the ground level entry and internal access to the basement garage minimises impacts to surrounding neighbours for car access. The acoustic and visual privacy associated with the front yard is semi-private being attributed to the front ground level bedrooms and not as a communal space. Along the side boundaries window spacing and positions have been kept minimal to allow for reasonable residential privacy and narrow / slot windows have been suitably located to limit overlooking. Generally the proposal maintains an outlook toward the street and rear yard, with the upper storeys able to view toward Manly area. The balcony areas are of a suitable size for functionality without being excessively large. Overall the proposal is consistent with this objective in maintaining residential privacy and noise privacy for occupants and neighbours.

Images: Adjacent high hedge at rear of No.88 Queenscliff Road (left photo) and No.92 Queenscliff Road (right photo) affords privacy and screening.

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

  Comment:
  The building is in an "art deco" style but provide a contemporary and modern floor layout. Innovative use of internal space has been achieved to ensure the building does not create unreasonable amenity impacts on surrounding land. The proposal has been amended and suitable changes were made to improve privacy considerations to adjacent land, including reduce bulk, landscape screening and allocation of private open space areas.

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

  Comment:

The design will include appropriate security including residential style fencing, garage parking, landscaped pathways (rear garden) as well as a well defined front entry area to the flat building. Front fencing will maintain a suitable delineation between the road boundary and the front yard (open style fencing with landscaped setting / border planting).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives of this clause and accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D9 Building Bulk

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

- *To encourage good design and innovative architecture to improve the urban environment.*

  Comment:
  The amendments provided to the plans compliance with the maintain compliance with the 8.5m height plane, and have reduced the previous extent of non-compliance on the side boundary envelope pursuant to this objective. The increased upper level setbacks, including changes to balcony areas and reduced building bulk achieve the desired objectives to ensure that the development does not become visually dominant in relation to adjacent dwellings. In this regard consideration is also relevant the existing building profile (as shown on the elevations) in context of the new 3 storey building. The proposal will maintain adequate daylight, solar access and privacy to adjacent living areas of neighbouring properties by providing spatial separation between buildings and to ensure that development responds to the topography of the site. The architecture of the building seeks to use an 'art deco' period styling, albeit with a contemporary interpretation of this style.

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

  Comment:
  The proposal ensures a compliant landscaped front setback and rear setback areas with landscaping and residential outlook toward the street. The building bulk has been suitably articulated with appropriate driveway and pedestrian entry areas to the streetscape. The site is situated within a low density residential area and is consistent with the built form controls for that zone and does not create any unreasonable visual impact for apartment buildings and other dwellings nearby that overlook the site. The proposal satisfies this objective.

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

E10 Landslip Risk

Merit consideration:

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

- *To ensure development is geotechnically stable.*

Comment:
The proposal has included detailed *Preliminary Landslip and Geotechnical Assessment, dated 10.8.2022* to address this objective and address considerations with regard to the natural site conditions and surrounding land. No significant landslip to unusual geotechnical conditions have been identified and therefore the Crozier Geotechnical consultants recommend that *onsite testing and reporting will be required prior to CC to satisfy Council conditions and for design/construction purposes*. The proposal is consistent with this objective.

- *To ensure good engineering practice.*

  Comment:
  The proposal has been submitted with a detailed geotechnical report to ensure appropriate engineering considerations of the excavation and works proposed. This is subject to recommendations as per the advice provided by Crozier Geotechnical Consultants with concludes that "*the proposed basement and driveway excavation will extend through low to medium strength sandstone bedrock which is likely to be self-supporting, although this will need to be confirmed during the geotechnical investigation and with inspections during the excavation works to identify any potential unfavourably oriented defects."* Appropriate conditions are included to ensure recommended engineering requirements are implemented during works.

- *To ensure there is no adverse impact on existing subsurface flow conditions.*

  Comment:
  The proposal has been provide with detailed engineering plans to address drainage and provision has been made in the basement area for cavity drainage. Council's development engineers are satisfied with the submitted engineering plans, subject to conditions.

- *To ensure there is no adverse impact resulting from stormwater discharge.*

  Comment:
  Councils stormwater engineer / development engineer has considered the stormwater and civil works associated with the proposal as per the plans (architectural and engineering). The proposal is consistent with this objective.

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

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 $30,492 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $3,049,200.

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

PLANNING CONCLUSION

This proposal, for demolition work and the construction of a residential flat building with basement parking and ancillary site works. The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to more than 10 submissions of objection having been received.

The concerns raised in the objections have been addressed and resolved by conditions or in the design changes made during the assessment period.

The critical assessment issues include building bulk, height, setbacks, excavation works, drainage, landscaping, solar access, privacy (visual & noise), parking, and streetscape considerations. The provisions of SEPP 65 and the ADG do not apply since the proposal is only for 3 apartments. Council's DSAP however provided recommendations on the design and the applicant has sought to accommodate those changes as far as practicable at DA stage.

During the assessment period the applicant has also sought to address the existing use rights situation

applying to the site and to demonstrate no unreasonable impact on views, overshadowing, privacy, parking, streetscape or general amenity on adjacent land. 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1443 for Demolition works and construction of a residential flat building and strata subdivision on land at Lot 22 DP 8373, 90 Queenscliff Road, QUEENSCLIFF, 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**
DA001 Issue A Demolition Plan	20.8.2022	PBD Architects
DA100 Issue B Basement	5.12.2022	PBD Architects
DA101 Issue B Ground Floor	5.12.2022	PBD Architects
DA102 Issue B Level 1	5.12.2022	PBD Architects
DA103 Issue B Level 2	5.12.2022	PBD Architects
DA105 Issue B Roof Plan	5.12.2022	PBD Architects
DA200 Issue B North Elevation	5.12.2022	PBD Architects
DA201 Issue B South Elevation	5.12.2022	PBD Architects
DA202 Issue B West Elevation	5.12.2022	PBD Architects
DA203 Issue B East Elevation	5.12.2022	PBD Architects
DA300 Issue B Section A	5.12.2022	PBD Architects
DA301 Issue B Section B	5.12.2022	PBD Architects
DA302 Issue B Section C	5.12.2022	PBD Architects
DA303 Issue A Section D	5.12.2022	PBD Architects
DA204 Issue A Section E	5.12.2022	PBD Architects
DA400 Issue B Material Schedule	5.12.2022	PBD Architects
DA401 Issue B Material Schedule	5.12.2022	PBD Architects
DA570 Issue B Excavation and Fill Diagram	5.12.2022	PBD Architects
Strata Subdivision Plan*	**Dated**	**Prepared By**
Sheet 1 Issue C Draft Strata Plan of subdivision 10815-SP Location Plan	1.8.2022	ATS Surveyors
Sheet 2 Issue C Draft Strata Plan of subdivision 10815-SP Ground Floor (Parking)	1.8.2022	ATS Surveyors
Sheet 3 Issue C Draft Strata Plan of subdivision 10815-SP Ground Floor	1.8.2022	ATS Surveyors

Sheet 4 Issue C Draft Strata Plan of subdivision 10815-SP Level 1	1.8.2022	ATS Surveyors
Sheet 5 Issue C Draft Strata Plan of subdivision 10815-SP Level 2	1.8.2022	ATS Surveyors

*Final strata plan to be updated to be consistent with the approved Architectural Plans.

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
DA_C000 Rev 6 Cover Sheet, Drawing Schedule, Notes and Locality Sketch	17.3.2023	Henry&Hymas
DA_C100 Rev 17 Ground Floor	17.3.2023	Henry&Hymas
DA_C101 Rev 6 Basement Plan	17.3.2023	Henry&Hymas
DA_C110 Rev 3 Standard Gutter Crossing Detail	19.7.2022	Henry&Hymas
DA_120 Rev 6 Vehicle Crossing and Driveway Details	14.2.2023	Henry&Hymas
DA_121 Rev 1 Driveway Section and Details	14.2.2023	Henry&Hymas
DA-C130 Rev 1 Site Sections	17.3.2021	Henry&Hymas
DA_C200 Rev 9 Stormwater Miscellaneous Details	20.2.2023	Henry&Hymas
DA_C201 Rev 9 OSD Tank Plans, Sections and Details	14.3.2023	Henry&Hymas
DA_C250 Rev 5 Stormwater Catchment	14.3.2023	Henry&Hymas
DA_SE01 Rev 3 Sediment And Erosion Control Plan	19.7.2022	Henry&Hymas
DA_SE02 Rev 3 Sediment And Erosion Details	19.7.2022	Henry&Hymas

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate 1320159M	2.8.2022	ESD Synergy Pty Ltd
Report - Fire - 220 97 F DA Capability Statement R1.1	28.7.2022	Code Performance
Report - BCA - P220081 (4)	3.8.2022	BCA Vision
Report - Geotechnical - P220081 (4)	10.8.2022	Crozier Geotechnical
Arboricultural Impact Appraisal	22.12.2022	Naturally Trees

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L-01 Issue F Ground Floor Landscape Plan	5.12.2022	Site Design & Studios
L-02 Issue F Level 1 Landscape Plan	5.12.2022	Site Design & Studios
L-03 Issue F Level 2 Landscape Plan	5.12.2022	Site Design & Studios

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	30.7.2022	Paul Oates

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	25.7.2022

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **residential flat building** containing 3 apartments only, in accordance with the Dictionary of the *Warringah Local Environmental Plan 2011*

The approved apartment configuration is limited to 2 x 3 bedroom apartments only and 1 x 4 bedroom apartment only, with basement carparking for 6 cars.

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

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**
(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
(b) BASIX affected development must comply with the schedule of BASIX commitments

specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

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

(i) showing the name, address and telephone number of the Principal 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.

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 $30,492.00 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 $3,049,200.00.

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.

8. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**
The applicant is to lodge a Bond of $10 000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

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

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

The following minimum soil depths are required to support landscaping as proposed:
i) 600mm for shrubs on Level 1 and 2,
ii) 1000mm for all planting on Ground Floor.

Design certification shall be submitted to the Principal Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

10. **Transplanting Methodology Plan**
A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed *Plumeria rubra* (tree 1), including:
i) preparation of the transplantation site,
ii) preparation of the tree to be transplanted,
iii) transplanting methodology and installation works,
iv) post-transplanting care and duration,
v) ongoing maintenance program,
vi) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Principal Certifier for approval prior to issue of a Construction Certificate

Reason: Tree protection.

11. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **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.

13. **Stormwater Treatment Measures – Minor**
The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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.

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

Due to heavy traffic along Queenscliff Road, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed

- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

15. **Removal of Redundant Driveways**
All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

16. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

Details demonstrating compliance by either adjusting the alignment of OR limiting the height of the wall to the east of the driveway to no more than 1m above footpath level are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

17. **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 by *Crozier Geotechnical* referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Compliance Assessment Report prepared by BCA Vision, dated 3/8/2022, Ref No.220081, including any Fire Engineered Performance Solutions, are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate..
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

19. **Access 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 Certifying Authority 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.

20. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Henry & Hymes, drawing number 20437_DA-C000, 20437_DA-C100, 20437_DA-C101, 20437_DA-C130, dated 17/3/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. OSD shall be provided in accordance with Section 9.0 of Council's Water Management for Development Policy
ii. Site discharge shall be via gravity to the kerb in Queenscliff Road.
iii. Site discharge to the kerb shall not exceed 25l/s.
Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

21. **Submission Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular cross and associated works on the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 3.0 meters wide constructed in accordance with Council's standard drawing Normal and the levels to be in accordance with concept plans by Henry & Hymes, drawing number 20437_DA_C120, dated 14/2/2023, revision 06 and council specifications.
2. Reinstatement of redundant driveway.
3. Reinstatement of the footpath along the Queenscliff Rd frontage.
4. Footpath to the northeast of the proposed vehicular crossing to be regraded to suit the new driveway levels.
5. Footpath to the northwest of the proposed vehicular crossing to be regraded to suit the exiting levels.
6. Nature strip along the northwestern boundary to be regarded such that overflow from the boundary pit is directed to the footpath.
7. Integrity of the retaining wall along the frontage of No 92 Queenscliff Rd shall be maintained
8. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

22. **Tanking of Basement Level**
The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Water NSW are to be complied with and a copy of the approval must be submitted to the Certifier.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

23. **Structural Adequacy and Excavation Work**
Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

24. **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;
    - 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: To protect the environment from the effects of sedimentation and erosion from development sites.

25. **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.

26. **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.

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

28. **Utilities Services**
Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

(a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
(b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

29. **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.

a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) tree protection measures under section 4 Arboricultural Method Statement and Appendix 8 Tree management plan,
ii) works under Appendix 7 Schedule of works and responsibilities,
iii) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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

c) All tree protection measures specified must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal 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.

d) 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.

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane a

Reason: To ensure Work zones are monitored and installed correctly.

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

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-
- Make provision for all construction materials to be stored on site, at all times.

- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

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

32. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:
- No.88 Queenscliff Road, Queenscliff
- No.92 Queenscliff Road, Queenscliff
- any other adjacent private property assets or adjacent public property that may be adversely affected by site works or activity during site works.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties

prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

33. **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

34. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be

submitted by the Arborist to the 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.

35. **Condition of Trees**
During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

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

Reason: Public safety.

37. **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.

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

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

39. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved *Construction Traffic Management Plan* (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate *Transport for NSW* (TfNSW) accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval.

A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

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

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

Reason: To ensure public safety.

41. **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.

42. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

43. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

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

44. **Footpath Construction**
The applicant shall reconstruct the footpath along the Queenscliff Rd frontage and the works shall be in accordance with the following:

(a) All footpath works are to be constructed in accordance with Section 138 Road Act approval
(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifier.

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

45. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

46. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

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

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

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

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

48. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing L-01, L-02, L-03, and L-04 by Site Design Studios dated 05/12/22), and inclusive of the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, 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 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 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
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.

49. **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, 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.

50. **Certification of Civil Works and Works as Executed Data on Council Land**
The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

51. **Basement Garage Traffic Signal System**
To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at the ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;
- be clearly visible from ramp entrances,
- is to clearly indicate to exiting driver, by way of red light or wording, that an opposing vehicle has entered the ramp from the street.
- Incorporate linemarking to delineate traffic flow and nominate a waiting bay location to allow an entering vehicle to pass the waiting vehicle.
- Incorporate signage at the base of the ramp instructing exiting vehicles to "Give Way to entering traffic" as a fail safe measure in the event that the signals break down.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Principal Certifier that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of an Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

52. **Allocation of parking spaces (strata title)**
All carparking spaces are to be assigned to individual units. All residential units must be assigned a minimum of one parking space with one space assigned for visitor parking. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability for residents in accordance with section C3 of Warringah Council's Development Control Plan.

53. **Tandem Parking Spaces (residential)**
The tandem parking space pair is to be assigned to the one residential unit. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To minimize conflicts regarding parking areas.

54. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of

inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

56. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

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

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

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

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

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

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

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

Details are to be submitted with any Occupation Certificate or Strata Subdivision Certificate

certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

60. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

61. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

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

Reason: To create encumbrances on the land.

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

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

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

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

The approved landscaped areas as shown on drawing Deep Soil Calculations (DA500 by PBD Architects dated 05/12/22) shall remain as planting.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

64. **Maintenance of Stormwater Treatment Measures - Minor**
Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

65. **Landscaping adjoining vehicular access**
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of one (1) metre (m).

Reason: To maintain unobstructed sight distance for motorists.

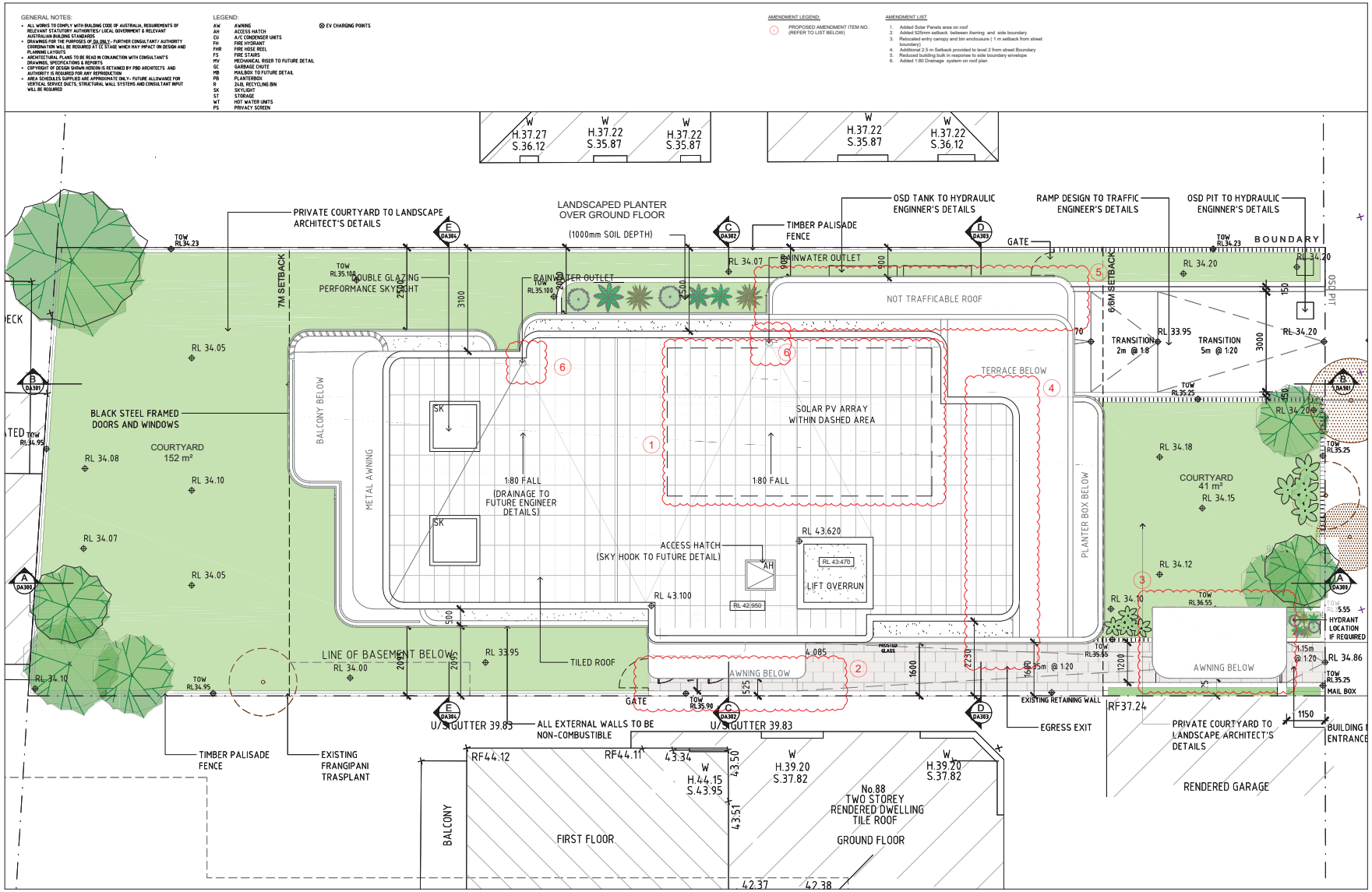
66. **Walls / Fencing Height / Vegetation**
All walls, fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that walls, fencing (that cannot be seen through) and vegetation does not exceed one (1) metre in height. The height of solid walls shall be no more than 1m above footpath level and appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

67. **Strata Subdivision**
Prior to the issue of Strata Subdivision Certificate, an Occupation Certificate is to be provided to the Certifying Authority.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation, and to ensure adequate provision is made, where required for fire safety, occupant safety, egress, access and appropriate facilities in the premises for building occupants.



PROJECT:
RESIDENTIAL
90 QUEENSCLIFF ROAD,
QUEENSCLIFF, NSW

CLIENT: TRACEY AND PAUL OATES

ISSUE	DATE	DESCRIPTION
A	20.09.2022	DA LODGEMENT
B	05.12.2022	COUNCIL RFI

DA003
SITE PLAN
ISSUE: B
DATE: 05/12/2022 PROJECT NO: 2228
DRAWN BY: GR CHECKED BY: PB

PBD | ARCHITECTS
ABN 36 147 035 350
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au
Level 2, 52 Albion Street, Surry Hills NSW 2010
Nominated Architect: Paul Bulevic NSW 7769

GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS.
- DRAWINGS FOR DEVELOPMENT APPLICATION PURPOSES ONLY- FURTHER CONSULTANT/ AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHICH MAY IMPACT ON DESIGN AND PLANNING LAYOUTS.
- ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION
- AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY- FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED

LEGEND:

AW	AWNING
AH	ACCESS HATCH
CU	A/C CONDENSER UNITS
FH	FIRE HYDRANT
FHR	FIRE HOSE REEL
FS	FIRE STAIRS
MV	MECHANICAL RISER TO FUTURE DETAIL
GC	GARBAGE CHUTE
MB	MAILBOX TO FUTURE DETAIL
PB	PLANTERBOX
R	240L RECYCLING BIN
SK	SKYLIGHT
ST	STORAGE
WT	HOT WATER UNITS
PS	PRIVACY SCREEN

⊗ EV CHARGING POINTS

AMENDMENT LEGEND:

(-) PROPOSED AMENDMENT ITEM NO. (REFER TO LIST BELOW)

AMENDMENT LIST

1. Reduced building bulk in response to side boundary envelope
2. Added 525mm setback between Awning and side boundary



PROJECT:
RESIDENTIAL
90 QUEENSCLIFF ROAD,
QUEENSCLIFF, NSW

CLIENT: TRACEY AND PAUL OATES

ISSUE	DATE	DESCRIPTION
A	20.08.2022	DA LODGEMENT
B	05.12.2022	COUNCIL RFI

SCALE 1:50 @ A1
SCALE 1:100 @ A3

DA200
NORTH ELEVATION
ISSUE: B
DATE:05/12/2022 PROJECT NO: 2228
DRAWN BY:GR CHECKED BY:PB

PBD | ARCHITECTS
ABN 36 147 035 350
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au
Level 2, 52 Albion Street, Surry Hills NSW 2010
Nominated Architect: Paul Bulevic NSW 7769

GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS.
- DRAWINGS FOR DA USE PURPOSES OF DA ONLY.- FURTHER CONSULTANT/ AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHICH MAY IMPACT ON DESIGN AND PLANNING LAYOUTS.
- ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION
- AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY.- FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED

LEGEND:

AW	AWNING
AH	ACCESS HATCH
CU	A/C CONDENSER UNITS
FH	FIRE HYDRANT
FHR	FIRE HOSE REEL
FS	FIRE STAIRS
MV	MECHANICAL RISER TO FUTURE DETAIL
GC	GARBAGE CHUTE
MB	MAILBOX TO FUTURE DETAIL
PB	PLANTERBOX
R	240L RECYCLING BIN
SK	SKYLIGHT
ST	STORAGE
WT	HOT WATER UNITS
PS	PRIVACY SCREEN

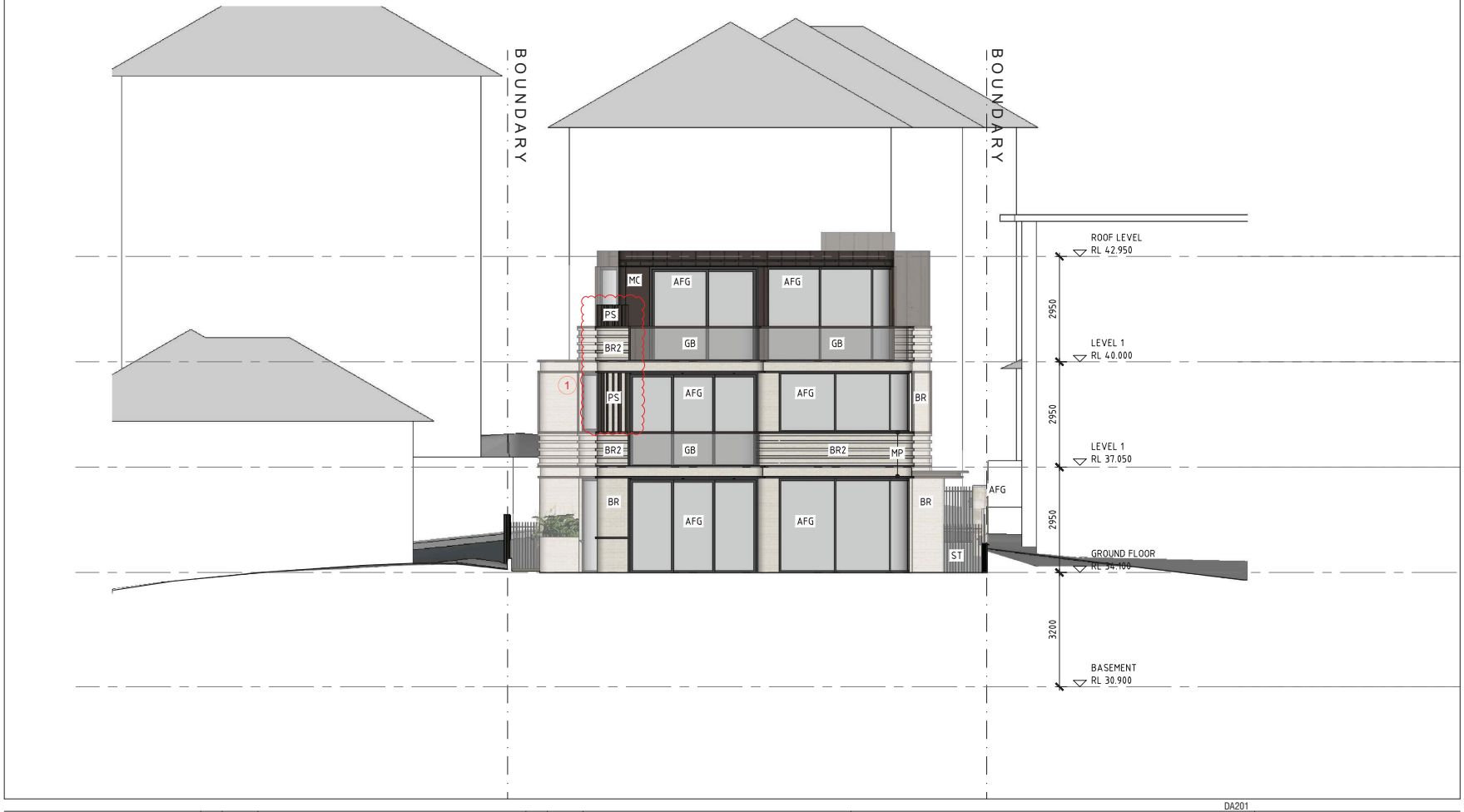
⊗ EV CHARGING POINTS

AMENDMENT LEGEND:

(1) PROPOSED AMENDMENT ITEM NO. (REFER TO LIST BELOW)

AMENDMENT LIST

1. Added privacy screen



PROJECT:
RESIDENTIAL
90 QUEENSCLIFF ROAD,
QUEENSCLIFF, NSW

CLIENT: TRACEY AND PAUL OATES

ISSUE	DATE	DESCRIPTION
A	20.08.2022	DA LODGEMENT
B	05.12.2022	COUNCIL RFI

SCALE 1:50 @ A1
SCALE 1:100 @ A3

DA201
SOUTH ELEVATION
ISSUE: B
DATE:05/12/2022 PROJECT NO: 2228
DRAWN BY:GR CHECKED BY:PB

PBD | ARCHITECTS
ABN 36 147 035 350
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au
Level 2, 52 Albion Street, Surry Hills NSW 2010
Nominated Architect: Paul Bulevic NSW 7769

GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS.
- DRAWINGS FOR THE PURPOSES OF DA ONLY.- FURTHER CONSULTANT/ AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHICH MAY IMPACT ON DESIGN AND PLANNING LAYOUTS.
- ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION
- AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY.- FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED

LEGEND:

AW	AWNING
AH	ACCESS HATCH
CU	A/C CONDENSER UNITS
FH	FIRE HYDRANT
FHR	FIRE HOSE REEL
FS	FIRE STAIRS
MV	MECHANICAL RISER TO FUTURE DETAIL
GC	GARBAGE CHUTE
MB	MAILBOX TO FUTURE DETAIL
PB	PLANTERBOX
R	240L RECYCLING BIN
SK	SKYLIGHT
ST	STORAGE
WT	HOT WATER UNITS
PS	PRIVACY SCREEN

⊗ EV CHARGING POINTS

AMENDMENT LEGEND:

(1) PROPOSED AMENDMENT ITEM NO. (REFER TO LIST BELOW)

AMENDMENT LIST

1. Added Privacy screen
2. Additional 2.5 m Setback provided to level 2 from street Boundary



PROJECT:
RESIDENTIAL
90 QUEENSCLIFF ROAD,
QUEENSCLIFF, NSW

CLIENT: TRACEY AND PAUL OATES

ISSUE	DATE	DESCRIPTION
A	20.09.2022	DA LODGEMENT
B	05.12.2022	COUNCIL RFI

SCALE 1:50 @ A1
SCALE 1:100 @ A3

DA202
WEST ELEVATION
ISSUE: B
DATE:05/12/2022 PROJECT NO: 2228
DRAWN BY:GR CHECKED BY:PB

PBD | ARCHITECTS
ABN 36 147 035 350
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au
Level 2, 52 Albion Street, Surry Hills NSW 2010
Nominated Architect: Paul Buljevic NSW 7769

GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS.
- DRAWINGS FOR DA PURPOSES ONLY. FURTHER CONSULTANT/ AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHICH MAY IMPACT ON DESIGN AND PLANNING LAYOUTS.
- ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION
- AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY - FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED

LEGEND:

AW	AWNING
AH	ACCESS HATCH
CU	A/C CONDENSER UNITS
FH	FIRE HYDRANT
FHR	FIRE HOSE REEL
FS	FIRE STAIRS
MV	MECHANICAL RISER TO FUTURE DETAIL
GC	GARBAGE CHUTE
MB	MAILBOX TO FUTURE DETAIL
PB	PLANTERBOX
R	240L RECYCLING BIN
SK	SKYLIGHT
ST	STORAGE
WT	HOT WATER UNITS
PS	PRIVACY SCREEN

⊗ EV CHARGING POINTS

AMENDMENT LEGEND:

(-) PROPOSED AMENDMENT ITEM NO. (REFER TO LIST BELOW)

AMENDMENT LIST

1. Added Privacy screen
2. Additional 2.5 m Setback provided to level 2 from street Boundary
3. Relocated entry canopy and bin enclosure (1 m setback from street boundary)



PROJECT:
RESIDENTIAL
90 QUEENSCLIFF ROAD,
QUEENSCLIFF, NSW

CLIENT: TRACEY AND PAUL OATES

ISSUE	DATE	DESCRIPTION
A	20.08.2022	DA LODGEMENT
B	05.12.2022	COUNCIL RFI

SCALE 1:50 @ A1
SCALE 1:100 @ A3

DA203
EAST ELEVATION
ISSUE: B
DATE: 05/12/2022 PROJECT NO: 2228
DRAWN BY: GR CHECKED BY: PB

PBD | ARCHITECTS
ABN 36 147 035 350
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au
Level 2, 52 Albion Street, Surry Hills NSW 2010
Nominated Architect: Paul Buljevic NSW 7769

Design + Sustainability Advisory Panel Meeting Report – Date 27 October 2022

Item 1 - DA2022/1443 - 90 Queenscliff Road QUEENSCLIFF

PANEL COMMENT AND RECOMMENDATIONS

General

DA2017/1525 for Alterations and additions to an existing residential building containing two (2) dwellings to create three (3) dwellings was approved on 20 September 2018.

The assessment and approval of DA2017/1525 established *"that the property benefits from existing use rights characterized as a "residential building" being "a building, other than a dwelling-house, designed for use of human habitation together with such out-buildings as are ordinarily use therewith, a residential flat building" that included "flats" for habitable purposes granted by development approval under the Council of Cumberland Planning Scheme Ordinance."*

DA2020/0684 for Alterations and additions to a Residential Flat Building and Strata Subdivision was withdrawn on 30 October 2020 due to the following concerns raised by Council:

- Built form impacts relating to building height, wall height, side boundary envelope, front and rear setbacks, landscaped open space & building bulk
- Amenity impacts including solar access, privacy and views
- Issues regarding architectural plan details and bin storage location

A proposal for adaptation of the existing building comprising: 1 x two br unit,1 x four br unit 1 x three br unit with a total number 8 bathrooms and car parking for 4 vehicles and 1 additional permeable paved space was presented to the Panel on 25 March 2021. The Panel did not support the design.

This is a new DA submission for a completely new building design involving demolition, basement carparking and construction of a 3 storey, 3-unit residential flat building comprising 2x3br and 1x 4br each with 3 bathrooms; a total of 10 bedrooms and 9 bathrooms.

The current proposal aims to deal more positively with the issues that kept arising from the previous approaches including poor internal amenity, excessive bulk and an awkward arrangement of carparking.

Although a residential flat building is not permitted in the zone, existing use rights exist and allow the development of three dwellings on the site. Legal issues relating to this land use are not relevant to DSAP meeting.

Strategic context, urban context: surrounding area character

The new proposal is consistent with the mix of residential flat buildings and single occupancy development in the area. Its art deco style has been inspired by others in the neighbourhood. Its relationship to the street and neighbours improves on the previous submissions.

With only 3 apartments, the proposal does not need to comply with the ADG. Nevertheless, the design has been informed by these guidelines.

Scale, built form and articulation

While the proposal does not exceed the maximum height of 8.5m and generally complies with front, and rear setbacks it does not comply with wall height and side setbacks.

Where noncompliance is proposed, it is the Panels view that the proposal must be justified by comparison with a fully compliant benchmark scheme to show:

• a demonstrable improvement in amenity within the proposal, (overshadowing, privacy, access to rooftop open space etc.)

• a reduced impact on adjoining sites (either existing or in relation to future development potential)

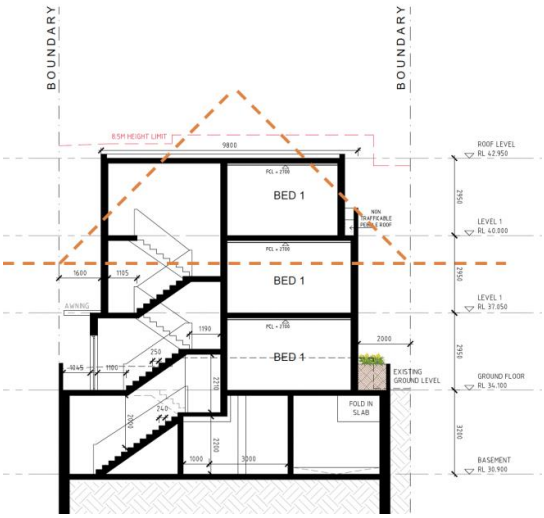
• contributions to the public domain or other public benefits (affordability, environmental performance)

In this case, in the absence of a floor space ratio to control the amount of development on the site the Panel considers the amount of development and the resulting bulk excessive.

The Panel accepts that 3 units may be accommodated but that does not imply that these should or could be 3-4 bedrooms and even less that there should be 3 bathrooms in each.

A side boundary envelope control in the WDCP determines that a building must be defined by a 45-degree plane projecting inwards once walls reach 5m in height. The proposed development is not compliant with this control.

It is the Panels view that while minor breaches of the height may be acceptable breaching of the 45degree height plane is not, particularly given that the drawings do not show the breach:



The design needs to demonstrate how it addresses neighbour concerns about bulk and scale given the non-compliance.

Most buildings in the street have a two-storey presentation and although there is a change in material for the third storey and a small setback, the third storey could be setback much further to emphasis the two-storey form. This could be easily achieved by reducing the size or number of bathrooms on the top level.

It is difficult to achieve 2.7m floor to ceiling clearances (for good internal amenity) within the proposed 2.95m floor-to-floor heights with DBP Act obligations for waterproofing This is particularly relevant where wet areas/terraces/planters are above habitable rooms.

Depending on the vertical relationship of internal layouts between each level, it is not unusual to find 3.1m becoming insufficient height where additional structure, insulation, and waterproofing is made effective, particularly where accessible paths of travel may be required between internal and external spaces.

Particular care is required to assist Design and Building Practitioners to comply with the Design and Building Practitioners Bill and Residential Apartment Buildings (Compliance and Enforcement Powers) Bill 2020. DA assessments should consider compliance with this new legislation to assist designers manage the increased risk they are now expected to carry.

The documentation does not indicate appropriate falls (1:80) in roof slab to allow for effective drainage of rainwater and watering of roof planters. See previous comment re: DBP Act.

The Panel does not consider ‘market expectations’ a sufficient reason for non-compliance with controls.

Recommendations

1. Revise the upper-level apartment plans to reduce the number and/or size of bathrooms to provide a generous setback from the street
2. Revise floor to floor heights and/or provide more detail in relation to water proofing, falls and insulation
3. Drawings should indicate the 45deg height from 5m height plane on sections and provide detailed analysis of the impact if it is proposed to exceed the height plane. As noted, this may be achieved by a significant reduction in the internal floor area that might be achieved by a reduction in the number of bedrooms or bathrooms or both, and a different planning strategy for the apartments overall.

Access, vehicular movement and car parking

The basement for the carparking goes right to the eastern boundary which will have implications for the neighbouring property.

Normally a residential flat building is required to have 2.0m setback from the boundary.

No parking for visitors has been allowed at this stage.

The Panel questions the need and rationale for the sloped section of the carpark and the efficacy of the downturn in the beam to allow for deep soil in a location that would not support trees. Refer to comments in landscape.

Recommendations

4. Reconsider basement plan (around the storage areas and car park) in order to reduce the extent of excavation required and set back from the eastern boundary. The drawings should clearly show any non-compliance.
5. Remove slab downturns and provide a level floor for the carpark

Landscape

Calculations include deep soil over the basement – this area should not be counted as part of the deep soil, despite the 1m soil depth it is over the basement. The folds in the basement and costs associated is not worth the provision of the 1m soil depth as it is wasted when only planted with lawn or small species.

The division of private open space is very unbalanced. Unit one gets all the ground floor which is extensive, and others get minimal POS. The unit one private space is not well integrated in the design as a private garden for indoor / outdoor amenity and is overlooked by the upper units.

The ground level landscape is lawn and bushes to the edges, with a few minimal trees. It is not well considered, does not create usable spaces for the resident, add value to biodiversity, offer canopy cover (while acknowledging the shading in winter). Given the shading it is also likely the lawn will struggle and is an ongoing maintenance requirement.

Recommendations

6. Engage an Arborist to report on the neighbouring trees. All trees impacted to be shown with TPZs on the architectural and Landscape Plans.
7. Remove the basement folds and reconsider where other areas of landscape can be provided to compensate where possible. Make all the landscape provided valuable in terms of shade, biodiversity and amenity.
8. Reconsider the landscape plan to positively contribute to amenity and the quality development for the residents. This should include reduced lawn, more usable ‘paved’ areas (which maximise permeability) and increased planting, utilizing shade tolerant native options in lieu of lawn.
9. Where possible endemic or native species should be used. An exception would be the use of deciduous trees to give summer shade and allow winter solar access to units and the private open spaces. Generally, more trees should be provided in both the front and rear of the site.

10. The third level unit should utilise extra setback area from reduced floor plan for private open space
11. Consider green roof to reduce urban heat an improve PV for power generation performance
12. Consider slightly reducing the width of the entry path to allow for a narrow strip of soil along the eastern boundary to allow for climbing plants

Amenity

It is concerning that none of the apartments have their living areas located on the northern side of the site to optimise the available solar access. While views to the water might be achieved from the southern side of the upper floors, the ground floor location has no such benefit. The Panel acknowledges the construction advantages in stacked services, this is outweighed by solar access where there are no views or other reasons to have a south aspect.

Switching the plan around would also enable better utilisation of the front garden area by connecting it with the living areas.

As noted above the panel considers the size and number of bathrooms unnecessary and excessive.

The arrangement of garbage bins at the entry is unattractive.

The BBQ area on rear balconies overlook adjoining rear yard.

Recommendations

13. Reconsider the layout of the ground floor plan to enable solar access to the living rooms and direct connection with the front garden
14. Consider private high-level windows in the northwest walls of the living rooms on the first and second floors to enable solar access
15. Consider clerestory/monitor windows with vertical operable glazing in lieu of horizontal skylights for the upper unit. This would allow for greater solar control and natural ventilation. Locate the window to optimise passive solar and passive design performance The Panel considers any breaching of the height plane that would result as insignificant.
16. Consider re-orienting the garbage bin enclosure
17. Provide screen in to rear balconies to minimise overlooking

Façade treatment/Aesthetics

The articulated art deco style can be enriched with some of the changes recommended above. Additional landscaping in place of the reduced bulk will also enhance the aesthetics.

Sustainability

We are living in a climate emergency – all new dwellings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels.

Arguably, the impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation. SEPP BASIX explicitly precludes the setting of either higher or lower targets by other Environmental Planning Instruments or Development Control Plans. It is noted that BASIX has not been updated to keep pace with changes in technology or with the overall need to decarbonise the grid nor to move away for fossil fuels.

The role of the Panel is to advise on ‘design (quality) and sustainability’ and is not confined to existing legislation or the approaches of the past. Accordingly, the Panel believes it is appropriate and necessary for it to provide ‘forward-thinking advice’ to both proponents and to council staff involved in the assessment of development. With the current massive spikes in energy from uncertain times, the advisability to build the comfort and energy resilience of projects is even more obvious.

With the regulatory environment changing in the near future – for efficiency, electrification and mandatory disclosure – these investments at this time will be worthwhile both for future residents and the developers' reputation, market position and marketability of the units.

Recommendations

18. 2.2kW PV not shown on plans, consider significant increase to approach carbon neutrality
19. Energy performance could be significantly improved by installation of higher performance AC- currently 2.5*

The following aspects of design and servicing should be included:

20. Decarbonise energy supply

- All services should be electric – gas hot water and heating should be avoided
- Heat pump systems for apartments or other ways of providing electric hot water should be considered
- The storage of hot water can be considered a defacto battery if heated by PVs during the day
- Note the risk of gas reticulation becoming a 'stranded asset' and the possibility of additional costs to remove gas and rewire the building

21. Install onsite power generation and storage

- Unshaded roof space is a valuable resource for hosting PV panels to create onsite renewable energy
- PVs over green roofs perform better due to the local lower ambient air temperature
- On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid
- Given the number of units and the extent of roof it should be possible to achieve carbon neutrality in operation

22. Install EV charging

- Provide EV charging points for each unit car space
- Allow for bi-directional (2-way) charging of EV battery for powering the building

23. Include passive design and thermal performance as essential part of building fabric

- The Panel notes that higher energy standards have been approved by the Department of Planning available here https://pp.planningportal.nsw.gov.au/BASIX-standards
- The Department advises that the higher BASIX thermal performance standards will require 7 stars based on NatHERS rating system, consistent with the National Construction Code for 2022. It also has a number of other improvements that for future proofing of projects are advisable to be included in advance of them being enforced.

PANEL CONCLUSION

The Panel commends the client and their team on their continued efforts to improve the proposal for this site and supports the new direction, however it is the Panel's view that the amount of development is excessive and the breaching of controls is not justified.

In any re-design consideration should be given to the recommendations.

ITEM 4.2	**DA2022/1193 - 20 AVON ROAD, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING INCLUDING STRATA SUBDIVISION.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/219964**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan & Elevations** **3 ⇩Clause 4.6** **4 ⇩SEPP 65** **5 ⇩Design & Sustainability Advisory Panel Report**

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 and is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.

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 WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1193 for Demolition works and construction of a residential flat building including strata subdivision on land at Lot 1 DP 104820, 26 Avon Road, DEE WHY, Lot 2 DP 104820, 24 Avon Road, DEE WHY, Lot 3 DP 104820, 22 Avon Road, DEE WHY, Lot 4 DP 104820, 20 Avon Road, DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1193

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 104820, 26 Avon Road DEE WHY NSW 2099 Lot 2 DP 104820, 24 Avon Road DEE WHY NSW 2099 Lot 3 DP 104820, 22 Avon Road DEE WHY NSW 2099 Lot 4 DP 104820, 20 Avon Road DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a residential flat building including strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	ACN 647 465 236 Pty Ltd
Applicant:	ACN 647 465 236 Pty Ltd

Application Lodged:	17/08/2022
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	02/09/2022 to 30/09/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 2.7% to 7.2%
Recommendation:	Approval

Estimated Cost of Works:	$ 7,410,040.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of existing dwellings and construction of a residential flat building comprising of 21 units and basement carparking.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal is technically a four (4) storey residential flat building as a minor portion of the basement protrudes more than 1.2m above the ground level at the north-eastern corner due to the requirement for the ground floor level to meet the flood planning level of the site (i.e SEPP 65 development that is 4 or more

stories). However, the building contains only three (3) residential levels and will present as such to the casual observer given the proposed landscaping established around the perimeter of the basement level which for the most part is below the ground level.

The 4.6 request for the non-compliance with height standard arises due to the requirement for the ground level to comply with the flood planning level, which raises the ground floor of the building to a maximum 1.8m above the ground level at the north-eastern corner. The mechanical plant which has been paced in the centre of the roof also breaches the building height, however will not visible from surrounding properties or the public domain. A detailed assessment of the height breach is undertaken within the Clause 4.6 assessment later in this report and the breach is less than 10%.

This application follows on from a previous application (DA2021/1208) that was refused by Council and was then subject to a Class 1 Appeal in the Land and Environment Court (*ACN 647 465 236 v Northern Beaches Council [2022] NSWLEC 1245*). During the course of the proceedings for the Class 1 Appeal, the proposal underwent a range of design changes to resolve varying issues relating to height, setbacks, overshadowing, privacy, landscaping, waste storage and collection, stormwater, flooding, ADG compliance and bulk/scale. Council was satisfied the majority of reasons for refusal were resolved, however there remained two outstanding issues during the contested hearing, this being the building height breach (from a non-compliant fourth residential level) and the quantum of landscaping on the site (proposed at 37%). Council's view was the combination of the non-compliances resulted in an overdevelopment. Ultimately, the appeal was dismissed by the Court and DA2021/1208 was refused. The Court found there was insufficient planning grounds to warrant a departure from the building height breach which resulted from a fourth residential level. The landscape area breach was not a determining factor for the Court.

The current application has now been submitted to Council without the non-compliant fourth residential level and through amended plans increased the quantum of landscaping on the site to 40%. Due to the increase in landscape area and removal of the fourth residential level, Council is now satisfied the proposal will be compatible with the street character (in terms of height, scale and setback) and there will be sufficient deep soil planting within the site to establish good quality landscaping between the adjoining properties to enhance outlook and privacy, as well as compatible street planting. Council's landscape officer has also had input into the landscape design (during the previous appeal process and the new DA) and is now satisfied with the overall landscape design and landscape presentation to the street.

A total of seven (7) submissions were received regarding the proposal. Concerns raised in the objections predominantly relate to the driveway location off Richmond Avenue, number of car parking spaces, privacy and overshadowing. Each of the issues are considered in detail within the assessment report and Council is satisfied these issues have been resolved through the amended design. Council is satisfied the surrounding properties (consisting of residential apartments) will maintain a reasonable level of amenity in accordance with the guidelines within the Apartment Design Guidelines.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition works and construction of a new Residential Flat Building comprising of 21 Dwellings across three (3) residential levels (plus basement parking). Specifically, the proposal consists of:

- Demolition of the existing four (4) dwellings and removal of seven trees (T7-T12);
- Construction of a residential flat building comprising of 1 Studio, 3 x 1 bedroom, 8 x 2 bedroom

and 9 x 3 bedroom apartments;
- Construction of a new driveway crossover off Richmond Avenue and construction of basement parking comprising of 30 spaces and residential storage and waste storage room;
- Bin holding area at street level;
- Landscaping around the site;
- Strata subdivision of the building.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 5.21 Flood planning
Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 104820 , 26 Avon Road DEE WHY NSW 2099 Lot 2 DP 104820 , 24 Avon Road DEE WHY NSW 2099 Lot 3 DP 104820 , 22 Avon Road DEE WHY NSW 2099 Lot 4 DP 104820 , 20 Avon Road DEE WHY NSW 2099

Detailed Site Description:	The subject site consists of four (4) allotments located on the western side of Avon Road, being 20, 22, 24 and 26 Avon Road. These four (4) residential blocks forming the last remaining detached one and two storey residential dwellings in the street block. The site is regular in shape with a frontage of 30.48m along Richmond Avenue and a depth of 50.31m Avon Road. The site has a surveyed area of 1533m². The site is located within the R3 Medium Density Residential zone and accommodates a detached dwelling house on each alotment. The site has a slight fall from the southern boundary to the northern boundary. The site is flood prone with 1% AEP flood flows present in Avon Road and through an overland flow path at the rear of the existing dwellings. The land is identified a bushfire prone. There is one tree of significant (T11 - Cheese Tree 12m high) straddling the boundary between the site and Richmond Avenue. There are three (3) mature street trees along the Avon Road frontage in the council road reserve. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mixture three and four storey residential flat buildings of varying ages, with a combination of flat roofs an pitched roof forms. To the south of the site is an older style brick four storey residential flat building, with ground level garages/parking and three levels of residential above and a shallow pitched roof. To the west of the site is an older three storey residential flat building with a pitched roof. Across the road to the north of the site is an older four storey residential flat building with a pitched roof. To the north-west is an older style three storey residential flat building with gable roof. To the north-east is an area of public open space and bushland, forming part of Dee Why Lagoon. This area is identified as a local heritage conservation area with landscape significance. Across the road to the east is a more modern residential flat building with basement car parking, this building being three stories with a flat roof and pop-out clerestory roof forms. This building is the most modern example of development in the visual catchment of the site.

Map:



SITE HISTORY

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

DA2017/0198 – Residential flat building at 24 and 26 Avon Road.

Development consent granted for the construction of a three storey residential flat building at 24 and 26 Avon Road (two sites only) under DA2017/0198 by Northern Beaches Council on 10 November 2017. This approval consisted of a three storey, flat roof residential flat building consisting of 11 units and generally compliant with the 11m height limit. It is noted this consent was not acted upon and the consent lapsed on 10 November 2022.

PLM2018/0252 – PLM for a residential flat building at 20, 22, 24 and 26 Avon Road

A pre-development application meeting was held under PLM2018/0252 for the construction of a 24 Unit Residential flat building across the four (4) sites at 20-26 Avon Road, Dee Why. This scheme comprised of a three storey building (with basement carpark) which sat generally beneath the 11m building height (with the exception of the lift overrun). The scheme included all four sites and did not result in any site isolation, which is a preferred outcome for development of the remaining lots on this block.

DA2021/1208

This application was for 'Demolition of a construction of a residential flat building' with 26 units proposed across four (4) residential levels (plus basement parking). The applicant was referred to the NBLPP with a refusal recommendation, the primary issue being the fourth storey element containing four (4) residential apartments. The fourth storey element was in breach of the 11m WLEP 2011 building height limit and DCP control which requires a maximum of three (3) stories . The NBLPP agreed with Council's recommendation and refused the application on 20 October 2021. It is noted that prior to determination

of the application (on 15 September 2021) a deemed refusal was lodged with the Land and Environment Court.

Class 1 Appeal (ACN 647 465 236 v Northern Beaches Council [2022] NSWLEC 1245)

On 15 September 2021, the applicant filed a Class 1 Appeal (Deemed Refusal) with the Land and Environment Court for the proposed development. Council's position was confirmed by the actual refusal of DA2021/1208.

Throughout the conciliation phase a number of amendments and additional information was provided to satisfy issues relating to the front setback to Avon Road, resolution of privacy and building separation as required by the ADG, solar access (for and from the development), flooding and overland flows, stormwater design, waste storage design, landscape design, setbacks and driveway design. The amendments satisfied Council's referral officers, however the proposal still maintained a fourth residential level in breach of the height limit (albeit substantially reduced from 4 to 2 apartments). Council's was still not satisfied with the breach of the building height resulting from the fourth level. Also, Council's planner was not satisfied with the quantum of landscaping on the site, having regard to the 50% DCP requirement (amended plans had 37.2% landscaping). As these two issues remained unresolved, the amended proposal progressed to a hearing on 5 and 11 April 2022.

On 12 May 2022 the Land and Environment Court dismissed the appeal and gave the following reason:

[21] For the reasons given, I find that the applicant's written request does not provide sufficient environmental planning grounds to justify the contravention of the development standard, and therefore does not meet the prerequisites of WLEP cll 4.6 (3) and 4(a)(i) and (ii). Further, I find that the application with its fourth level is not consistent with the objectives of the WLEP cl 4.3 Height of Buildings development standard and is not in the public interest, and subsequently that the jurisdictional thresholds established by WLEP cl 4.6 are not met.

Current Application DA2022/1193

The current application was submitted to Council on 17 August 2022. The application was submitted in substantially the same form as the amended proposal that was relied upon during the hearing, minus the fourth (4th) residential level that was Council's primary concern during the Class 1 Appeal. The proposal also increased the quantum of landscaping on the site to 40% in response to the second contention via amended plans.

During the assessment of the application, further information was required from Water NSW with regards to basement dewatering and the applicant has provided this information, with General Terms of Approval being provided by Water NSW.

On 31 March 2023, amended plans were received which amended the colour of the external brickwork used on the building. The changes were considered to be minor and as such renotification of the application is not required.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to water management and increase to landscaping. This information was provided to Council and forms part of the DA assessment. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact**

Section 4.15 Matters for Consideration	Comments
	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision (which includes Strata subdivision) of bush fire prone land that could lawfully be used for residential l purposes under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/09/2022 to 30/09/2022 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 process council is in receipt of 7 submission/s from:

Name:	Address:
Matthew Francis Collins	6 / 17 Richmond Avenue DEE WHY NSW 2099
Narelle Kathleen Hewins	3 / 20 Richmond Avenue DEE WHY NSW 2099
Elizabeth Tomczyk	7 / 20 Richmond Avenue DEE WHY NSW 2099
Mr Laith Farouqi	13 / 20 Richmond Avenue DEE WHY NSW 2099
Mr David Arthur Noble	2 / 17 Richmond Avenue DEE WHY NSW 2099
Mrs Flora Pourhartonian	4 / 17 Richmond Avenue DEE WHY NSW 2099

Name:	Address:
Ms Jane Alison Douglass	PO Box 7080 BERRIMA NSW 2577

The following issues were raised in the submissions:

- Solar Access to 17 Richmond Avenue, in particular Unit 6 and 7 of 17 Richmond Avenue.
- Safety concerns with the driveway location off Richmond Avenue for cyclists, pedestrians and cars. Amenity of 17 Richmond Avenue impacted due to driveway location of Richmond Avenue, would be less impact off Avon Road. Driveway off Richmond Avenue will cause noise impacts.
- Insufficient parking and increase in traffic.
- Stormwater impacts from the proposal.
- The scale of the building does not align with the buildings in the locality
- Privacy concerns for the western façade to the apartments within 17 Richmond Avenue.
- View impact for Unit 1/17 Richmond Avenue.
- Impact on property value of surrounding properties.

The above issues are addressed as follows:

- ***Solar Access to 17 Richmond Avenue, in particular Unit 6 and 7 of 17 Richmond Avenue.***

  Comment: A detailed assessment of solar access for the building at 17 Richmond Avenue is undertaken later within this report under the SEPP 65/ADG Assessment. The proposal has demonstrated (through view from sun diagrams) that reasonable solar access outcomes are maintained for the adjoining properties to the west (17 Richmond Avenue).

- ***Safety concerns with the driveway location off Richmond Avenue for cyclists, pedestrians and cars. Amenity of 17 Richmond Avenue impacted due to driveway location of Richmond Avenue, would be less impact off Avon Road. Driveway off Richmond Avenue will cause noise impacts.***

  Comment: Council's development engineers and traffic engineers have reviewed the driveway location and design and have deemed the location off Richmond Avenue to be acceptable. It is noted that the development has been amended from the original scheme (under the previous DA) to pull the driveway away from the western boundary and maintain a generous landscape buffer between the driveway and western boundary. The proposed driveway location will not give rise to unreasonable amenity impacts beyond what would be expected within a R3 Residential Zone.

- ***Insufficient parking and increase in traffic.***

  Comment: Council's traffic engineer has undertaken a review of the quantum of parking within the development and finds the proposal provides for a suitable number of parking spaces, having regard to the proximity of this development to the Dee Why Town Centre. See Council's traffic engineers comments within this report. Council's engineers are satisfied that the development will not have unacceptable impacts as a result of traffic generation.
- ***Stormwater impacts from the proposal.***

  Comment: Council's development engineer has reviewed the method of stormwater disposal and support to application, subject to conditions. Council's flood engineers are satisfied that

flooding will not be increased onto the adjoining properties as a result of the building footprint and flood impacts are not caused for adjoining sites.

- ***The scale of the building does not align with the buildings in the locality***

  Comment: The issue of building scale/height is considered within the Clause 4.6 variation assessment within this report. In short, the building will present as a three storey residential flat building which is completely consistent with the locality and adjoining buildings.

- ***Privacy concerns for the western façade to the apartments within 17 Richmond Avenue.***

  Comment: The proposal has been considered in detail against the privacy requirements of Part 3F of the Apartment Design Guidelines and found to be acceptable and consistent with objectives of the ADG. See discussion later within this report at the end of the assessment against the Apartment Design Guidelines.

- ***View impact for Unit 1/17 Richmond Avenue.***

  Comment: The proposal will not result in unreasonable view impacts for adjoining properties and the proposal has been considered against the *Tenacity* Planning Principle within this report.

- ***Impact on property value of surrounding properties***

  Comment: Property values are not a matter for consideration under the Environmental Planning and Assessment Act 1979.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	**Not supported in current form - Design Amendments Required** (Note - amended plans have been received following DSAP's review in response to recommendations) The application was presented to the DSAP on 29 September 2022. The DSAP acknowledged the long history of the application, which included the Class 1 Appeal that was ultimately refused by the Court on the basis of building height (the former design had an additional residential level). Although Council included a contention about landscape area, this was not the primary issue for Council, rather it was the combination of the non-compliances (non-compliant 4th residential storey and shortfall of landscaping)). The Panel had a number of recommendations in order for the Panel to support the proposal. It is noted the design panel raised particular concern with the development falling short of the 50% landscape control. The proposal presented to the panel had 37% landscaping. In response, the applicant submitted amended plans increasing the quantum of landscaping to 40%. The application was not referred back to DSAP, given the changes were considered either minor or were in direct response to recommendations by the DSAP. The applicant has provided a response letter and amended plans where necessary to address DSAP recommendations.

Internal Referral Body	Comments
	The recommendations of DSAP are addressed below: ***1. Provide 50% open space.*** Comment: The application has been amended to provide 40% landscaping, which is an increase since the DSAP reviewed the proposal (was 37%). It is noted that the application provides street setbacks that are compatible in alignment and will enhance the landscape setting of the street via landscaping. The DSAP noted that an increase to landscaping would improve privacy between sites. However it is considered that the building separation to the southern and western boundaries, along with the façade design (skewed windows, high sill windows) has achieved the intent of the Apartment Design Guidelines in regards to privacy, noting the adjoining older RFB's provide no landscaping within their site. The 4.7m deep soil landscape zone along the western boundary provides ample opportunity for landscaping to further enhance privacy between the sites, with species of 10m-12m height shown on the landscape plan. An assessment against the outcomes of the DCP landscape control is undertaking later in this report and Council considers that the outcomes are met on merit. There is a previous consent on the site for a residential flat building (across 24 and 26 Avon Road) that Council was able to support a shortfall on merit (approved at 38.8%). In the circumstances where Council is satisfied the intent of the DCP has been met, there should be some flexibility in the application of the DCP and consideration to the fact Council's landscape officer is now satisfied (through amendments via this DA and the court process) that a quality landscape outcome for the site will be achieved. There is a quality area of deep soil along the western boundary (4.7m) that proposes to contain trees between 10m and 12m at maturity and once established will enhance privacy. As discussed in the ADG assessment, all balconies are setback at a compliant 6m with the ADG and windows have been skewed to enhance privacy between sites (with sill height windows on the western facade where necessary). Therefore, although strict compliance with the 50% is not achieved, the increase to 40% landscaping and combination of design changes to resolve privacy have satisfied Council and therefore, enables Council to support the proposal. Furthermore, given the non-compliant upper floor (4th residential level) has been deleted from the proposal following refusal by the Court, Council no longer considers the proposal to be an overdevelopment of the site having regard to the shortfall of landscaped area. ***2. Resolve the privacy issues of the west facing apartments***

Internal Referral Body	Comments
	Comment: As above, Council considers the privacy issue to be resolved. ***3. Resolve the light to lobbies*** Comment: Skylights have been introduced over the lobby. ***4. Resolve and refine placement of bathrooms to maintain -where possible-natural light and air but not to the detriment of living and balcony amenity*** Comment: Applicant has addressed this by way of amended plans. See applicant's written response to the DSAP comments which form part of the documentation submitted for consideration of the DA. ***5. Increase the size and amenity of balconies and courts*** Comment: Applicant has addressed this by way of amended plans, in particular the ground floor eastern facing units have provided increased POS with a minor increase to the balconies of L1 and L2 units. It is noted that majority of the units exceed the minimum ADG requirements. The ground level landscaping along the western boundary has been maintained as common property to restrict possibility of changes to the overland flow path along the western boundary and allow opportunity for landscaping to mature. The landscape area in the front setback is maintained as common property at the request of Council's landscape team to ensure the street landscape outcome is achieved and therefore, has not been used as private open space. ***6. The absence of communal open space needs a comprehensive solution in line with ADG.*** Comment: See above point 5, balconies have been increased for some units in response. Council maintains the the site is in a well serviced locality in proximity to open space and the beach and communal open space is not required in this circumstance. This is not uncommon for residential flat buildings in this locality. ***7. Consideration should be given to an open fire stair – perhaps top lit- to encourage active movement and to provide a visual connection between the stair and lobbies. It is the Panel's understanding that this is permissible within the NCC, and that the stair does not need to be fire-isolated for a building of this class and height. (See Clause NCC D1.3)*** Comment: The amended plans have not included an 'open fire stair' and the fire stair are maintained within the building as per the original plans. However, skylights have been incorporated over the fire stair to allow them to be 'top lit' as requested by the DSAP. The non-inclusion of this recommendation would not be a reason to refuse the

Internal Referral Body	Comments
	application, with the proposal still able to comply with the BCA/NCC with regards to fire escapes without this change. ***8. More consideration needs to be given to improving privacy on balconies*** Comment: This is addressed in Point 1 above and within Council's assessment against the ADG. The proposal is considered to meet the desired outcomes of the ADG. ***9. Consideration should be given to opening up the roofs of the balconies on the top-most floor to improve solar access*** **Comment:** This has been adopted, top floor units have operable roofs over the terraces. ***10. Skylights recommended for all living spaces in dwellings with an east and western aspect*** Comment: This has been adopted. ***11. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas*** Comment: This has not been adopted, however this is not a statutory requirement and would not be a reason for refusal. ***12. The Panel recommends inclusion and maximisation of rooftop PV.*** Comment: This has not been adopted, however this is not a statutory requirement and would not be a reason for refusal. **Panel Recommendation:** **The Panel does not support the proposal in its current form. The proposal is a significant over-development of the site and is not of sufficient merit to support a breach of the site controls and the requirement for 50% open space in particular.** Comment: The application has been amended to increase the Landscape area to 40% and Council has conducted a merit assessment against the outcomes of the control. It is noted that the DSAP is an advisory panel and not a determination panel, and Council must conduct a merit assessment of the overall proposal whilst considering the DSAP recommendations. For the reasons outlined above and within this assessment report, Council is of the view the proposal is compatible with the streetscape, has resolved privacy, meets the intent of the ADG and is a good

Internal Referral Body	Comments
	contextual fit for the locality and with the proposal achieving the objectives of the DCP and ADG, despite the numerical shortfall. Given this, flexibility is applied to the numerical controls within the DCP and Council can support the proposal on merit.
Building Assessment - Fire and Disability upgrades	**Supported subject to conditions** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	**Supported subject to conditions** The proposal is supported with regard to landscape issues. <u>Additional Information Comment 15/11/22:</u> The amended plans are noted. The Landscape Plan has been amended and coordinated with the Stormwater Plan's. The amended proposal is supported and all proposed planting shall meet the requirements outlined in the conditions of consent. All on-slab landscaping shall meet Council's soil depth requirements, subject to the imposed conditions. The waste collection point has been updated along with the surrounding planting. The constraints around the waste collection point are noted; however, some architectural screening is recommended to lessen the visual impact of the bins from Richmond Avenue should they be left in the collection area for extended periods. The Arboricultural Impact Assessment (AIA) identifies 14 trees of which 6 are located within the property boundary, and 8 are located in the road reserve or in neighbouring properties. Of the 6 trees within the property boundary 5 trees (trees 6-10) are exempt by species or height and do not require consent for removal, and tree 4 has been recommended for transplanting which is supported by the Landscape Plan. Transplanting shall be under advice from the Project Arborist, subject to the imposed conditions. Trees 1-3 and 14 are *Lophostemon confertus* street trees which must be retained and protected during the works. The AIA has raised some concerns regarding the boundary fence; however, the architectural plans show the boundary fence along Avon Road and Richmond Avenue as an open palisade style fence. These fences must be supported by individual posts as recommended by the Arborist and subject to the imposed conditions.

Internal Referral Body	Comments
	All landscaping works (planting, paths, stairs) within the tree protection zone of trees 1-3 and 14 shall be under the advice and supervision of the Project Arborist. Trees 5 and 13 are on neighbouring properties and must be retained and protected as per the recommendations in the AIA. Tree 11 is located within the road reserve; however, the AIA states that the stability of the tree may be compromised upon demolition of the existing dwelling, therefore on safety concerns its removal is supported. Tree 12 is also in the road reserve and is an exempt species. It has been determined that the replacement street trees for Richmond Avenue will provide more benefit than tree 12, therefore its removal can also be supported. Original Comment Summary: Landscape Referral raised the following concerns: • the Stormwater Plan's weren't coordinated with the Landscape Plan, • non-compliant landscape open space, • planting around bin storage area would not allow removal of the bins, and screen planting recommended.
NECC (Bushland and Biodiversity)	**Supported subject to conditions** The proposal seeks to remove one locally native tree and replace existing landscaping with lawn and low shrubs. Given the highly urban nature of the site, there are no objections to the proposal from a biodiversity perspective, however the development is likely to have implications for landscape amenity of the area which shall be assessed by the Landscape referrals body.
NECC (Coast and Catchments)	**Supported subject to conditions** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (sections 2.10 & 2.12); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. The application is supported subject to conditions: • Installation and maintenance of erosion and sediment controls (prior to commencement) • Pollution control (during works)
NECC (Development Engineering)	**Supported subject to conditions** A review of the submitted driveway crossing design by the applicant's Civil Engineer indicates that the profile is not consistent with the profile submitted and agreed upon during the previous appeal for the

Internal Referral Body	Comments
	application. In this regard, the updated driveway drawings by Rise Consulting Engineers Pty Ltd, drawing number 21066 C.010 and C.011 dated 22/03/2022 must be submitted with the application. The submitted stormwater management plan is acceptable. Development Engineering cannot support the proposal due to insufficient information to address vehicular access in accordance with clause C2 of the DCP. **Amended driveway profile submitted 23/11/22** The updated driveway profile is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	**Supported subject to conditions**
NECC (Stormwater and Floodplain Engineering – Flood risk)	**Supported subject to conditions** The proposed development is for the demolition of 4 existing dwellings and the construction of a residential flat building. Pre and post development flood modelling has be undertaken for the development. The basement carpark crest level and ground floor levels are above the Flood Planning Level. Subject to conditions, the development is compliant with Council's flood-related development controls including Warringah LEP Clause 5.21 and Warringah DCP Clause E11.
NECC (Water Management)	**Supported subject to conditions** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12); • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. *Dewatering* Construction dewatering is subject to approval from Council and WaterNSW. The proposed basement is intercepting the water table. Dewatering activities will be required during construction and will be subject to WaterNSW review. Prior to construction a Council dewatering permit application must be made, the application is to include the dewatering management plan and any supporting documentation. The permit will indicate the water

Internal Referral Body	Comments
	quality, point of discharge and maximum flow rate. *Environmental Management Plan and Sediment management* Due to the sensitivity of the downstream environment it is imperative that sediment are managed appropriately during construction. *Water Management* The proposed stormwater management strategy is satisfactory.
Strategic and Place Planning (Heritage Officer)	**Supported - no conditions** HERITAGE COMMENTS Discussion of reason for referral This application has been referred as it is within the vicinity of a heritage conservation area, **C5 Dee Why Lagoon and Reserve** Details of heritage items affected Details of this heritage conservation area in the vicinity, as contained within the Heritage Inventory, are: **C5 Dee Why Lagoon and Reserve** Statement of Significance The Australian Heritage Commission states in its official statement of significance that: 'Dee Why Lagoon is one of the best examples, in the Sydney Region, of an estuarine lagoon. It is one of the few large estuarine barrier lagoons, remaining in good condition, in the Sydney Region. The saltmarsh of the lagoon area is a regionally uncommon remnant of saline marshlands, which were formerly more widespread in the Sydney Region. The diversity of saltmarsh plants found at Dee Why Lagoon is high in comparison to other saltmarsh communities in the region. Dee Why Lagoon is also an important site for teaching and research associated with biological zonation, estuarine barrier lagoons and estuarine wetlands. The Lagoon is also an important feeding and sheltering place for migratory birds, including some from the Northern Hemisphere. Its south-western sector also contains one of the best remaining stands of Swamp Mahogany (Eucalyptus robusta), now a threatened species. Other relevant heritage listings

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>Yes</td><td>Register of the National Estate (non-statutory archive)</td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>Yes</td><td>National Trust Register (non-statutory)</td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>N/A</td><td></td></tr>
</table>
Consideration of Application
The application seeks consent for the construction of a 3 storey apartment building with 21 apartments. The conservation area is located to the north of the site across Dee Why Parade.

Given that this site is separated from the Dee Why Lagoon Conservation Area by Dee Why Parade, the proposed works will not have any direct impact upon the heritage significance of the conservation area. However, given the vicinity of this site to this significant natural area of heritage significance, it is considered that any proposed development of this site should include substantial landscaping, including tree plantings.

Therefore Heritage raises no objections and requires no conditions.

Consider against the provisions of CL5.10 of WLEP.

Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No
Further Comments
COMPLETED BY: Brendan Gavin, Principal Planner

DATE: 18 August 2022
</td></tr>
<tr><td>Traffic Engineer</td><td>Supported subject to conditions

Officer comments

The proposed development is for demolition of the existing structure at 20-26 Avon Road, Dee Why and construction of a single-level basement and a 3-storey residential complex comprising of 21 apartments:</td></tr>
</table>

Internal Referral Body	Comments
	· 1 x studio apartment · 3 x one-bed apartments · 9 x two-bed apartments · 8 x three-bed apartments **Parking** Northern Beaches Council's DCP (Warringah Development Control Plan) car parking requirements for **Residential flat buildings** require: · 1 space per 1 bedroom dwelling · 1.2 spaces per 2-bedroom dwelling · 1.5 spaces per 3-bedroom dwelling · 1 visitor space per 5 units or part of dwelling Hence, the total required off-street parking spaces is 31. The applicant has proposed to provide 30 spaces. The applicant has justified this by referencing the SEPP 65 parking requirements which are also identical to Dee Why Town Centre parking requirements. The subject location is not however located within the Dee Why Town Centre but is located near to it. The SEPP 65 requirement for parking would be 26 parking spaces. Although the parking provisions are one space short of the Warringah DCP requirement for parking, in this instance, the shortfall of 1 car space is considered acceptable, given the proximity of the development to the Dee Why town centre and B-line bus services, as the shortfall is only minor and noting that the development will result in the removal of 4 x vehicle crossings on the site's Avon Street frontage which will return at least 4 parking spaces for unrestricted on-street parking. **Traffic Generation** The RMS Guide to Traffic Generating Development provides a traffic generation rate for: High Density Residential flat building in Metropolitan Sub-Regional Centre Peak Hour Vehicle Trips = 0.29 trips per unit = 21 * 0.29 = 6.09 vtph

Internal Referral Body	Comments
	Current existing structures along 20-26 Avon Road are 4 houses. As per RMS Guide to Traffic Generating Development, the Peak Hour Vehicles Trips generated would be: Weekday peak hour vehicle trips = 4*0.85 = 3.4 vtph. Therefore, although the proposed development will almost double the peak hour vehicle trips generated from the site, the quantum of the increase is small and considered acceptable. **Vehicular Access** The swept path analysis has shown sufficient space for internal circulation. Swept path tuning plots have demonstrated that access to and from the most critically located parking space by a B85 vehicle is feasible. Passing of a B99 and B85 vehicle at the vehicle crossing and also at the entry point to the basement carpark has also been demonstrated. It is noted that an amendment vehicle crossing profile has been provided which is acceptable to Council's Development engineer and is consistent with that approved at past court proceedings relating to this site. **Loading/Servicing** Given the proposed residential building only has a total of 21 apartments, the frequency of the need for servicing and removalist trucks to occupy kerb space will be low and a dedicated off-street Loading Bay or on-street Loading Zone is considered unnecessary. Should parking need to be reserved on an occasional basis for a removalist truck a Stand Plant application can be submitted for consideration. Waste collection will be undertaken at kerbside by Council’s waste contractor and it is noted that the proposed linemarked shared zone area on the driveway has been deemed acceptable for transport of bins from the bin room to kerb in combination with a garage traffic signal system incorporating a manual override for the movement of bins to kerbside. The traffic signal requirement has been conditioned by the waste services team and is consistent with the previous court approval for the site and its application to this DA is supported.

Internal Referral Body	Comments
Waste Officer	**Supported subject to conditions** Waste Management Assessment - Addendum to SOEE submitted 11/11/2022 Waste Management Assessment Recommendation - not supported Specifically: Within the Statement of Environmental Effects clause 1.2 the applicant has stated - *"Various contentions in the appeal relating to privacy, solar access, waste, and landscaped area were resolved in the court proceedings. The revised proposal, that is the subject of this DA, maintains the design features found to be satisfactory in resolving these issues."* 1) Waste Management requires a detailed explanation of these "design features" relating to waste be included in this DA proposal with specific reference to how the conflict between vehicles and pedestrians is managed on the vehicular driveway as it is proposed that the garbage and recycle bins are transferred between the basement binroom and the street level holding bay via the vehicular driveway. 2) As the driveway ramp is steeper than the permitted 1 in 8 for the maneouvring of bins please explain how this issue will be overcome.

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.
Integrated Development - Rural Fire Service - Rural Fires Act, s100B - Subdivisions and Special Fire Protection Purposes	Supported - General Terms of Approval Issued
Nominated Integrated Development - Department of Planning and Environment - Water - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	**General Terms of Approval Issued** The application was referred to Water NSW as Nominated Integrated Development as the proposal required an approval under Section (90) (2) of the *Water Management Act 2000* for temporary construction dewatering. WNSW have provided the following comments: *"I refer to your recent request regarding an integrated Development Application (DA) proposed for the above location. Please find attached the WaterNSW General Terms of Approval (GTA) for part of*

External Referral Body	Comments
	the proposed development requiring a Water Supply Work approval under the Water Management Act 2000 (WM Act), as detailed in the subject DA". The General Terms of Approval will be referenced within the proposed consent 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 65 - Design Quality of Residential Apartment Development

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

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

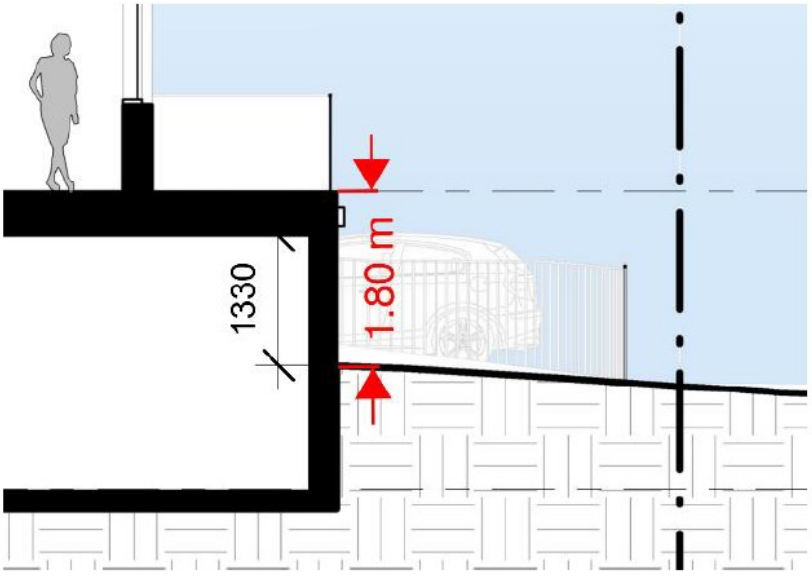
(a) the development consists of any of the following:

(i) the erection of a new building,
(ii) the substantial redevelopment or the substantial refurbishment of an existing building,
(iii) the conversion of an existing building, and

(b) the building concerned **is at least 3 or more storeys** (not including levels below ground level (existing) or **levels that are less than 1.2 metres above ground level (existing) that provide for car parking),** and
(c) the building concerned contains at least **4 or more dwellings**.

As previously outlined the proposed development is for the erection of a four storey residential flat ‘housing’ development plus basement car parking for the provisions of 21 self-contained dwellings.

The building is technically '4 stories' as a portion of the basement level is more than 1.2m above the ground level, see extract below. This is a result of the flood affectation of the side and need to protect the ground floor level from flooding.



As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(a) the advice (if any) obtained from the design review panel, and
(b) the design quality of the development when evaluated in accordance with the design quality principles, and
(c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel. However, Council has a 'Design Sustainability Advisory Panel' (DSAP) that provide advice for development applications. This advice is considered as part of the assessment of the application. The comments made by the DSAP are discussed elsewhere within this report.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic,

health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The building, which presents as a three storey building to the street, is compatible with the height and scale of the surrounding buildings. The site is zoned R3 Medium Density Residential and the proposal is consistent with what is expected in the area, which is surrounded by residential flat buildings of varying ages. The proposal provides compatible street setbacks which are landscaped to respect the existing street character and maintain the landscape setting of the R3 Zone.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The proposal is well articulated to break down the building bulk through vertical articulation and balconies, with complimentary landscaping around the building footprint. The scale of the building is generally compliant with the 11m height limit (with minor portions exceeding due to the flood affectation of the site) and compatible with the desired three (3) story character as identified in the WDCP. The proposal is well articulated on the western and southern elevations to allow the adjoining properties to have a reasonable outlook, with deep soil landscaping around the building to allow medium and tall canopy trees to further soften the building as viewed from adjoining properties. The building has compatible street setbacks that reflect the existing pattern of development along Avon Road and Richmond Avenue, with these setbacks comprising of deep soil landscaping and planter boxes to compliment the landscaped nature of the street.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The apartments achieve the minimum requirements of the ADG with regard to solar access and cross ventilation. The proposal is in proximity to public transport and the Dee Why Town centre, with the number of apartments suitable for this highly serviced location.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal provides a suitable amount of deep soil in accordance with the ADG and

consistent with the objectives of the DCP. Solar access is acheived for the site in accordance with the ADG, along with cross ventilation. The application is accompanied by a BASIX certificate which demonstrates requirements with the legislative provisions in regard to sustainability.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The building provides compatible street setbacks that allow for landscaping to be established that contribute to street character and a variety of medium and tall canopy trees. The landscape zones along the western and southern boundary allow for enhancement of privacy between buildings and neighbours, as well as outlook from the adjoining properties.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Comment: The proposal results in an acceptable outcome for solar access to the adjoining properties in accordance with the ADG. The balconies facing the western boundary have been setback in accordance with the ADG requirements, with skewed windows and highlight windows used to minimise views between neighbours. The proposal provide a compliant amount of private open space through balconies (with some balconies above the minimum) and compliant amount of storage within each unit, including within the basement. The apartments have been designed to minimise noise transmission between units within the building.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal provide a high level of passive surveillance of the street and well defines the street edge, with gates at the street frontage regulating access between the private/public domain.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal provide an appropriate mix between 1, 2 and 3 bedroom units to allow for a variety of budgets/family sizes to reside in the development. The building is in a well serviced location the provides access to services for a variety of occupants and ages.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The building is well articulated and provides compatible street setbacks to allow for landscaping to compliment the built form. The desirable elements of the streetscape are the landscape front setbacks, which have been provided in this development at the street edge. Robust materials have been used to provide texture and visual interest.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	**Yes** - Height, setbacks and building style suitable for locality.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	**Yes** - The building has been orientated to maximum solar penetration for apartments and complies with solar access requirements.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	**Yes** - Clearly defines public/private street edge through landscaping and fencing.
Communal and	Appropriate communal open space is to be	**No** - Some balconies

<table>
<tr>
<td>Public Open Space</td>
<td>provided as follows:

1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</td>
<td>however have been increased over the minimum requirements to provide additional open space. It is considered the site is in close proximity to open space networks including Dee Why Beach and therefore the proposal is acceptable within communal open space.</td>
</tr>
<tr>
<td>Deep Soil Zones</td>
<td>Deep soil zones are to meet the following minimum requirements:

<table>
<tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr>
<tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr>
<tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr>
<tr><td>Greater than 1,500m^2</td><td>6m</td></tr>
<tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr>
</table>
</td>
<td>Yes - Deep soil zones with a 3m minimum dimension make up 266m^2 of the site area. This as a percentage accounts for 17% of the total site area which complies with the 7% minimum.</td>
</tr>
<tr>
<td>Visual Privacy</td>
<td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table>
<tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr>
<tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr>
<tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr>
<tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr>
</table>

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring</td>
<td>Does not strictly comply with building separation- See discussion below table. Objectives have been achieved through innovative design solution and setbacks where required.</td>
</tr>
</table>

	properties.	
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	**Yes** - Clear entrance with line of site.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	**Yes** - Councils engineers are satisfied with driveway deign.
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	**Yes** - Parking rates of the ADG have been achieved (26 spaces required), see comments by Council's traffic engineer who also makes an assessment against the WDCP.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	**Yes** - 15/21 apartments receive a minimum of 2 hours solar access to the living rooms and balconies , 71.4%.
	• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	**Yes** - There are no apartments that receive no direct sunlight
	• Where an adjoining property does not	**Yes** - Where a unit within

<table>
<tr><td></td><td>currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%</td><td>an adjoining property does not currently receive 2 hours, solar access is not reduced by more then 20%.</td></tr>
<tr><td rowspan="2">Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</td><td>Yes - 12 of the apartments are 'corner apartments' and three (3) additional units are operable skylights that allow stack effect ventilation, this results in 15/21 units or 71.4%.</td></tr>
<tr><td>• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td>Yes - All less than 18m.</td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<table>
<tr><th colspan="2">Minimum ceiling height</th></tr>
<tr><td>Habitable rooms</td><td>2.7m</td></tr>
<tr><td>Non-habitable</td><td>2.4m</td></tr>
<tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr>
<tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr>
<tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr>
</table></td><td>Yes - All have minimum 2.7m floor to ceiling heights.</td></tr>
<tr><td>Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:

<table>
<tr><th>Apartment type</th><th>Minimum internal area</th></tr>
<tr><td>Studio</td><td>35m^2</td></tr>
<tr><td>1 bedroom</td><td>50m^2</td></tr>
<tr><td>2 bedroom</td><td>70m^2</td></tr>
<tr><td>3 bedroom</td><td>90m^2</td></tr>
</table>
The minimum internal areas include only one</td><td>Yes - All achieve minimum dimensions</td></tr>
</table>

<table>
<tr><td></td><td>bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each.</td><td></td></tr>
<tr><td></td><td>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</td><td>Yes - All habitable rooms have suitably sized window.</td></tr>
<tr><td></td><td>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</td><td>Yes - Habitable room depths appropriate size.</td></tr>
<tr><td></td><td>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</td><td>Yes - Open plan depth not exceeding 8m from a window.</td></tr>
<tr><td></td><td>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</td><td>Yes - Bedroom sizes meet minimum requirement</td></tr>
<tr><td></td><td>Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</td><td>Yes - Bedroom sizes meet minimum requirement</td></tr>
<tr><td></td><td>Living rooms or combined living/dining rooms have a minimum width of:

• 3.6m for studio and 1 bedroom apartments
• 4m for 2 and 3 bedroom apartments</td><td>Yes - Living room widths comply.</td></tr>
<tr><td></td><td>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</td><td>Yes - No crossover or cross through apartments.</td></tr>
<tr><td>Private Open Space and Balconies</td><td>All apartments are required to have primary balconies as follows:

<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr></table>
The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>Yes - Minimum areas provided and in some cases exceeded. Area win minimum dimension provided for each.</td></tr>
<tr><td></td><td>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.</td><td>Meets objective - Each ground floor unit has at least 15m2, with the apartments facing Avon Road having dimensions between 2 and 3m.</td></tr>
</table>

<table>
<tr><td></td><td></td><td>Additional green space is provided in the Avon Road Frontage that can be enjoyed with a minimum dimension of 2.5m. The combination provides adequate open space.</td></tr>
<tr><td rowspan="2">Common Circulation and Spaces</td><td>The maximum number of apartments off a circulation core on a single level is eight.</td><td>Yes - Maximum is 7 of the core.</td></tr>
<tr><td>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</td><td>N/A.</td></tr>
<tr><td>Storage</td><td>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:
<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m^2</td></tr><tr><td>1 bedroom apartments</td><td>6m^2</td></tr><tr><td>2 bedroom apartments</td><td>8m^2</td></tr><tr><td>3+ bedroom apartments</td><td>10m^2</td></tr></table>At least 50% of the required storage is to be located within the apartment.</td><td>Yes - Storage shown in the basement and apartments providing adequate space. Based on the unit mix, 88m^3 of storage is required in the basement. The basement allocates 112m^3 of storage.

A condition of consent will be recommended to ensure basement storage is allocated as per the ADG.</td></tr>
<tr><td>Acoustic Privacy</td><td>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</td><td>Yes - This is achieved - bedroom off G02 setback more than 3m from driveway.</td></tr>
<tr><td>Noise and Pollution</td><td>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</td><td>Yes - Layout considers noise transmission.</td></tr>
<tr><td colspan="3">Configuration</td></tr>
<tr><td>Apartment Mix</td><td>Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.</td><td>Yes - The development provides a suitable mix and variety of studio, 1 , 2 and 3 bedroom apartments.</td></tr>
<tr><td>Ground Floor Apartments</td><td>Do the ground floor apartments deliver amenity and safety for their residents?</td><td>Yes - Ground floor opens out to residential street.</td></tr>
<tr><td>Facades</td><td>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</td><td>Yes - The facade is well articulated and appropriate in setback/scale for the locality.</td></tr>
<tr><td>Roof Design</td><td>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</td><td>Yes - Flat roof is used which is consistent with the newer RFB's in the area.</td></tr>
</table>

<table>
<tr><td></td><td>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</td><td></td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</td><td>Yes - Council's landscape team have reviewed the landscape scheme and are satisfied that the planting will compliment the street. The setbacks to the street are compatible.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
<tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr>
<tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr>
<tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr>
</table></td><td>Yes - Appropriate soil depth is provided around the perimeter of the building and within the planter boxes. Conditions have also been recommended to ensure soil depths are shown on the landscape plan.</td></tr>
<tr><td>Universal Design</td><td>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features</td><td>Yes - The application is accompanied by a access report which confirms 20% of the apartments are accessible.</td></tr>
<tr><td>Adaptable Reuse</td><td>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</td><td>N/A - The building is not an adaptive reuse.</td></tr>
<tr><td></td><td></td><td></td></tr>
</table>

Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	**N/A** - Not a mixed use building.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	**N/A** - Residential building only.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	**Yes** - BASIX Certificate has been provided which confirms measures have been met and plans show compliance with certificate.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	**Yes** - The stormwater plan has considered these matters and the application has addressed groundwater.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	**Yes** - Waste management plan has been submitted to the satisfaction of Council's waste team.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	**Yes** - Robust materials are used and sustainability has been taking into account through cross ventilation and solar access.

3B Overshadowing of adjoining properties

The controls within the ADG state the following for adjoining properties:

- Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.
- Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%

The application is accompanied by sun view diagrams at 30 minute increments and a report which details the solar access outcomes for the adjoining residential flat building to the west (17 Richmond Avenue) and the south (18 Avon Road/50 Dee Why Parade).

<u>18 Avon/50 Dee Why Parade</u>

The sun view diagrams demonstrate that adjoining units to the south (18 Avon Road/50 Dee Why Parade) will continue to receive a minimum of 2 hours solar access in accordance with the ADG, with the impact of the proposal minimal on this building.

17 Richmond Avenue

The adjoining property to the west at 17 Richmond Road contains nine (9) units. The applicant has provided a detailed model of the windows and balconies of this building to allow a solar access study to occur. In addition, Council staff have reviewed the floor plan of each of the units which will experience some additional overshadowing within the building at 17 Richmond Avenue to understand the location of the living room windows within these units. It is noted that there is only additional overshadowing between 9am and 9:30am to two (2) of the nine (9) units within the building. The units which will experience some additional overshadowing between 9am and 3pm are:

- Unit 6 /17 Richmond Avenue (First floor most southern unit) - This unit will experience overshadowing of the eastern facing balcony and living room window between 9am and 9:30am. Following this, no overshadowing occurs from the development. The balcony will maintain solar access between 9:30am and 11:30am (2 hours). The unit also has a western facing window to the living area and when combined with the eastern facing window, will receive a minimum of 2 hours. Unit 6 achieves compliance as the living room has a dual aspect (east/west).

- Unit 7/17 Richmond Avenue - (First floor, second unit from the south). This unit has an easterly facing balcony and easterly facing living room window, with the living room having a single aspect. At present, the eastern facing living room window receives sunlight from 9am to 10am, less than the 2 hour ADG requirement. The living room window becomes in shadow after 10m due to the overhanging balcony of the unit above. The applicant has provided the following analysis based on the sun view diagrams:

  - We can confirm that this apartment is overshadowed from 9:00am until 9:02am where at 9:03am the living area receives more than 1m2 of sun. There is no overshadowing at all to the living room by 9:14am.

  Council agrees with this analysis as the 9am view from sun diagram shows that the living room window is just obstructed at 9am, and then from 9:03am the window will begin to receive sunlight. Therefore, Unit 7 will meet the ADG requirement as there is only a 5% reduction in sunlight to the living room window (within the ADG requirement for sunlight not reduced more than 20%). The balcony will begin to receive solar access just after 9am and will retain sunlight until just after 11am, achieving 2 hours in accordance with the ADG.

Therefore, the applicant has demonstrated to the satisfaction of Council that the solar access outcomes of the ADG have been met and reasonable amounts of solar access will be maintained for the adjoining properties in accordance with the ADG controls.

3F Visual Privacy Assessment

The design criteria requires that separation for habitable room windows and balconies to an adjoining properties boundary is 6m.

The design guidance states that:

"New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:

• site layout and building orientation to minimise privacy impacts (see also section 3B Orientati

The DCP has a setback control of 4.5m to the adjoining property boundaries (western and southern boundary in this case). On the ground level the building has been setback at 4.7m in compliance with the control within the DCP. The ground level balconies facing the western boundary will not directly face any balconies or habitable room windows of 17 Richmond Avenue, as the building on 17 Richmond Avenue has garages placed on the ground level. Furthermore, there is a 4.7m wide deep soil zone that is contain generous landscaping to provide further screening along the western boundary. Based on these two factors, the 4.7m setback is acceptable for the ground level.

The western facade of Level 1 and 2 has proposed all balconies compliant with the 6m building separation of the ADG, meeting the requirement. Operable privacy screens have also been proposed on all west facing balconies to further enhance privacy if the resident desires. The species of tree planting within the western setback are capable of reaching 12m (Coastal Banksia and Lilli Pilli) and will further enhance privacy over time. The portions of the building which are setback less than 6m have been 1.8m sill heights and proposed an innovative 'skewed window' solution to allow northern light into the apartments, yet resolve privacy in accordance with the intent of the ADG. Therefore, the portions of building less than 6m do not directly impact privacy and meet the intent of the ADG and this is supported.

The southern façade contains bathroom windows setback 4.5m (non-habitable rooms only require 3m) and one bedroom window upon each level setback 5.5m, however the separation distance to the southern building is 15m and the bedroom does not directly face a living room or balcony of the adjoining property to the south. The southern facade similarly uses skewed windows to allow light and ventilation, whilst retain privacy to the southern property.

Therefore, the intent of the ADG is met in this circumstances and the proposal is supported.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The application is not recommended for refusal for the reasons of carparking (a), internal area (b) or the ceiling heights (c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and
(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: Regard has been given to the design principles and these are addressed above the compliance table. Objectives of the design criteria have been considered where numerical compliance is not strictly achieved.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1318563M_03 dated 4 November 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	35

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area
2.7 Development on certain land within coastal wetlands and littoral rainforests area

1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
   a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
   b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
   c) the carrying out of any of the following:
      i) earthworks (including the depositing of material on land),
      ii) constructing a levee,
      iii) draining the land,
      iv) environmental protection works,
   d) any other development

Comment: The land is not within coastal wetlands or littoral rainforest area.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
   a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
   b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment: The land is not within coastal wetlands or littoral rainforest proximity area.

Division 2 Coastal Vulnerability Area
2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

b) the proposed development:
   i) is not likely to alter coastal processes to the detriment of the natural environment or
   ii) other land, and
   iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment: The land is not within coastal vulnerability area.

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 land is within the coastal environment area. Council's water quality team have reviewed the proposal and are satisfied the proposed development does not have an unacceptable impact upon the biophysical, hydrological (surface and groundwater) and ecological environment. The proposed development does not impact upon coastal processes or inhibit foreshore access given the proximity to the beach and coastline, being separated by public roads. The proposal satisfies the matters listed in (a)-(g).

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

Comment: The development has been designed to avoid and minimise impacts.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment: The development is not within the coastal use area.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment: The development does not increase coastal hazards given the proximity to the coastline or foreshore.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: There is no coastal management program for the site.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	11.8m (mechanical plant) 11.3m (max building)	7.2% 2.7%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	11.3m - Roof maximum 11.8m - Mechanical Plant
Percentage variation to requirement:	2.7% - 7.2%

The height breach is limited to the northern and eastern edge of the roof parapet of the building and the centrally located mechanical plant. See figures below.



Figure 1 *- Cross section of non-compliance of eastern parapet.*

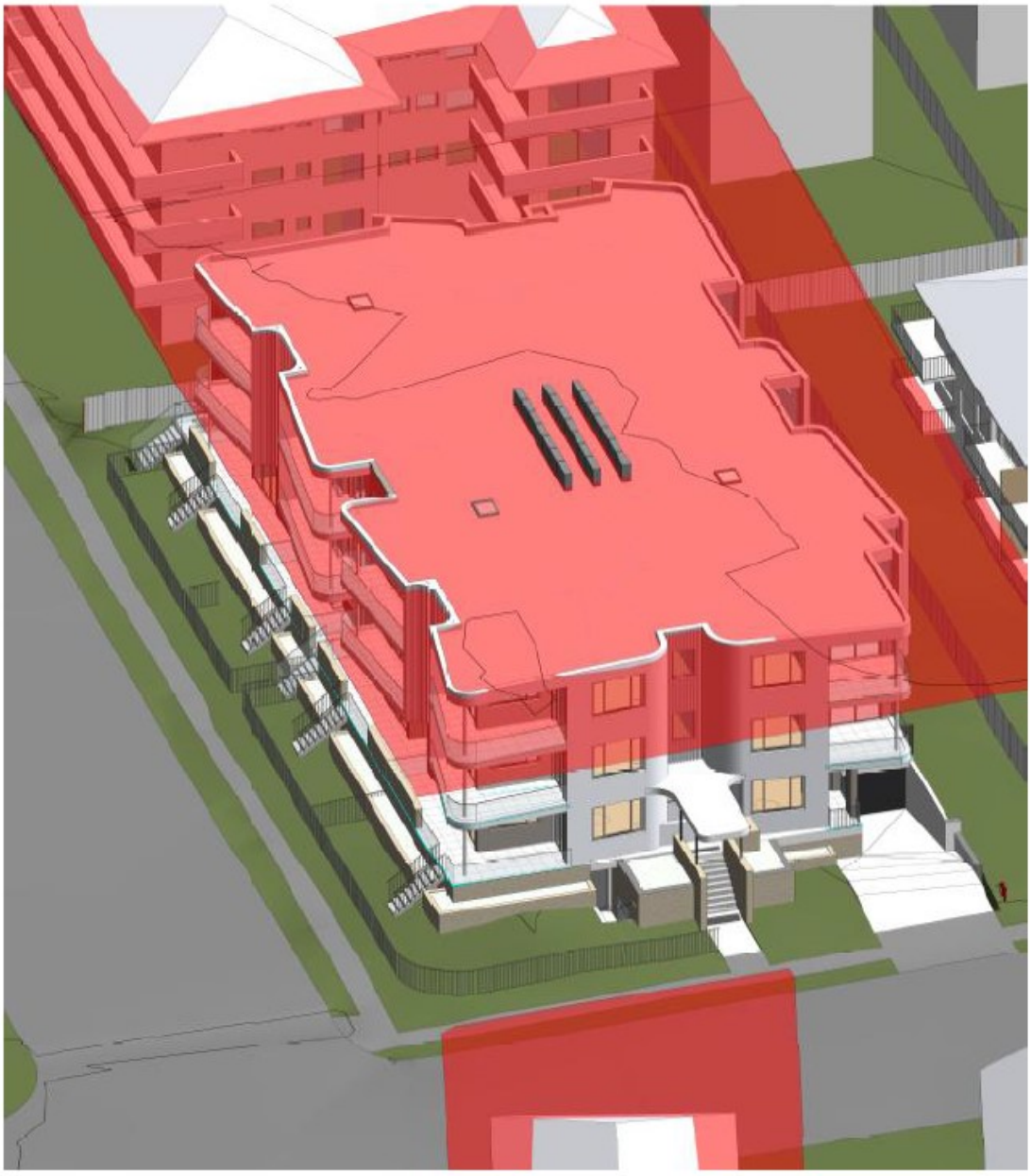


Figure 2 *- Height blanket showing the parapet encroachment and centrally located roof plant.*

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 judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

Comment:
Clause 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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

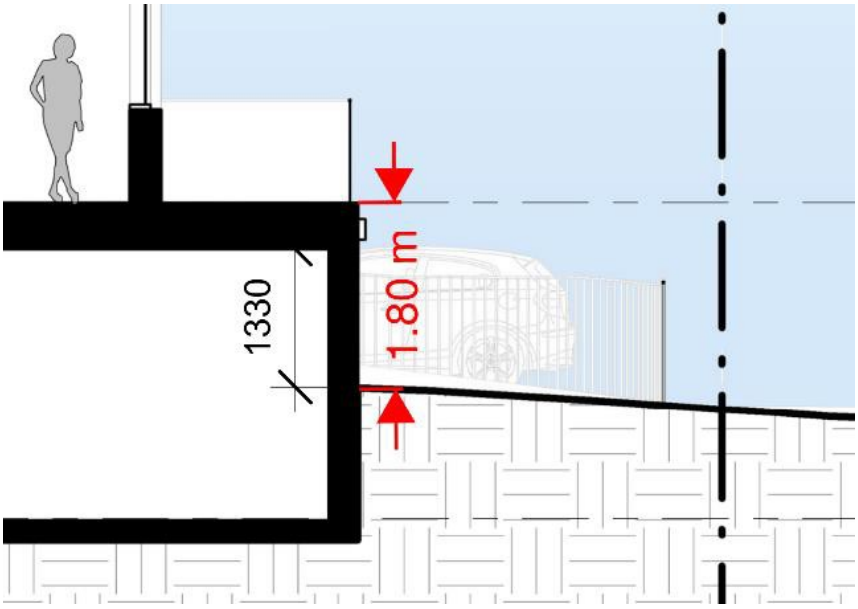
s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

Ground 1 – Compliance with the flood planning level contributes to the height of the proposed building

The topography of the site is irregular with a fall of approximately 1.3 metres (RL 6.79 to RL 5.24) generally in a north easterly direction, diagonally from the south western corner of the site. Compliance with the Flood Planning Level contributes up to approximately 1.8m to the height of the proposed building.
The height exception, ranging up to 0.8m, is attributable to the development's compliance with the flood planning level. It results in the building being raised up to 1.8m to achieve a ground floor level that meets to flood planning level which is RL 7.350.



Ground 2 – Compatibility with the height and scale of surrounding and nearby development is achieved

It is noted that objective (a) of the standard is 'to ensure that buildings are compatible with the height and scale of surrounding and nearby development'.
The objective seeks for the design to respond to its context, which in this case, comprises a mix of 3 and 4 storey residential flat buildings (figure 20), rather than just adhere to the numerical standard which may not (and typically, does not) relate to the specific heights of buildings in a location.
Other 4 storey residential flat buildings exceed the building height standard within the local area, for example 18 Avon Road, 26 Richmond Avenue, and 19-23 Richmond Avenue. Modest additional height is proposed that is below the height or compatible with the height of nearby residential flat buildings.
The proposed perimeter rooftop parapet exception provides a height that is compatible with the established mix of 3-to-4 storey residential flat building development within the site's visual setting and within the broader local area that comprises the R3 zone within Dee Why, being generally the area that extends from Pittwater Road in the west to Dee Why Beach in the east (figure 21).
Given the 3-to-4 storey flat building context, the proposed building height will have an appropriate scale to a casual observer and the proposal will be 'compatible with surrounding and nearby development'.

Ground 3 – the proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):
(c) to promote the orderly and economic use and development of land; and
(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.
In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that is desired by the prevailing planning provisions because it will facilitate consolidation of four individual allotments, renewal of the land, additional housing in a highly desirable location, to meet contemporary living needs, and renewal of the housing to meet building sustainability (BASIX) and contemporary flood level compliance. In response to (g), the

proposal results in a residential development that will promote good design and amenity of the built environment and increased landscaped deep soil area and planting at the site's street edges.
An improved streetscape outcome is achieved for the land through, street setbacks that are compatible with the adjoining developments at 18 Avon Road and 17 Richmond Avenue, the removal of 4 existing driveways on Avon Road, deep soil areas and planting around the proposed building.
A perspective image is provided within the architectural plan set illustrating the proposed streetscape presentation of the site as viewed from the eastern side of Avon Road. The image communicates the height, form, and context of the proposal as it relates to buildings to the south and north of the site within a streetscape setting. The proposed design presents a high-quality building that will improve the land's streetscape presentation in a manner that is anticipated by the prevailing planning objectives for the renewal of the land.
The proposal provides a new and enhanced landscape regime. It includes 586m2 square metres of landscaped area around the perimeter of the site (plan sheet DA401); it involves the planting of landscaped areas with species selected from Council's Native Species Guide (Curl Curl Ward which the site is within); it will remove five existing vehicle crossings and driveways and consolidate into one vehicle crossing/driveway, overall resulting in an improvement to the site's visual presentation to the adjoining streets and the nature reserve.
The proposed building height and scale relates to the site conditions including the flood planning level, mix of 3-to-4 storey flat buildings within the local area, relatively flat land, and the relatively tall established trees within the local area (streets and public open space reserve). The proposed height exceptions are minor and will be visually imperceivable from surrounding land.
The proposed building form is appropriately articulated, noting the various indentations incorporated angular balconies and low-profile roof form.

Ground 4 - Appropriate amenity outcomes are achieved
The features of the amended building design have resulted in a building that satisfies amenity outcomes to the neighbouring properties in terms of privacy, and overshadowing.
- *The proposed exceedance results in appropriate shading impact.*
- *The proposed exceedance does not result in inappropriate view sharing impacts.*
- *The proposed exceedance does not result in an inappropriate visual presentation to surrounding land.*

The height exceedance relates to the protruding basement level to meet the flood planning level, the proposed boundary setbacks satisfy DCP control B5 'side boundary setbacks', significant deep soil landscaped area is contained within the setbacks and provision is made for the planting of these areas.
- *The proposed exceedance does not result in inappropriate privacy impacts. The design incorporates a combination of the following measures: high sill windows, windows angled away from the adjoining buildings towards the adjacent streets, screens to the western side balconies, appropriate room function and increased separation at the sensitive site interfaces (to the south and west.*

Council Comment on Planning Grounds
The applicant's planning grounds are generally agreed with, in particular planning ground 1, which relates to the flood affectation of the land. It is agreed, that flooding directly impacts the ability to comply with the building height and if the site was not flood affected the building would comply with the height limit. The centralised roof plant will not cause visual or acoustic impact upon adjoining properties or be looked down upon from surrounding buildings. The roof plant will not be visible from the street level. It is agreed that the building is compatible with the scale of those surrounding buildings and consistent with the desired future character which is set by the planning controls, requiring a three storey building presentation. The proposal provides planter boxes and landscape treatment around the protruding basement level to compliment the landscape character of the area and reduce the visual bulk of the protruding basement level through landscaping.

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. The proposal also achieves aim (h) 'to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants' as the floor level is required to respond to the flood planning level.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The building is consistent with the height of surrounding development having regard to the older style 3 and 4 storey 'walk up flats' and will sit comfortably in the streetscape with regard to building height. The proposal is consistent with the development across the road to the east (more recent development) which is a three storey building with a slightly protruding basement.

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

Comment:

The application has demonstrated the reasonable solar access outcomes will be maintained to the adjoining properties in accordance with the ADG and the minor encroachment to the building height is not in a location that has a direct influence on solar access outcomes for the units at 17 Richmond Avenue (with the height breach being located on the eastern and northern edge of the roof). The breach of height does not cause unreasonable privacy or view loss, as discussed within this report.

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

Comment:

The building will sit comfortably within the streetscape and when viewed from the public reserve to the north-east of the site adjoining the lagoon. The height of the building is compatible with the older style four (4) storey walk up flats.

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

Comment:

As above, the building will be compatible in scale and height when viewed from the public reserve to the north-east adjoining the lagoon. The proposal is well articulated and will not have a visual impact on the streetscape due to the height breach.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment: The proposal provides a mix of apartment sizes to meet the housing need of the community. The density of the development is compatible with the R3 Zone.

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

Comment: The proposal provides apartments which add to housing diversity within the R3 Zone and for the wider Northern Beaches locality where housing need and affordability is an issue. The proposal provides a mix of 1, 2 and 3 bedroom apartments for variety.

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

Comment: Not applicable to this development.

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

Comment: The proposal will sit comfortably within the landscape setting of Richmond Avenue and Avon Road due to the compatible street setbacks which allong for new landscaping to be established along the street edge. The western and southern boundary consist of deep soil zones that allow medium and tall trees to be planted to contribute to the landscape setting.

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

Comment: The building is well articulated and presents as high quality to the street and public reserve to the north-east. A high level of articulation is used and landscaping is established around the

perimeter of the building, with compatible setbacks to the street.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard 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 proposal is accompanied by a flood management report which has demonstrated the proposal is compatible with the flood behavior of the land, the residential use is appropriate given the level of flood. The use is not classified as a 'sensitive or vulnerable' use (i.e child care, school or aged care). (Objective a)

The proposal has demonstrated to the satisfaction of Council's flood engineers that flood waters can be managed in a way that do not excassibate impacts onto adjoining land (Objective b).The site is capable of being safely evacuated in a flood emergency. (Objective c).

Council's flood engineers are satisfied the proposal implements measures to manage risk to life and flood waters are diverted around the building and the basement is protected from flooding (objective D).

The proposal will not adversely impact the natural environment or cause avoidable erosion . Erosion and sediment controls have been implemented and the site will be landscaped to assist erosion (objective 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:
Council's flood engineers have accounted for climate change in considering flood impacts (objective a). The scale of the building is appropriate with only a minor exceedance of the LEP 11m height limit as a result of the raised floor level to respond to flooding (objective b). Evacuation is available from the site in the event of a flood (objective c). It is not anticipated the building will be need to be modified or moved to respond to flooding or coastal erosion, Council's flood engineers are satisfied with the design (objective d).

Therefore, the consent authority can be satisfied the pre-conditions with regard to flooding have been satisfied to allow consent to be granted.

6.1 Acid sulfate soils

The land is located in the "Class 5" Acid Sulfate Soils area map. The proposed excavation of 3m would not ordinarily trigger the requirement for an Acid Sulfate Soils Management Plan. Notwithstanding this, the applicant has undertaken testing for Acid Sulfate Soils within the geotechnical report and found that sound ASS may be present in the ground. Therefore, an Acid Sulfate Soils Management Plan (prepared in accordance with the ASS Manual) has been prepared and submitted with the application (within the geotechnical report) prepared by Geotechnique Pty Ltd dated 12 August 2022. A condition of consent will be recommended to comply with this report during works.

Therefore, the precondition 6.1 Acid sulfate soils has been appropriately address by the applicant and consent may be granted.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) 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, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment: The site is not located in the vicinity of any watercourse or drinking water catchment. The site is opposite a public reserve which contains Dee Why Lagoon. The application has been reviewed by Council's water management team and conditions have been recommended regarding basement dewatering with regard to this environmentally sensitive area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3 stories	4 stories* **Note - Only 3 stories of residential - Portion of basement is technically a 'storey' as level above >1m above NGL due to the Flood Level*	33%	**No**
B3 Side Boundary Envelope	West 5m	Outside up to 1.3m	N/A	**No**
	South 5m	Outside 1.7m	N/A	**No**
B5 Side Boundary Setbacks	West 4.5m	Ground - 4.7m First - 4.2m to 6m Second - 4.2m to 6m	N/A 6% 6%	Yes **No** No
	South 4.5m	Ground - 4.5m First - 3.2m to 5.5m Second - 3.2m to 5.5m	N/A 28% 28%	Yes **No** **No**
	Basement 2m	West 4.7m South - 2m	N/A	Yes
B7 Front Boundary Setbacks	Richmond Av 6.5m	6.5m	N/A	Yes
B7 Front Boundary Setbacks Secondary Street	Avon Road - Min 3.5m, providing consisent with the street character	3.5m terrace 5.4m facde Balcony setbacks consistent with prevailing street character	N/A	Yes

D1 Landscaped Open Space (LOS) and Bushland Setting	50% (766.5sqm)	40%* ($613m^2$) *In accordance with LOS Definition, including planters 1m soil depth	20%	**No**

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B2 Number of Storeys

Description of non-compliance

The DCP requires that the maximum number of stories is three (3) stories. The proposed development is technically (4) stories due to a portion of the basement level protruding more than 1m above the ground level. The proposal only contains three (3) residential levels above as envisaged by the control and LEP height limit. The residential floor level is required to be raised to meet the flood planning level of the site.



Merit consideration:

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

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

  Comment:

  The proposed development is compatible with the surrounding buildings which comprise of new

three storey buildings and older style walk up flats with garage parking and three levels of residential above. The building has compatible street setbacks and is largely compliant with the 11m LEP height limit.

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

  Comment:

  The height of the building is compatible with the surrounding three storey buildings and older walk up flats. The visual impact is minimsed through façade articulation and quality landscaping around the building.

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

  Comment:

  The proposal results in reasonable view sharing outcome.

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

  Comment:

  The application is accompanied by a 'view from sun' analysis which demonstrates the adjoining properties will continue to receive solar access in accordance with the ADG.

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

  Comment:

  The proposal uses a flat room to minimise height and remain predominantly below the LEP building height.

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

  Comment:

  The proposal only exceeds the 11m building height control by a minor amount and this is due to the flood affectation of the land and centrally located roof plant. The proposal is in keeping with the objectives of the 11m height development standard.

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

B3 Side Boundary Envelope

Description of non-compliance

A portion of the southern façade and western façade encroach the 5m building envelope control. It is noted that the building envelope breach is partially a result of the flood affectation of the site and the requirement to set the ground floor level at the flood planning level (in this case between 0.9m and 1.3m above ground level along the western facade and 0.7 to 0.9m along the southern facade).

The encroachments also result from portions of the skewed windows which have been incorporated into the facade (at the recommendation of Council's Urban Designer), however these elements add articulation and provide a superior outcome in regards to privacy and amenity for the development. The applicant has demonstrated through a thorough solar access study that the encroachments do not result in adjoining properties being unreasonable impacted, with the adjoining properties receiving solar access in accordance with the ADG.

The below extract shows the portions of non-compliant façade.



Merit consideration

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

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

Comment:

The building is well articulated and is compatible with the height of the surrounding RFB's, with the façade broken down by recessed and projecting elements. The portions of the building which protrude the envelope are considered minor and as result of the requirement to comply with the flood planning level.

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

  Comment:

  The applicant has provided comprehensive view from sun modelling and a solar access report which demonstrates the apartments within the two adjoining buildings will retain solar access outcomes in line with the ADG. It is noted that portions of the western façade are recessed (balconies at 6m) that result a superior outcome to a compliant envelope.

  Balconies have been setback at 6m compliant with the ADG, with skewed windows introduced to provide a superior outcome for privacy whilst providing solar access to the apartments. The spatial separation, although not strictly 6m for some portions of the building, has addressed the objectives of the ADG.

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

  Comment:

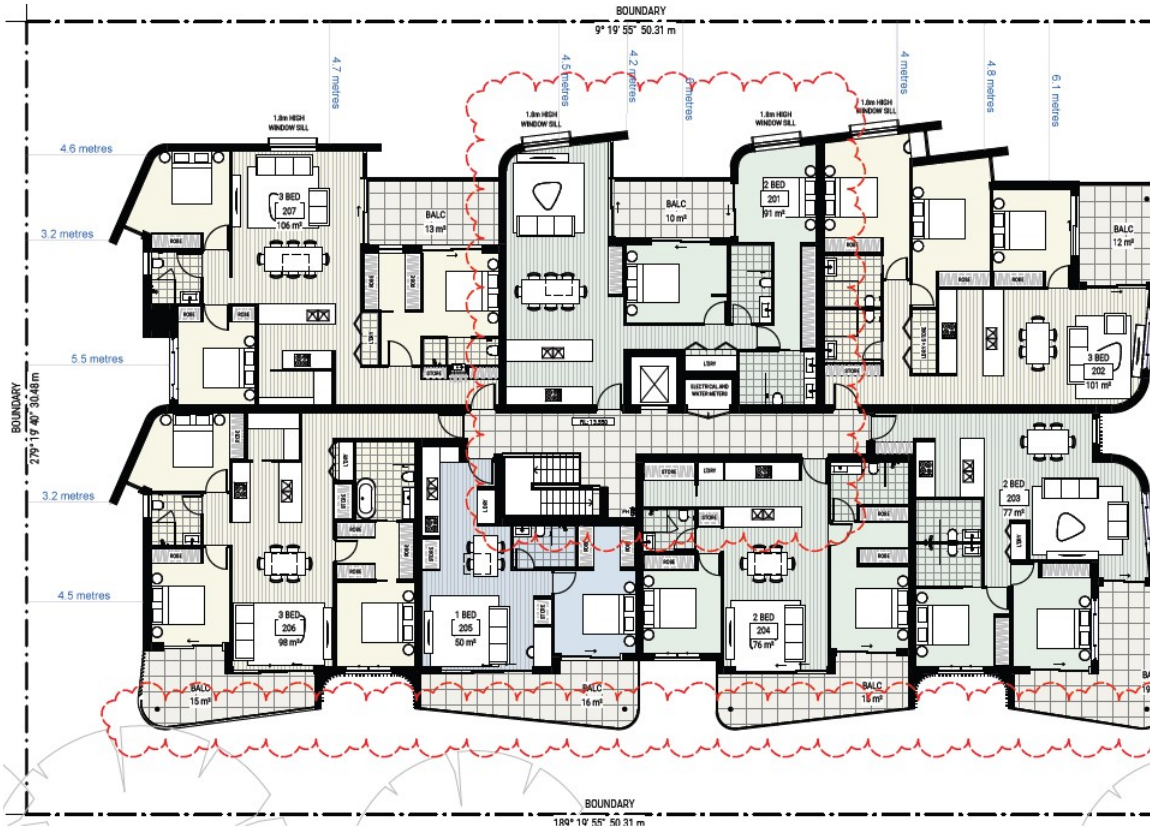
  The site is relatively flat, however the site is flood affected which causes potions of the building to be non-compliant with the building envelope control. The topography of the site is not a major influence in the design of the building.

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

B5 Side Boundary Setbacks

Description of non-compliance

The control requires 4.5m setbacks to the southern and western side boundaries. The proposal has minor encroachments into the side setbacks upon Levels 1 and 2 resulting from skewed window/blade wall elements that have been incorporated to enhance privacy and introduce building articulation. It is noted that the ground level is setback compliant with the control.



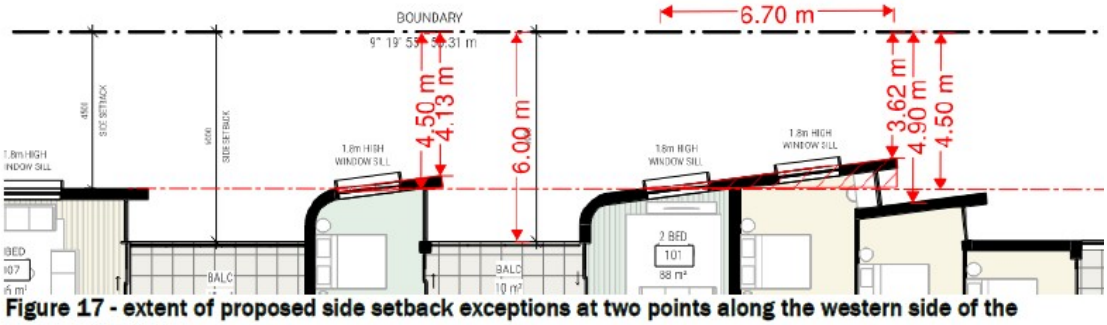


Figure 17 - extent of proposed side setback exceptions at two points along the western side of the proposed building

Merit consideration

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

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

  Comment:
  The encroachments do not prevent deep soil landscaping with the ground level setback compliant with the control and the basement level setback a compliant 2m to the southern boundary (will 1m soil depth planter above basement). Deep soil zone of 4.7m is maintained along the western boundary.

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

  Comment:

  The proposal is will articulated and generally sits within the LEP height limit with setbacks that are consistent with the surrounding locality. The blade wall elements which encroach the side setbacks provide vertical articulation to the facade and do not result in a visual dominant built form.

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

  Comment:

  The scale of the building is consistent with the DCP requirement of three stories and the 11m height limit under the LEP which the proposal is largely compliant with.

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

  Comment:

  The encroachment to the side setbacks are a result of the skewed windows which will enhance privacy, whilst not creating unreasonable impacts on neighbours in terms of solar access as discussed previously in this report. The balconies on L1 and L2 are setback 6m and compliant with the ADG.

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

  Comment:

  The proposal will result in a reasonable view sharing outcome.

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

C3 Parking Facilities

The application is considered against the recommended minimum amount of car parking specified in Schedule 1 of the Warringah DCP 2011.

The proposal consists of:

- 1 x studio
- 3 x 1 bedroom
- 8 x 2 bedroom
- 9 x 3 bedroom

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
1 bedroom dwelling	1 space	4	25	-1
2 bedroom dwelling	1.2 spaces	9.6		
3 bedroom dwelling	1.5 spaces	13.5		
Visitor	1 visitor per 5 units	4.2	5	0
Total		**31** (Rounded)	**30**	**- 1**

The proposal provides a shortfall of car parking of 1 spaces for the residential component of the development.

The application is accompanied by a traffic and parking impact assessment in support of the application and which seeks to justify the shortfall of car parking in accordance with the Warringah DCP. Council's traffic engineer has provided an assessment of the car parking spaces provided within the development and raises no objections to the 1 space shortfall given the location of the development in proximity to the Dee Why Town centre. The proposed development is situated within a well serviced area, adjacent to public transport, shops and the Dee Why Town Centre. The proposal also results in the removal of four (4) driveway crossings along Avon Road.

See comments under the traffic referral earlier in this report.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The DCP control requires that 50% of the site is landscaped area. The DCP allows planter boxes/planting over structure that has a minimum soil depth of 1m to be included as landscape area.

The proposed development has 40% landscape area and is non-compliant with the numerical control.

Merit consideration

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

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

  Comment:
  Council's landscape officer has required amendments to the plans throughout the process (during the previous DA and the court matter) to achieve a high quality outcome with the street planting. Noting, the proposal has also been amended from previous iterations to now provided compatible and compliant front street setbacks to both Avon Road and Richmond Avenue, with both the street frontages containing landscaping to enhance the street. Council's landscape officer is satisfied with the landscape outcome to the street and it is considered that the combination of compatible street setbacks and landscaping will enhance the streetscape (noting

some of the older RFB's in the area have minimal front setback landscaping).

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

  Comment:
  The proposal will not result in the removal of any significant trees or impact upon rock outcrops. The site will have new landscape planting throughout to enhance habitat for wildlife.

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

  Comment:
  The landscape design includes a range of low, medium and tall trees and shrubs to compliment the area. Trees capable of reaching 10m-12m are proposed around the perimeter of the building to mitigate the bulk and scale. Although there is a shortfall in the numerical requirement, the 40% proposed is good quality landscaping that will assist in enhancing both the street and mitigating building bulk/scale.

- *To enhance privacy between buildings.*

  Comment:
  Deep soil landscaping is maintained along the side boundaries (west and south) with landscaping proposed that is capable of enhancing privacy between the adjoining buildings. It is noted that two adjoining sites have driveways along the boundaries and therefore no landscaping. Therefore, this proposal will enhance privacy between neighbouring sites through the provision of landscape planting that consists of trees up to 10m-12m between properties.

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

  Comment:
  The building provides sufficient private open space in accordance with the ADG. The western boundary is not used for outdoor recreation to enable the landscape zone to mature and also to prevent modification of the overland flow path along the western boundary.

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

  Comment:
  Sufficient room is provided in accordance with the ADG.

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

  Comment:
  Council's water management team, stormwater team and flooding team have reviewed the proposal and are satisfied that all Council's policies are met in regards to water management.

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

D6 Access to Sunlight

See discussion regarding solar access previously within this report under the SEPP 65 assessment.

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

  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 view from Unit 1/17 Richmond Avenue is a highly obscured distant ocean view. The view was difficult to ascertain during the site visit, which occurred during the hearing of the previous Class 1 Appeal. Any view of the ocean is heavily obscured by the existing vegetation which exists in the road reserve. See photos below:



Figure 1 *- Standing looking east from Unit 1, living room window.*



Figure 2 *- Standing looking east from Unit 1, living room window.*



Figure 3 *- Standing looking east from Unit 1, living room window. Zoomed in, potential distance ocean view obscured by 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 view is over a side boundary from a living room. The view is obtained in a standing and seated position.

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 view impact is considered minor, having regards to the fact the ocean view is highly obscured and difficult to see. Some view or aspect of the surrounding trees will be impacted and therefore, this is considered minor. However, no significant features are obscured (such as the beach, headlands or iconic features).

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 impact is caused by the three storey nature of the development, however the proposal is generally in accordance with the 11m height limit for the site and would be impacted in any redevelopment of the site in accordance with the planning controls. The view is highly vulnerable to impacts and it is unreasonable to expect the view to be maintained given it is across a side boundary and the development potential of the site. The proposal is also compliant with the front setback to Richmond Avenue.

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

  Comment:

  The proposal has demonstrated design solutions through building articulation and landscaping to improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

  Comment:

  No trees are removed to facilitate views from the site.

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

D8 Privacy

See discussion within the assessment of SEPP 65 and the Apartment Design Guidelines.

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 $74,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $7,410,040.

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

Council is satisfied that:

1) The Applicant’s written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 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.

PLANNING CONCLUSION

This proposal, for the demolition of existing dwellings and construction of a residential flat buildings has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the residential flat building is technically 4 stories due to a section of the protruding basement on the north-eastern corner (i.e SEPP 65 development that is 4 or more stories).

The concerns raised in the objections relating to the driveway location, car parking, privacy and overshadowing are each addressed in the report. Each of these issues have been addressed to the satisfaction of Council, as discussed in the report. Council's traffic engineers are satisfied with the quantum of parking and driveway location. The proposal will not result in any unacceptable impacts on the surrounding properties and is a compatible development in the R3 Medium Density zone.

The critical assessment issues relate to the assessment of landscaping on the site, whereby the control requires 50% of the site to have landscape open space. The proposal comprises of 40% landscape open space, however despite this shortfall, Council is satisfied the objectives of the control have been met through a well developed landscape scheme and flexibility in the application of the DCP control is reasonable in the circumstances as the objectives of the control have been met. The breach of the 11m height limit is supported given the flood affection of the site, with the breach being minor and not resulting in any direct amenity impacts upon adjoining properties.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 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 DA2022/1193 for Demolition works and construction of a residential flat building including strata subdivision on land at Lot 1 DP 104820, 26 Avon Road, DEE WHY, Lot 2 DP 104820, 24 Avon Road, DEE WHY, Lot 3 DP 104820, 22 Avon Road, DEE WHY, Lot 4 DP 104820, 20 Avon Road, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance 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**
DA000 Rev C	30/03/23	Walsh Architects
DA020 Rev A	20/06/22	Walsh Architects
DA090 Rev B	1/11/22	Walsh Architects
DA100 Rev B	1/11/22	Walsh Architects
DA101 Rev B	1/11/22	Walsh Architects
DA102 Rev B	1/11/22	Walsh Architects
DA103 Rev B	1/11/22	Walsh Architects
DA104 Rev B	1/11/22	Walsh Architects
DA201 Rev B	1/11/22	Walsh Architects
DA202 Rev B	1/11/22	Walsh Architects
DA203 Rev B	1/11/22	Walsh Architects
DA300 Rev C	30/02/23	Walsh Architects
DA301 Rev C	30/02/23	Walsh Architects
DA910 Rev B	1/11/22	Walsh Architects
Plan of Strata Subdivision Sheets 1 to 5	3/11/22	Warren L. Bee

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D.010 Rev E	2/02/22	Rise Engineers
D.020 Rev E	2/02/22	Rise Engineers

D.030 Rev B	6/10/21	Rise Engineers
D040 Rev B	6/10/21	Rise Engineers
Driveway Plan Rev 01 C.010	23/03/2022	Rise Engineers
Driveway Plan Rev 01 C.011	23/03/2022	Rise Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No.1318563M_03	4/11/22	Building Sustainability Assessments
Geotechnical Analysis and Groundwater Inflow Report, 16381-GR-1-1-Rev A	8/03/23	Alliance
BCA/Access Report, 113958-BCA-r3	5/07/22	BCA Logic
Arboricultural Impact Assessment, Rev A	27/06/22	Hugh Millington
Bushfire Risk Assessment Report, Rev A	20/06/22	Bushfire Consultancy Australia
Flood Risk Assessment Report 21066 Rev C	10/08/22	Rise Engineers
Amended Geotechnical Investigation Report, 14931/1-AA	12/08/22	Geotechnique Australia
Landscape Maintenance Plan, Rev A	January 2022	Plot Design Group

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L501.1 Issue B	09/11/22	Plot Design Group
L502.1 Issue B	09/11/22	Plot Design Group
L503.1 Issue B	09/11/22	Plot Design Group

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	27/06/22	Applicant

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,	**EDMS Reference**	**Dated**

Authority or Service		
Ausgrid	2022/584315	16/09/22
Water NSW, General Terms of Approval, IDAS1145681	2023/184818	20/03/23
Rural Fire Service, General Terms of Approval, DA20220831010321-Original-1	2022/678076	25/10/22

(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 $74,100.40 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 $7,410,040.00.

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.

7. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of $5,000 as security against any damage to Council's stormwater drainage assets. The bond will be held until the satisfactory submission of the Post-Construction Stormwater Assets Dilapidation Report and rectification of any damages to the satisfaction of Council.

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

Reason: Protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**
The applicant is to lodge a Bond of $20,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

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

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

The following soil depths are required to support landscaping as proposed:
i) 300mm for groundcovers or native grasses,
ii) 600mm for shrubs.

Design certification shall be submitted to the Principal Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

10. **Transplanting Methodology Plan**
A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed *Cyanthea australe*, including:
i) preparation of the transplantation site,
ii) preparation of the tree fern to be transplanted,
iii) transplanting methodology and installation works,
iv) post-transplanting care and duration,
v) ongoing maintenance program,
vi) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Principal Certifier for approval prior to issue of a Construction Certificate

Reason: Tree protection.

11. **Stormwater Disposal**

The Applicant is to submit stormwater drainage plans for the new development within this development consent, indicating the all details relevant to the collection and disposal stormwater from the site, buildings, paved areas and where appropriate adjacent catchments in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Rise Consulting Engineers Pty Ltd, drawing number 21066 D.010 Rev E, D.020 Rev E, D.030 Rev B and D.040 Rev B dated 02/02/22 and 06/10/2021 respectively. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The connection into the pit at the corner of Avon Road and Richmond Road is to be in accordance with the S138A Roads Act approval from Council.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The Applicant is to submit a certification from a suitably qualified Geotechnical Engineer that the construction plans and specifications satisfy the recommendations of the Geotechnical Investigation Report by Geotechnique Pty Ltd Job number 14931/1-AA Amended dated 12 August 2022.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

Flood Effects Caused by Development – A2
There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 5.3-6.85m AHD.

Building Components and Structural Soundness – B1
All new development below the Flood Planning Level of 5.8-7.35m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2
All new development must be designed to ensure structural integrity up to the Flood Planning Level of 5.8-7.35m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3
All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.8-7.35m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Floor Levels – C1
New floor levels within the development shall be set at or above the Flood Planning Level of 7.35m AHD.

Car parking – D6
All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level of 5.8-7.35mAHD (6.14m AHD for the basement driveway crest).

Fencing – F1
New fencing (including boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters (unless shown in Stormwater Plans to be a Solid impermeable wall). Open fencing must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level of 5.3-6.85m AHD. Openings should be a minimum of 75mm x 75mm.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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

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

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

Reason: Protection of the receiving environment.

15. **Construction Environment Management Plan**
A Construction Environmental Management Plan (CEMP) must be prepared to describes how activities undertaken during the construction phase of the development will be managed to avoid or mitigate environmental or nuisance impacts in particular the sediment management and dewatering activity.
The CEMP should cover how those environmental management requirements will be implemented. The CEMP must be kept in the site office.

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

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

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising Civil Engineer.

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

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

17. **Detailed Design of Stormwater Treatment Measures - Major**
A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance STORMWATER DRAINAGE CONCEPT PLAN Rev E (prepared by RISE stormwater engineers) and Council's Water Management for Development Policy.

The certificate shall be submitted to the Principal Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

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

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control

measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

19. **Pedestrian sight distance at property boundary**
A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

20. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA / Access Assessment Report by BCA Logic dated 5/7/2022, Ref: 113958-BCA-r3 are to be taken into consideration, including any Performance Engineered Solutions, as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate.

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

21. **Access for People with Disabilities**
Access to and within the building is to be provided for Persons with a Disability. In this regard the Access Provisions as contained in the BCA/Access Report prepared by BCA Logic dated 5/7/2022, Ref: 113958-BCA-r3 are to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority 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.

22. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of civil infrastructure works within the road reserve in Avon Road and Richmond Avenue which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified Civil Engineer. The design must include the following information:

Avon Road

1. 1.5 metre wide concrete footpath along the entire frontage of the site.

2. Connection paths between the pedestrian access paths and the new footpath.

3. Reinstatement of the existing driveway crossings with 150mm high kerb and gutter with turf between the kerb and the new footpath and between the footpath and the boundary.
4. Reconstruction of the kerb and gutter with 600mm AC reinstatement along the entire frontage of the site.

Richmond Avenue

1. 6 metre wide concrete driveway crossing in accordance with Council's standard drawing Normal and the concept plan by Rise Consulting Engineers Pty Ltd, drawing number 21066 C.010 and C.011 REV 01 dated 22/03/2022. The internal driveway is to ensure a minimum crest level of RL 6.14m AHD.

2. Reinstatement of the existing driveway crossing to kerb and gutter, footpath and turf for the portions outside of the new crossing.

3. 1.5 metre wide concrete footpath along the entire frontage of the site.

4. Connection path between the pedestrian access path and the new footpath.
5. Reconstruction of the kerb and gutter with 600mm AC reinstatement along the entire

frontage of the site.

Stormwater Connection

1. Details of the pipeline connection into the existing Council stormwater pit at the corner of Avon Road and Richmond Avenue.

2. Services plan and long section to ensure no conflict with existing services. Note any adjustment of existing services is to be approved by the relevant service authority in writing with all costs borne by the applicant.

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

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

23. **Tanking of Basement Level**
The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the WaterNSW. The bore license must be obtained prior to commencement of dewatering works. All requirements of the WaterNSW are to be complied with and a copy of the approval must be submitted to the Certifier.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

24. **Utilities Services**
Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

(a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
(b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

25. **Structural Adequacy and Excavation Work**
Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

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

Reason: To provide public and private safety.

26. **Shoring of Council's Road Reserve (Temporary road anchors)**
Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

An application to Council for approval under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The form can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/temporary-ground-anchors-road-reserve/4018-temp-ground-anchors-application-jun19.pdf

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

The Owner's approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

27. **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.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

29. **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.

a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) tree protection measures under section 11 AMS and Tree Protection Requirements, and Appendix 1B,
ii) works under section 8 Tree Sensitive Construction Specification for trees 1,2,3,5,13 and 14, section 10.7, and section 12 Hold Points,
iii) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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

c) All tree protection measures specified must:
i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal 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.

d) 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.

30. **Tree Removal Within the Road Reserve**
This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):
i) tree 11 - *Glochidion ferdinandi*, tree 12 - *Schefflera actinophylla*,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

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

Due to heavy traffic congestion throughout the area, truck movements must be limited during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

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

33. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: 17 Richmond Avenue and 18 Avon Road/50 Dee Why Parade Dee Why

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

34. **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

35. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

All street trees within the road verge 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.

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the

matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

36. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the 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.

Reason: Tree and vegetation protection.

37. **Condition of Trees**
During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not

exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

38. **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.

39. **Impacts to Protected Native Wildlife**
Any trees to be removed must be inspected for native wildlife prior to their removal. If native wildlife is found within habitat to be removed, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier.

Reason: To protect native wildlife.

40. **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.

41. **Substitution of Stormwater Treatment Measures**
The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifier for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

42. **Dewatering Management**
Groundwater: A permit from Council is required for any dewatering of groundwater.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW , Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Reason: Protection of the receiving environment and groundwater resources.

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

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

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

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

45. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

46. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

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

47. **Footpath Construction**
The applicant shall a 1.5 metre wide concrete footpath along both frontages of the site. The works shall be in accordance with the following:

(a) All footpath works are to be constructed in accordance with Section 138 Road Act approval.
(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath.

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

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

48. **Notification of Inspections (infrastructure works to be handed over to Council)**
Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

(a) Installation of Silt and Sediment control devices
(b) Prior to backfilling of pipelines
(c) Prior to pouring of stormwater gully pits
(d) Prior to pouring of kerb and gutter, driveway crossing and footpath
(e) Subgrade level / basecourse level / subbase
(f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an Engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

49. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing Normal, the concept drawing by Rise Consulting Engineers Pty Ltd, drawing number 21066 C,010 and C.011 REV 01 dated 22/03/2022 and the Section 138 Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory “Vehicle Crossing Inspection” card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

50. **Kerb and Gutter Construction**
The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council's Standard Drawings and the Section 138 approval. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifier.

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

51. **Stormwater Connection**

The applicant shall connect the pipeline connection from the site into the existing pit at the corner of Avon Road and Richmond Avenue in accordance with the Section 138 Roads Act 1993 application approval. The applicant shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the works. All works shall be undertaken at the applicant’s cost.

Reason: To ensure compliance of drainage works with Council’s approved plans.

52. **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.

53. **Pollution Control**
All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

54. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan referenced in Condition 1 of this consent.

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

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

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

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

56. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing LS502.1 by Plot Design Group dated 09/11/22), and inclusive of the following conditions:
i) all tree planting, within the property boundary, shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying 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 located either within garden bed or within a prepared bed within lawn,
ii) all street tree planting shall be a minimum pre-ordered planting size of 200 litres, and shall meet the requirements of Natspec - Specifying Trees, shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall generally be centralised within the road verge,
iii) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Prior to the issue of an Occupation Certificate, details 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.

57. **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, 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.

58. **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 an Occupation Certificate.

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

59. **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.

60. **Basement Car Parking (D6)**
A registered surveyor is to certify that all access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park have been constructed at or above the relevant Flood Planning Level of 5.8-7.35m AHD (6.14m AHD for the basement driveway crest) as per the section 6.2 of the Flood Risk Assessment Report (Rise Engineers, 10 August 2022).

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

61. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate approved plans . The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

62. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

63. **Stormwater Treatment Measures Operation and Maintenance Plan**
An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
a) Work as executed drawings
b) Intent of the stormwater treatment measures including modelled pollutant removal rates
c) Site detail showing catchment for each device
d) Vegetation species list associated with each type of vegetated stormwater treatment measure
e) Impervious area restrictions to maintain the water balance for the site
f) Funding arrangements for the maintenance of all stormwater treatment measures
g) Identification of maintenance and management responsibilities
h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
a) Activity description, and duration and frequency of visits
Additionally for vegetated devices:
b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing
a) Activity description, and duration and frequency of visits
b) Routine maintenance requirements
c) Work Health and Safety requirements
d) Waste management and disposal
e) Traffic control (if required)
f) Renewal, decommissioning and replacement timelines and activities of all stormwater

treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

64. **Works as Executed Drawings - Stormwater Treatment Measures**
Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

65. **Strata Management Statement**
The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

66. **Disabled Parking Spaces**
Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

67. **Stacked Parking Spaces (residential)**
Stacked parking space pairs are to be assigned to the same residential unit. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To minimize conflicts regarding parking areas.

68. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,

- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

69. **Certification of Structures Civil Works and Work as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 Roads Act 1993 application approval. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Work as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits. Written acceptance is to be provided by Council.

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

Reason: To ensure compliance of works with Council's specification for engineering works.

70. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Work-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant shall be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

71. **Basement Garage Traffic Signal System**
To prevent conflicting vehicle and pedestrian movements on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting

vehicle approaching.

The signal system:
▪ must be clearly visible from ramp entrances,
▪ is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
▪ incorporate line-marking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.
▪ include a manual override to allow safe entry and egress for the movement of waste bins from the bin room to the collection area. This system is to be key operated and only enacted for the movement of the waste bins and not to be used for general pedestrian access to and from the carpark.

Details of the system, including the system operation, components, and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority and Council that the system has been installed and operating as designed, in accordance with the requirements of this condition.

Reason: To ensure no vehicle and pedestrian conflicts upon the basement carpark access driveway.

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

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

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

75. **Waste Management Confirmation**
Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier 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.

76. **Consolidation of Lots**
Prior to the issue of any occupation certification, the four (4) sites are to be consolidated into one (1) lot. Details demonstrating compliance shall be provided to the Principle Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure the orderly development of land.

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided.

78. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

79. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

80. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of an Occupation Certificate. A copy of

the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Principal Certifier, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land.

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

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

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

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

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

82. **Replacement of Canopy Trees**
Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

83. **Maintenance of Stormwater Treatment Measures - Major**
Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer’s specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

84. **Landscaping adjoining vehicular access**
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,1m

Reason: To maintain unobstructed sight distance for motorists.

85. **Transfer of bins between the basement bin room and the street level holding bay**
Bins are to be available for collection from the street level holding bay between 6.00am to 6.00pm on the scheduled day of collection.
Bins are to be transferred from the basement bin room to the street level holding bay no earlier than 4.00 pm on the day prior to the scheduled day of collection.
Bins are to be transferred from the street level holding bay to the basement bin room as soon as possible after collection but no later than the evening of the day of collection.
The traffic signal override system must be used whilst transferring bins between the basement bin room and the street level holding bay.

Reason: To ensure bins are available for collection staff at the appropriate time. To ensure bins do not remain in the street level holding bay for an excessive period of time. To ensure safety of persons engaged in the transfer bins between the basement bin room and the street level holding bay.



WALSH ARCHITECTS

Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
E: scott@walsharchitects.com.au
P: 0466 049 880
Nominated Architect : Scott Walsh ACT 2624 | NSW 10366

REV NO.	DESCRIPTION	REV DATE
A	ISSUE FOR DA APPROVAL	20.06.22
B	UPDATED FOR DA	1.11.22

PROPOSED SITE PLAN
SHEET NUMBER DA090
REVISION B
SCALE @ A1 1 : 200
APARTMENT BUILDING - 21 APARTMENTS



1 EASTERN ELEVATION - AVON ROAD
SCALE 1 : 100 @ A1



2 NORTHERN ELEVATION - RICHMOND AVENUE
SCALE 1 : 100 @ A1

WALSH ARCHITECTS
Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609
E: scott@walsharchitects.com.au
P: 0466 049 880
Nominated Architect : Scott Walsh
ACT 2624 | NSW 10366

REV NO.	DESCRIPTION	REV DATE
A	ISSUE FOR DA APPROVAL	20.06.22
B	UPDATED FOR DA	1.11.22
C	UPDATED FOR DA	30.03.23

ELEVATIONS

SHEET NUMBER	**DA300**
REVISION	**C**
SCALE @ A1	**1 : 100**

APARTMENT BUILDING - 21 APARTMENTS



1 WESTERN ELEVATION
SCALE 1 : 100 @ A1



2 SOUTHERN ELEVATION
SCALE 1 : 100 @ A1

WALSH ARCHITECTS
Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609
E: scott@walsharchitects.com.au
P: 0466 049 880
Nominated Architect : Scott Walsh
ACT 2624 | NSW 10366

REV NO.	DESCRIPTION	REV DATE
A	ISSUE FOR DA APPROVAL	20.06.22
B	UPDATED FOR DA	1.11.22
C	UPDATED FOR DA	30.03.23

ELEVATIONS

SHEET NUMBER	DA301
REVISION	C
SCALE @ A1	1 : 100

APARTMENT BUILDING - 21 APARTMENTS

CLAUSE 4.6 - REVISED

Height of Building

20-26 Avon Road, Dee Why

Suite 1, 9 Narabang Way Belrose NSW 2085
Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

RESPONSIBLE FOR THIS REPORT:

Michael Haynes — Director - BBF Town Planners
Master Urban and Regional Planning Sydney University

July 2022

NOTE: This document is Copyright. Apart from any fair dealings for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced in whole or in part, without the written permission of Boston Blyth Fleming Pty Ltd, 1/9 Narabang Way Belrose, NSW, 2085.

TABLE OF CONTENTS

TABLE OF CONTENTS 3

1 Clause 4.6 exception for Height of Building 4
1.1 Overview 4

2 Site Analysis 8
2.1 Site description 8
2.2 Location description 8

3 Assessment 16
3.1 Objectives of clause 4.6 16
3.2 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances 16
3.3 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard 17
3.3.1 Ground 1 – Compliance with the flood planning level contributes to the height of the proposed building 17
3.3.2 Ground 2 – Compatibility with the height and scale of surrounding and nearby development is achieved 18
3.3.3 Ground 3 – the proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act 18
3.3.4 Ground 4 - Appropriate amenity outcomes are achieved 19
3.4 4.6 (4)(a)(ii) - the public interest 21
3.4.1 Objectives of the Development Standard 21
3.4.2 Objectives of the zone 32
3.5 Secretary's considerations 33
3.6 Conclusion 33

1 Clause 4.6 exception for Height of Building

1.1 Overview

Clause 4.6 of the Warringah LEP 2011 is applicable to the proposal and provides a mechanism to allow an exception to a development standard. The proposal contravenes LEP clause 4.3 height of buildings which prescribes an 11m standard and an exception is sought.

The exception relates to northern and eastern sections of the perimeter roof parapet and centrally located mechanical plant at the roof level of the proposed building.

The exception varies but is measured at a maximum of 11.800m at the topmost level of the portion of the building containing mechanical plant, comprising 21 air conditioning condenser units. This results in an exception to the standard of 0.8m and 7.2%.

The height exceptions relate to the requirement to elevate the building to meet the flood planning level. No additional gross floor area arises from the exceedance.

A modest extent of the perimeter roof parapet and centrally located mechanical plant exceeds the height standard in the manner shown within figures 1 to 3.



Figure 1 – long section XX of the proposed building showing compliance with the 11m height plane



Figure 2 – long section XX and the extent to which it exceeds the 11m height plane

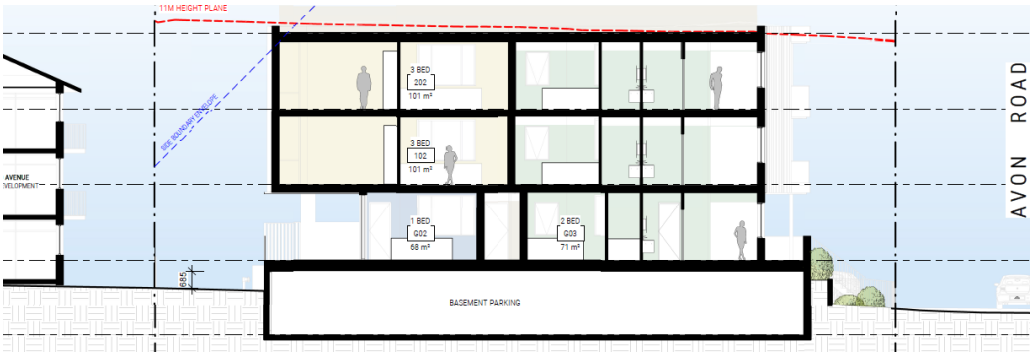


Figure 3 – cross section 1/203 of the proposed building and the extent to which it exceeds the 11m height plane

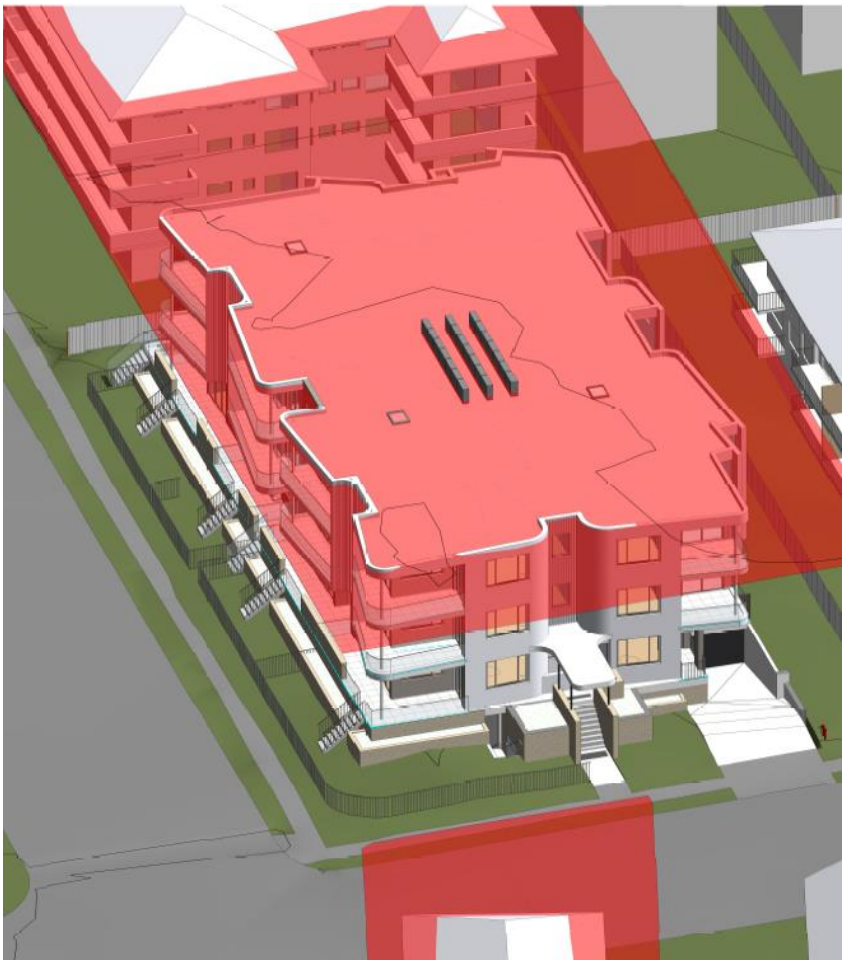


Figure 4 – height blanket diagram indicating the extent of the proposal that exceeded the 11m height plane

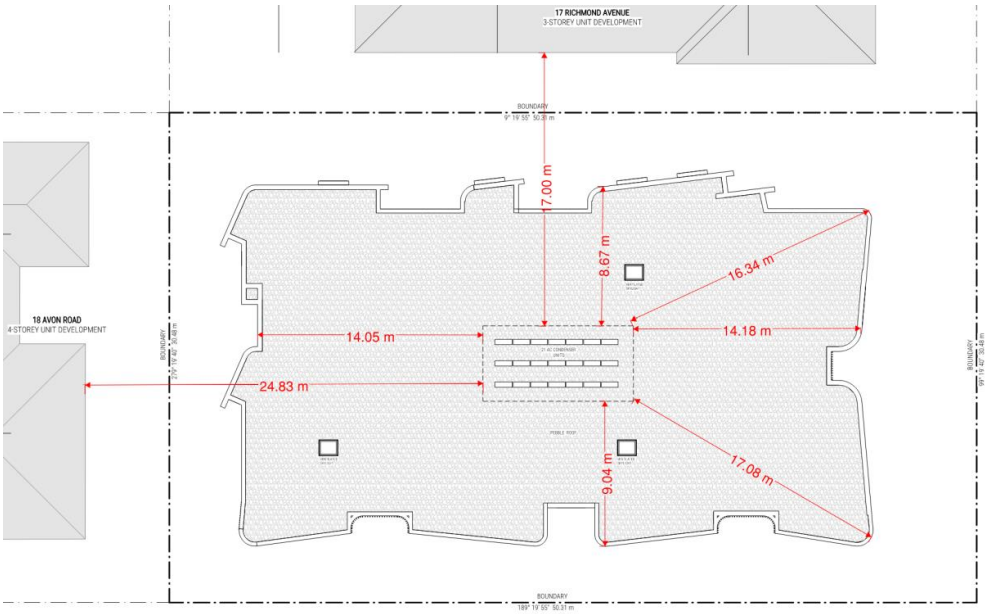


Figure 5 – roof plan showing the central location of the air conditioning mechanical plant



Figure 6 – profile of the adjoining development to the south at 18 Avon Road and the extent of its building height exception



PHOTO OF 26 RICHMOND AVE

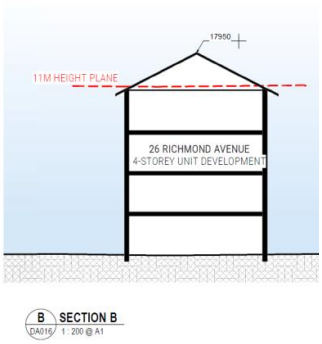


Figure 7 – profile of the development opposite to the north at 26 Richmond Avenue and the extent of its building height exception

2 Site Analysis

2.1 Site description

The site is located at 20-26 Avon Road, Dee Why. The development site comprises 4 Torrens Title allotments known as 20, 22, 24 and 26 Avon Road, Dee Why and legally described as Lots 1, 2, 3, and 4 in Deposited Plan 104820.

Each lot has rectangular dimensions of 12.575m in width and 30.48m in length and an area of 383.2m^2.

The land slopes moderately from south west to north east. displaying a level difference of approximately 1.3m (approximately RL 6.8 at the south west to RL 5.5 at the north east).

Currently there are 5 driveway crossings serving the 4 dwelling houses, 4 to Avon Road and 1 to Richmond Avenue.

The four existing dwelling houses orientate east to west to Avon Road. Number 26 Avon Road is the corner allotment which contains a two-storey dwelling house with minimal set-back to Richmond Avenue.

The site forms a consolidated corner allotment addressing the 'T' intersection of Avon Road and Richmond Avenue.

The total area of the development site is 1,533 m^2 with an eastern frontage of 50.3m to Avon Road. The northern boundary runs along Richmond Avenue and measures 30.48m. The site has no significant or notable natural features to retain.

The site has two residential boundary interfaces. Adjacent to the south is 50 Dee Why Pde (18 Avon Road). Adjacent to the west is 17 Richmond Avenue.

The property is affected by flooding and there is a flood planning level applicable to the site.

Driveways adjoin the southern and western boundary within the adjacent properties which are both residential flat buildings. The site adjoins two roadways providing increased separation to the adjoining residential properties to the east and north and the site's existing landscape and built form quality is relatively poor and dilapidated.

2.2 Location description

Like the subject site, the surrounding land is zoned R3 under the WLEP 2011 within a long-established medium density residential setting.

The site is located within an area that is mostly characterised by older style three to four storey, walk-up, residential flat buildings, intermixed with some contemporary flat buildings (for example at 19-23 Richmond Avenue) on the northern periphery of the area generally known as the Dee Why town centre. The distribution of flat building development within the local context is depicted on architectural plan DA015.

The site is also directly south of a large, vegetated reserve surrounding Dee Why Lagoon known on council's maps as the Dee Why Lagoon reserve, sections of which (natural areas close to the waterway) are identified as 'wildlife refuge no. 373'.

The immediate visual catchment of the site is characterised by a mix of 3 and 4 storey residential flat buildings. The predominant character is brick, 'walk-up' flats, with pitched tile roofs, above ground level carparking and surface driveways. This character is intermixed

with some contemporary three to four storey residential flat buildings and some residual brick and tile dwelling houses.

The street front setbacks of most nearby properties are characterised by a mix of established hardstand car parking areas, low height front fences and turfed / garden areas. An avenue of established red gum street-trees makes a positive contribution to the streetscape amenity and is a notable characteristic throughout sections of the local area of Dee Why.

The figures on the following pages depict the character of the property and its existing development.

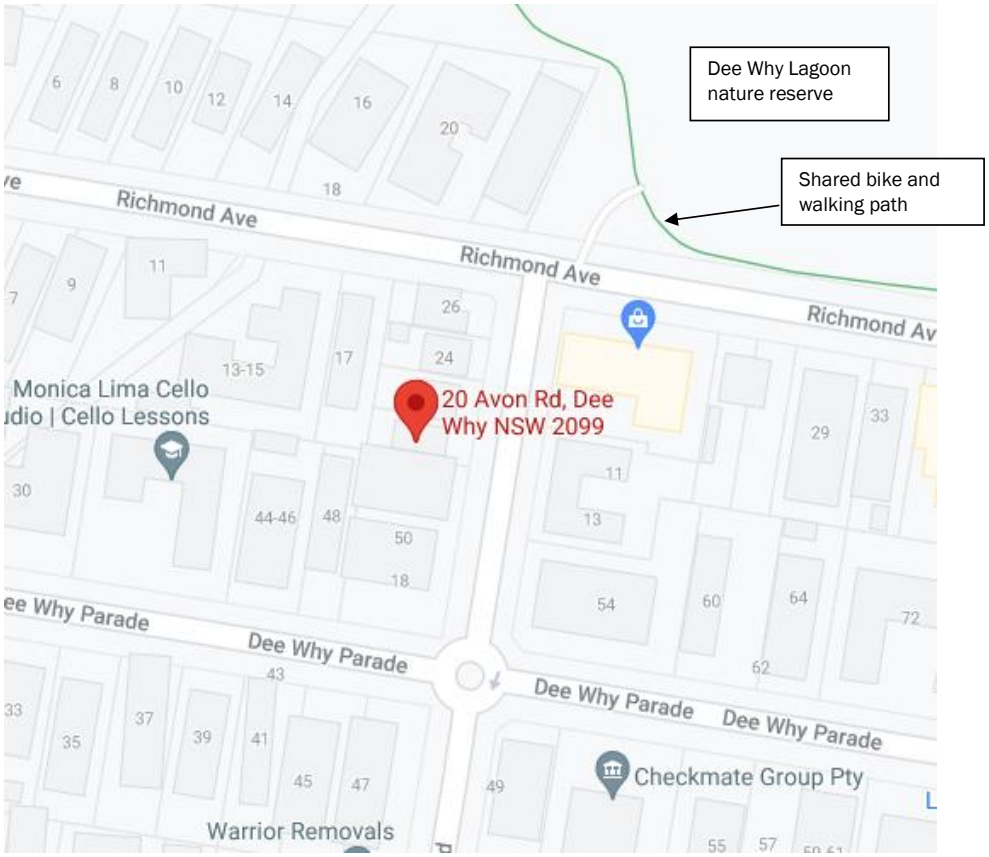


Figure 8 – Location of the site within its wider context (courtesy Google Maps)

SITE ANALYSIS



Figure 9 – Alignment, orientation, and spatial layout of the subject site (courtesy Northern Beaches Council)

SITE ANALYSIS



Figure 10 - the subject site



Figure 11 – southern aadjoining property 50 Dee Why Pde (18 Avon Road). 4 Storey residential flat building, ground level car parking and no landscaped setting

SITE ANALYSIS



Figure 12 - Intersection Avon Road and Dee Why Pde. 50 Dee Why Pde (18 Avon Road) is to the north west of the intersection



Figure 13 - Avon Road street trees are a positive streetscape characteristic



Figure 14 - 11-13 Avon Road is a 3 storey brick residential flat building with pitched tile roof and ground level carparking opposite the site to the east



Figure 15 - 26 Richmond Avenue is a 4 storey brick residential flat building with tile roof. It is located opposite, to the north of the site and directly adjoins the public reserve.

SITE ANALYSIS



Figure 16 - adjoining western boundary interface with 17 Richmond Avenue



Figure 17 - Richmond Avenue streetscape looking east towards the subject site

SITE ANALYSIS



Figure 18 - 19-23 Richmond Avenue opposite the site to the east is a contemporary residential flat building with recessed building elements that breach the building height plane.

3 Assessment

3.1 Objectives of clause 4.6

The objectives of clause 4.6 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.*

Within the spirit of these objectives, the matters in support of the proposed exception are demonstrated by the characteristics of the proposal and circumstances of the case as set out below.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

3.2 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827,* and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827,* Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

> 1st *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
>
> *The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.*

The objectives of the height standard are addressed within section 3.4.1 below. In summary, the proposed height exception does not threaten the proposal's ability:

- To achieve a height and scale that is compatible with the surrounding and nearby residential flat buildings development.
- To achieve a presentation that is not visually intrusive, that does not result in inappropriate view disruption, and satisfies privacy and solar access controls.

- To achieve a development that is compatible with the scenic quality of the local area which includes the two adjacent streets and the nearby public land zoned RE1 public recreation ('part of Warringah's coastal and bush environments').
- To achieve a residential flat building compatible with its setting that will enhance the built form and landscape quality on the site to the benefit the adjoining streetscapes and nearby nature reserve.
- To achieve a development that is compatible with the scenic quality of the public spaces that are near the site including the adjoining roadways and nearby public land to the north east zoned RE1 Public Recreation.

3.3 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

The environmental planning grounds in support of the exception are listed as follows and described below.

- Ground 1 - compliance with the flood planning level contributes to the proposed height exception.
- Ground 2 – compatibility with the height and scale of surrounding and nearby development is achieved.
- Ground 3 – the proposal is of good design and satisfies the objectives of the Environmental Planning and Assessment Act.
- Ground 4 – appropriate amenity outcomes are achieved.

3.3.1 Ground 1 – Compliance with the flood planning level contributes to the height of the proposed building

The topography of the site is irregular with a fall of approximately 1.3 metres (RL 6.79 to RL 5.24) generally in a north easterly direction, diagonally from the south western corner of the site.

Compliance with the Flood Planning Level contributes upto approximately 1.8m to the height of the proposed building.

The height exception, ranging upto 0.8m, is attributable to the development's compliance with the flood planning level. It results in the building being raised upto 1.8m to achieve a ground floor level that meets to flood planning level which is RL 7.350.

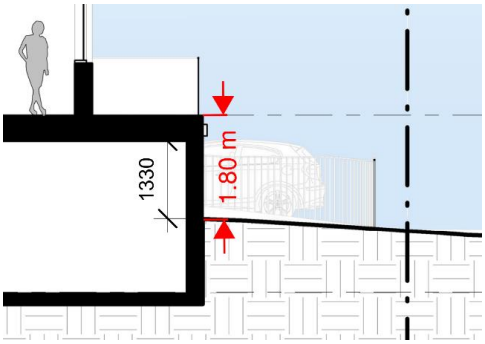


Figure 19 – excerpt of section 3 from sheet DA203 of the architectural plans showing the extent to which the building's ground floor level must be raised to comply with the flood planning level

3.3.2 Ground 2 – Compatibility with the height and scale of surrounding and nearby development is achieved

It is noted that objective (a) of the standard is '*to ensure that buildings are compatible with the height and scale of surrounding and nearby development'*.

The objective seeks for the design to respond to its context, which in this case, comprises a mix of 3 and 4 storey residential flat buildings (figure 20), rather than just adhere to the numerical standard which may not (and typically, does not) relate to the specific heights of buildings in a location.

Other 4 storey residential flat buildings exceed the building height standard within the local area, for example 18 Avon Road, 26 Richmond Avenue, and 19-23 Richmond Avenue. Modest additional height is proposed that is below the height or compatible with the height of nearby residential flat buildings.

The proposed perimeter rooftop parapet exception provides a height that is compatible with the established mix of 3-to-4 storey residential flat building development within the site's visual setting and within the broader local area that comprises the R3 zone within Dee Why, being generally the area that extends from Pittwater Road in the west to Dee Why Beach in the east (figure 21).

Given the 3-to-4 storey flat building context, the proposed building height will have an appropriate scale to a casual observer and the proposal will be *'compatible* with *surrounding and nearby development'*.

3.3.3 Ground 3 – the proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

> *(c) to promote the orderly and economic use and development of land; and*

(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.

In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that is desired by the prevailing planning provisions because it will facilitate consolidation of four individual allotments, renewal of the land, additional housing in a highly desirable location, to meet contemporary living needs, and renewal of the housing to meet building sustainability (BASIX) and contemporary flood level compliance.

In response to (g), the proposal results in a residential development that will promote good design and amenity of the built environment and increased landscaped deep soil area and planting at the site's street edges.

An improved streetscape outcome is achieved for the land through, street setbacks that are compatible with the adjoining developments at 18 Avon Road and 17 Richmond Avenue, the removal of 4 existing driveways on Avon Road, deep soil areas and planting around the proposed building.

A perspective image is provided within the architectural plan set illustrating the proposed streetscape presentation of the site as viewed from the eastern side of Avon Road. The image communicates the height, form, and context of the proposal as it relates to buildings to the south and north of the site within a streetscape setting. The proposed design presents a high-quality building that will improve the land's streetscape presentation in a manner that is anticipated by the prevailing planning objectives for the renewal of the land.

The proposal provides a new and enhanced landscape regime. It includes 586m^2 square metres of landscaped area around the perimeter of the site (plan sheet DA401); it involves the planting of landscaped areas with species selected from Council's Native Species Guide (Curl Curl Ward which the site is within); it will remove five existing vehicle crossings and driveways and consolidate into one vehicle crossing/driveway, overall resulting in an improvement to the site's visual presentation to the adjoining streets and the nature reserve.

The proposed building height and scale relates to the site conditions including the flood planning level, mix of 3-to-4 storey flat buildings within the local area, relatively flat land, and the relatively tall established trees within the local area (streets and public open space reserve). The proposed height exceptions are minor and will be visually imperceivable from surrounding land.

The proposed building form is appropriately articulated, noting the various indentations incorporated angular balconies and low-profile roof form.

3.3.4 Ground 4 - Appropriate amenity outcomes are achieved

The features of the amended building design have resulted in a building that satisfies amenity outcomes to the neighbouring properties in terms of privacy, and overshadowing.

- The proposed exceedance results in appropriate shading impact.
- The proposed exceedance does not result in inappropriate view sharing impacts.
- The proposed exceedance does not result in an inappropriate visual presentation to surrounding land. The height exceedance relates to the protruding basement level to meet the flood planning level, the proposed boundary setbacks satisfy DCP control B5

'side boundary setbacks', significant deep soil landscaped area is contained within the setbacks and provision is made for the planting of these areas.

- The proposed exceedance does not result in inappropriate privacy impacts. The design incorporates a combination of the following measures: high sill windows, windows angled away from the adjoining buildings towards the adjacent streets, screens to the western side balconies, appropriate room function and increased separation at the sensitive site interfaces (to the south and west.



Figure 20 - 3-to-4 storey residential flat building development within the site's local setting

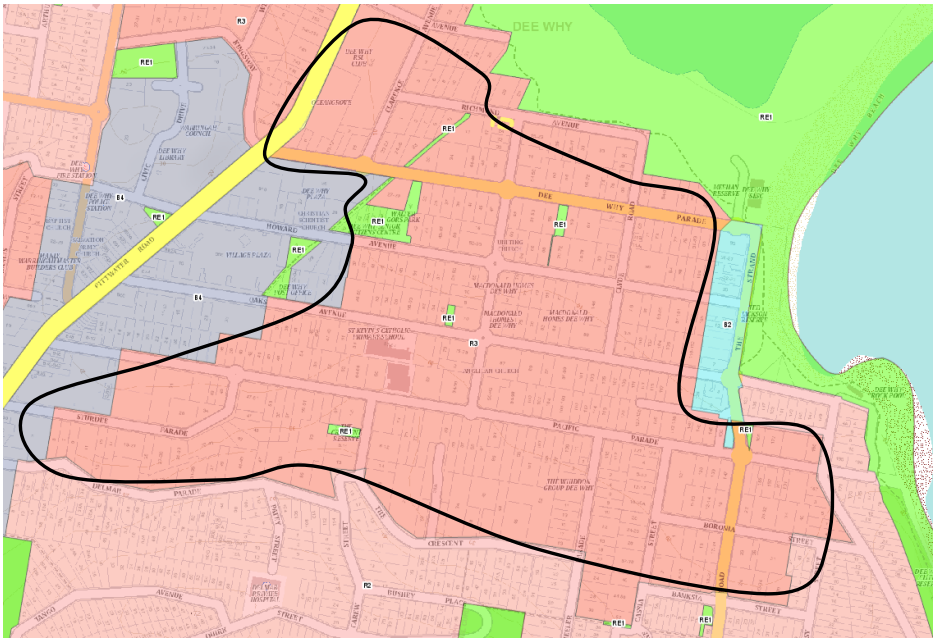


Figure 21 – the R3 medium density zone between Pittwater Rd and Dee Why Beach is predominantly characterised by a mix of 3-to-4 storey flat buildings

3.4 4.6 (4)(a)(ii) - the public interest

3.4.1 Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings development standard which are repeated and responded to below:

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

In response:

The objective seeks for the design to respond to its context, which in this case, comprises a mix of 3 and 4 storey residential flat buildings (figure 19), rather than just adhere to the numerical standard which typically, does not relate to the specific heights of buildings in a location.

The proposed development's height and scale is similar to, and compatible with, the 3-to-4 storey residential flat buildings within the site's visual catchment and to nearby development noting:

- its proposed roof ridge height is RL16.650 with the top of the roof parapet at approximately 16.890 (being approx. 0.270m above the upper roof level).

ASSESSMENT

- The adjoining development to the south at 18 Avon (50 Dee Why Parade) has a pitched tile roof with a ridge height RL19.07
- The development opposite to the north at 26 Richmond Avenue is 4 storeys with a pitched tile roof.
- The approved plans for the established development at 19-23 Richmond Ave show a level of RL 16.8 to the ceiling of the upper level, allowing for a 300mm roof would result in a roof top RL of 17.1 (figure 22).



Figure 22 - Northern elevation from the approved plans for the development at 19-23 Richmond Avenue

The proposal achieves a form and scale on the site that is harmonious with that of the residential flat buildings within the local area. The design of the proposal is successful in ensuring that the height of the building is compatible noting:

- The position of the proposed height exceptions below the maximum level of nearby residential flat buildings.
- Generous boundary setbacks that respond to the pattern of adjoining buildings at 18 Avon Rd and 17 Richmond Ave.
- The proposal's landscaped setting, which is enhanced by concealed basement car parking.
- Appropriate articulation and presentation of the building form.



Figure 23 – perspective image from the eastern side of Avon Road

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

Relevant to *visual impact*, Objective (b) of the building height development standard states:

'(b) to minimise ... visual impact'

In response:

The site and surrounding land has a small, immediate visual catchment as a result of being located on relatively flat land within a built-up and long established medium density area characterised predominantly by residential flat buildings.

Views of the site to the south western section of the Dee Why Lagoon reserve to the proposed development will be from adjacent roads including Richmond Ave, Avon Rd and Dee Why Lagoon reserve.

Views from this location to the subject site include a foreground characterised by many significant sized and established trees within the reserve, large street trees, the streetscape, and surrounding residential development.

The building height exceptions relate to the northern and eastern sections of the perimeter roof parapet and the centrally located mechanical plant at the roof level of the proposed building. The potential visual impact of these elements is considered below.

Mechanical plant

The mechanical plant is centrally located within the roof level and visually imperceivable from adjoining streets and land (figures 7 and 24 to 27).

The 21 condenser units will occupy an area of approximately a modest 23m^2 which is a minor proportion (2.8%) of the roof area which is approx. 810m^2. The condenser units are significantly setback from the perimeter of the roof (figure 7).

The mechanical plant will be imperceivable from adjoining streets and land and not have a detrimental visual impact. To consider the potential visibility of these elements, figures 24 to 27 below show a computer-generated image model of the outlook from the upper level of the adjacent residential flat buildings. In each instance the mechanical plan cannot be seen. In this sense the proposed 21 air conditioning condenser units minimise their visual impact to surrounding land.

It is noted that the 21 air conditioning condenser units proposed are significantly smaller and less prominent than that of a typical roof top structure like cooling towers or lift tower over runs. In this sense the proposed 21 air conditioning condenser units minimise their visual impact to surrounding land.

Contemporary flat roof

The proposal incorporates a contemporary flat roof. The proposed parapet to the edge of the roof will conceal the flat metal roof structure when its viewed from adjoining land. It will provide a 'finishing-edge' to the roof level that is compatible with the facade design which involves the expression of horizontal lines / bands that are associated with the balconies within the first three levels.

The proposed roof parapet is compatible with the alignment of the height of nearby 3-to-4 storey residential flat buildings as previously identified.

The proposed roof parapet displays street setbacks that are compatible with the street setbacks of the adjoing residential flat buildings at 17 Richmond Avenue and 18 Avon Road.

A perspective image is provided within the architectural plan set illustrating the proposed streetscape presentation of the site as viewed from the eastern side of Avon Rd. The image communicates the height, form, and context of the proposal as it relates to buildings to the south and north of the site within a streetscape setting. The proposed design presents a high-quality building that will improve the land's streetscape presentation in a manner that is anticipated by the prevailing planning objectives for the renewal of the land.

Within this visual context the proposal presents an appropriately articulated design and building form with a visual impact that will be compatible with both 3-to-4 storey residential flat buildings that are characteristic of the Dee Why R3 medium density area.



Figure 24 – from rear upper level unit at 17 Richmond Avenue

ASSESSMENT



Figure 25 – from front upper level unit at 17 Richmond Avenue



Figure 26 – from unit at upper level west side of 18 Avon Road

ASSESSMENT



Figure 27 – from unit at upper level east side of 18 Avon Road

Relevant to view sharing, Objective (b) of the building height development standard states:

'(b) to minimise ... disruption of views'

In response:

- Noting the small scale and minor extent the exceptions minimise the disruption of views.
- Water views are not available from the adjacent properties to the west and south.
- The proposed building height exceptions (the northern and eastern sections of the perimeter roof parapet and the centrally located mechanical plant at the roof level will not result in adverse view impacts and therefore minimises disruption of views.
- Furthermore:
  - The 6.5m primary front setback to Richmond Avenue will optimise the north eastern aspect to the reserve from 17 Richmond Avenue and adjacent properties to the west.
  - The 5.4m (approx.) secondary front setback to Avon Road will optimise the north eastern aspect to the reserve from 18 Avon Road.

Relevant to privacy, Objective (b) of the building height development standard states:

'(b) to minimise ... loss of privacy'

In response:

ASSESSMENT

The building height exceptions relate to the northern and eastern sections of the perimeter roof parapet and the centrally located mechanical plant at the roof level of the proposed building. They are not related to the habitable areas of the building. These non-habitable building elements will not cause any adverse privacy impacts.

Moreover, the proposal is appropriately designed to address privacy considerations.

The design incorporates a combination of the following measures: high sill windows, windows angled away from the adjoining buildings towards the adjacent streets, screens to the western side balconies, appropriate room function and increased separation at the sensitive site interfaces (to the south and west. The following features of the design and its relationship with adjoining land are noted:

- There will be no unreasonable privacy impacts to the east and north of the site with appropriate building separation facilitated by boundary setbacks and the adjacent roadways.
- Bedrooms and bathrooms are located along the southern portion of the proposed building, addressing privacy to the southern adjacent residential flat building at 18 Avon Road.
- All west facing windows provide 1.8m sill heights. South facing windows either relate to bathrooms and incorporate obscure (frosted) glazing or a bedroom where there is a 15.6m building separation.
- Appropriate building setbacks are provided to the southern and western side boundaries.
- In terms of the western adjacent property at 17 Richmond Avenue:
  - operable screens are incorporated with the western side balconies (figure 13)
  - increased setbacks of 6m are provided to the western side balconies (figure 14)
  - balconies have generally been offset in terms of their alignment and floor levels to balconies on the neighbouring property to the west.

Noting these characteristics, the proposal will not inappropriately impact on the visual privacy of the neighbouring properties and satisfies the planning controls (ADG).



Figure 28 – operable screens are incorporated to the western side balconies

ASSESSMENT

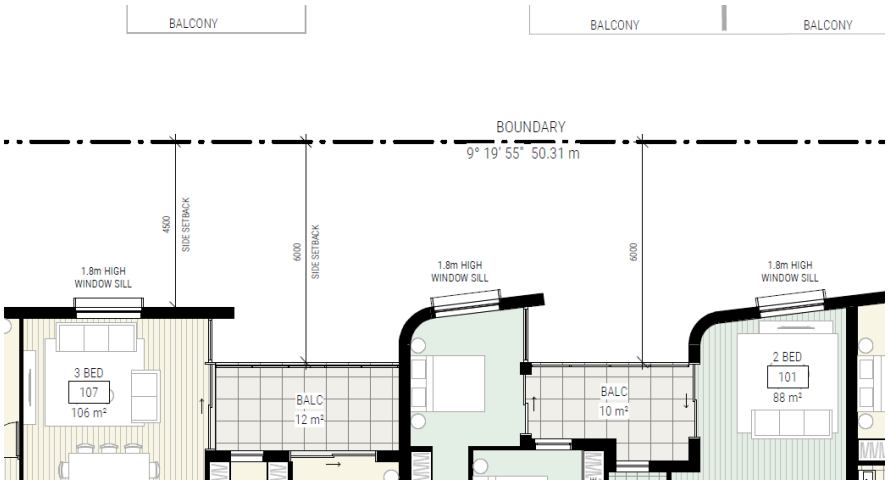


Figure 29 – Increased setbacks of 6m are provided to the western side balconies

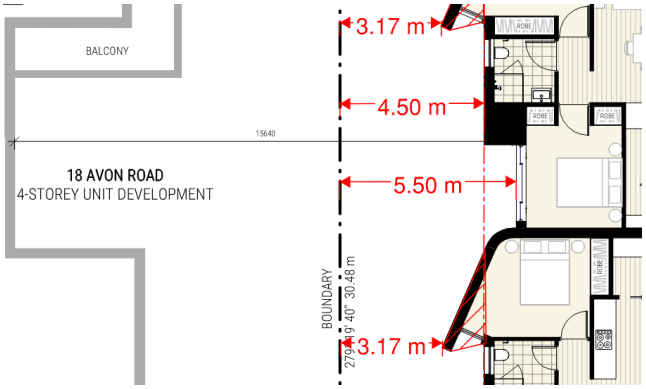


Figure 30 – proposed building separation with the residential flat buloiding to the south at 18 Avon Road

Relevant to overshadowing, Objective (b) states:

'(b) to minimise ... loss of solar access'

In response:

The building height exceptions relate to the northern and eastern sections of the perimeter roof parapet and the centrally located mechanical plant at the roof level of the proposed building. The potential solar impact of these elements is considered below.

The rooftop mechanical plant will occupy a minor portion of approximately 2.8% of the roof area and are significantly setback from the perimeter of the roof (figure 7).

The proposed roof parapet exception is located along the northern and eastern edges of the building and not at the property's interface with adjoining residential flat buildings. The location of the proposed roof parapet exceptions does not result in the increased shading of the adjoining residential flat buildings.

Furthermore, the proposed building complies with the solar access requirements under the relevant provisions of the Apartment Design Guide satisfying solar access provisions.

In these ways the proposed exceptions 'minimise' the loss of solar access'.

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

The proposal is assessed as being consistent with objective (c) noting that:

- As previously identified, the site is to the south of a large, vegetated reserve known as the Dee Why Lagoon reserve (source: Council's online mapping). The land is zoned RE1 Public Recreation.
- Between the subject site and the lagoon waterway there is a treed and managed parkland containing recreational facilities like a shared walking and cycling path. The closest section to the site is shown within figure 28 below.
- the mechanical plant being centrally located within the roof level and being visually imperceivable from adjoining streets and land (figures 7 and 24 to 27).
- The proposed eastern and northern sections of the roof parapet will conceal the flat metal roof structure when it is viewed from adjoining streets and nearby parkland. It will provide a concealing 'finishing-edge' to the roof level that is compatible with the facade design which involves the expression of horizontal lines / bands that are associated with the balconies within the first three levels.
- The proposed roof parapet is compatible with the alignment and the height of nearby 3-to-4 storey residential flat buildings. The proposed roof parapet displays street setbacks that are compatible with the street setbacks of the adjoining residential flat buildings at 17 Richmond Avenue and 18 Avon Road.
- Furthermore, the potential for any adverse scenic quality impacts on the location are 'minimised' through:
  - presenting to both adjoining streets and nearby public spaces with a characteristic building form that is within a landscaped setting.
  - providing 586m^2 square metres of landscaped area around the perimeter of the site which is more generous than its immediate neighbours to the south and west, that will be densely planted.
  - removal of 4 existing vehicle crossings and driveways (4 within Avon Road) and consolidate into 1 vehicle crossing/driveway enabling more street tree planting.

  Along with the proposal's generous street setbacks, these measures will minimise any adverse impact on the scenic quality of the local environment.

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

The proposal is assessed as being consistent with objective (d) noting that:

- The proposed perimeter rooftop parapet will be a visually appropriate element of the building when it is viewed from the surrounding streets and the nature reserve (noting that one of the viewing points from within the reserve is approx. 47m from the site

(figure 27). It does not threaten or compromise the proposal's ability to achieve a development within a landscape setting.

- The building height exceptions relate to the northern and eastern sections of the perimeter roof parapet and the centrally located mechanical plant at the roof level of the proposed building. The potential **visual** impact of these elements is considered below.
- The mechanical plant is centrally located within the roof level and visually imperceivable from adjoining streets and land (figure 7). The 21 condenser units will occupy a small area and be significantly setback from the perimeter of the roof (figure 7).
- The mechanical plant will be imperceivable from adjoining streets, land and parkland to the north east and not have a detrimental visual impact.
- The proposal incorporates a contemporary flat roof. The proposed parapet to the edge of the roof will conceal the flat metal roof structure when it is viewed from adjoining land. It will provide a concealing 'finishing-edge' to the roof level that is compatible with the facade design which involves the expression of horizontal lines / bands that are associated with the balconies within the first three levels.
- The proposed roof parapet is compatible with the alignment of the height of nearby 3-to-4 storey residential flat buildings as previously identified. The proposed roof parapet displays street setbacks that are compatible with the street setbacks of the adjoining residential flat buildings at 17 Richmond Avenue and 18 Avon Road.

Furthermore:

- Compliance is achieved with DCP controls B5 side boundary setbacks, B7 front boundary setbacks, and appropriate landscaping is proposed to the perimeter of the site.
- The design is appropriate for a corner allotment, by presenting to both adjacent streets.
- The proposed building envelope is appropriate when considering the pattern of development within the local context.
- The proposal provides a new and enhanced landscape regime. It includes 586m^2 square metres of landscaped area around the perimeter of the site (plan sheet DA401); it involves the planting of landscaped areas with species selected from Council's Native Species Guide (Curl Curl Ward which the site is within); it will remove five existing vehicle crossings and driveways and consolidate into one vehicle crossing/driveway, overall resulting in an improvement to the site's visual presentation to the adjoining streets and the nature reserve.
- The proposal retains and supports the growth of more street trees because of driveway consolidation and the generous street front setbacks.

ASSESSMENT



Figure 31 - The dashed line marks the shared pathway within the nature reserve. It is approx. 47m from the splayed corner of the site. The proposed perimeter rooftop parapet is setback approx.16m from this corner (a distance of 63m) and will be a visually recessive element of the building when viewed from the reserve (source: SIX Maps)



Figure 32 - the south western section of Dee Why Lagoon reserve that is opposite subject site (Google Streetview October 2018)

3.4.2 Objectives of the zone

The proposed development will be in the public interest because it is consistent with the objectives for development within the R3 medium density residential zone under the Warringah Local Environmental Plan 2011 in which the development is proposed to be carried out. The zone objectives are repeated and responded to below.

These are stated as follows:

> *To provide for the housing needs of the community within a medium density residential environment*
>
> *To provide a variety of housing types within a medium density residential environment.*
>
> *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
>
> *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
>
> *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

The proposed development is consistent with the first zone objective as the additional building height will enable the provision of 2 additional dwellings and thereby provide for the housing needs of the community in a highly suitable location.

The proposed development is consistent with the second zone objective as it will provide a mix of different sized apartments (1 studio, 3 x 1 bed, 8 x 2 bed, 9 x 3 bed).

The third zone objective is not relevant to the proposal.

The proposed development is consistent with the fourth zone objective as:

- it presents to both adjoining streets and nearby public spaces with a characteristic building height and form that is within a landscaped setting.
- it provides 586m^2 square metres of landscaped area around the perimeter of the site which is more generous than its immediate neighbours to the south and west.
- the perimeter landscaped areas are proposed to be densely planted.
- will remove 4 existing vehicle crossings and driveways (4 within Avon Rd) and consolidate into 1 vehicle crossing/driveway enabling more street tree planting.

  Along with the proposal's compatible street setbacks, these measures will provide an improved landscape setting to the site; and an improved presentation to the streetscape, the public reserve to the northeast of the site and adjoining private land.

The proposed development is consistent with the fifth zone objective as it will positively contribute to the visual quality (both built form and landscape quality) of the corner of Avon Road and Richmond Avenue as well as the longer distance views (50m or more) of the site from the Dee Why Lagoon reserve because:

- the building design presents to both adjoining streets and nearby public spaces with a characteristic building height and form that is within a landscaped setting

- provides 586m^2 square metres of landscaped area around the perimeter of the site which is more generous than its immediate neighbours to the south and west, that will be densely planted.
- it will remove 4 existing vehicle crossings and driveways (4 within Avon Road) and consolidate into 1 vehicle crossing/driveway enabling more street tree planting.
- provides generous street setbacks that will align with the adjacent residential flat buildings at 17 Richmond Avenue and 18 Avon Road.

3.5 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

3.6 Conclusion

The variation proposed to the *Height of buildings* development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- the proposed building height exception will result in a contextually responsive development is consistent with the zone objectives;
- the proposal is consistent with the objectives of the height of buildings standard and will result in an appropriate amenity outcome to neighbouring land;
- there are sufficient environmental planning grounds to justify contravening the development standard;
- compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case;
- given the proposal's ability to comply with the zone objectives that approval would not be antipathetic to the public interest; and
- contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

Furthermore:

- this written request has addressed the matters required to be demonstrated by 4.6 (3) & 4.6(a)(i);
- this written request is well founded and adequately addressed the matters required in accordance with & 4.6(a)(i);

- the exception is appropriate considering the range of relevant environmental planning considerations and the circumstances of the case.

The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6 and should be granted development consent.

Walsh Architects

**Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609**

www.walsharchitects.com.au/

SEPP 65 Design Verification Statement

Prepared to accompany the Development Application submitted to Northern Beaches Council.

Project Address:
20-26 Avon Road Dee Why

Prepared on behalf of:
ACN 647 465 236 Pty Ltd

Prepared by:
Walsh Architects Pty Limited trading as Walsh Architects

Verification of Qualifications

Scott Walsh is a registered Architect in New South Wales (10366)

Statement of Design

Walsh Architects has been responsible for the design of the project since its inception while having worked in conjunction with a wider consultant team. The project has been designed to contribute positively to the local area and respond respectfully to the local planning and design controls including the best practice design principles of SEPP 65.

We verify that our proposed residential development complies with the design quality principles set out in the Apartment Design Guide within SEPP 65. Details of the design compliance are included in the attached SEPP 65 Design Statement.



Scott Walsh
Director

NSW Registered Architect No. 10366

Walsh Architects

**Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609**

www.walsharchitects.com.au/

Apartment Design Guide Compliance Statement

Prepared to accompany the Development Application submitted to Northern Beaches Council.

Project Address:
20-26 Avon Road Dee Why

Design Criteria		Control Compliance	Notes
3D	Communal Open Space	NO	The project is situated on a small lot in a dense urban area, therefore the provision of an on-site communal open space was difficult to achieve. The site is located within 25m of a large open public park which links to the beach, lagoon, children's enclosed play area, bicycle paths and nature walks, therefore, it is deemed not necessary to provide onsite.
3E	Deep Soil Zones	YES	Overall landscape area accounts for 37% of the overall subject site. This is inclusive of planters over basement. The previous DA on this site (DA 2017/0198) was approved on 38.8%. Deep soil zones with a 3m minimum dimension make up 266m^2 and is located at the north and east of the site along Richmond and Avon Road. This as a percentage accounts for 17% of the total site area which complies with the 7% minimum.
3F	Visual Privacy	NO	The proposed development is largely setback to the primary boundary at 6.5m and with a setback of 4.2m from the secondary front boundary which are compliant. The western setback has all habitable rooms at 6m and anytime it reduced to 3-4.5m then there are only high level windows to maintain visual privacy or the windows are faced towards the street frontage so that they do not face the neighbour. The balcony's that are 6m from the boundary also have operable privacy screens to them to enhance the visual privacy. Whilst visual privacy under 3F is not maintained on the south, the southern units have no private open spaces or living rooms facing the southern neighbour. This ensures that visual privacy to the south is maintained. To the North and East, no visual privacy concerns are raised.
3J	Car Parking	YES	The proposal provides basement parking which complies with the Guide to Traffic Generating Development parking generation rates for residential parking. Bicycle parking has also been allowed for under the WDCP controls. The development application is accompanied by a traffic report by TTPA which demonstrates compliance.

Walsh Architects

Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609

www.walsharchitects.com.au/

4A	Solar and Daylight Access	YES	The proposed development achieves 71.4% of solar access, with 2hours of solar access to 70% of dwellings between 9-3pm required. This represents full compliance with the design criteria. The development application is supported by a Solar Analysis Report to demonstrate compliance. No apartments receive less that 15mins of sun. All living areas on Ground to Level 2 face north, east, or west with no living spaces facing the south.
4B	Natural Ventilation	YES	67% of apartments are naturally cross ventilated. Maximum depth of a cross-through apartment is 18m.
4C	Ceiling Heights	YES	Ceiling heights of 2.7m are provided for habitable rooms and 2.4m for non-habitable rooms.
4D-1	Apartment Size	YES	Apartments are greater than minimum area and each habitable room has a window to an external wall of not less than 10% of the floor area.
4D-2	Apartment Depth	YES	All open plan layouts have a habitable not exceeding 8m.
4D-3	Apartment Layout	YES	Bedrooms and living rooms meet or exceed minimum dimensional requirements with all bedrooms having a minimum dimension of 3m excluding wardrobe space.
4E	Private Open Space and Balconies	YES	All balconies and primary open space meet or exceed minimum dimensions.
4F	Common Circulation and Spaces	YES	All floors have 7 apartments per level with a single lift core and fire stair accessible to all units.
4G	Storage	YES	Storage size volumes for each apartment type exceed the minimum criteria. 50% or greater of the required storage volume is located with each apartment.

Walsh Architects
Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609
www.walsharchitects.com.au/

SEPP DESIGN STATEMENT

20-26 AVON ROAD DEE WHY





Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Introduction

Site Description

The subject site comprises Lots 1 – 4 in DP 1246740.

All four sites are rectangular in shape with the proposed site having a dual frontage to both Avon Road and Richmond Avenue. The north and south boundary length is 30.480m along Richmond Avenue; and 50.3m at the East and West boundary along Avon Road.

The site has a fall of approximately 1.5m from its south-western corner to the north-eastern corner. The four sites currently accommodate two 2-storey residences and two 1-storey residences. All lots have detached garages located towards their rear.

The immediate context is characterized main of residential flat buildings of 3-4 storeys as well as single and two storey residential dwellings.

The subject site is located within the Northern Beaches Council Local Government Area (LGA) and has a total surveyed site area of 1533m². The subject site is zoned R3 (Medium Density Residential) under Warringah Local Environment Plan 2011. A maximum building height of 11m applies to the site.

Design Proposal

The Development Proposal includes:

- The demolition of four existing brick residences and ancillary structures.
- The construction of a 3 storey residential flat building comprising of the following mix, inclusive of 5 LHA Silver level units.

Apartment Mix	No.	Parking	Visitors Parking
Studio	1	0.6	0.2
1 Bed	3	1.8	0.6
2 Bed	9	8.1	1.8
3 Bed	8	1.2	1.6
Total	**21**	**21.7**	**4.2**

There will also be 4 additional on street car parking spaces due to the reinstatement of the verge crossings on Avon Road.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

- The subject site is located at the corner of Richmond Avenue and Avon Road.
- The subject site is well serviced by public transport; bus routes can be easily accessed along Howard Avenue which is within approximately 200m walk. Dee Why Village Plaza is located approximately 200m from the subject site with a Medical Centre located within 500m of the subject site.
- The development proposes landscaped front setback on low rendered planter boxes to the street boundaries which will contribute to Avon Road and Richmond Avenue Street frontage. The generous amount of landscape area to the south and west of the subject site will serve as a buffer zone between the development and its neighbours. There is also additional trees that will be planted on Avon Road where the verge will be reinstated which will give the
- A significant number of native vegetation will be incorporated into the landscape design within the development to merge the proposed building and vegetation subtly into the surrounding scenery.
- A balanced palette of materials and a well-proportioned building form will ensure a sophisticated integration of the proposed building into the existing context. We believe it contributes greatly to the quality and identity of the area.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 2: Built Form + Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

- The proposed development adopts built form and scale in response to its immediate context by mimicking a similar 3-story unit typology which is evident throughout the immediate surrounding context.
- The forms respond carefully to the need for privacy as well as outlook by ensuring the majority of balconies and open space face towards both Richmond Avenue and Avon Road.
- The scale and bulk of the built form is designed to effectively moderate the size of the building. When perceived from the street and surrounding locations, deep balconies and dynamic recesses give articulation to the façade. On the top floor, units are setback by large amounts so they that the building has a discrete upper appearance when viewed from to the street and surrounds.
- Pedestrian entry is accessed directly off Richmond Avenue for access into the front entrance of complex. Secondary access points to ground floor units where they have a street frontage are provided. Most of these access points are off a discrete entry which is on the side of a fire escape. The main entry incorporates a portico which creates a clear sense of entry and address with planting and fencing creates privacy and separation for neighbouring with the streetscape.
- The form and overall architectural design contribute to the immediate context and reflects the northern beaches climate through its choice of materiality and colour palette.
- The building contains a one level underground basement with car parking accessible off Richmond Road. This secure car park is accessible via swipe card from the driveway.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

- The proposed development is consistent with the controls that relate to the site as identified in the WLEP and WDCP. The proposed density has been comfortably accommodated on the site in a manner that does not compromise the amenity of adjacent occupants particularly in respect of solar access, cross ventilation, privacy considerations and relative scale to future development within the general near vicinity. The building has an indent on the East and West with a material difference to break down the scale to appear are two buildings. The Northern side has a 2m wide break in the building to again break down the scale whilst also proving natural light into the lobbies.

- There is a total of 21 apartments in the proposed development, comprising of 1 studio, 3 x 1-bedroom units, 9 x 2-bedroom units and 8 x 3-bedroom units. The apartments range in sizes with a number generously sized.

- The proposal reflects current market demands in relation to typologies and living patterns currently established in the local area. This is evident through the incorporation of more 2-bedroom and 3-bedroom unit types.

- The density of the development is considered sustainable within the existing and future availability of infrastructure, public transport, community and culturally significant facilities and environmental qualities on the site.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 4: Sustainability

Good design combines positive environmental, social, and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and livability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

- The proposed development is consistent with the principles of SEPP 65 particularly through the orientation and design of the units, solar access and cross- ventilation consideration, as well as the choice of construction materials to reduce heating and cooling costs. A comprehensive analysis of the building has been undertaken as part of the BASIX Assessment.
- Climate and location suitable plant selection as well as the capture of stormwater to provide for irrigation to landscaping.
- Natural light and cross flow ventilation have been maximized where possible including skylights to units to take advantage of solar access or daylighting.
- Bathrooms will all be mechanically exhausted to the façade or roof.
- Energy efficient appliances and fixtures provided as per BASIX.
- Low maintenance, long lifecycle and reusable materials proposed in structural material and external cladding.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long-term management.

- The proposed development makes provision for planting in common open spaces and areas where the provision of landscaping is practical. All apartments house generous balconies positioned to flow from primary living spaces as well as some bedrooms to take advantage of orientation and outlook.
- The proposal incorporates selective, low maintenance planting of various heights and density with an overall desire to blend into the characteristic landscaping of the area.
- The proposal seeks to create a landscape buffer around the perimeter of the building to respect the surrounding context and integrate the site levels into the overall streetscape. Fences and walls have been included as vertical landscape elements designed to define boundaries between spaces or to rationalise a change in level.
- Minimal maintenance outdoor planting on ground floor has been carefully considered to represent and reflect the landscape of the climate and area.
- Careful consideration has been taken by the landscape architect to ensure appropriate planting is selected to ensure an environmentally sustainable landscape design whilst maximize the potential for amenity and resident privacy. Please refer to Landscape drawings prepared by "Plot Design Group" issued as part of this DA submission.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility

- Functional apartment sizes and general configuration consistent with current market demands. Lift services from basement to Level 2.
- Appropriate connections and subtle separation of spaces within the apartments to capture northern light
- The building layout allows ventilation to all bedrooms and habitable spaces, with 15/21 units (71.4%) achieving solar access and 14/21 units (66.6%) achieving natural cross-ventilation.
- Adequate day lighting and solar access for all rooms within the apartments.
- Carefully considered privacy and acoustic measures to any balconies and bedroom windows
- Five LHA Silver level units proposed promoting all age groups and ageing of future occupants consistent with ADG requirements.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.

- Clearly identifiable main building entrances and generous open entry area allowing for adequate surveillance. The entrance will be clearly visible from the street with a glass security door installed. An intercom with integrated camera will be installed to identify visitors to the building complex.
- Residential apartments have been designed in such a way as to have most of the main living areas and balconies facing the street/ public areas for casual surveillance.
- Secure basement car parking provided with keyed and remote-control access. Clear circulation paths in the basement allow safe pedestrian movement, especially when waiting at the lift and access to individual parking space and storage area.
- A clear definition between public and private spaces with clear, safe access points and adequate lighting of entrances and pedestrian areas including a separate accessway for pedestrian and for vehicles with a clear visibility.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents

- The elevations are varied in expression and designed primarily to respond to significant views, setbacks, and the site. The building has a classic aesthetic that contributes to the overall characteristics found within residential properties within the Northern Beaches.
- The size, configuration and mix of the apartments associated with the development provides an appropriate response to the market demand of future occupants
- The development has provided generous width of lobbies for ease of accessibility and analysis has been conducted to ensure the development complies with the accessibility requirements. General access for people with disabilities has also been addressed in the design of the building overall.
- The site is located within proximity to necessary facilities including public transport, supermarkets, educational and leisure facilities, and medical services.

Walsh Architects
Building 3.3/1 Dairy Rd, Fyshwick ACT 2609
www.walsharchitects.com.au/

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours, and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements, and repetitions of the streetscape.

- Massing and façade details are designed to respond to both desired character of the area and the existing context.
- Considering the materiality of the existing neighbourhood, the proposal features brickwork similar to the surrounding residential dwellings. The light tone material palette contributes to the coastal and fresh aesthetic of the Northern Beaches.
- The elevations are varied in expression and designed primarily to respond to sun, views, setbacks, and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.
- Colour and material selections have been made to create transitions between inside and outside and allowing the development to add value to its surrounding neighbourhood.
- All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design, and structure contributing positively to the desired future character of the vicinity.

Walsh Architects

Building 3.3/1 Dairy Rd,
Fyshwick ACT 2609

www.walsharchitects.com.au/

Design + Sustainability Advisory Panel Meeting Report – Date 29 September 2022

Item 1 - DA2022 1193 - 20 Avon Road DEE WHY

PANEL COMMENT AND RECOMMENDATIONS

General

The Panel recognises that this project has a long history and acknowledges the work done by the applicant to address the concerns and issues raised by the Panel previously and by Council. This includes the reduction in height of one storey and changes to setbacks.

The Panel has also been informed that the proposal was then subject to a Class 1 Appeal through the NSW Land and Environment Court *(ACN 647 564 236 v Northern Beaches Council [2022] NSWLEC 1245).*

It is the Panel's understanding that the principal basis for refusal by the Land and Environment Court was insufficient planning justification for the breaching of the height limit.

The judgement noted the concerns of Council including "*excessive height and scale, landscaped area, public interest, and landscape design and character"*

However, the Panel is still concerned about non-compliances, in particular, the shortfall in open space with 38.8% being proposed that is well below the 50% required by the Warringah DCP 2011 (D1 Landscaped Open Space and Bushland Setting).

Development controls work as a 'system' to achieve a good result. The 'landscaped area' control is not solely about 'landscape'; embedded in it are concerns for site coverage, privacy and building footprint and other matters as follows (emphasis added).

> *Objectives*
>
> • *To enable planting to maintain and enhance the streetscape.*
>
> • *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*
>
> • *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low-lying shrubs, medium high shrubs and canopy trees of a size and density*
>
> *to mitigate the height, bulk and scale of the building.*
>
> • ***To enhance privacy between buildings.***
>
> • ***To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.***
>
> • ***To provide space for service functions, including clothes drying.***
>
> • *To facilitate water management, including on-site detention and infiltration of stormwater.*

The modified proposal meets some of these objectives, but fails to achieve adequate privacy from the adjoining residential building to the west, does not provide much in the way of outdoor spaces for occupants on the ground/lowest level, and does not provide for any outdoor drying space.

Of these, the issue of privacy and adequate private outdoor space are most significant.

Although the proposal has 6m setbacks for habitable rooms **and balconies** from the side boundary as recommended by the ADG (3F-1), the adjoining building to the west has balconies approximately 3m from the boundary and the glass line approximately 4.5m from the boundary meaning that the separation distance is approximately 9m not the minimum 12m required and there is no opportunity for screen planting on the adjoining property.

This means the onus for achieving adequate privacy, separation distances and screen planting is on the proponent.

This is the reason the Panel clearly stated in previous advice that the 50% landscape area should be provided with the aim of increasing the separation distances and improving the amenity of the future and existing residents.

The proposal does not provide any communal open space and fails to compensate for this by providing more generous private open space in the form of balconies which are at the absolute minimum and overshadowed in some cases. The Panel notes that the reliance on privacy screens would reduce solar penetration and constrict outlook, further reducing the amenity of the balconies, that in the absence of communal space would be expected to provide better than average amenity.

ADG Objective 3D-1:

Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room (not provided in proposal)*
- *provide larger balconies or increased private open space for apartments (balconies are minimum dimensions and courtyards are small)*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space*

There is some merit in arguing that proximity to beach provides amenity, but it is the Panel's view that this is not a sufficient reason to not provide more generous balconies or open space.

In summary, it remains the Panel's view that the 50% landscape area is important to achieve the range of objectives in the DCP and as set out in the ADG.

The more detailed comments that follow are provided as general comment and advice and are of lesser importance, but may be considering in any re-design.

Recommendations

1. Provide 50% open space

Strategic context, urban context: surrounding area character

Refer to previous panel comments

Scale, built form and articulation

Whilst the provision of high-level windows on the western elevation effectively addresses the issue of privacy from the bedrooms, the amenity of the living spaces in these units is compromised by offering only oblique views out to the north and south. It is therefore critical that the balconies to these units feel generous and offer a level of privacy. It is not yet clear how this is to be resolved and detailed.

The Panel supports the changes in materiality and the decision to use face brick.

Recommendations.

2. Resolve the privacy issues of the west facing apartments
3. Resolve the light to lobbies
4. Resolve and refine placement of bathrooms to maintain -where possible-natural light and air but not to the detriment of living and balcony amenity

Access, vehicular movement and car parking

No comment

Landscape

The Panel is concerned about the shortfall in landscape which is compounded by the lack of any communal open space.

Recommendations

5. Increase the size and amenity of balconies and courts

Amenity

The Panel supports the strategy of providing natural light and air to bathrooms. But some of the locations do not appear to be optimal (e.g. the bathrooms to the apartments in the middle of the western side). It would be better if they were relocated into the centre of the plan (e.g. so that they do not open onto balconies that are themselves adjacent to living space). Where there is an opportunity to do so, it would be preferable to relocate bathrooms away from high-value wall frontages and into “secondary” recesses. Perhaps there is an opportunity to revisit this element of the design when resolving how light is to be provided to the lobbies (ADG 4F).

Attention is drawn to the non-compliant entry lobbies. Refer to the ADG 4-F (Common Circulation and Spaces) which requires daylight to lobbies. By creating a slot in the building (e.g. towards the south) to get light into the lobbies, there will be areas of wall that better lend themselves to blind windows for bathrooms, laundries and kitchens.

The absence of communal open space needs to be addressed in a comprehensive way. Where no communal open space is to be provided, balconies should be designed to compensate for this absence. The expectation (as directed in the ADG 3D-1) is that balconies will be bigger and functionally useful. Balconies should therefore be able to accommodate a decent sized outdoor dining table and chairs with space to circulate around plus an area for a BBQ and space for other outdoor recreational use.

Attention is also drawn to Objective 4E-1 of the ADG which states that apartments at ground level must have a private open space that has minimum area of 15m2 and a minimum depth of 3m.

The Panel is concerned that Units 101 and G01 on the west will not achieve the requisite 2 hours of sun. Increasing western setbacks to a full 6m should rectify this. More detail is called for to demonstrate ADG compliance e.g. 1m2 of solar into living areas and to demonstrate the modelling of cross-ventilation given the areas of openings.

The skylights should be detailed. They need to be operable. For units that rely on skylights for solar compliance, the size needs to be quantified to provide good amenity and solar modelling provided to show where the light falls in the living spaces.

Recommendations

6. The absence of communal open space needs a comprehensive solution in line with ADG
7. Consideration should be given to an open fire stair – perhaps top lit- to encourage active movement and to provide a visual connection between the stair and lobbies. It is the Panel’s understanding that this is permissible within the NCC, and that the stair does not need to be fire-isolated for a building of this class and height. (See Clause NCC D1.3)
8. More consideration needs to be given to improving privacy on balconies
9. Consideration should be given to opening up the roofs of the balconies on the top-most floor to improve solar access
10. Skylights recommended for all living spaces in dwellings with an east and western aspect

Sustainability

The Panel reiterates its previous advice:

Few sustainability measures in excess of minimum compliance have been included. The large amount of bike parking is commendable, however further initiatives could also be employed.

The 7-star NatHERS performance is a good result, but seems doubtful with clear float and no floor insulation on the suspended floors. It is recommended that this is confirmed with the NatHERS assessor.

As noted previously, the study spaces appear to be included for ADG compliance only and is resulting in poor amenity of the space. It's a small area with a large amount of exposed glass which will be thermally uncomfortable for a large portion of the year and will result in unnecessary heat loss through the cold bridge which is created.

Recommendations

11. Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas
12. The Panel recommends inclusion and maximisation of rooftop PV

PANEL CONCLUSION

The Panel does not support the proposal in its current form. The proposal is a significant over-development of the site and is not of sufficient merit to support a breach of the site controls and the requirement for 50% open space in particular.

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	**MOD2022/0664 - 398 SYDNEY ROAD, BALGOWLAH - MODIFICATION OF DEVELOPMENT CONSENT REV2021/0012 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT.**
AUTHORISING MANAGER	**Jordan Davies**
TRIM FILE REF	**2023/219977**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Design & Sustainability Advisory Panel Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2022/0664 for Modification of Development Consent REV2021/0012 granted for Demolition works and Construction of a Shop Top Housing Development on land at Lot 100 DP 1260628,398 Sydney Road, BALGOWLAH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0664

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 100 DP 1260628, 398 Sydney Road BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent REV2021/0012 granted for Demolition works and Construction of a Shop Top Housing Development
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:	398 Balgowlah Pty Limited
Applicant:	398 Balgowlah Pty Limited

Application Lodged:	06/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	12/12/2022 to 17/01/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for modification to a shop top housing development previously approved by a Review of Determination at the Northern Beaches Local Planning Panel on 18 August 2021.

The application is referred to the *Northern Beaches Local Planning Panel* (NBLPP) due to the proposal adding an additional residential unit and increasing floor space by way of modification to a non-compliant ratio when the parent consent complied.

Concerns raised in the objections predominantly relate to overshadowing and the building setbacks changing. The reconfigured FSR and balcony changes do not create any unreasonable impact on

overshadowing or change the building setbacks / overall bulk / height by comparison to the approved scheme. Changes are generally minor and rationalise selected elements within the building, including disabled persons parking, accessible units, unit configuration, balcony shape and waste bin areas.

Critical assessment issues included review of the building under the *Apartment Design Guide* and the modified plans have also been reviewed by Council's *Design & Sustainably Advisory Panel*. During the assessment period the applicant was able to incorporate some of DSAP changes but other recommended change were not adopted due to the proposal being in an advanced construction certificate design stage.

Due to the application being a "modification of consent" clause 4.6 does not strictly apply. The variation is minor and equates to a variation of request for the non-compliance with FSR standard arises from a minor increase in floorspace. The existing building has a compliant floorspace ratio of 1.99:1 (1,624sqm) with the proposed modifications creating a variation above 2:1 FSR (1,626sqm) which is 0.18% or 3.0sqm above compliance with the *Manly Local Environmental Plan*. The additional floorspace does not create perceptible increase in bulk or scale, or change the height or outer setbacks / profile of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks approval to modify REV2021/0012 which was approved by the Northern Beaches Local Planning Panel on 18 August 2021 for the Review of Determination of Application DA2020/0634 for demolition works and construction of a shop top housing development.

BACKGROUND TO THIS APPLICATION

At that meeting the Panel adopted the recommendation and conditions of the assessment report with the addition of the following condition (Condition 36) which reads:

Hours Of Operation
For the occupancies identified as 'Retail/Business 2' and 'Retail/Business 3' as appears on development application plan DA102 P9 Ground Floor Plan, the hours of operation shall be limited to 7am and 7pm Monday to Saturday and no operation on Sundays or a Public Holiday. Any extension to operating hours will require a separate development application to be submitted to Council.

Reason: to protect the amenity of neighbouring properties.

The subject application does not propose to amend this condition.

PROPOSED MODIFICATIONS

The application seeks to make the following amendments:

Basement Level 2 (RL 37.40 and RL 38.60)

- Inclusion of a parking space for the disabled.
- Minor changes to internal accessways.

Basement Level 1 (RL 40.80 and RL 41.60)

- Exclusion of a parking space for the disabled.
- Minor changes to bin room.
- Minor changes to internal accessways.

Ground Floor Level (RL 44.80)

- No change proposed.

Level 1 (RL 48.40)

- Reconfiguration of internal courtyard.
- Designate Unit 1.04 as an adaptable apartment.

Level 2 (RL 51.50)

- Designate Unit 2.04 as an adaptable apartment.
- Replacement of 1 x 3 bedroom apartment with 1 x 1 bedroom apartment and 1 x 2 bedroom apartment (no change to floor area).
- Removal of planter box on the northern balcony corner to former Unit 2.01 (now Unit 2.05).
- Revision of balcony curves at the southern elevation.

Level 3 (RL 54.60)

- Designate Unit 3.03 as an adaptable apartment.
- Revision of balcony curves at the southern elevation.

Roof (RL 57.70 and 58.20)

- No change proposed.

NUMERICAL SUMMARY OF PROPOSED CHANGES

Feature	Approved	Proposed	Difference
Bedrooms			
1	1	2	+1
2	8	9	+1
3	3	2	-1
Total Bedrooms	**12**	**13**	**+1**
Car Parking			
Residential	18	20	+2
Residential Visitors	2	2	No change
Commercial	11	10	-1
Loading	1	1	No change
Total Car Parking	**31**	**32**	**+1**

GFA **FSR**	1,624m² 1.99:1	1,629m² 2.0:1	**+5m²** **+0.01:1**
Building Height	15.9m	15.9m	No change

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Development Control Plan - 3.4.2 Privacy and Security

SITE DESCRIPTION

Property Description:	Lot 100 DP 1260628 , 398 Sydney Road BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of two (2) allotments located on the northern side of Sydney Road. The site is regular in shape with a frontage of 19.34m along Sydney Road and a depth of 42.66m. The site has a surveyed area of 813m². The site is located within the B2 Local Centre zone and until recently accommodated two x two storey buildings. The site is currently under construction subject to REV2021/0012. The site slopes from south-west to north-east and includes a crossfall of 3.4m. The site includes a 4m, 7m and 8m tree to the rear of the existing buildings. **Detailed Description of Adjoining/Surrounding Development**

	Adjoining and surrounding development is characterised by a mix of residential and commercial development. Directly to the north of the site is a right of carriageway that provides pedestrian access to Totem Lane. Further to the north, fronting Woodland Street is land zoned R1 General Residential. This land is developed with two storey attached dwellings to the west and a car parking/service area to the east. To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafes, with residential apartments located on the floors above. To the east and to the south east (approximately 60 metres south-east) on the southern side of Sydney Road is land zoned B2 Local Centre which forms part of the 'Balgowlah Town Centre'. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height. To the south of the site, opposite Sydney Road, is land zoned R1 General Residential which is predominantly characterised by single dwelling houses in landscaped settings. To the west of the site is a five storey shop top housing development comprising three levels of basement car parking, ground floor retail premises and 17 apartments. This development is currently under construction and nearing completion.

Map:



SITE HISTORY

Review of Determination No. REV2021/0012 - Review of Determination of Application DA2020/0634 for demolition works and construction of a shop top housing development. Approved by the NBLPP on 18 August 2021 as recommended with the addition of Condition 36 (Hours of Operation).

Development Application No.DA2020/0634 - Demolition works and construction of a Shop Top Housing Development comprising 5 storeys with basement carparking and ground floor shops / commercial space was refused by the *Northern Beaches Local Planning Panel* on 9 December 2020 for the following single reason:

"*The Panel considers the building to be of good design and has merit. But the building is not on a designated "important corner site" as set out in clause 3.1.3.1(b) and Schedule 2 - Map B - Balgowlah Local Centre of the Manly DCP. Therefore the Panel considers the proposed height exceedance of 5 metres to be excessive.*"

Development Application No.DA2018/1743 - This application was approved by the Northern Beaches Local Planning Panel on 14 June 2019. Approval was granted for construction of a shop top housing development, which is very similar to the one proposed under the current application. The major difference being that the current application has added another storey on top. The previous application was originally proposed with another storey, but the upper level was removed during the assessment process, at the request of Council, due to non-compliance with the height of buildings control (proposed at up to 18.5m) and floor space ratio. The amended plans were approved with a height of 15.6m.

Development Application No.DA132/2015 - Alterations and additions to an existing building including changes to to the existing ground floor commercial level, addition of new shop top housing at rear with ground floor commercial, two (2) storeys above comprising of four (4) residential units, tree removal, stairs and landscaping. This DA has not been commenced.

Development Application No.DA219/2013 - Partial demolition of existing building, construction of an attached three (3) storey building to the rear for the purposes of a Boarding House including ten (10) rooms, common room, balconies, courtyards and common outdoor area. This DA was not commenced.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for REV2021/0012, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under REV2021/0012 for the following reasons as noted by the applicant: • The proposed use does not change. • The approved general building form, footprint, setbacks, car parking and drainage circumstances are not significantly altered. Whilst the previously approved residential density is increased by 1 Apartment, such increase is generally achieved through the reconfiguration of the previously approved floor space. • Notwithstanding the minor 5m² increase in GFA/FSR appropriate spatial separation is maintained to adjoining development noting that the additional floor space is located within the alignment of the previously approved north facing balcony with the resultant façade alignment consistent with that approved on Level 1 below. In this regard, the minor increase in GFA/FSR

Section 4.55 (2) - Other Modifications	Comments
	does not compromise the streetscape or residential amenity outcomes afforded to surrounding development through approval of the original application.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application REV2021/0012 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 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 Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application as a modification however the proposal has been reviewed by Councils design review & sustainability panel. At the DSAP meeting the architect addressed the panel in its review of the modification. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact

Section 4.15 'Matters for Consideration'	Comments
locality	in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development. The modifications are of a minor nature (but of Type "(2)" as it is adding an additional Unit and increasing the FSR above the existing compliant scheme. The proposal does not disrupt neighbouring properties views, privacy or amenity. The proposal is consistent with the reasons for granting of approval to the parent consent. No LPP conditions are affected by the modifications works that principally relate to rationalise selected disable parking spaces, waste bins, BCA related matters, landscaping design, selected shaping of balcony and spitting one apartment into 2 smaller Units.
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 12/12/2022 to 17/01/2023 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 1 submission/s from:

Name:	Address:
Mr Kenneth Edward Burke	206 / 404 Sydney Road BALGOWLAH NSW 2093

The following issues were raised in the submission:

- Overshadowing.

The above issue is addressed as follows:

- **Overshadowing**

  In summary, the submission states:

  "[*I am] in the adjoining building* [to the west] *and the space between the two buildings in the application was I assume made square to allow sunlight to not be restricted to my apartment. By making this modification it is reducing that open area and therefore increasing the shadow over my apartment".*

  Comment
  A review of the plans approved under REV2021/0012 reveals that the building footprint will not change with respect to its relationship to the neighbouring property to the west. The open area in question is not reducing as result of this application and the levels of impact to the neighbouring apartment (the source of the submission) remain as per the approved development. Appropriate privacy screening is maintained.

  This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	Design + Sustainability Advisory Panel Meeting Report – Date 23 March 2023 MOD2022 0664 - 398 Sydney Road BALGOWLAH **PANEL COMMENT AND RECOMMENDATIONS** General *The proposal is for minor changes to an approved DA. Modification of Development Consent REV2021/0012 granted for Demolition works and Construction of a Shop Top Housing Development.* *The application includes plans prepared by Design Workshop Australia (DWA) which are accompanied by a Design Statement from the architect. However, the original designer of the approved development which was PBD Architects. Section 104(2) of the Environmental Planning and Assessment Regulation 2021 requires the application to be accompanied by a design statement prepared by the original designer. If the application to modify the development does not include the design statement by the original designer, then the application is required to be referred to the to a design review panel (DRP) for advice.* Section 102(4) states: "*If a statement by the qualified designer does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel, if any, for advice*". The application is therefore referred to the Design + Sustainability Advisory Panel for review. DSAP undertakes a similar purpose to a DRP as per section 102(2).

Internal Referral Body	Comments
	Although not required for approval of the modification the Panel has taken the opportunity to make some recommendations for further improvements. The Panel understands that construction contracts have been awarded and that construction is underway, so these recommendations can on;y be treated as suggestions and in no way required. **Strategic context, urban context: surrounding area character** *The site is zoned B2 Local Centre under the provisions of Manly Local Environmental Plan 2013 and the proposed development is permissible with consent.* **Scale, built form and articulation** *No changes, no comment required.* **Access, vehicular movement and car parking** *No changes, no comment required.* **Landscape** *Minor changes, no comment required.* **Amenity** *The Panel noted the inclusion of privacy screen to units 1.01? and 2.05 in front of the living dining areas. Ideally bathrooms would be naturally lit and ventilated where possible.* <u>Recommendations</u> 1. Consider flipping living dining and bedrooms in units 1.01 and 2.05 to increase solar access and views out. 2. Consider re-arranging ensuite and laundry in units 1.04 and 2.04 using the void space that appears to serve no function. **Façade treatment/Aesthetics** *Minor changes, no comment required.* **Sustainability** <u>Recommendations:</u> 3. Add windows to the bathrooms of apartments 1.02, 1.03, 2.02, 2.03, 3.02. Also relocate the ensuite for 2.04 to the façade so that a window can be included 4. Only 4.8 kW PV is included, consider maximising the amount of PV 5. Provide heat pump hot water and induction cooktops instead of gas. **PANEL CONCLUSION** The Panel supports the modification. <u>Planning Assessment Comments on Applicant response to DSAP recommendations:</u> • Recommendation 1 not adopted as the Unit is directly north facing and the screen principally restrict overlooking from

Internal Referral Body	Comments
	No.404 Sydney Road but the louvres allow direct sun and view to the north. • Recommendation 2 has been included with amended plans. • Recommendation 3 not adopted as the CC is in an advanced stage and new changes would create extensive internal redesign process and potentially another MOD. • Recommendation 4 this can be incorporated at final CC fitout / stage (rather than amend DA). • Recommendation 5 this can be incorporated at final CC fitout / stage (rather than amend DA).
Environmental Health (Contaminated Lands)	**Supported without condition changes.** General Comments The Modification appears to be minor alterations of internal walls and should be in the same current approved site area. should not alter our original assessment. No further conditions recommended Recommendation APPROVAL - no conditions
Environmental Health (Industrial)	**Supported without condition changes.** General Comments The Modification appears to be minor alterations of internal walls and should be in the same current approved site area. should not alter our original assessment. No further conditions recommended Recommendation APPROVAL - no conditions
Landscape Officer	**Supported with condition changes.** The application for modification to the development consent includes updated Landscape Plans to the central courtyard on the first floor level, and no concerns are raised with these updated plans. Condition 23. Landscape Completion, shall be modified to reflect the updated Landscape Plans. All other Landscape Referral Conditions remain unaltered. Planning comment Condition change is minor to reflect landscape changes to building elements.
Road Reserve	**Supported without condition changes.** There is no impact on existing road infrastructure. It is noted the proposed awning provides little in the way of weather protection for pedestrians in this high pedestrian shopping precinct.
Strategic and Place Planning	**Supported without condition changes.**

Internal Referral Body	Comments
(Urban Design)	This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment. The application seeks consent to: 1. Split approved apartment 201, being a 3 bedroom apartment, to create a 1 x 1 bedroom and 1 x 2 bedroom apartment consistent with the apartment layout on Level 1 below. This results in a 5m² increase in gross floor area in the new apartments where the northern façade of the proposed apartments is extended slightly to the north to match the façade alignment of the Level 1 apartments below. 2. Re-allocate car parking spaces within the basement levels for the newly created apartments. 3. The proposed changes and rationalisation in the design of the central courtyard. 4. The conversion of approved unit 1.04 to be an adaptable unit. 5. The modification in the curve radius of the street facing balconies at each level to enhance buildability. The proposed modifications do not change the previously approved building footprint and envelope. Changes made to the external facades are minor. However the balcony planter box deleted on level 2 (unit 201 previously) will result in the loss of privacy to the neighboring townhouse to the north-west. As such, a privacy screen will need to be added along the northern edge of the deleted planter box.
Traffic Engineer	**Supported with condition changes.** The proposed modification does not result in any changes to the quantum of parking which remains in excess of DCP requirements. There are no changes to the vehicular access and internal circulation areas. One additional accessible parking space is proposed however this is appropriately located and sized. All traffic conditions applied to DA2020/0634 remain applicable and two extra conditions as detailed below have been applied relating to the accessible parking spaces. <u>Planning Comment</u> The applicant has sought to re-arrange selected parking and disabled parking spaces therefore Traffic conditions for the modification relate to those matters.
Waste Officer	**Supported without condition changes.** <u>Waste Management Assessment - Amended Plans</u> Supported, subject to conditions. Existing waste conditions (REV2021/0012) to remain.

Internal Referral Body	Comments
	It is noted that in increasing the size of the bin enclosure on the left hand side of the drive to accommodate an additional bin the centre wall has been removed. The result of this change means that the door configuration is no longer functional (nothing to attach the doors to). As the bins are to be stored in this location for a maximum of 24hrs only Council will permit the deletion of the doors. Recommendation - Not supported The additional unit will trigger the requirement for two additional bins to be allocated to the property. • The basement bin storage room/s will need to be enlarged to accommodate an additional 2 x 240 litre bins. • The bin service bays on either side of the driveway will need to be enlarged to accommodate an additional 2 x 240 litre bins. • The additional unit on level 2 means that there will no longer be sufficient recycling bin capacity to last a full week on level 2. Please explain how available recycling capacity will be maintained at all times for all the units on level 2.

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 modification of REV2021/0012 which was approved for the construction of a shop top housing development plus basement car parking for the provision of 12 self-contained dwellings. This application involves the separation of one apartment (Unit 2.01) into two apartments (Unit 2.01 and Unit 2.05). Other minor changes are proposed to the communal courtyard area but only in terms of redesigning the landscaping layout, and to the curvature of the balconies. Minor changes are proposed in the basement car park to redistribute an accessible parking space. The remainder of the development is maintained as approved.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(a) the advice (if any) obtained from the design review panel, and
(b) the design quality of the development when evaluated in accordance with the design quality principles, and
(c) the Apartment Design Guide.

DESIGN REVIEW PANEL

The application includes plans prepared by *Design Workshop Australia* which are accompanied by a Design Statement by the architect. However, s.104(2) of the *Environmental Planning and Assessment Regulation 2021* requires the application to be accompanied by a design statement prepared by the original designer (*PBD Architects*) which it was not. If the application to modify the development and does not include the design statement by the original designer, then the application is required to be referred to the to a design review panel for advice.

Section 102(4) states:

"*If a statement by the qualified designer does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel, if any, for advice".*

The application was therefore referred to the *Design & Sustainability Advisory Panel* for advice.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment
The development, as modified, does not change the outcome of the assessment conducted under REV2021/0012.

Principle 2: Built Form and Scale

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

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment
The development, as modified, does not change the outcome of the assessment conducted under REV2021/0012.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment
The development, as modified, increases the dwelling yield by 1 thereby changing the apartment mix as follows:

Apartment Type	REV2021/0012	MOD2022/0664	Difference
1 Bedroom	1	2	+1
2 Bedroom	8	9	+1
3 Bedroom	3	2	-1
Total	**12**	**13**	**+1**

The modified mix provides more opportunity to access affordable housing given the separation of 1 x 3 bedroom apartment into 1 x 1 bedroom apartment and 1 x 2 bedroom apartment.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and livability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment
The development, as modified, does not change the outcome of the assessment conducted under REV2021/0012. An updated BASIX Certificate has been lodged with the application which confirms that the proposal will continue to meet the targets for water, thermal comfort and energy efficiency. This will be included in the consent.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment
The proposal includes an amendment to the layout of the landscaping within the centrally located eastern courtyard. The amendment 'squares off' the pedestrian area from the previously approved curved pedestrian area. Otherwise, the layout remains the same as approved however the quantum of landscaping within this area marginally increases from 33.8m² to 34.4m² (i.e. +0.6m²).

This has been reviewed by Council's Landscape Officer who did not raise any objection to the proposal.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Comment
The separation of one apartment into two apartments does not adversely impact upon the amenity of either new apartment. The ADG demonstrates that the development continues to achieve the levels of amenity as approved.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment
The development, as modified, does not change the outcome of the assessment conducted under REV2021/0012.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment
As discussed under Principal 3 above, the modified mix provides more opportunity to access affordable housing given the separation of 1 x 3 bedroom apartment into 1 x 1 bedroom apartment and 1 x 2 bedroom apartment. (Including the adjustment of accessible parking and changes Unit 1.04.)

Communal spaces remain as approved under REV2021/0012.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment
The development retains the overall aesthetic as approved under REV2021/0012. The only notable change is to the cuvature of the balconies which is considered to provide a more consistent and softer facade treatment to the overall presentation.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the ‘Apartment Design Guide’ as required by SEPP 65.

Development Control	**Criteria / Guideline**	**Comments**
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	As approved
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	As approved

<table>
<tr><td>Public Domain Interface</td><td>Does the development transition well between the private and public domain without compromising safety and security?

Is the amenity of the public domain retained and enhanced?</td><td>As approved.</td></tr>
<tr><td>Communal and Public Open Space</td><td>Appropriate communal open space is to be provided as follows:

1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</td><td>As approved.</td></tr>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:

<table>
<tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr>
<tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr>
<tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr>
<tr><td>Greater than 1,500m^2</td><td>6m</td></tr>
<tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr>
</table>
</td><td>As approved.</td></tr>
<tr><td>Visual Privacy</td><td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table>
<tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr>
<tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr>
<tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr>
<tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr>
</table>

Note: Separation distances between buildings on</td><td>As approved</td></tr>
</table>

	the same site should combine required building separations depending on the type of rooms. *Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.*	
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	As approved
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	As approved. Adjustment to better locate accessible parking spaces together.
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	As approved
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid	Complies

<table>
<tr><td></td><td>winter.</td><td></td></tr>
<tr><td></td><td>• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</td><td>As approved</td></tr>
<tr><td>Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</td><td></td></tr>
<tr><td></td><td>• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td></td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table></td><td>As approved</td></tr>
<tr><td>Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:

<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m^2</td></tr><tr><td>1 bedroom</td><td>50m^2</td></tr><tr><td>2 bedroom</td><td>70m^2</td></tr><tr><td>3 bedroom</td><td>90m^2</td></tr></table>
The minimum internal areas include only one bathroom. Additional bathrooms increase the</td><td>Complies

• Unit 2.01 (2 bedroom): 83m²
• Unit 2.05 (1 bedroom): 53m²

All other units as approved.</td></tr>
</table>

	minimum internal area by 5m^2 each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each.	
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Does not comply • **Unit 2.01: 8.7m** • Unit 2.05: 8.0m The rear wall of the kitchen to Unit 2.01 has been relocated to 8.7m from the north-facing window to the Living Room. The element has been considered in terms of the open plan layout and position of the "galley style" kitchen with the main bench facing forward to full height glazed northern wall. The minor variation is considered suitable. DSAP did not raise this as a fundamental issue.
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Complies • Unit 2.01: 12.1m² • Unit 2.05: 11.9m²
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Complies • Unit 2.01: 3.0m • Unit 2.05: 3.0m
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Complies • Unit 2.01: 4.0m • Unit 2.05: 3.6m
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Not applicable
Private Open Space	All apartments are required to have primary	Does not comply

<table>
<tr><td rowspan="2">and Balconies</td><td>balconies as follows:

<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr></table>
The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>• Unit 2.01: 11.6m²/2.2m.
• Unit 2.05: 12.5m²/1.8m to 2.4m

The balcony area is shaped and principally achieved the minimum area. The balconies are directly accessible off the living space with wide opening glazed doors and are north facing. The balconies are not excessively closed in by development to the north due to the rear setback and separation space created by Thomas Street.</td></tr>
<tr><td>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.</td><td>Not applicable</td></tr>
<tr><td>Common Circulation and Spaces</td><td>The maximum number of apartments off a circulation core on a single level is eight.</td><td>Complies
Level 2 = 5 units</td></tr>
<tr><td>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</td><td>Not applicable</td></tr>
<tr><td>Storage</td><td>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m^2</td></tr><tr><td>1 bedroom apartments</td><td>6m^2</td></tr><tr><td>2 bedroom apartments</td><td>8m^2</td></tr><tr><td>3+ bedroom apartments</td><td>10m^2</td></tr></table>
At least 50% of the required storage is to be located within the apartment.</td><td>Complies. Spread between basement and apartments.
Additional storage added with amendment to the plans (Drawing No.13 dated 27.3.2023 following DSAP review)</td></tr>
<tr><td>Acoustic Privacy</td><td>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</td><td>As approved</td></tr>
</table>

<table>
<tr><td>Noise and Pollution</td><td>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</td><td>As approved</td></tr>
<tr><td colspan="3">Configuration</td></tr>
<tr><td>Apartment Mix</td><td>Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.</td><td>Complies
The modification includes an additional single bedroom apartment.</td></tr>
<tr><td>Ground Floor Apartments</td><td>Do the ground floor apartments deliver amenity and safety for their residents?</td><td>Not applicable</td></tr>
<tr><td>Facades</td><td>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</td><td>Complies
The modification retains the building facade as approved but provides a more consistent curvature to the balconies.</td></tr>
<tr><td>Roof Design</td><td>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.
Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</td><td>As approved</td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</td><td>Complies
The modification includes a reconfiguration of the landscaping to the communal courtyard.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
</table></td><td>Complies</td></tr>
</table>

		crown spread at maturity				
		Shrubs			500-600mm	
		Ground Cover			300-450mm	
		Turf			200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features					As approved
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.					As approved
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					As approved
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.					As approved
Performance						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?					Complies
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?					As approved
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?					As approved
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?					As approved

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment
The modification works maintain consistency with the BCA and internal areas for the ADG.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and
(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

(a) sub-clause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in sub-clause (1), including on the basis of sub-clause (2), and
(b) the design criteria specified in sub-clause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment
The proposed modifications have been reviewed in detail with internal planning staff review, referrals and by DSAP. The modifications are considered satisfactory and have included additional refinements recommended by DSAP as far as practicable. (Note that CC works are already in progress)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1092984M-03 dated 11 November 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass

Energy	35	35

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 original application (DA2020/0634) was referred to Ausgrid who provided their response raising no objection. This modification does not alter any of the matters considered by Ausgrid nor the conditions included in their response. Therefore, the application was not required to be referred back to Ausgrid.

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

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

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

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

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

Comment
The original application (DA2020/0634) was referred to TfNSW pursuant to cl 100 'Development on proposed classified road'. TfNSW provided concurrence on 24 September 2020. This modification does not alter any of the matters considered by TfNSW nor the conditions included in their concurrence. Therefore, the application was not required to be referred back to TfNSW.

Section 2.119 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—
(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment
The modification does not change the layout or openings to those apartments facing Sydney Road. The considerations and conditions which were applied to REV2021/0012 will remain applicable.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	**Size or Capacity** (Site with access to any road)	**Size of Capacity** (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings
Commercial premises	10,000m² in area	2,500m² in area

Note: Under Section 2.121(2) of Chapter 2, 'relevant size of capacity 'is defined as meaning:

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

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

Comment:
The original application (DA2020/0634) was referred to TfNSW pursuant to cl 100 'Development on proposed classified road'. TfNSW provided concurrence on 24 September 2020. This modification does not alter any of the matters considered by TfNSW nor the conditions included in their concurrence. Therefore, the application was not required to be referred back to TfNSW.

Other Service Infrastructure Authorities
The requirements of *Sydney Water* are managed directly by *Sydney Water* own administrative processes. No other service authority referral issues are raised pursuant to the SEPP.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	12.5m	12.6m to 15.9m	No change	N/A	As approved
Floor Space Ratio	2.0:1 (1,626m²)	1.99:1 (1,624m²)	2.0:1 (1,629m²)	0.18% (+3.0m²)	**No**
Gross floor area in Zone B2	Commercial GFA: 25% (max 1,000m² per premises)	Commercial GFA: 26% Max sqm per premises: 415m²	No change	N/A	As approved

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	N/A
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	2.0 to 1
Proposed:	2.003 to 1
Percentage variation to requirement:	0.18%

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted

by Clause 4.4 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. (See *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998])

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the B2 Local Centre zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment:
The change to the FSR is very minor and calculates to 2.003:1 against a compliant ratio of 2.0:1. The change to the floor plans to split one large unit into two smaller units did not affect provisions such as carparking, building height or the outer limits of the building shape. The extra floor area is gained by absorbing part of landscape and balcony area in the new 2 smaller units and requirements to ensure appropriate internal spacing for living / kitchen / dining, bedrooms and the like. This includes internal consideration for furniture space that demonstrates floorspace is not unreasonable cramped just to achieve numeric compliance.

- *There are sufficient environmental planning grounds to justify contravening the development standard,*

Comment:
The additional floor space is located at the rear of the property where it will not be readily discernible in a streetscape context and certainly not to the extent that the resultant additional bulk and scale would be perceived as inconsistent with the existing and desired streetscape character. The additional floor space is located over the alignment of the previously approved north facing balcony such that it does not compromise the residential amenity outcomes afforded to adjoining development in terms of views, privacy or solar access. The design has been reviewed by Council's DSAP and is supported. Minor changes were made to accommodate DSAP review of the floor space layout.

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

4.4 Floor space ratio

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

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

Comment:
The building bulk and scale remains consistent and has been refined to achieve appropriate reshaping of selected elements to suit the original design and fits appropriately with the adjacent larger building to the west (new development).

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

Comment:
The proposal does not create an adverse changes to views, public vista's of townscape or other streetscape characteristics.

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

Comment:
The character and styling of the building is maintained for the modification and the FSR change does not create any adverse impact on surrounding land or buildings in this regard.

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

Comment:
The proposal maintains consistency with this objective and the ground floor plan adjustments, rationalization of disabled parking and refinement to the accessible units provided are appropriate.

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

Comment:
The commercial floor space is not altered as a consequence of the modifications sought with a compliant quantum of commercial floor space maintained.

Zone objectives

The underlying objectives of the zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery*

Comment:
The above objectives have been considered in context with the modification and FSR non-compliance. Overall the FSR change will not be discernible to the approved building bulk and does not create an adverse impact on other local retail areas, employment, access to transport or increase land use conflict. Submission issues have been considered and Councils DSAP are satisfied with the design changes proposed for the modification are reasonable for the building as proposed in context of the urban environment.
Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

Comment:
The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 813m²	**Requirement**	**Approved**	**Proposed**	**Complies**
4.2.3 - Setbacks (Side, Front and Rear)	Built to boundaries	Side: Boundary Rear: Boundary Basement: Boundary Upper Levels: Setback for building separation. Front: Boundary and Stepped back for balconies	No change	As approved
4.2.4 - Car Parking	Residential 12 residential (1 space per dwelling) 2 visitor (0.16 space per dwelling) Commercial 11 (10.1 rounded up) Commercial	Residential Residential 20 Visitor 2 Commercial Commercial 10	Residential Res 20 Vis 2 Commercial Comm 10	As approved

	(1 space per 40m² of GFA)			
4.2.6.1 - Wall Height on Street Frontage	10.5m Upper storey step back at 12.5m height plane	10.1m to 11.5m Setback 4.0m	No change	As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.1 Landscaping Design	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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	Yes	Yes
4.2.6.1 Wall Height on the Street Frontage	Yes	Yes
4.2.6.2 Exceptions to LEP Building Height	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.6.3 Setbacks	Yes	Yes
4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The development maintains the level of privacy approved under REV2021/0012 with exception to the new one bedroom apartment (Apartment 2.05) at the rear of Level 2.

The rear balcony which serviced Apartment 2.01 is separated into two balconies to service Apartments 2.01 and 2.05. The single balcony contained a planter box to address overlooking to the north however, this has been removed on the plans and replaced by a privacy screen and balcony space. The screen allows direct outlook toward Thomas Street (laneway) and northern sunlight but restricts views to the west.

As noted by Council's Urban Designer, this is considered to be an adequate response to the removal of the planter box and resolving privacy.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 a minor modification changes to the approved consent of REV2021/0012 granted for demolition and construction of shop top housing has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the additional unit being added which has resulted in non-compliance with the floor space ratio (when the approved development consent complied). The floor space ratio variation however is minor (0.13%) are result from one larger unit being split into 2 smaller units a previous landscape planter area being changes for balcony / living area space.

The concerns raised in the objections have been addressed and did not require changes to conditions as the building setbacks are not changing and the overshadowing regime is not changing for the building.

The critical assessment issues include the FSR variation, however clause 4.6 does not strictly apply (for reasons detailed under the heading Clause 4.4 within this report). The application has been reviewed by Council's Design and Sustainability Advisory Panel and the applicant was able to include some minor changes recommended. Other matters are appropriate for the construction certificate stage however major internal changes to the Units have not been adopted since the proposal is at an advanced design stage for the construction certificate.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0664 for Modification of Development Consent REV2021/0012 granted for Demolition works and Construction of a Shop Top Housing Development on land at Lot 100 DP 1260628,398 Sydney Road, BALGOWLAH, subject to the conditions printed below:

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

"1A - Modification of Consent - 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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
000 D Coversheet	31.1.2023	DWA Architects
010 D Basement Plans	31.1.2023	DWA Architects
012 E Floor Plans (Ground Floor and Level 1)	27.3.2023	DWA Architects
013 E Floor Plans (Level 2 and Level 3)	27.3.2023	DWA Architects
014 D Floor Plans (Roof)	31.1.2023	DWA Architects
020 D Sections		

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Basix certificate 109298M_03	11.11.2022	AGA Consultants

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LPCC 19-46 D Site Plan	28.11.2022	Conzept Landscape Architects
LPCC 19-46 D Landscape Plan 01	28.11.2022	Conzept Landscape Architects
LPCC 19-46 D Landscape Plan 02	28.11.2022	Conzept Landscape Architects
LPCC 19-46 D Specification and Details	28.11.2022	Conzept Landscape Architects

Waste Management Plan		

Drawing No.	Dated	Prepared By
Operational Waste Management Plan 18043	1.2.2023	Elephants Foot

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

B. Modify Condition No.23 Landscape Completion, to read as follows:

"23. Landscape Completion

a) Landscaping is to be implemented in accordance with the Landscape Plans 01, 02, 03, 04 and 05 revision D, prepared by Conzept Landscape Architects.

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

Reason: Environmental amenity."

C. Add Condition No.32A Disabled Parking Spaces, to read as follows:

"32. A Disabled Parking Spaces

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards."

D. Add Condition No.32B Shared Zone Bollard, to read as follows:

"32B. Shared Zone Bollard

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

Design + Sustainability Advisory Panel Meeting Report – Date 23 March 2023

Item 5 - MOD2022/0664 - 398 Sydney Road BALGOWLAH

PANEL COMMENT AND RECOMMENDATIONS

General

The proposal is for minor changes to an approved DA. Modification of Development Consent REV2021/0012 granted for Demolition works and Construction of a Shop Top Housing Development.

The application includes plans prepared by *Design Workshop Australia* (DWA) which are accompanied by a Design Statement from the architect. However, the original designer of the approved development which was *PBD Architects.* Section 104(2) of the *Environmental Planning and Assessment Regulation 2021* requires the application to be accompanied by a design statement prepared by the original designer. If the application to modify the development does not include the design statement by the original designer, then the application is required to be referred to the to a design review panel (DRP) for advice.

Section 102(4) states:

"If a statement by the qualified designer does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel, if any, for advice".

The application is therefore referred to the *Design + Sustainability Advisory Panel* for review. DSAP undertakes a similar purpose to a DRP as per section 102(2).

Although not required for approval of the modification the Panel has taken the opportunity to make some recommendations for further improvements. The Panel understands that construction contracts have been awarded and that construction is underway, so these recommendations can only be treated as suggestions and in no way required.

Strategic context, urban context: surrounding area character

The site is zoned B2 Local Centre under the provisions of *Manly Local Environmental Plan 2013* and the proposed development is permissible with consent.

Scale, built form and articulation

No changes, no comment required.

Access, vehicular movement and car parking

No changes, no comment required.

Landscape

Minor changes, no comment required.

Amenity

The Panel noted the inclusion of privacy screen to units 1.01? and 2.05 in front of the living dining areas.

Ideally bathrooms would be naturally lit and ventilated where possible.

Recommendations

1. Consider flipping living dining and bedrooms in units 1.01 and 2.05 to increase solar access and views out
2. Consider re-arranging ensuite and laundry in units 1.04 and 2.04 using the void space that appears to serve no function

Façade treatment/Aesthetics

Minor changes, no comment required.

Sustainability

Recommendations:

3. Add windows to the bathrooms of apartments 1.02, 1.03, 2.02, 2.03, 3.02. Also relocate the ensuite for 2.04 to the façade so that a window can be included.
4. Only 4.8 kW PV is included, consider maximising the amount of PV
5. Provide heat pump hot water and induction cooktops instead of gas

PANEL CONCLUSION

The Panel supports the modification.

ITEM 5.2	**DA2022/1468 - 26 WANDELLA ROAD, ALLAMBIE HEIGHTS - DEMOLITION WORKS, SUBDIVISION OF ONE LOT INTO TWO, CONSTRUCTION OF A DWELLING HOUSE UPON EACH LOT AND ONE SWIMMING POOL.**
AUTHORISING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/220007**
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 Minimum Lot Size Development Standard of Clause 4.1 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1468 for Demolition works, Subdivision of one lot into two, construction of a dwelling house upon each lot and one swimming pool on land at Lot D DP 412123, 26 Wandella Road, ALLAMBIE HEIGHTS subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1468

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot D DP 412123, 26 Wandella Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Demolition works, Subdivision of one lot into two, construction of a dwelling house upon each lot and one swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Austrian Investments Pty Limited
Applicant:	AMDE Construction Pty Ltd

Application Lodged:	05/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	12/10/2022 to 26/10/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 4.5% - 24%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,935,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works, subdivision of one lot into two and the construction of two dwelling houses.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a proposed contravention of Clause 4.1 Minimum subdivision lot size development standard of Warringah Local Environmental Plan 2011 (WLEP 2011) by more than 10%.

The required lot size is 600sqm, and the proposed presents a lot size of 573.1sqm for lot 100, and

456sqm for lot 101.Therefore, the proposal presents a variation of 4.5% (26.9sqm) for Lot 100, and a variation of 24% (144sqm) for Lot 101.

The 4.6 request for the non-compliance with minimum lot size standard arises from the compatabiltiy and pattern of subdivision within the street. The existing lot while non-compliant with the minimum lot size development for two lots, is one of the last remaining lots on the western side of Wandella Road, Allambie Heights that has not been subdivided. The lot sizes proposed are consistent and in chracter with that of other battle-axe allotments within the direct locality.

Critical assessment issues included Clause 4.1 Minimum subdivision lot size of WLEP 2011. The variation to Clause 4.1 Minimum subdivision lot size of WLEP 2011, has been addressed under Clause 4.6 Exceptions to development standards of WLEP 2011 contained within this report.

No submissions were received as part of public exhibition of the application.

On the balance of all factors, this report finds that the proposal is appropriate for the site and concludes with a recommendation that the NBLPP, as the consent authority, grants approval to the development application.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works, subdivision of one lot into two and the construction of two dwelling houses (one dwelling house on each lot).

Specifically, consent is sought for:

- Demolition of the existing dwelling house and associated structures;
- Torrens title subdivision of the existing single lot into two lots;
- Construction of 2 x two storey dwelling houses, compromising;
    - Front lot
        - Double garage
        - 4 bedrooms
        - Swimming pool
    - Rear lot
        - Double garage
        - 4 bedrooms
- Associated landscaping
- New driveway, crossover and Right of Way (ROW).

Note: The front lot is noted in report as lot 100, the rear lot noted as lot 101.

Additional Information
Following a preliminary assessment of the application, Council wrote to the applicant on 25 January 2023 outlining concerns from Council Development Engineer and Water Management, which would not allow for Council to support the application. Following receipt of the letter the applicant advised that they intended to provide additional information to address the concerns raised. Council agreed to accepting this additional information.

The additional information was submitted by the applicant on 8 February 2023. Amended plans were received on 24 Feburary 2023 amending the access from from two driveways to one. Re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot D DP 412123 , 26 Wandella Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Wandella Road, Allambie Heights. The site is regular in shape with a frontage of 20.52m along Wandella Road and a depth of 58.33m. The site has a surveyed area of 1173.1m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site has a site slope from the rear boundary to Wandella Road of approximately 4m **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by

	residential deveopment, typically dwelling houses.

Map:



SITE HISTORY

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

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

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 Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional

Section 4.15 Matters for Consideration	Comments
	information was requested in relation to water management and stormwater management. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/10/2022 to 26/10/2022 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
Landscape Officer	***Supported, subject to conditions*** The proposal is supported with regard to landscape issues. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation Landscape Referral raises concern that the proposed developments do not achieve the 40% landscaped open space under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted number 26 has approximately 35% compliant landscaped open space, and number 26A has approximately 34% complaint landscaped open space. Should the application be approved additional tree planting will be conditioned to offset any landscaped open space non-compliance. No prescribed trees are proposed to be removed and the trees shown to be removed do not require consent for removal as they are exempt by height. The landscape proposals are generally supported and all proposed planting shall be installed as per the requirements outlined in the conditions of consent. The *Livistona australis*, in the front setback of number 26, shall be replaced with a native canopy tree, and the *Pandanus pedunculatus*, in the rear setback, shall be replaced with a native canopy tree, subject to the imposed conditions. The surface surrounding the pool, at number 26, has not been labelled on the plans, and it shall be lawn or groundcover planting as outlined in the conditions of consent. Substitute all *Rhaphiolepis* and *Pennisetum* species at number 26A with suitable alternatives, as Council deems these species an environment threat. One additional native canopy tree shall be installed in the rear setback of number 26A.
NECC (Development Engineering)	***Supported, subject to conditions*** The driveway access has now also been resolved with the use of a

Internal Referral Body	Comments
	shared single driveway crossing . Lot 100 will need to provide a ROW benefiting LOT 101 over the front driveway area. No objections subject to conditions.
NECC (Water Management)	***Supported, subject to conditions*** This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. The proposed stormwater management is conforming with Council Water Management for development Policy.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. 1321169S_02 dated 11 July 2022 and 1319113S dated 5 July 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or

an application for modification of consent) for any development carried out:

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm	Lot 100: 573.1sqm	4.5%	No
		Lot 101: 456sqm excluding access handle (600sqm including access handle)	24%	No
Height of Buildings:	8.5m	Lot 100: 7.5m	-	Yes
		Lot 101: 7.9m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.9 Dwelling house or secondary dwelling affected by natural disaster	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.11 Affordable housing	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m^2
Proposed:	Lot 100: 573.1sqm Lot 101: 456sqm
Percentage variation to requirement:	Lot 100: 4.5% (26.9sqm) Lot 101: 24% (144sqm)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:
Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the minimum lot sizes development standard because:

- *The site has sufficient area to accommodate the proposed battle-axe subdivision that is consistent with the prevailing subdivision pattern in the immediate vicinity of the site.*
- *The proposed subdivision achieves free standing dwellings that are in keeping with the existing and desired future character for development in the low-density residential zone.*
- *The proposed subdivision can accommodate free standing dwellings that have regard to the building envelope including controls, including height, setbacks, private open space, landscape and car parking controls within the LEP and DCP.*
- *The subdivision provides sufficient area around the proposed built form that contributes to the landscape setting.*
- *The proposed subdivision and proposed dwellings will not result in unreasonable amenity impacts to adjoining properties or the public domain regarding overshadowing, visual privacy, acoustic privacy, visual bulk and scale."*

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 Minimum Subdivision Lot Size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

> ***(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.***
>
> Comment:
> The proposal protects the residential character by providing a suitable subdivision of land that is consistent with the existing pattern, size and configuration of existing lots in the locality.
>
> ***(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.***
>
> Comment:
> The proposal is located in a R2 Low Density Residential zone and is surrounded by residential development. Therefore this objective is not relevant.
>
> ***(c) to protect the integrity of land holding patterns in rural localities against fragmentation.***
>
> Comment:
> The subject site is not located in a rural locality. Therefore this objective is not relevant.
>
> ***(d) to achieve low intensity of land use in localities of environmental significance.***
>
> Comment:
> The application proposes two allotments that will be used for low density residential land uses. It is not considered that the subject site is of any environmental significance.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:
The site is not located on Bush Fire Prone Land, and as such this objective is not relevant.

(f) to protect and enhance existing remnant bushland.

Comment:
The site is does not obtain bushland. Therefore this objective is not relevant.

(g) to retain and protect existing significant natural landscape features.

Comment:
The proposal has been reviewed by the Aboriginal Heritage Office whom are supportive of the proposal. As such, the proposal does not obtain significant natural landscape features.

(h) to manage biodiversity.

Comment:
The proposal will not result in unreasonable impacts to biodiversity.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:
The proposal has been reviewed by Council's Water Management Officer who is supportive of the proposal subject to conditions. Therefore, the proposal will provide for appropriate stormwater management and sewer infrastructure.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

  Comment:
  The proposal will result in two allotments that will allow for additional housing to meet the needs of the community within a low density residential environment.

  It is considered that the development satisfies this objective.

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

  Comment:
  The proposal is likely to retain the existing land uses for dwelling houses as detailed in the accompanied Indicative Plans, subject to a future Development Application, that will provide housing to meet the needs of residents.

  It is considered that the development satisfies this objective.
- ***To ensure that low density residential environments are characterised by landscaped***

settings that are in harmony with the natural environment of Warringah.

Comment:
The proposal has demonstrated through the Indicative Landscape Area Plans, that the proposed allotments will ensure low density environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah. Furthermore, Council's Landscape Officer has reviewed the proposal and is supportive of the current proposal subject to a future Development Application.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	Lot 100 - 7.2m	6.5m	-	Yes
	Lot 101 - 7.2m	5.6m	-	Yes
B3 Side Boundary Envelope	Lot 100 - 4m	North **Outside envelope** Height -0m - 0.7m Length - 11.8m	17.5%	No
	Lot 100 - 4m	South Outside envelope Height -0m - 0.7m Length - 13m	17.5%	No
	Lot 101 - 4m	Within envelope	-	Yes
	Lot 101 - 4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	Lot 100 - 0.9m	1.65m	-	Yes

	Lot 100 - 0.9m	1.44m	-	Yes
	Lot 101 - 0.9m	2.41m	-	Yes
	Lot 101 - 0.9m	3.67m	-	Yes
B7 Front Boundary Setbacks	Lot 100 - 6.5m	6.5m - 10.21m	-	Yes
	Lot 101 - 6.5m	2.27m - 6.65m	up to 65%	No
B9 Rear Boundary Setbacks	Lot 100 - 6m	Dwelling - 6.2m Swimming pool - 1.2m	- 80%	Yes No
	Lot 101 - 6m	Dwelling - 4.8m - 7.64m	up to 20%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	Lot 100 - 40%	41% (235.5sqm)	-	Yes
	Lot 101 - 40%	45% (208.4sqm)	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

Under Clause B3 of Warringah Development Control Plan 2011, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 4 metres above ground level (existing) at the side boundaries.

The proposal sits outside of the building envelope on the north facade as depicted in image 1. The southern eastern obtains an encroachment of 0m - 0.7m in vertical height for a horizontal length of 11.8 metres, resulting in a maximum variation of 17.5%.

The proposal sits outside of the building envelope on the south facade as depicted in image 1. The southern eastern obtains an encroachment of 0m - 0.7m in vertical height for a horizontal length of 13 metres, resulting in a maximum variation of 17.5%.

Image 1 - Building envelope non-compliance

Merit consideration

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

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

  Comment:

  The proposal is compliant with the maximum height of buildings development standard, wall height control, and side boundary setbacks control. Therefore, the proposal does not become visually dominant by virtue of its height and bulk as the first floor addition includes articulation to

mitigate any unreasonable bulk and scale.

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

  Comment:

  The proposal is accompanied with shadow diagrams that demonstrates adequate solar access and light to the subject site and neighbouring sites. Privacy has been incorporated into the design through the inclusion of privacy screens along the northern and southern deck edges to mitigate any unreasonable privacy impacts.

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

  Comment:

  The dwelling is considered to respond to the topography of the site by minimising unreasonable levels of excavation and stepping the design to ensure a sympathetic siting of the dwelling.

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

B7 Front Boundary Setbacks

Description of non-compliance

Part B7 of Warringah Development Control Plan 2011, requires development be setback 6.5m from the front property boundary.

The prososed rear dwelling (lot 101) propsoes a 2.27m - 6.65m front setback, presenting a % variation to the control.

Merit consideration:

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

- *To create a sense of openness.*

  Comment:

  The setback for the new building is consistent with the building alignment of the adjacent dwellings. The proposed dwelling to the rear lot will will maintain a sense of openness to the streetscape and adjoining properties maintaining consistency with this merit consideration.

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

  Comment:

The proposal maintains sufficient landscaping within the front setback consistent with surrounding properties.

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

  Comment:

  The design of the proposal will successfully achieve a reasonable level of openness within the front setback, while maintaining the visual continuity of buildings and landscape elements. The reduced front setback will not unreasonably affect the visual quality of the surrounding streetscape, as the dwelling won't be visible from the street. Therefore, the proposal is compatible with the established streetscape of Wandella Road.

- *To achieve reasonable view sharing.*

  Comment:

  The proposal is unlikely to result in any unreasonable view sharing impacts.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The control requires all structures to be setback 6m from the rear boundary.

The application proposes the following:
Swimming pool (front lot) - 1.2m (80% variation)
Dwelling (rear lot) - 4.8m - 7.64m (up to 20% variation)

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

  Comment:

  The site retains several garden areas that are capable of accommodating deep soil plantings both to the front and rear of both dwelling houses.

- *To create a sense of openness in rear yards.*

  Comment:

The non-compliance does not impact on the site's ability to create a sense of openness with the dwelling largely complying with the minimum setback control.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

  Comment:

  The proposed pool is situated below ground level. As such, the amenity of adjacent land, including privacy between the pool and cabana will be minimised

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

  Comment:

  This assessment concludes that the location of the proposal in relation to the rear boundary is acceptable, given no unreasonable amenity impacts will be associated with the development.

- *To provide opportunities to maintain privacy between dwellings.*

  Comment:

  As noted above, the proposal will not give rise to unreasonable privacy impacts.

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

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²	**Lot 100** Width - 16.44m Depth - 35.57m Building area - complies **Lot 101** Width - 20.51m Depth - **22.76m** Building area - complies	No - Refer to discussion below this table
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a	Motor vehicle access from Government Road is provided to Lots 100 and 101. Access for Council service vehicles, emergency vehicles and	No - Refer to discussion below this table

	section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction. Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided. Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10. Driveways in excess of 200 metres will not be allowed for residential development. Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m. Passing bays should have regard to sight conditions and minimise vehicular conflict. Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay. Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities. Width of accessways are to be as follows: Number of lots to be serviced — Width of clear constructed accessway (m) 1 - 5 — 3.5 6 - 10 — 5.0	garbage collection vehicles is not inhibited. The internal driveway meets the vehicular access grades. A shared access along the right of carriageway parallel to the southern boundary of Lot 100 is proposed. The accessway is 4.08m, compliant with the 3.5m requirement. The drivway length is 35.5m. No passing bay is proposed.		

	<table><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> Provision of services in rights of carriageway are as follows: <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	The proposal has been reviewed by Council's Development Engineer who raises no objections to the approval, subject to conditions	Yes
Drainage	Provision should be made for each allotment to be drained by	The proposal is in accordance with the requirements under this	Yes

	gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	control. Conditions have been included as part of the development consent to ensure the development is complian	
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Appropriate conditions have been included in the consent.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	Not applicable.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bushfire prone.	Yes

Description of non-compliance

Clause C1 of the WDCP 2011 requires new allotments to have a depth of at least 27m. Lot 101 is a irregularly shaped allotment and possess minimum depth sizes of 22.76m, which fails to meet the numeric requirement.

Further, subdivisions with a proposed right of carriageway which exceeds 30m is to include a passing bay. The proposed right of carriageway is 35.5m, however no passing bay is proposed, which fails to meet the numeric requirement.

Merit consideration

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

- *To regulate the density of development.*

  Comment:

  As mentioned previously, the site utlilises the existing allotment to provide the additional allotment that is consistent with that of surrounding and regular shaped allotments. In this respect, despite the non-compliance with the minimum lot depth and lot size, the proposal is consistent with the density within the site surrounds.

  Accordingly, the proposed width is not inconsistent with the pattern of surrounding development where there are numerous narrow frontage Lots that have produced a more compact style /building form that is common to the character of the locality.

- *To limit the impact of new development and to protect the natural landscape and topography.*

  Comment:

  The site does not contain any significant natural feature that are proposed for removal.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

  Comment:

  The plan submitted as part of the application demonstrates that sufficient area for landscaping, private open space and access can be maintained to, and from the site. The site drains to the street for ease of stormwater management and utility service connections.

- *To maximise and protect solar access for each dwelling.*

  Comment:

  The proposal will maintain adequate solar access for each of the proposed dwellings in that both dwelling will allow for suitable access from the east, north and west and maintain compliance for overshadowing if they conform to the indicative building envelope control.

- *To maximise the use of existing infrastructure.*

  Comment:

  No additional infrastructure is required to accommodate the proposed additional lot.

- *To protect the amenity of adjoining properties.*

Comment:

The amenity of adjoining properties will be protected by conditions to ensure safe demolition management including handling waste materials, proper management of stormwater/erosion control

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

  Comment:

  The site is not subject to bushfire, landslip risk or coastal hazards, therefore no conditions out of the ordinary are required to address these matters.

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

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 $19,350 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,935,000.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause Clause 4.1 Minimum Subdivision Lot Size 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 subdivision of one (1) lot into two (2) lots has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a proposed contravention of Clause 4.1 Minimum subdivision lot size development standard of Warringah Local Environmental Plan 2011 (WLEP 2011) by more than 10%.

The critical assessment issues relate to the variation of Clause 4.1 Minimum subdivision lot size of WLEP 2011. The Clause 4.6 variation request for the non-compliance with Minimum subdivision lot size development standard arises from the proposed lot sizes to be 573.1sqm for Lot 100, and 456sqm for Lot 101. The proposed lot sizes are consistent with the existing subdivision pattern in the locality, and as such the proposal has demonstrated that variation to the development standard is considered appropriate as compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.1 Minimum Subdivision Lot Size development standard pursuant to clause 4.6 of the WLEP 2011 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 DA2022/1468 for Demolition works, Subdivision of one lot into two, construction of a dwelling house upon each lot and one swimming pool on land at Lot D DP 412123, 26 Wandella Road, ALLAMBIE HEIGHTS, 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.
Subdivision Plan/ Sheet 1 of 1
A03/ Revision G
A05/ Revision G
A06/ Revision G
A07/ Revision G
A08/ Revision G
A09/ Revision G
A10/ Revision G
A03/ Revision G
A03/ Revision G
A03/ Revision G
A12/ Revision G
A15/ Revision G
A16/ Revision G
A17/ Revision G
A03/ Revision D
A05/ Revision D
A06/ Revision D
A07/ Revision D
A08/ Revision D

A09/ Revision D
A12/ Revision D
A13/ Revision D
A16/ Revision D
A17/ Revision D

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Lot Classification Report	28 March 2022	ideal geotech
BASIX Certificate No. 1321169S_02	11 July 2022	Chapman Environmental Services
BASIX Certificate No. 1319113S	5 July 2022	Chapman Environmental Services

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**
C1/ Revision C	1 September 2022	Contour Landscape Arhitecture
C2/ Revision C	1 September 2022	Contour Landscape Arhitecture
C3/ Revision C	1 September 2022	Contour Landscape Arhitecture
C4/ Revision C	1 September 2022	Contour Landscape Arhitecture
C5/ Revision C	1 September 2022	Contour Landscape Arhitecture
C1/ Revision A	30 August 2022	Contour Landscape Arhitecture
C2/ Revision A	30 August 2022	Contour Landscape Arhitecture

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
A14/ Revision C	19 August 2022	KJR Drafting
A14/ Revision E	19 August 2022	KJR Drafting

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	N/A

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a ***dwelling house***, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

dwelling house *means a building containing only one dwelling.*

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

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

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

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

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

(i) showing the name, address and telephone number of the Principal 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.

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 $19,350.00 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 $1,935,000.00.

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. **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 Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

9. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the stormwater plan for 26 and 26a rev B dated 09.12.2022 (Nastasi) and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

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 referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

12. **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.

13. **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:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

14. **Subdivision Works Certificate**
A Subdivision Works Certificate is to be approved by Certifier for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifier for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979. The stormwater management plans detailing the provision of on site stormwater detention systems are to be in accordance with the plans prepared by Natasi and Associates (No 29 DRW 31912 C2-C5 Issue B) and (No 29A DRW 31913 C1-C4 Issue B)

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. and Water Management Policy for Development .The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. Design levels are to be detailed on the Rainwater reuse/On site detention tank (29A Wandella Street) .Levels of the Orifice plate , tank invert and top water Level are to be detailed on the plans . The On Site Detention tanks are to be fully dimensioned.
2. Engineering details of the access driveway (combined Right of Way) are to be prepared including structural details , longsections and typical cross-sections together with stormwater drainage collection.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

15. **Utilities Services**
Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

(a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
(b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

16. **Pre-Commencement Dilapidation Report**
The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written

approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the 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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and

vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

23. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

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

24. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing C2 for number 26, and drawing C1 for number 26A by Contour Landscape Architecture dated 01/09/22 and 30/08/22 respectively), and inclusive of the following conditions:
i) substitute the 1 x *Livistona australis*, in the front setback of number 26, and the 1 x *Pandanus pedunculatus*, in the rear setback of number 26, with locally native canopy trees to achieve at least 6 metres height at maturity, and selected from Northern Beaches Council's Native Plant Species Guide - Frenchs Forest Ward, or Council's Tree Guide (not *Livistona australis*),
ii) install one additional locally native canopy tree in the rear setback of number 26A to achieve at least 6 metres height at maturity, and selected from Northern Beaches Council's Native Plant Species Guide - Frenchs Forest Ward, or Council's Tree Guide (not *Livistona australis*),
iii) substitute all *Rhaphiolepis indica* and *Pennisetum alopecuroides* with a suitable alternative (Council deems this species an environmental threat),
iv) the surface surrounding the pool, at number 26, shall be installed as lawn or groundcover planting,
v) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
vi) 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 at least 1.2 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
vii) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
viii) 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.

25. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate approved Stormwater plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

26. **Stormwater Treatment Measures Operation and Maintenance Plan**
An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must contain the following:

1. Detail on the stormwater treatment measures:
a) Work as executed drawings
b) Intent of the stormwater treatment measures including modelled pollutant removal rates
c) Site detail showing catchment for each device
d) Vegetation species list associated with each type of vegetated stormwater treatment measure
e) Impervious area restrictions to maintain the water balance for the site
f) Funding arrangements for the maintenance of all stormwater treatment measures
g) Identification of maintenance and management responsibilities
h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
a) Activity description, and duration and frequency of visits
Additionally for vegetated devices:
b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing
a) Activity description, and duration and frequency of visits
b) Routine maintenance requirements
c) Work Health and Safety requirements
d) Waste management and disposal
e) Traffic control (if required)
f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
g) Requirements for inspection and maintenance records, noting that these records are required

to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

27. **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.

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

28. **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 landscaped areas as shown on Proposed Landscape Plan (drawing A04 for both number 26 and 26A) shall remain as planting.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

29. **Maintenance of Stormwater Treatment Measures - Major**
Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

30. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards

identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **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.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

32. **Positive Covenant for On-site Stormwater Detention**
A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

33. **Provision of Services for Subdivision**
The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

34. **Right of Carriageway**
The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. The terms shall create a right of way over Lot 100 to enable safe unrestricted vehicle passage to lot 101 and also prohibit the parking of vehicles within the right of way area.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

35. **Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

36. **Services**
The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

37. **Certification of On-site Detention System (New Subdivision)**
A Certificate is to be submitted by the design engineer confirming to the satisfaction of the Principal Certifier that the on-site stormwater detention has been constructed in accordance with the plans nominated on the Development Consent and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifier has confirmed that this condition has been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard

38. **Sydney Water Compliance Certification**
The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

39. **Easement for Drainage**
The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

40. **Release of Subdivision Certificate**
The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

41. **Subdivision Certificate Application**
The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

42. **Title Encumbrances**
The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

DIMENSIONS INCLUDE CLADDING THICKNESS

SETBACK NOTES:

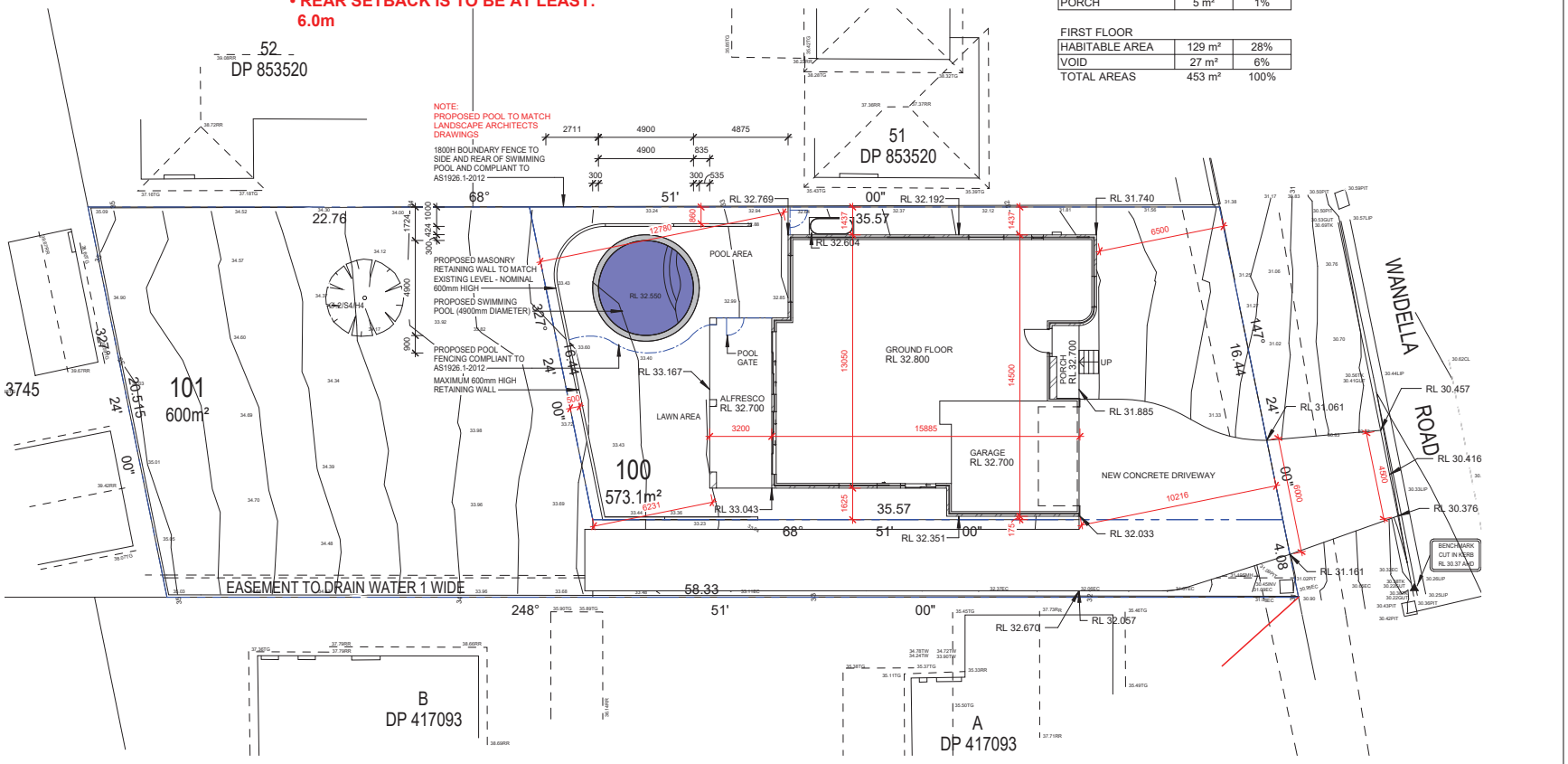
- **FRONT SETBACK IS TO BE AT LEAST: 6.5m**
- **SIDE SETBACK IS TO BE AT LEAST: 0.9m**
- **REAR SETBACK IS TO BE AT LEAST: 6.0m**

SITE AREA	FSR
573 m²	0.50

GROSS FLOOR AREAS (GFA)		
AREA NAME	AREA	%
HABITABLE AREA	288 m²	100%
TOTAL GFA:	288 m²	100%

PROPOSED FLOOR SPACES		
AREA NAME	AREA	%
GROUND FLOOR		
ALFRESCO	28 m²	6%
DRIVEWAY	49 m²	11%
DRIVEWAY CROSSING	18 m²	4%
GARAGE	38 m²	8%
HABITABLE AREA	160 m²	35%
PORCH	5 m²	1%
FIRST FLOOR		
HABITABLE AREA	129 m²	28%
VOID	27 m²	6%
TOTAL AREAS	453 m²	100%

DRAWING REVISION SCHEDULE			
No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	16/05/2022	DJH
B	CHANGES AS PER EMAIL 23/05/2022	24/05/2022	DJH
C	CHANGES AS PER EMAIL 02/06/2022	21/06/2022	NF
D	DA SUBMISSION	11/07/2022	MO
E	ADJUST WATERTANK	19/08/2022	NF
F	ADDED POOL TO SHEETS	07/09/2022	NF
G	MODIFIED DRIVEWAY	28/02/2023	DJH



1 SITE PLAN
1 : 200

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:200

© COPYRIGHT. THIS DRAWING REMAINS THE PROPERTY OF G.J GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT

G.J. Gardner. HOMES
Builders Details

BLUE WATER 386
PALM SPRINGS FACADE

© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES

DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: DOUBLE STOREY DWELLING
THE AUSTRIAN INVESTMENTS PTY LTD

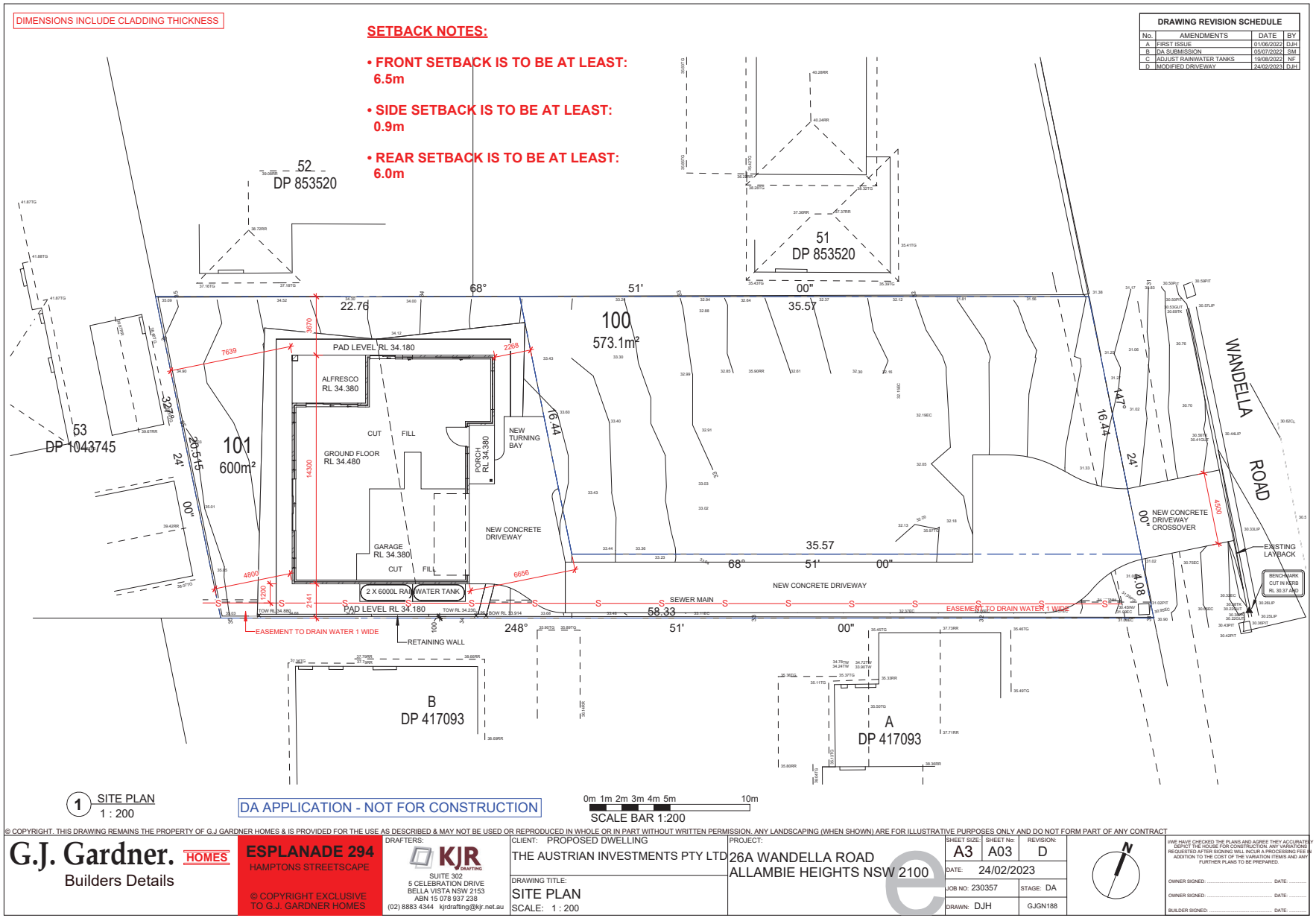
DRAWING TITLE:
SITE PLAN
SCALE: 1 : 200

PROJECT:
26 WANDELLA ROAD
ALLAMBIE HEIGHTS NSW 2100

SHEET SIZE:	SHEET No:	REVISION:
A3	A03	G
DATE: 28/02/2023		
JOB NO: 230357	STAGE: DA	
DRAWN: DJH	GJGN187	

I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....



© COPYRIGHT. THIS DRAWING REMAINS THE PROPERTY OF G.J GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT

G.J. Gardner. HOMES
Builders Details

ESPLANADE 294
HAMPTONS STREETSCAPE

© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES

DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: PROPOSED DWELLING
THE AUSTRIAN INVESTMENTS PTY LTD

DRAWING TITLE:
SITE PLAN
SCALE: 1 : 200

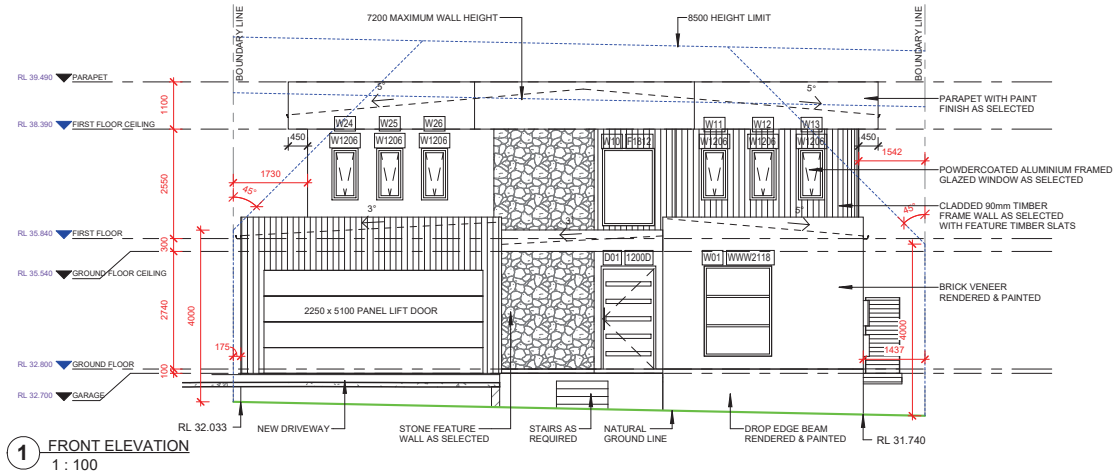
PROJECT:
26A WANDELLA ROAD
ALLAMBIE HEIGHTS NSW 2100

SHEET SIZE: A3 | SHEET No: A03 | REVISION: D
DATE: 24/02/2023
JOB NO: 230357 | STAGE: DA
DRAWN: DJH | GJGN188

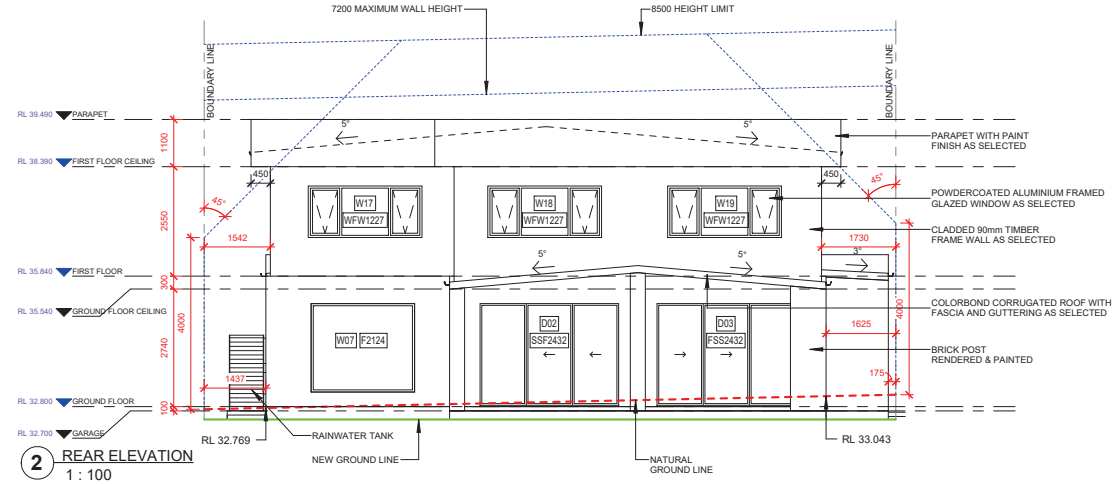
I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....

REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY



1 FRONT ELEVATION
1 : 100



2 REAR ELEVATION
1 : 100

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

DRAWING REVISION SCHEDULE

No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	16/05/2022	DJH
B	CHANGES AS PER EMAIL 23/05/2022	24/05/2022	DJH
C	CHANGES AS PER EMAIL 02/06/2022	16/06/2022	NF
D	DA SUBMISSION	11/07/2022	MO
E	ADJUST WATERTANK	19/08/2022	NF
F	ADDED POOL TO SHEETS	07/09/2022	NF
G	MODIFIED DRIVEWAY	28/02/2023	DJH

WINDOW SCHEDULE

MARK	WIDTH	HEIGHT	HEAD HT
W01	1570	2100	2400
W02	610	450	2400
W03	610	1460	2400
W04	1810	2100	2400
W05	2410	600	2400
W06	2410	600	2400
W07	2410	2060	2400
W08	610	2100	2400
W09	1210	1200	2400
W10	1210	1800	2100
W11	610	1200	2100
W12	610	1200	2100
W13	610	1200	2100
W14	1810	600	2100
W15	610	1200	2100
W16	610	1200	2100
W17	2650	1200	2100
W18	2650	1200	2100
W19	2650	1200	2100
W20	2170	600	2100
W21	1210	600	2100
W22	1210	600	2100
W23	1810	600	2100
W24	610	1200	2100
W25	610	1200	2100
W26	610	1200	2100

Grand Total: 26

DOOR SCHEDULE

MARK	WIDTH	HEAD HT
D01	1200	2400
D02	3228	2400
D03	3228	2400
D04	1570	2400

Grand Total: 4

WALL & ROOF CLADDING.

WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC 2019 Vol 2 Prt 3.5 OF THE BUILDING CODE OF AUSTRALIA PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE BCA FOR PRODUCT MATERIALS AND INSTALLATION.
IMPORTANT NOTE:
ANY PROPOSED PRODUCET CHANGES AFTER APPROVAL OF THE CC OR CDC IS TO BE IMMEDIATELY NOTIFIED TO THE PCA FOR CONCURRENCE.

BALUSTRADES - NCC/BCA Part 3.9

NO HORIZONTAL ELEMENTS TO FACILITATE CLIMBING BETWEEN 150mm TO 760mm WHERE FLOOR TO FLOOR LEVEL BELOW IS MORE THAN 4 METRES.

WINDOWS

PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC/BCA Part 3.9.2

© COPYRIGHT. THIS DRAWING REMAINS THE PROPERTY OF G.J GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT

G.J. Gardner. HOMES
Builders Details

BLUE WATER 386
PALM SPRINGS FACADE

© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES

DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: DOUBLE STOREY DWELLING
THE AUSTRIAN INVESTMENTS PTY LTD

DRAWING TITLE: ELEVATIONS
SCALE: 1 : 100

PROJECT: 26 WANDELLA ROAD
ALLAMBIE HEIGHTS NSW 2100

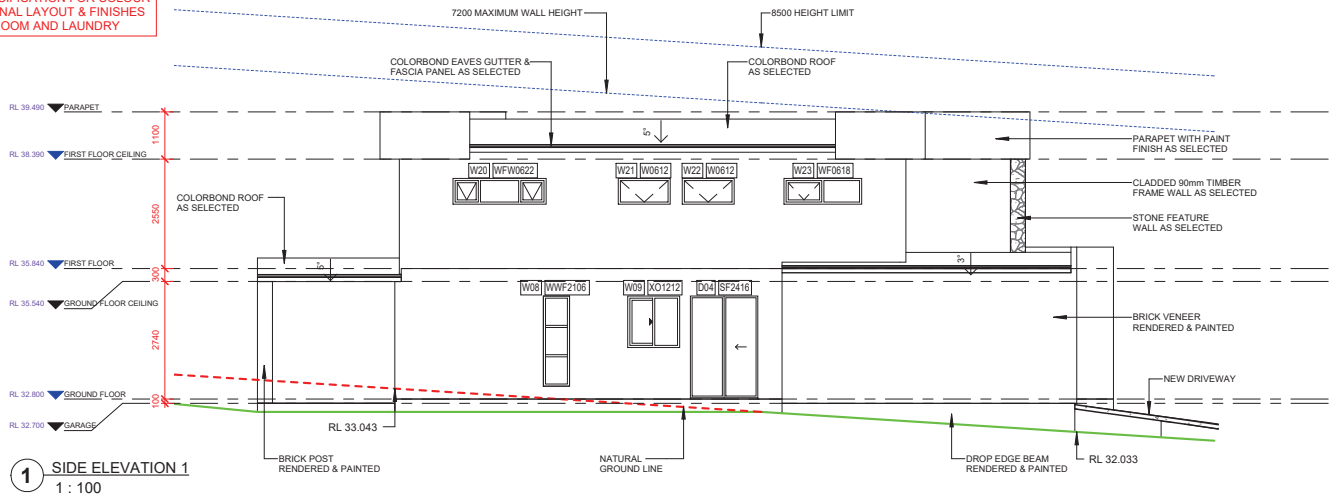
SHEET SIZE:	SHEET No:	REVISION:
A3	A07	G

DATE: 28/02/2023
JOB NO: 230357 STAGE: DA
DRAWN: DJH GJGN187

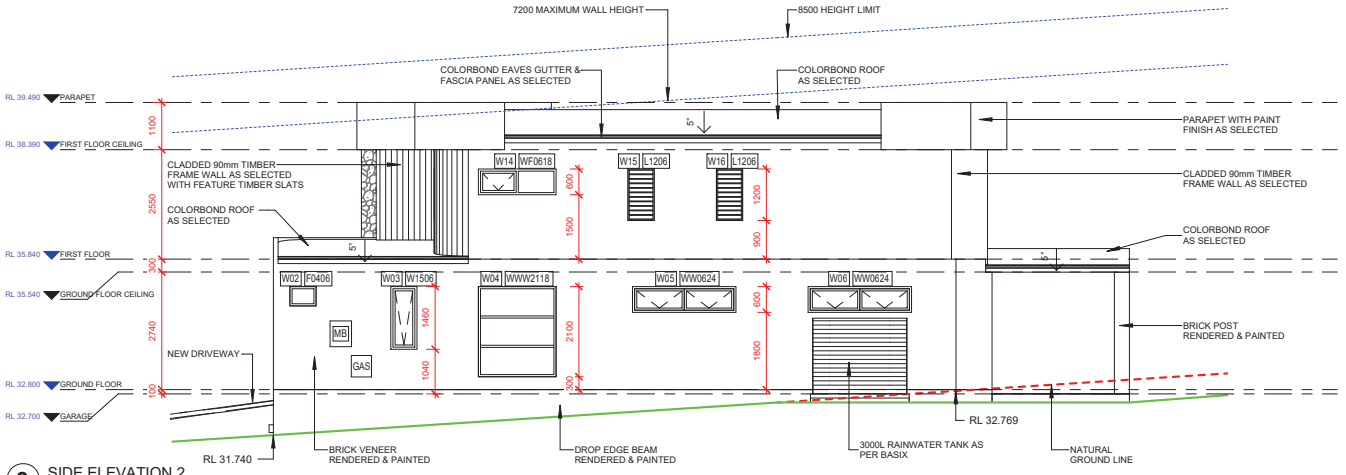
I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....

REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY



1 SIDE ELEVATION 1
1 : 100



2 SIDE ELEVATION 2
1 : 100

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

DRAWING REVISION SCHEDULE

No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	16/05/2022	DJH
B	CHANGES AS PER EMAIL 23/05/2022	24/05/2022	DJH
C	CHANGES AS PER EMAIL 02/06/2022	16/06/2022	NF
D	DA SUBMISSION	11/07/2022	MO
E	ADJUST WATERTANK	19/08/2022	NF
F	ADDED POOL TO SHEETS	07/09/2022	NF
G	MODIFIED DRIVEWAY	28/02/2023	DJH

WINDOW SCHEDULE

MARK	WIDTH	HEIGHT	HEAD HT
W01	1570	2100	2400
W02	610	450	2400
W03	610	1460	2400
W04	1810	2100	2400
W05	2410	600	2400
W06	2410	600	2400
W07	2410	2060	2400
W08	610	2100	2400
W09	1210	1200	2400
W10	1210	1800	2100
W11	610	1200	2100
W12	610	1200	2100
W13	610	1200	2100
W14	1810	600	2100
W15	610	1200	2100
W16	610	1200	2100
W17	2650	1200	2100
W18	2650	1200	2100
W19	2650	1200	2100
W20	2170	600	2100
W21	1210	600	2100
W22	1210	600	2100
W23	1810	600	2100
W24	610	1200	2100
W25	610	1200	2100
W26	610	1200	2100

Grand Total: 26

DOOR SCHEDULE

MARK	WIDTH	HEAD HT
D01	1200	2400
D02	3228	2400
D03	3228	2400
D04	1570	2400

Grand Total: 4

© COPYRIGHT. THIS DRAWING REMAINS THE PROPERTY OF G.J GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT

G.J. Gardner. HOMES
Builders Details

BLUE WATER 386
PALM SPRINGS FACADE
© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES

DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: DOUBLE STOREY DWELLING
THE AUSTRIAN INVESTMENTS PTY LTD

DRAWING TITLE:
ELEVATIONS
SCALE: 1 : 100

PROJECT:
26 WANDELLA ROAD
ALLAMBIE HEIGHTS NSW 2100

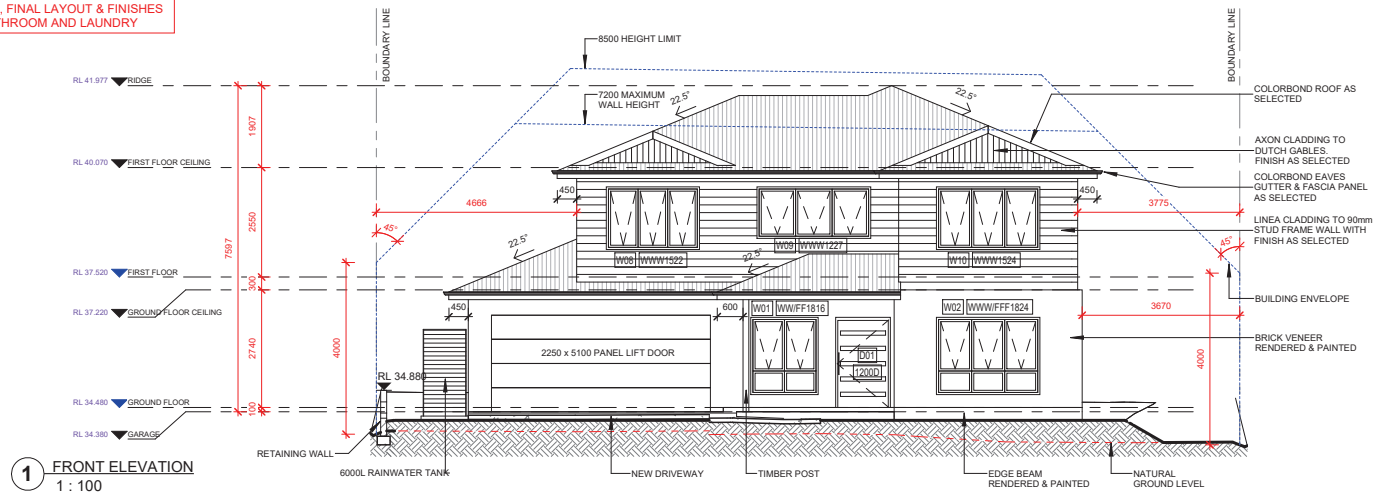
SHEET SIZE:	SHEET No:	REVISION:
A3	A08	G

DATE: 28/02/2023
JOB NO: 230357 STAGE: DA
DRAWN: DJH GJGN187

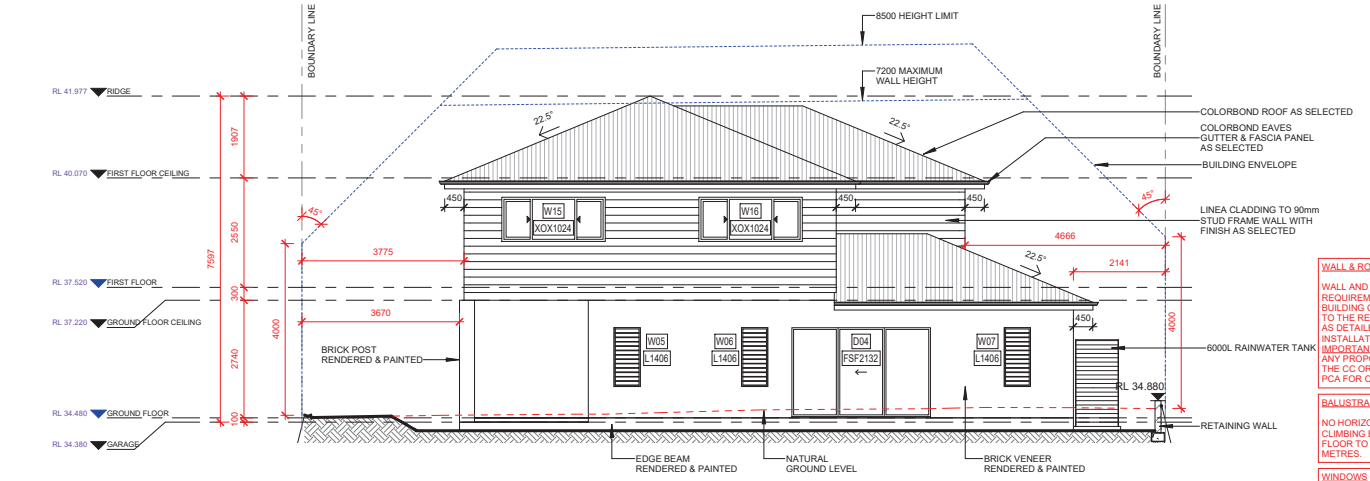
I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....

REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY



1 FRONT ELEVATION
1 : 100



2 REAR ELEVATION
1 : 100

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

DRAWING REVISION SCHEDULE

No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	01/06/2022	DJH
B	DA SUBMISSION	05/07/2022	SM
C	ADJUST RAINWATER TANKS	19/08/2022	NF
D	MODIFIED DRIVEWAY	24/02/2023	DJH

DOOR SCHEDULE

MARK	WIDTH	HEAD HT
D01	1200	2100
D02	1570	2100
D03	3228	2100
D04	3228	2100

Grand Total: 4

WINDOW SCHEDULE

MARK	WIDTH	HEIGHT	HEAD HT
W01	1570	1800	2100
W02	2410	1800	2100
W03	2170	600	2100
W04	610	1030	2100
W05	610	1370	2100
W06	610	1370	2100
W07	610	1370	2100
W08	2170	1460	2100
W09	2650	1200	2100
W10	2410	1460	2100
W11	2410	600	2100
W12	1210	1030	2100
W13	610	1030	2100
W14	2170	600	2100
W15	2410	1030	2100
W16	2410	1030	2100
W17	610	1030	2100
W18	1570	1030	2100

Grand Total: 18

WALL & ROOF CLADDING.

WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC 2019 Vol 2 Prt 3.5 OF THE BUILDING CODE OF AUSTRALIA PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE BCA FOR PRODUCT MATERIALS AND INSTALLATION.
IMPORTANT NOTE:
ANY PROPOSED PRODUCET CHANGES AFTER APPROVAL OF THE CC OR CDC IS TO BE IMMEDIATELY NOTIFIED TO THE PCA FOR CONCURRENCE.

BALUSTRADES - NCC/BCA Part 3.9

NO HORIZONTAL ELEMENTS TO FACILITATE CLIMBING BETWEEN 150mm TO 760mm WHERE FLOOR TO FLOOR LEVEL BELOW IS MORE THAN 4 METRES.

WINDOWS

PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC/BCA Part 3.9.2

© COPYRIGHT. THIS DRAWING REMAINS THE PROPERTY OF G.J GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT

G.J. Gardner. HOMES
Builders Details

ESPLANADE 294
HAMPTONS STREETSCAPE

© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES

DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: PROPOSED DWELLING
THE AUSTRIAN INVESTMENTS PTY LTD

PROJECT:
26A WANDELLA ROAD
ALLAMBIE HEIGHTS NSW 2100

DRAWING TITLE:
ELEVATIONS
SCALE: 1 : 100

SHEET SIZE:	SHEET No:	REVISION:
A3	A07	D

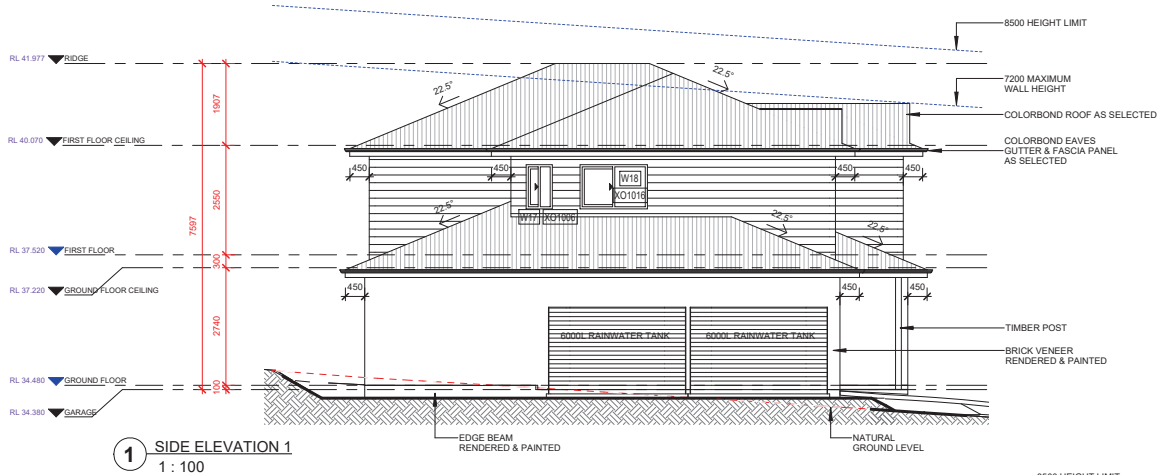
DATE: 24/02/2023
JOB NO: 230357 STAGE: DA
DRAWN: DJH GJGN188

I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

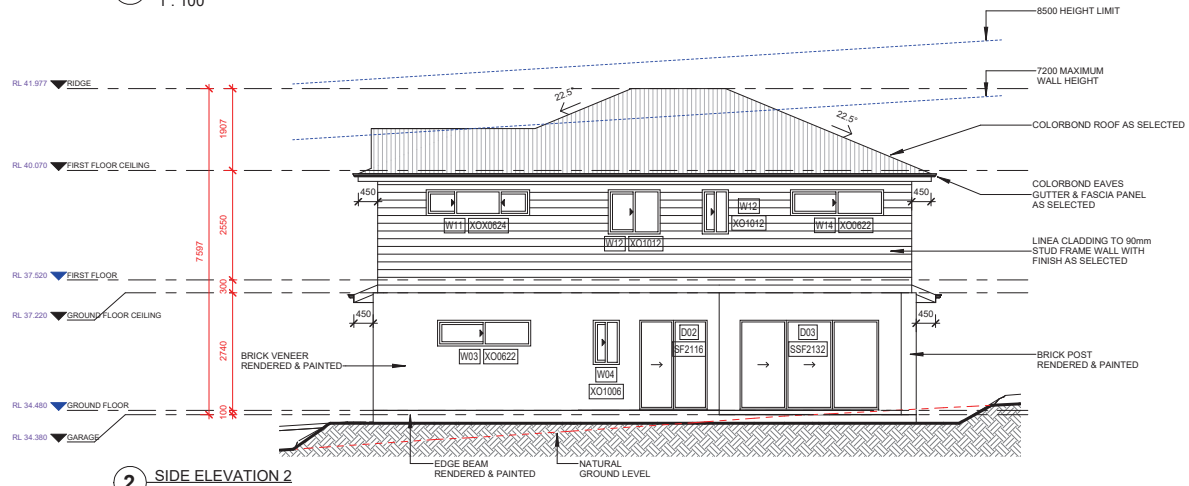
OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....

REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY

DRAWING REVISION SCHEDULE			
No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	01/06/2022	DJH
B	DA SUBMISSION	05/07/2022	SM
C	ADJUST RAINWATER TANKS	19/08/2022	NF
D	MODIFIED DRIVEWAY	24/02/2023	DJH



1 SIDE ELEVATION 1
1 : 100



2 SIDE ELEVATION 2
1 : 100

DOOR SCHEDULE		
MARK	WIDTH	HEAD HT
D01	1200	2100
D02	1570	2100
D03	3228	2100
D04	3228	2100

Grand Total: 4

WINDOW SCHEDULE			
MARK	WIDTH	HEIGHT	HEAD HT
W01	1570	1800	2100
W02	2410	1800	2100
W03	2170	600	2100
W04	610	1030	2100
W05	610	1370	2100
W06	610	1370	2100
W07	610	1370	2100
W08	2170	1460	2100
W09	2650	1200	2100
W10	2410	1460	2100
W11	2410	600	2100
W12	1210	1030	2100
W13	610	1030	2100
W14	2170	600	2100
W15	2410	1030	2100
W16	2410	1030	2100
W17	610	1030	2100
W18	1570	1030	2100

Grand Total: 18

WALL & ROOF CLADDING.

WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC 2019 Vol 2 Prt 3.5 OF THE BUILDING CODE OF AUSTRALIA PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE BCA FOR PRODUCT MATERIALS AND INSTALLATION.
IMPORTANT NOTE:
ANY PROPOSED PRODUCET CHANGES AFTER APPROVAL OF THE CC OR CDC IS TO BE IMMEDIATELY NOTIFIED TO THE PCA FOR CONCURRENCE.

BALUSTRADES - NCC/BCA Part 3.9

NO HORIZONTAL ELEMENTS TO FACILITATE CLIMBING BETWEEN 150mm TO 760mm WHERE FLOOR TO FLOOR LEVEL BELOW IS MORE THAN 4 METRES.

WINDOWS

PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC/BCA Part 3.9.2

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

© COPYRIGHT. THIS DRAWING REMAINS THE PROPERTY OF G.J GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT

G.J. Gardner. HOMES
Builders Details

ESPLANADE 294
HAMPTONS STREETSCAPE

© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES

DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: PROPOSED DWELLING
THE AUSTRIAN INVESTMENTS PTY LTD

DRAWING TITLE:
ELEVATIONS
SCALE: 1 : 100

PROJECT:
26A WANDELLA ROAD
ALLAMBIE HEIGHTS NSW 2100

SHEET SIZE:	SHEET No:	REVISION:
A3	A08	D
DATE: 24/02/2023		
JOB NO: 230357	STAGE: DA	
DRAWN: DJH	GJGN188	

I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....



CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

- **Clause 4.1A-Minimum subdivision lot size**

Warringah Local Environmental Plan 2011

No.26 Wandella Road, Allambie Heights

August 2022

Clause 4.6 Exception to Development Standard request to Clause 4.1A-Minimum Subdivision Lot Size

Site Address: 26 Wandella Road, Allambie Heights
Proposal: Demolition, Two (2) lot torrens title subdivision and construction of free standing dwellings on each allotment
Development Standard: Minimum subdivision Lot Size

Introduction.

This Clause 4.6 Variation request has been prepared by Metro Planning Services. It is submitted to Northern Beaches Council in support of a development application (DA) for a two (2) lot battle-axe subdivision and construction of dwelling on each lot on a property located at No.26 Wandella Road, Allambie Heights.

This Clause 4.6 request refers to the minimum lot size development standard under Clause 4.1A of Warringah Local Environmental Plan 2011 (WLEP 2011) (the LEP").

- Clause 4.1A of WLEP 2012-'*Minimum Subdivision Lot Size'* which requires a minimum lot size of 600m^2.

Proposed Lot 100 has an area of 573.1m² and is 26.9m² (4.48%) short of the required minimum. The proposed battle-axe Lot 101 has a total area of 600m² but only 456m², excluding the area of the driveway and is 144m² (24%) short of the required minimum.

This request to contravene the development standard for the minimum lot size has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79,
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446,
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009,
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118,
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170, *and*
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*

This Clause 4.6 request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b) and 4.6(4)(a)(ii))
5. Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

The focus of cl 4.6(3)(a) of the LEP which requires demonstration that compliance with the development standard is unreasonable or unnecessary is on whether the compliance with the specified control itself is unreasonable or unnecessary.

The contravention of the development standard for the proposed subdivision and construction of dwellings achieves the objectives of the standard, notwithstanding non-compliance with the standard as addressed below.

Objectives for the minimum subdivision lot size development standard

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

The proposed battle-axe subdivision for the purposes of typical low density detached dwellings will maintain the low density residential character of the locality and streetscape. We submit that the proposed lot sizes and battle-axe shape are consistent with the majority of those surrounding and representative of the prevailing subdivision pattern.

The prevailing subdivision pattern in the surrounding area comprises a number of similar sized and shaped battle-axe allotments. There is a minimum of eight (8) nearby allotments on the western side of Wandella Road that share the battle-axe allotment style of torrens subdivision detailed below:

- Nos.21 & 21a Wandella Road;
- Nos. 23 & 25 Wandella Road;
- Nos.28 & 27a Wandella Road;
- Nos.32 & 30a Wandella Road;
- Nos.34 & 34a Wandella Road;
- Nos. 36a & 36b Wandella Road;
- Nos. 38 & 38a Wandella Road;
- Nos. 40 & 42 Wandella Road.

Below is a location plan which shows similar battle-axe subdivisions in the immediate vicinity of the site along Wandella Road.

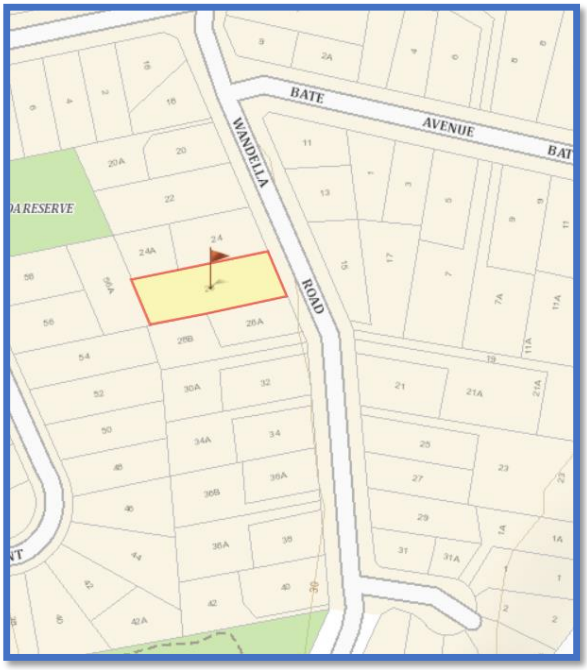


Figure 1 – Locality Plan showing general subdivision pattern of Wandella Road

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

N/A

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

N/A

(d) to achieve low intensity of land use in localities of environmental significance,

The development is not located in an environmentally significant zone.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

The site is not impacted by bushfire.

(f) to protect and enhance existing remnant bushland,

The site is not impacted by remnant bushland.

(g) to retain and protect existing significant natural landscape features,

The proposed development for the will not impact on any significant landscape features.

(h) to manage biodiversity,

The proposed development will have no impact on biodiversity.

(i) to provide for appropriate stormwater management and sewer infrastructure.

The proposed subdivision has appropriately designed for compliant stormwater disposal as detailed on hydraulic plans prepared by Nastas and Associates. The site has an existing sewer connection and we understand that there is capacity within the Sydney Water reticulated sewer network to accommodate another allotment.

It is therefore unnecessary to require compliance with the minimum lot size development standard due to the following reasons:

- The site is of sufficient size to accommodate the subdivision and proposed free standing dwellings on each proposed allotment,
- The proposed development is consistent with the LEP building height development standard, and the DCP building envelope, wall height, setbacks, landscape area, private open space, access and car parking controls;
- The form and scale of the proposed dwellings is suitable for the site and locality noting the 2-storey development is consistent with existing development within the visual catchment of the site and will not affect the low-density character of the locality,
- The dual occupancy development provides additional housing and housing choice consistent with the Local Planning Policies for housing contained in the Northern Beaches LSPS.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the minimum lot size control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

<u>There are sufficient environmental planning grounds to justify contravening the development standard</u>

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 request must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the minimum lot sizes development standard because:

- The site has sufficient area to accommodate the proposed battle-axe subdivision that is consistent with the prevailing subdivision pattern in the immediate vicinity of the site.
- The proposed subdivision achieves free standing dwellings that are in keeping with the existing and desired future character for development in the low-density residential zone.
- The proposed subdivision can accommodate free standing dwellings that have regard to the

building envelope including controls, including height, setbacks, private open space, landscape and car parking controls within the LEP and DCP.

- The subdivision provides sufficient area around the proposed built form that contributes to the landscape setting.

- The proposed subdivision and proposed dwellings will not result inunreasonable amenity impacts to adjoining properties or the public domain regarding overshadowing, visual privacy, acoustic privacy, visual bulk and scale.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant's written request has adequately addressed matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in clause 4.6(3) of the LEP by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and,

2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the consent authority under clause 4.6(4)(a)(i) need only be satisfied that the written request addresses clause 4.6(3). Under clause 4.6(4)(a)(i) the consent authority needs to be satisfied that the request has been made and that the relevant matters have been demonstrated.

The relevant items in clause 4.6(3) have been demonstrated above. Clause 4.6(4)(a)(ii) - The proposed development is in the public interest.

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed subdivision is in the public interest because it is consistent with the objectives of the minimum lot size development standard and the objectives for development in the R2-Low Density Residential zone in accordance with the planning assessment provided as follows:

• *To provide for the housing needs of the community within a low density residential environment.*	The proposed subdivision and dwellings provide for additional housing choice designed to meet the development standards and controls ensuring the built form is compatible within the low density residential environment.
• *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*	N/A
• *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*	The subdivision provides sufficient area around the proposed built forms on each allotment that contributes to the landscape setting and in harmony with the natural environment.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objective of the development standard and the R2 – Low Density Residential Zone under the Warringah Local Environmental Plan 2011.

The contravention to the minimum site area development standard does not accommodate additional residential density on the site beyond that envisaged within the Low Density Residential zone. Rather, the property is of sufficient size to accommodate the proposed subdivision and free standing dwellings that meet the development controls for dwellings in the zone.

For these reasons, the proposal and its non-compliance does not undermine the integrity of the development standard and its objectives or the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

In deciding whether to grant concurrence, the Secretary is required to consider the following:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

a) The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the non-compliance with the minimum lot size standard is considered to be in the public interest because the proposed development is consistent with the objectives of the standard and the objectives of the R2 Low Density Residential zone.

b) The non-compliance with the development standard would not undermine the public benefit of maintaining the development standard. The proposal will not result in a subdivision layout that is inconsistent with the surrounding battle-axe subdivision pattern in the immediate vicinity of the site. The request for flexibility in the application of the development standard will facilitate a subdivision that is of sufficient size to accommodate the free standing low density dwellings as proposed.

c) The proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The contravention of the standard will not result in adverse amenity impacts and is in the public interest.

Conclusion

Strict compliance with the 600m² lot size development standard would hinder the development for the purpose of promoting the orderly and economic use and development of land.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

This written request addresses all mandatory requirements imposed by cl. 4.6 of LEP 2013, and as such the consent authority must afford flexibility in the application of the development standards.

John Mckee
Metro Planning Services