

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 7 JUNE 2023

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



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 7 June 2023

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	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.	
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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 17 MAY 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 17 May 2023 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	REV2023/0007 - 13 ILUKA ROAD, PALM BEACH - REVIEW OF DETERMINATION OF APPLICATION NO. DA2022/1158 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL.
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/322906
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a review of a determination or decision made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Development Consent to REV2023/0007 for Review of Determination of Application No. DA2022/1158 for demolition works and construction of a dwelling house including swimming pool on land at Lot 62 DP 14682, 13 Iluka Road, PALM BEACH, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0007
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 62 DP 14682, 13 Iluka Road PALM BEACH NSW 2108
Proposed Development:	Review of Determination of Application No. DA2022/1158 for demolition works and construction of a dwelling house including swimming pool
Zoning:	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:	Christopher James Stevens
Applicant:	Alejandra Becerra
Application Lodged:	17/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	23/03/2023 to 06/04/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,001,322.00

EXECUTIVE SUMMARY

This application seeks consent for demolition of the existing dwelling and construction of a new two storey dwelling house and swimming pool.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the application is a 'Review of Determination' of a previous decision by the panel. The review has been submitted pursuant to Division 8.2 of the *EP&A Act 1979*. The application subject to the review is DA2022/1158 and was previously referred to the NBLPP due to receiving 19 submissions. The application was subsequently refused by the NBLPP (as per Council's recommendation).

The review application is accompanied by amended plans which increases the setback to the northern

boundary (Nabilla Road) and increases the upper floor setback for a portion of the southern façade. The pool has also been relocated from the Iluka Road frontage to the Nabilla Road frontage.

The current review application was notified and received three (3) submissions. The main issues in the submissions raise concerns with view sharing, solar access and overall bulk/scale.

Critical assessment issues included view sharing, solar access and the building setbacks in accordance with the Pittwater DCP.

As a result of the increased setback to the northern street boundary the proposal now demonstrates a reasonable view sharing outcome is maintained for the adjoining property to the east. The increased setback to Nabilla Road also improved bulking bulk/presentation to the street and the proposal is considered to meet the desired future character of Palm Beach.

Given the previous issues have now been resolved via the amended plans submitted with this review application, this report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This application is a 'Review of Determination' pursuant to Division 8.2 of the EP&A Act 1979. The application being reviewed is DA2022/1158 which was refused by the NBLPP on 14 December 2022.

Proposal

Development Consent is sought for demolition works and the construction of a two storey dwelling house with swimming pool, fencing and associated landscaping.

The ground floor comprises a double garage with a bedroom, bathroom, and an open plan living / kitchen / dining space. An outdoor alfresco area adjoins these spaces.

The first floor accommodates three bedrooms, three bathrooms and two additional living spaces.

The roof of the building accommodates a 24sqm (approx.) roof terrace.

A swimming pool is proposed along the northern boundary adjoining Nabilla Road.

Boundary fencing is proposed along the street frontage, comprising of timber and sandstone, between 1.6m and 1.8m high, as shown on the submitted landscape plan.

The proposal includes the planting of five water gums, three blueberry ash, four fern leaf banksias, one old man banksia (all trees) alongside other shrubs, grasses and ground covers.

Changes from DA2022/1158

This application is a review of determination of DA2022/1158 and the following changes have been made from the previous proposal:

- The northern setback to Nabilla Road has been increased to 3.3m for both ground and upper level. Previously was proposed was 3.3m ground and 2.5m upper.
- The southern façade has been setback to 3m and a portion of the roof replaced with a planter box at western half of the building. Previously this portion of the upper floor had a 1.1m setback and then sloped roof at 45 degrees. This has reduced the bulk of the building.

- Sandstone material introduced at western façade facing Illuka Road.
- Swimming pool has been reduced in size and relocated to the norther street frontage, previously located in the Illuka Road Primary Street frontage.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

Pittwater 21 Development Control Plan - D12.8 Building envelope

Pittwater 21 Development Control Plan - D12.11 Fences - General

SITE DESCRIPTION

Property Description:	Lot 62 DP 14682 , 13 Iluka Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site is a corner allotment bound by Nabilla Road to the north and Iluka Road to the west. To the east the site adjoins a two storey detached dwelling house, and to the south the site adjoins one half of a two storey attached dual occupancy development.</p> <p>The site falls within the R2 Low Density Residential zone</p>

pursuant to the Pittwater Local Environmental Plan 2014, and is within the Palm Beach Locality pursuant to the Pittwater 21 Development Control Plan 2014.

The site has an east - west width varying from 33m (to Nabilla Road) to 43m, and a north - south depth of approximately 12.5m, equating to an overall surveyed area of 492.8m². The site is bound by a wide road reserve to the north and west which is generally lawn with one Angophora Costata tree to the north. The street frontages are not kerbed.

Presently the site accommodates a detached single storey fibro cottage, and an detached fibro garage / secondary dwelling structure.

Surrounding properties consist of dwelling houses, dual occupancy developments and other ancillary structures. These built forms are generally contained within two storey buildings, and consist of a varying format of architectural typologies.

Map:



SITE HISTORY

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

The previous applications on the site are as follows:

DA2021/0197 was a previous application on the site for the construction of a new dwelling house by the same architect. That application was ultimately withdrawn by the Applicant given concerns that were raised during the assessment, but were not satisfactorily resolved by revised plans.

DA2022/1158 was considered at the Local Planning Panel on 14 December 2022. The application was for Demolition and construction of a dwelling house and swimming pool. That application was refused by the NBLPP for the following reasons (and in accordance with the Council's recommended reasons outlined in the assessment report):

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 Views of the Pittwater 21 Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.5 Front building line of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to shadow diagrams and acid sulphate soils. This information was provided to</p>

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may

request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 14 December 2022 and the notice of determination was issued on 14 December 2022. The review was lodged on 17 March 2023 and is to be considered by the Northern Beaches Local Planning Panel on 7 June 2023, which is within 6 months of the date of determination.

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

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Assessment of Reasons for Refusal DA2022/1158

How has the 8.2 Application Responded to The Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2022/1158 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.

Comment: The desired future character statement for residential development for the Palm Beach Locality states that development will primarily consist of *"primarily a low-density residential area with dwelling houses in maximum of two stories in any one place in a landscape setting, integrated with the landform and landscape"*. The application is for a two storey dwelling and is surrounded by a quantum of landscaping that is consistent with the DCP requirement of 50% (when including the permissible variations under the DCP). The landscape plan will compliment the area and provide a built form that integrates into the landscape setting. There is limited excavation and therefore integrated into the landform. The proposal is considered to be consistent with the locality statement.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 Views of the Pittwater 21 Development Control Plan.

Comment: The impact upon views have been considered in detail later in this report. The application has increased the upper floor setback to the Nabilla Road Frontage from 2.5m to 3.3m. This has improved the view sharing outcome for the adjoining property at 1 Nabilla Road to an acceptable level. It is also noted that the upper floor, as a result of the amended proposal, now complies with the 3.25m secondary street setback. Although it has been requested in the submissions that an increased setback

be provided to the eastern boundary, Council's assessment finds view sharing is maintained without a further increase to the eastern boundary, with water views maintained from centrally within the dwelling and centrally within the living area.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.5 Front building line of the Pittwater 21 Development Control Plan.

Comment: As noted above, the upper floor setback to Nabilla Road has been increased from 2.5m to 3.3m, which is compliant with the secondary street front setback required under the DCP. As such, the façade setback is consistent with the DCP. The relocation of the swimming pool from the Illuka Road Frontage to the secondary frontage along Nabilla Road is also a better outcome for the site. Given the pool is inground it will have a limited impact on the streetscape and there is plenty of room for landscape planting either side to soften the building form.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Comment: The submission issues are discussed in detail within this report. It is considered that the amended plans address the reasons for refusal and there are no remaining issues raised within the submissions that would warrant refusal of the application in the now amended form.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

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 23/03/2023 to 06/04/2023 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 3 submission/s from:

Name:	Address:
Mr Nicholas Kenneth Martin Allen Mrs Yasmin Anita Allen	20 Bishops Avenue RANDWICK NSW 2031
Mr Neil Campbell Smith	11 A Iluka Road PALM BEACH NSW 2108
Mr Philip Francis Quirk	3 Woorak Road PALM BEACH NSW 2108

Name:	Address:
Ms Diana Dennison	

The following issues were raised in the submissions:

- Built Form Non-Compliances
- Overshadowing impacts
- View impacts
- Use of Building

The above issues are addressed as follows:

- **Built Form Non-Compliances**

The submissions raised concerns that the proposal non-compliant with Council's built form controls, particularly with regards to setback to the eastern boundary and northern boundary (Nabilla Road).

Comment:

The site is a corner allotment and is therefore subject to one primary front setback (6.5m) to Iluka Road, and can be subject to one secondary street front setback (3.25m, if objectives of the setback control are met) to Nabilla Road, and has residual boundaries being the east and south. The proposal is considered to be consistent with the objectives of the front setback control and as such, the secondary street setback of 3.25m can be applied. The proposal provides a 3.3m setback to Nabilla Road and meets the secondary street setback.

The P21DCP is silent on whether the remaining boundaries, for corner allotments, should be assessed as either 'side' or 'rear' boundaries. Submissions have requested that Council assess the eastern boundary as a 'rear' boundary, thereby requiring a 6.5m setback. The proposal provides a setback of between 4.6m and 6.1m to the eastern boundary.

This is discussed in detail later in this report and the proposal is found to be reasonable with regard to the eastern boundary setback and strict application of a 6.5m setback to the eastern boundary not considered reasonable given the site is a corner allotment, with the eastern boundary arguably also a 'side boundary'. The setback of between 4.6m and 6.1m to the eastern boundary is considered reasonable as discussed later in this report.

- **Overshadowing impacts**

The submissions raised concerns that the proposal will have an unacceptable overshadowing impact.

Comment:

The particulars regarding overshadowing impacts are discussed later in this report. The proposal is found to result in the reasonable retention of solar access to the adjoining sites.

- **View impacts**

The submissions raised concerns that the proposal will have unreasonable view impacts.

Comment:

A view sharing assessment is undertaken later within this assessment report against the *Tenacity* Planning Principle. The proposal has been found to result in reasonable view sharing.

- **Use of the Building**

The submissions raised concerns that a portion of the building may be occupied as a secondary dwelling, and that such a land use has not been sought under this application.

Comment:

Appropriate conditions are included within the recommendations of this report to limit the use of the building to be a dwelling house (only one occupancy).

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>Supported subject to conditions</p> <p>The site is designated as Class 3: Acid sulfate soils in a class 3 area are likely to be found beyond 1 metre below the natural ground surface. Excavation at this depth is not anticipated. Environmental Health supports the proposal subject to conditions.</p>
Landscape Officer	<p>Supported subject to conditions</p> <p>The development application is for demolition of existing structures and construction of a new dwelling, garage, pool, upper terrace, fencing, tree removal and landscape works, as described and illustrated in the reports and plans. A Landscape Plan and an Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The submitted Arboricultural Impact Assessment includes recommendations to remove four existing street trees/palms/tall shrubs including two Oleanders, one Cocos Palm, and one Black Locust. All are undesirable species and the Landscape Plan replaces these with native street trees thus no concerns are raised.</p>

Internal Referral Body	Comments
	<p>The property contains one Frangipani tree that is proposed to be transplanted. The native Angophora floribunda street tree is to be retained with pruning works required to one side, and all trees in proximity to the proposed development works within adjoining property are protected. The Arboricultural Impact Assessment includes recommendations for tree protection measures and conditions shall be accordingly imposed.</p> <p>The submitted Landscape Plan provides an enhanced landscape setting to the property and to the streetscape and no concerns are raised subject to imposed conditions.</p>
NECC (Bushland and Biodiversity)	<p>Supported subject to conditions</p> <p>The proposal has been assessed against the following applicable biodiversity-related provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) - Coastal Environment Area • Pittwater DCP Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land <p>The development will result in removal of exempt exotic trees and provides for appropriate replacement planting of approximately 60% native species. Conditions recommended by the Riparian and Landscape referral bodies will serve to protect coastal environmental/biodiversity values.</p>
NECC (Coast and Catchments)	<p>Supported subject to conditions</p> <p>The application has been assessed in consideration of the:</p> <ul style="list-style-type: none"> • Plans and documents lodged in support of the review of determination; • Coastal Management Act 2016, • State Environmental Planning Policy (Resilience and Hazards) 2021; and • Pittwater LEP 2014 and Pittwater 21 DCP. <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the review of determination. The proposed development is generally consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Divisions 3, 4 and 5 of the SEPP R & H apply to this application. On internal assessment, the application is considered to largely</p>

Internal Referral Body	Comments
	<p>satisfy requirements under Divisions 3, 4 and 5 of SEPP R & H. As such, it is considered that the application does comply with the provisions of State Environmental Planning Policy (Resilience & Hazards) 2021, subject to conditions.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related planning controls or development controls relevant to the subject review of determination were identified. As such, it is considered that the application is compliant with the coastal relevant requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>Supported subject to conditions</p> <p>The proposed development does not require OSD and connection of stormwater to the Council stormwater pit is acceptable. The proposal will require a driveway crossing which has been conditioned. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>Supported subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <p>Riparian</p> <p>The site drains to the Pittwater Estuary which supports the endangered and protected seagrass <i>Posidonia australis</i> and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the littoral rainforest, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Sediment Management</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. 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.</p> <p>Water Management</p> <p>Rainwater tank as per BASIX certificate.</p>

Internal Referral Body	Comments
	Swimming pool water management Pool water from the swimming pool must drain to the sewerage system to allow water to be correctly processed and to protect the receiving environment.

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.

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. 1309618S_02 dated 8 March 2023).

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

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

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 site is mapped as being within the coastal environment area. The property is situated some distance from the waters edge, with that distance being intersected by a road and a public car park. The spatial separation and type of structures between the site and the waterway largely minimise opportunities for the development to have adverse impacts on the waterway, its ecology, or the coastal processes.

The development does not impact on access to the coast, any known Aboriginal heritage items or the use of the surf zone.

Therefore on balance, the consent authority may be satisfied that the development is not likely to have an adverse impact as detailed in cl.2.10 (1) (a) through to (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 consent authority may be satisfied that the development is designed, sited, and will be managed in an appropriate manner to avoid adverse impacts referred to in subsection 1 as above.

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 site is also mapped as being within the coastal use area. Given the separation of the site to the coast, the consent authority can be satisfied that the development is designed, sited, and will be managed in an appropriate manner to avoid adverse impacts.

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 consent authority may be satisfied that the replacement of a dwelling within an established residential area would be unlikely to cause increased risk of coastal hazards on the subject site or surrounding lands.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 3, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 1.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 1.0 metre below the natural ground surface within a Class 3 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 2m below the natural ground level for the swimming pool. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by Ascent Geo Environment dated 3 May 2023. In the assessment, Ascent Geo found that:

"Despite the Class 3 mapping, the soil materials in the area of the proposed work are comprised of marine sand deposited in a foredune environment. These materials lack the required organic material and were not subject to the reducing environment necessary to permit the formation of acid sulfate soils. Based on the material encountered in our testing onsite, field acid sulfate soils testing was not considered necessary for this site.

Based on the scope of the proposed works, the results of the ground testing carried out, and our prior experience in the local area, the site and the proposed works present a very low risk of encountering potential or actual acid sulfate soils. Any further acid sulfate soils investigation, or the preparation of an acid sulfate soils management plan is not considered necessary for this development."

In this regard, Ascent Geo's advise that an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development of the site.

The application was referred to Council's Environmental Health Officer who recommended a condition which requires the applicant to notify the principal certifying authority of any new evidence of the presence of acid sulfate soils.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment: The 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 waterway, drinking water catchment or environmentally sensitive area

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form	Requirement	Proposed	%	Complies
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Control			Variation*	
Front building line	6.5m (Illuka Road - Primary)	Building 6.5m	N/A	Yes
	3.25m (Nabilla Road - Secondary)	Building 3.3m Pool 0.6m	N/A 81%	Yes No
Side building line	1m (South)	1.1m	N/A	Yes
Rear building line*	6.5m (East)	4.6m to 6.1m	6%-29%	No*
Building envelope	3.5m (East)	Within	N/A	Yes
	3.5m (South)	Privacy screen encroaches	N/A	No
Landscaped area (Site area is 467m ²)	50% (233.5m ²)	49.5% (231.4m ²) + Permitted 6% variation (28m ²) Total 55.5%	N/A	Yes

**See discussion on rear building line, having regard to the corner lot position.*

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.9 Landscaped Area - General	Yes	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15.22 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The character statement for residential development in Palm Beach states:

"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape."

The proposal is entirely consistent with this character statement, comprising of a two storey dwelling and surrounded by landscape planting.

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The views in question that may be impacted by the development are water views and, to a lesser extent, distant land-water-interface at West Head. Both views are obtained through the car park and reserve at Lucinda Park which sits west/north-west of the subject site. The views are not considered to contain any items that can be described as 'iconic' (as per Tenacity) and are partial views insofar as they are only obtainable across the length of the subject site, across a road, through a car park and between dwelling houses. The view corridor has several trees (generally within Lucinda Reserve) which obscure the wholeness of the view corridor, thus leading to the conclusion that the views are partial. The arc of the views from 1 Nabilla Road are indicated on the below diagram.



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 2:1 Nabilla Road, Palm Beach

The views available from 1 Nabilla Road are from the first floor in a westerly direction. The westernmost portion of the building is a covered entertaining deck which enjoys the view from both a sitting and standing position. The view is available from inside the kitchen/living/dining space of the house, albeit to a lesser extent the further east one walks into the dwelling and away from the windows.

Under the P21DCP, there is no definition as to whether the eastern and southern boundary of the subject site is a 'rear' or 'side' boundary.

5 Woorak Road, Palm Beach

It is unclear where views are available from 5 Woorak Road, or what extent of views exist. That property has a two storey dwelling house to the street and a two storey outbuilding along the rear boundary for the width of the site.

A review of the approved DA plans and CC plans for the buildings at this site reveal that there are no first floor west facing windows from the outbuilding, and that any views that may be obtainable from the main dwelling would be from a bathroom, however such a view would be highly obstructed by the two storey outbuilding on the site itself, and would be limited to a very narrow oblique angle.

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 3:1 Nabilla Road, Palm Beach

As described earlier, the views in question from 1 Nabilla Road are obtainable from the primary indoor and outdoor living spaces. The view is better from the balcony than it is from the indoor areas. The view corridor is narrow and is largely reliant on developments on the subject site and the growth of vegetation both on private and public property. The below photos show the a number of different vantage points from within 1 Nabilla Road of their view. The applicant has installed a height pole which represents the north-eastern corner of the proposal. The height pole has been surveyed and a certificate provided to Council. As can be seen in the below photos, the view is impacted to varying degrees depending on where one stands in the building.

When standing on the northern side of the deck (Figure 1) the water view is retained. When standing at the centre of the deck (Figure 2), half the water view is impacted. When standing at the southern part of the deck (Figure 3), the water view is entirely obscured. Standing centrally within the living room (figure 4), the water view is largely retained. From the dining room which is located to the south of the living room, the view is obscured (Figure 5).

Overall, given that the view is only a partial view and that portions of the view is retained from standing at the northern side and central of the building, the overall impact is considered

moderate.



Figure 1 - Standing at northern side of the deck.



Figure 2 - Standing at centre of the deck.



Figure 3 - Standing at the southern portion of the deck.



Figure 4 - Standing centre of the living room and area adjoining the kitchen.



Figure 5 - Standing in the dining room.

5 Woorak Road, Palm Beach

For the reasons described above, there is no view loss from this property. If there are in fact views available from the first-floor bathroom window, they would be more oblique and currently obstructed, rather than the view depicted in the above photographs for 1 Nabilla Road.

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 application has been amended to comply with the 3.25m secondary street setback from Nabilla Road in accordance with the DCP. The previous proposal was setback 2.5m to Nabilla Road and caused a greater impact. The now increased setback is compliant and opens up the view corridor in a reasonable way. The submissions have raised that the proposal should also provide a 6.5m setback to the eastern boundary in accordance with the rear setback control. The DCP control is silent on the assessment of corner allotments, and whether the boundaries running perpendicular to a street frontage are a 'side' or 'rear' boundary. A merit assessment of this issue is undertaken against control D12.6 Side and Rear Setbacks, later in this report.

However, given the adjoining property 1 Nabilla Road is located directly east of the site, the setback which is of most consequence for the view corridor is the northern setback to Nabilla Road, which the proposal has now been amended to be compliant with at 3.3m. It is considered that the setback as proposed to the eastern boundary achieves view sharing, despite being less than 6.5m. It is not considered that an increase to the eastern setback to 6.5m would result in a largely different view sharing outcome, especially when standing or sitting within the living room or on the northern portion of the deck off 1 Nabilla Road.

It is also noted that there are a number of other corner sites in the vicinity of the site that have a reduced setback to the boundary opposing the primary street frontage, including the existing shed/outbuilding on the site, 16 Nabilla Road, 2A Woorak Road and 1065 Pittwater Road. Therefore, flexibility in the siting of buildings is warranted for corner sites and is appropriate for this site considering how other corner sites have been treated in the locality. The proposed setback of 4.6m to the north-eastern corner results in a suitable view sharing outcome, with the view largely retained from the central and northern portions of the adjoining buildings. As such, the proposal deals with setbacks on a corner site in an appropriate way and distributes the volume of the building across the site to retain reasonable view sharing for the adjoining site.

To ensure this view corridor is maintained, a condition has been recommended to require that that any landscaping shall not exceed 3m in height forward of the building alignment to Nabilla Road.

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

Comment:

Views from public places are retained.

- *Canopy trees take priority over views.*

Comment:

Canopy trees are protected over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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.

C1.4 Solar Access

The DCP requires that:

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

The application is accompanied by shadow diagrams demonstrating solar access outcome for the adjoining sites.

1 Nabilla Road (3 Woorak Road)

The proposal is not considered to unreasonably overshadow 1 Nabilla Road to the east, given the due east/west relationship.

5 Woorak Road

The proposal is not considered to unreasonably overshadow 5 Woorak Road to the south-east. If any overshadowing were to occur, that would be limited to afternoon (approximately 1:45pm onwards), but it is noted that the primary open space of that dwelling is largely self-shaded by the presence of a two storey structure for the width of the site along the rear boundary.

11A Illuka Road

The site located directly to the south at 11A Illuka Road Palm Beach is the most susceptible to overshadowing given its direct south orientation to the site. The primary living room of 11A Illuka Road is located on the upper level, with windows facing north and west. As shown in the elevational shadow diagrams, sunlight is maintained to the northern facing windows and the western facing window. In this regard, the proposal meets the control for overshadowing of window of primary living areas.

In regards to overshadowing of private open space, the shadow diagrams submitted with the proposal show that the proposal will have a greater shadowing impact on the rear garden of 11A Illuka Road than the existing development on site. That impact is depicted on drawing A400 F and A410 G.

The attached dual occupancy development of 11A and 11B Illuka Road, includes a ground floor secondary living room at the rear which leads onto the respective rear gardens. The first-floor eastern portion of the dwellings include kitchen, living and dining spaces and open onto a large (approx. 4mx4m) terrace).

Both the rear garden and first floor terrace are private open space. Given that the terrace adjoins the living, kitchen and dining areas, this space is considered to be the 'main' private open space.

More than 50% of the rear garden will receive direct sunlight in the morning at 9am, with the extent of sunlight reducing considerably by midday when the majority of the rear yard will be overshadowed. In this regard the proposal will not achieve 3 hours solar access to the rear yard (min 80m² as required by C1.7 of the DCP) throughout the day. This is largely due to the site orientation and the narrow configuration of the rear yard of 11A Illuka Road. Whilst the DCP requires private open space to be at ground level, it is noted that the first-floor terrace will not be overshadowed by the development during the hours that additional overshadowing is experienced to the rear yard. Therefore, on balance, there will be an area of private open space (one at the ground level, one at the terrace level) that will continue to receive solar access throughout the day.

The proposal does not strictly achieve compliance with the solar access requirements of the P21DCP, however the configuration of the adjoining development with elevated terraces and primary living areas

result in an acceptable outcome, with the combination of the western terrace and the eastern rear yard receiving sunlight between 9am and 3pm midwinter.

C1.5 Visual Privacy

The proposal is considered to provide an acceptable level of visual privacy to neighbouring properties.

The building has limited windows on the eastern and southern elevations, and the northern and western elevation are facing the public road.

The rooftop terrace area is assessed as not likely to cause any adverse or unreasonable overlooking impacts to adjoining properties. The terrace has a privacy screen to the southern elevation to mitigate opportunities for overlooking between the terrace and 11A Iluka Road.

On balance, the degree of privacy afforded to neighbours and future occupants is consistent with what could readily be expected in a residential area.

C1.14 Separately Accessible Structures

The development includes a portion of the house (to the east) which appears capable of being separated from the main dwelling and occupied separately.

Whilst no issues would be raised if the applicants had sought approval use of this space as a secondary dwelling, such has not been sought.

Accordingly, conditions could be imposed in any consent requiring the property to only be used as a dwelling house (one dwelling) and that no approval for a secondary dwelling is provided under this application.

D12.5 Front building line

Description of Non-Compliance

Clause D12.5 *Front building line* of the P21DCP prescribes a front boundary setback requirement of either 6.5m, or consistent with the established building line, whichever is the greater. For corner allotments, it also permits a secondary street frontage (in this case, Nabilla Road) to have a setback half of the primary road setback, which in this case is 3.25m.

The facade of the building provides setbacks in accordance with the above, with 6.5m provided to Iluka Road and 3.3m provided to the Nabilla Road building facade.

The in-ground pool located within the Nabilla Road secondary frontage is the element that does not comply with the DCP control.

Merit Consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

Consistency with the desired future character has been established in part A4.12 *Palm Beach Locality* within this report.

The proposal now provides a compliant secondary street setback of 3.3m (minimum required is 3.25m). The proposal provides a high level of deep soil landscaping within the front setback area and the small pool within the secondary setback is not considered to compromise the proposal meeting the DFC.

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

Comment:

View loss is discussed in detail under part C1.3 *View Sharing* of this report. In summary, as the proposal now has a setback of at least 3.25m to Nabilla Road a reasonable view sharing outcome is now achieved. The in ground swimming pool does not impact views.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

N/A - Nabilla Road and Iluka Road are not main roads.

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

Comment:

The proposal retains the Angophora Costata on the Nabilla Road frontage within Council's road reserve, which serves as the most prominent vegetation on the site (or its curtilage) at present. The proposal seeks to introduce extensive new planting on private and public land, including (but not limited to) 4 x *fern leaf banksia*, 1 x *old man banksia*, 4 x *water gums*, 3 x *blueberry ash* in conjunction with other shrubs, grasses and groundcovers.

Therefore, the proposal is assessed as maintaining mature vegetation, and is providing new planting that is significantly in excess of the existing quantum of vegetation on the site.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

Not achieved. Providing vehicular manoeuvring in a forward direction for both ingress and egress would require an extensive area of the site to be dedicated to driveway which would ultimately detract from the ability to plant trees, and thus the developments ability to achieve the desired future character.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment:

The proposal is considered to be of a proportion, materiality, and surrounding by a landscaped curtilage - all of which are contributing factors to result in the conclusion that the building will, upon completion and more so maturity of landscaping, enhance the bushland character of the locality.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The proposal is largely at a height lesser than that achieved on surrounding properties, with a primary roof ridge of RL8.89 (commensurate to a ridge at 11A & B Iluka Road of RL11.13 and ridge at 1 Nabilla Road of RL9.75 - data extracted from survey). The height of the development is also lesser than the heights of mature vegetation within the vicinity.

Therefore, the proportions of the development promote a scale and density consistent with the surrounding built and natural environment.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

It is considered that the material palette chosen and landscaped treatment selected are appropriate for the land. The encroachment of the pool into the secondary setback is not considered to lessen the attractiveness of the streetscape.

It is further noted that the wide road reserves enhance both the site and the wider locality, and the provision of landscaping within these spaces will enhance the street frontage further, and will thus improve pedestrian amenity through aesthetic and natural shading from trees.

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

Comment:

The two streets in question have a varying setback and scale of structures throughout them. As the facade of the building meets the 3.25m secondary street setback, the proposal has adequately responded to the future character which is set out by the DCP controls.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 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.

D12.6 Side and rear building line

Description of Non-Compliance

Part D12.6 *Side and rear building lines* of the P 21 DCP prescribe a minimum rear building line of 6.5m, and required side setbacks of 1m to one side and 2.5m to the other side.

The control is silent on the assessment of corner allotments, and whether the boundaries running perpendicular to a street frontage are a 'side' or 'rear' boundary. Nevertheless, an assessment is undertaken against the objectives of the control.

The proposal has a 4.6m to 6.1m setback to the eastern boundary, and that setback area is to be

landscaped. To the southern boundary, the proposal has a minimum 1.125m setback which is also to be landscaped.

Merit Assessment

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

- *To achieve the desired future character of the Locality.*

Comment:

The developments consistency measured against the desired future character is established in part A4.12 *Palm Beach Locality* of this report.

- *The bulk and scale of the built form is minimised.*

Comment:

The development is not considered to be of a significant bulk and is commensurate with dwellings in the Palm Beach area. The proposal is well within the LEP height limit and the majority of the facade complies with the building envelope (with the exception of a minor portion at the western extent - discussed elsewhere within this report).

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

Comment:

View sharing is assessed in detail under part C1.3 *View Sharing* in this report. In short, the proposal maintains a reasonable view sharing outcome for the property 1 Nabilla Road. Given the adjoining property 1 Nabilla Road is located directly east of the site, the setback which is of most consequence for the view corridor is the northern setback to Nabilla Road, which the proposal has now been amended to be compliant with the secondary street setback of 3.25m (proposed at 3.3m). It is considered that the setback as proposed to the eastern boundary achieves view sharing, despite being less than 6.5m. It is not considered that an increase to the eastern setback would result in a largely different view sharing outcome, especially when standing centrally within the living room of 1 Nabilla Road.

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

Comment:

View sharing is assessed in detail under part C1.3 *View Sharing* in this report.

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

Comment:

The encroachment of structures within the prescribed side or rear setback areas is not considered to unreasonably detract from the amenity of surrounding properties. The eastern facade contains no windows.

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

Comment:

As detailed in the discussion covering the Front building line, the site maintains substantial landscaping and has a mature tree canopy to get an attractive streetscape. The area between the eastern boundary and building is deep soil landscaping.

- *Flexibility in the siting of buildings and access.*

Comment:

For the particular circumstances of this site and given the site is located on a corner, it is considered warranted to permit flexibility in the siting of buildings on the site and not strictly apply a 6.5m setback to the eastern boundary, as would be done on a single frontage site. Whilst it is acknowledged that several objectors have raised concerns in relation to the location of the building, it is considered to be the most suitable location with regards to neighbouring amenity, maintaining the streetscape and the corner position.

It is also noted that there are a number of other corner sites in the vicinity provide a reduced setback to the boundary opposing the primary street frontage, including the existing site (existing shed encroaches), 16 Nabilla Road, 2A Woorak Road and 1065 Pittwater Road.

Therefore, flexibility in the siting of buildings is warranted and appropriate for this site and is consistent with how other corner sites have been treated in the locality.

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

Comment:

As described elsewhere, vegetation is appropriately retained and the landscaping is enhanced.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

N/A - there is no adjacent commercial zone to create a buffer.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P 21 DCP 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.

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 *Building envelope* of the P21DCP prescribes a 3.5m envelope to the southern and eastern boundaries of the property.

The proposal has two elements that project outside of the prescribed envelope on the southern boundary, as depicted in red on the below drawing:

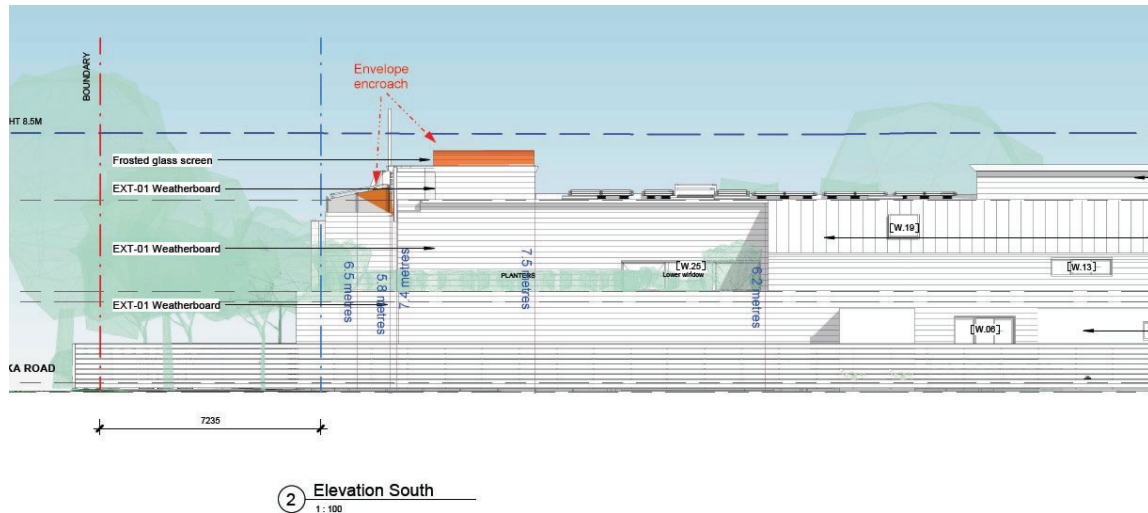


Figure 1: Working Drawing - showing the southern elevation of the proposal, with Iluka Road existing to the left-hand side. The portions in red are outside of the envelope. The blue dashed line indicates the 8.5m height control

Merit Consideration:

With regard to the request for a variation, the development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*

Comment:

Consistency with the DFC is addressed earlier in this report.

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

Comment:

The portions of building outside of the envelope are not particularly prominent from the streetscape in that they are 6.5m from the Iluka Road boundary and, generally, aligned with the building to the south. The encroaching portions sit below the maximum height of buildings and are below the height of canopy trees. Therefore, the encroaching elements do not jeopardise the streetscape or proportionality of the street.

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

Comment:

With regards to spatial characteristics, the lot is generally flat and is relatively small which poses difficulties in achieving compliance. Where a non-compliance exists it is addressed in the relevant section of this report. The spatial characteristics of the natural environment is considered to refer to topography and vegetation. The height of the building is below the

established tree canopy and neighbouring properties and therefore appropriately relates to this.

- *The bulk and scale of the built form is minimised.*

Comment:

The proposal has gone to considerable lengths to comply with the building envelope control and in turn, to reduce its bulk. The southern wall of the building is, for the most part, 4.5m in height before it slopes inwards at a 45 degree angle to minimise impacts and to achieve compliance.

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

Comment:

View sharing is discussed in detail elsewhere in this report.

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

Comment:

Amenity provisions are discussed elsewhere in this report.

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

Comment:

The proposal is retaining vegetation where appropriate and proposes a significant volume of new vegetation to enhance and visually reduce built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 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.

D12.11 Fences - General

The proposal seeks to construct a part timber part stone boundary fence with heights between 1.2m and 1.8m (1.8m adjoining the pool) along both the Iluka Road and Nabilla Road frontages. These heights are not considered to be excessive and are not considered to detract from the streetscape, particularly given the wide verge, landscaping on the verge, and the varying materiality of the fencing. There is a variety of fencing heights in the locality and the proposed fencing will be compatible with the locality and consist of timber and stone to blend into the natural setting.

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 \$20,013 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,001,322.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a new two storey dwelling house has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application being a 'review of determination' of a previous decision made by the NBLPP.

The concern raised in the objections relating to view sharing has been addressed via the increased setback to the northern facade of the building. The issues relating to solar access, bulk and scale and compliance with the controls are discussed within this report.

The critical assessment issues view sharing, solar access and setbacks have been addressed within this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2023/0007 for Review of Determination of Application No. DA2022/1158 for demolition works and construction of a dwelling house including swimming pool on land at Lot 62 DP 14682, 13 Iluka Road, PALM BEACH, 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
A201 F - Ground Level	10 March 2023	Walter Barda Design
A202 F - First Level	10 March 2023	Walter Barda Design
A203 F - Roof Level	10 March 2023	Walter Barda Design
A300 F - Elevations	10 March 2023	Walter Barda Design
A310 F - Sections	10 March 2023	Walter Barda Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	8 March 2023	All Arbor Solutions Pty Ltd
BASIX Certificate no. 1309618S_02	8 March 2023	Taylor Smith Consulting
Geotechnical Report (ref:AG 20223)	8 March 2023	Ascent Geo
Acid Sulfate Soils Letter	3 May 2023	Ascent Geo
Waste Management Plan	8 March 2023	Alejandra Becerra
Stormwater Plans SW-000, SW-100, SW-001 Rev A and SW-101, SW-102, SW-103 Rev B and SW-200 Rev A	7 March 2023	ADCAR Consulting

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
RDDS2203 - Landscape Plan	March 2023	Red Dust Designs

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

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

2. **Prescribed Conditions**

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$20,013.22 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 \$2,001,322.00.

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.

5. 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.

6. **Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$1,000.

Details confirming payment of the bond(s) are to be submitted to the Principal 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

7. **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 Frangipani identified as tree 7 in the Arboricultural Impact Assessment, including:

- i) preparation of the tree to be transplanted,
- ii) transplanting methodology and installation works,
- iii) post-transplanting care and duration,
- iv) ongoing maintenance program,
- v) replacement strategy if transplanting fails in the long term.

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

Reason: Tree protection.

8. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing Council pit in Iluka Road.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Ascentgeo Ref: AG20223 Version 3 dated 8/03/2023 are

to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **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: To protect the receiving environment.

11. **Amendments to the landscape plans**

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

- Any proposed landscaping forward of the building alignment to Nabilla Road (within 3.3m of the Nabilla Road boundary) shall not exceed 3m mature height. The landscape plan shall be updated to reflect this.

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

Reason: To ensure a reasonable view corridor is maintained for the adjoining eastern property.

12. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

13. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the stormwater connection from the site into the existing pit in Iluka Road which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

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

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

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

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

15. **Swimming Pools**

The backwash of Swimming Pool water must be discharged to Sydney Water's sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters.

16. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater

management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifier for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for stormwater management and disposal arising from development, ensuring that the proposed works do not negatively impact receiving waters.

17. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Tree Removal Within the Road Reserve**

a) This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):

- i) tree 2 and 3 - Nerium oleander (Oleander),
- ii) tree 5 - Syagrus romanzoffiana (Cocos Palm),
- iii) tree 6 - Robinia psuedoacacia (Black Locust),
- iv) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal,
- v) removal is subject to replacement street tree planting as per the Landscape Plan and any conditions of consent.

b) 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.

19. **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

20. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works (including excavation beyond 1m) that

has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

21. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation, unless approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, except tree 4 permitted to prune 20%, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, and in particular:

- i) section 4.0 Conclusions
- ii) appendix 2 Development Impacts Schedule and Controls
- iii) appendix 4 Tree Protection Plan

The Certifying Authority must ensure that:

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

e) 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

22. **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.

23. **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 prepared by ADCAR Consulting Pty Ltd 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: To protect the receiving environment.

24. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

25. **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.

26. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide at the kerb to 5 metres wide at the boundary in accordance with Northern Beaches Council Drawing Normal Profile 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.

27. **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 and debris is to be removed off site and disposed of as frequently as required in accordance with the waste management plan and applicable regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

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

28. **Landscape Completion**

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

i) at least three of the proposed trees within the property boundaries shall be native species selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide and the following suggestions are provided as a guide only: Blueberry Ash

- Elaeocarpus

reticulatus, Grey Myrtle - Backhousia myrtifolia, Snow in Summer - Melaleuca linearifolia, Ivory Curl - Buckinghamia celsissima, Small leaved Lillypilly - Syzygium leuhmannii,

ii) all tree planting within the property shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, 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) street tree planting shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, 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 subject to location of underground services,

iv) all other works shall be in accordance with the approved Landscape Plan, except as per v),

v) side and rear fencing between common residential boundaries is not approved under this application as this is a matter for adjoining owners under the Dividing Fences Act.

Reason: to maintain environmental and streetscape amenity.

29. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: Tree and vegetation protection.

30. **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.

31. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

33. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

34. **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.

Reason: To maintain local environmental amenity.

35. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

37. **Stormwater Pollution Control Pits**

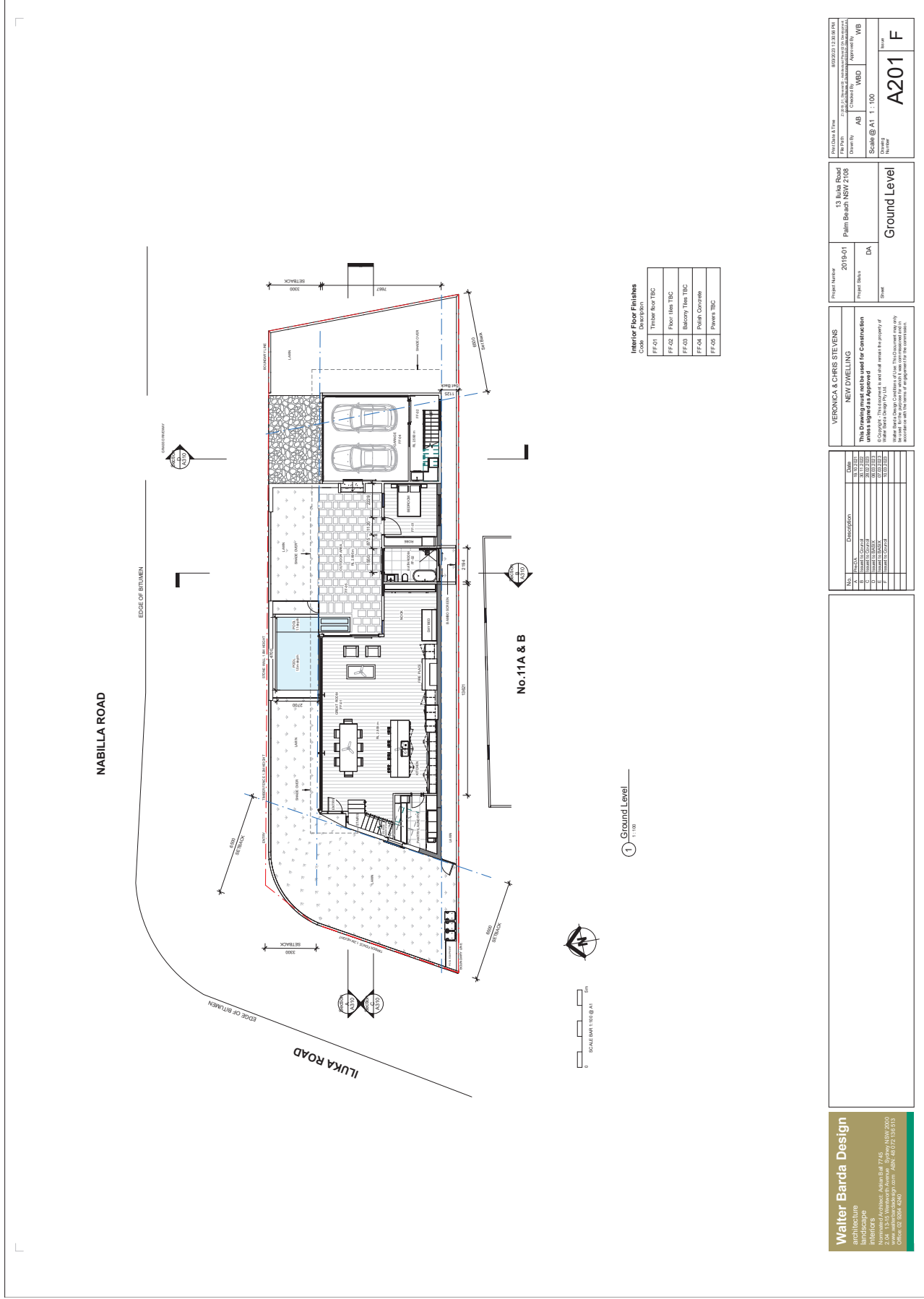
The Registered Proprietors of the property must maintain on a regular basis (at least every six months or after heavy rain events) stormwater pollution control pits, inlet pits and grated drains to include the clearing of silt, debris and rubbish, in perpetuity. The Registered Proprietors must ensure the effective operation of pollution control pits to prevent pollution of Pittwater by stormwater generated onsite.

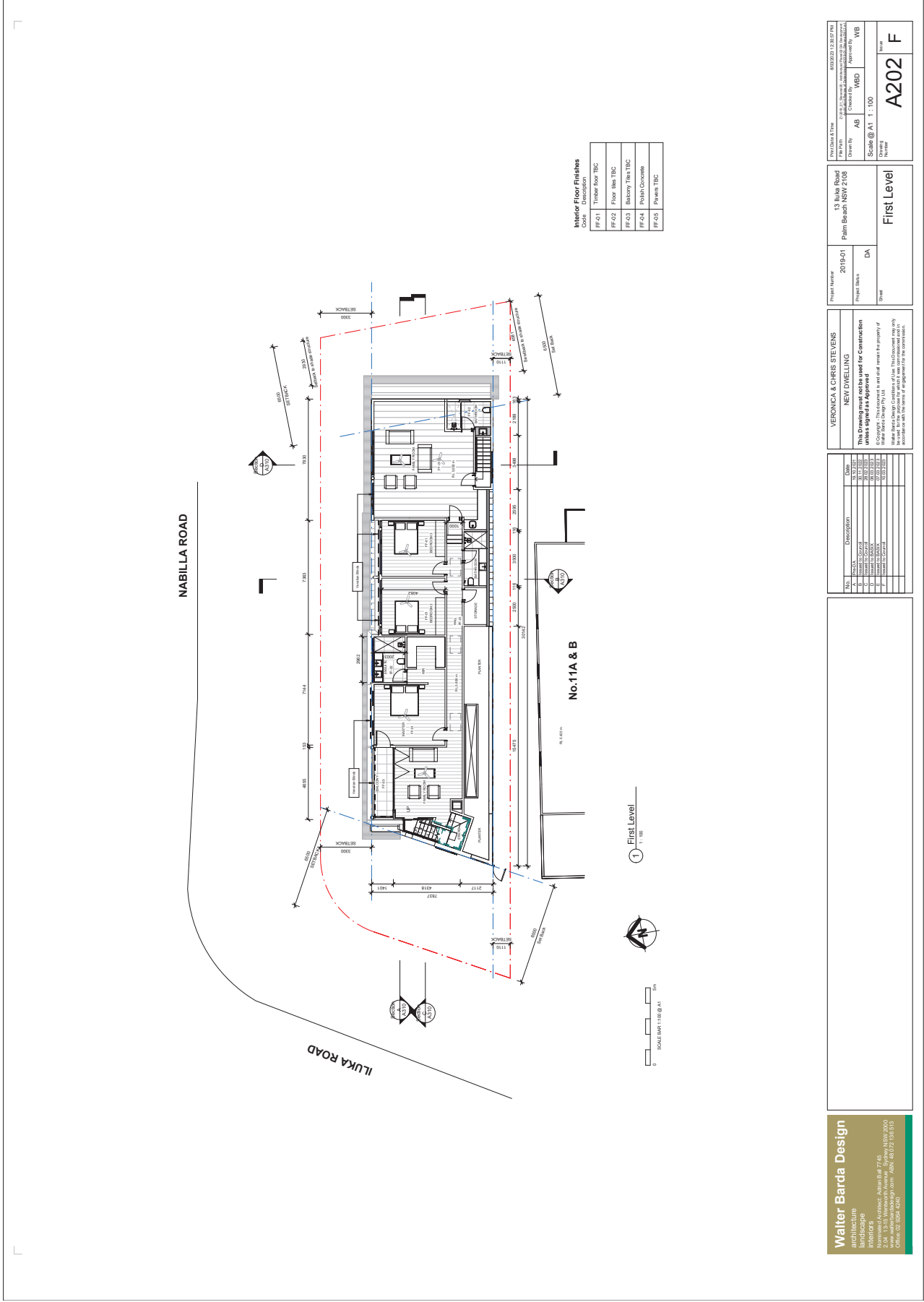
Reason: To ensure appropriate provision is made for the treatment and management of storm water generated by the development for the protection and preservation of the aquatic habitats and biota within receiving waters.

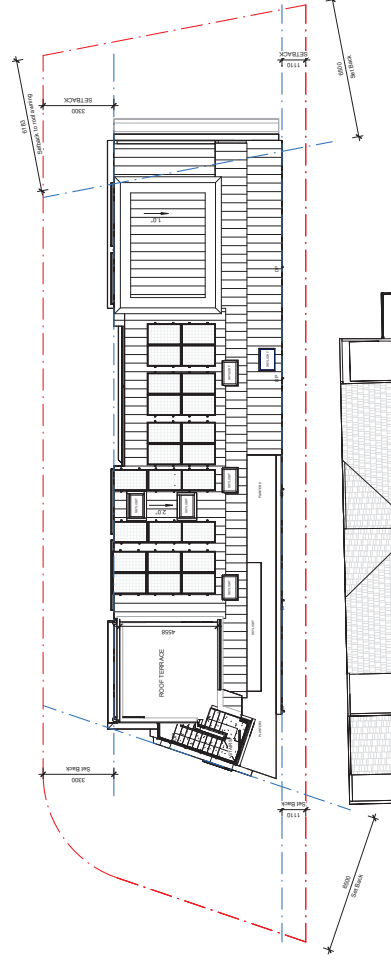
38. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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







1 Roof Level
1:500

Interior Floor Finishes	Description
FF-01	Timber floor TBC
FF-02	Floor tiles TBC
FF-03	Balcony Tiles TBC
FF-04	Polish Concrete
FF-05	Pavers TBC

Walter Barda Design
architecture
landscape
interiors

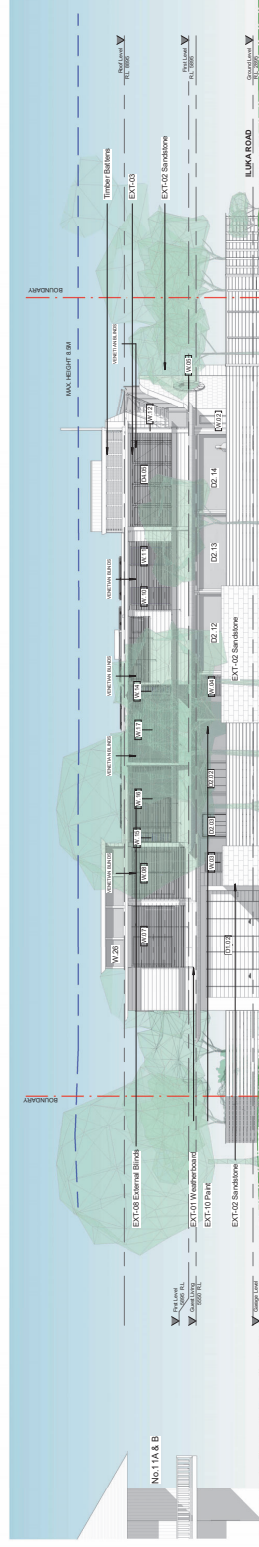
Nominated Architect: Adlan Ball 77 45
2.04 1.3-15 Wentworth Avenue Sydney NSW 2000
www.walterbardadesign.com ABN: 48 072 136 513
Office: 02 9264 4240

No.	Description	Date
A	Pres'd	18.10.2102
B	Issued to Council	30.11.2102
C	Issued to Council	28.02.2103
D	Issued to B&S x	06.03.2103
E	Issued to B&S x	07.03.2103
F	Issued to Council	16.03.2103

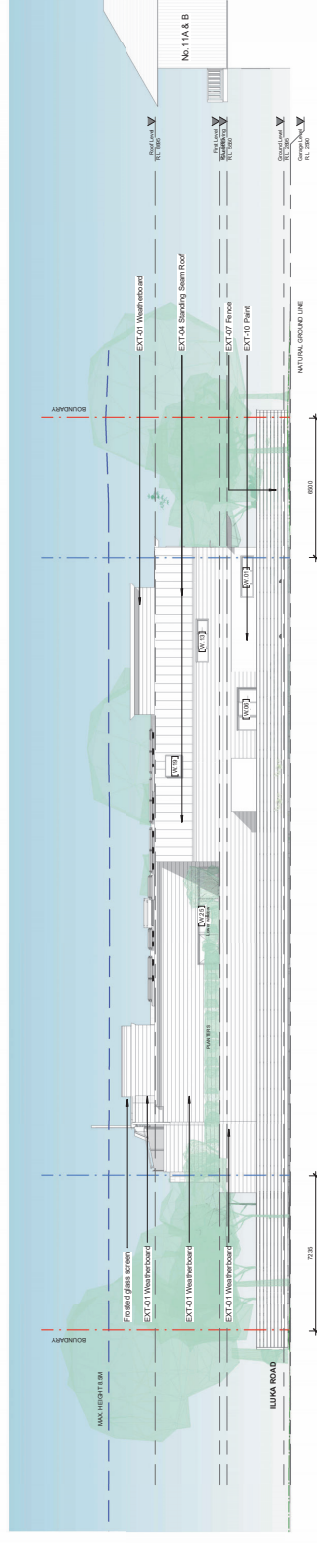
VERONICA & CHRIS STEVENS	NEW DWELLING	<p>This Drawing must not be used for Construction unless signed as Approved</p> <p>©Copyright - This document is and shall remain the property of Waterfield Design Pty Ltd.</p> <p>Waterfield Design Conditions of Use: This Document may only be used for the purpose for which it was commissioned and in no other way.</p>
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Project Number	2019-01	13 Iluka Road Palm Beach NSW 2108	Roof Level
Project Status	DA		
Sheet			

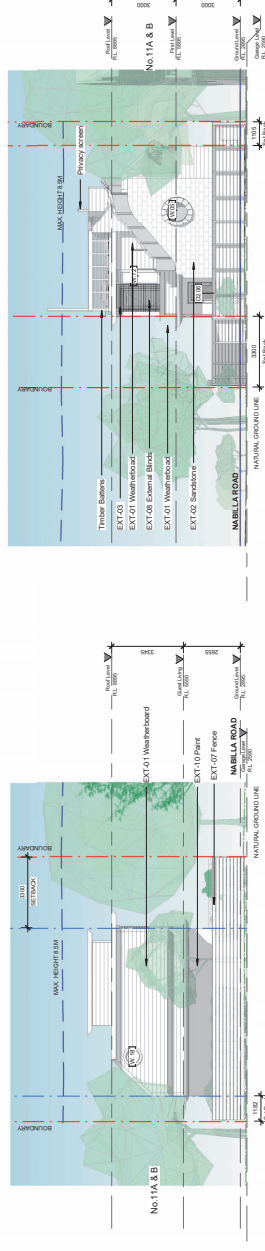
Print Date & Time	(03/20/2021 12:30:09 PM)					
File Path:	Z:\8079_1\ Drawings - Architectural Plans\2D Drawings\A203.dwg Z:\8079_1\Drawings - Architectural Plans\2D Drawings\A203.dwg					
Drawn By	AB	Checked By	WBD	Approved By	WB	
Scale @ A1				1 : 100		
Drawing Number	A203			Revision		
				F		



1 Elevation North



② Elevation South



③ Elevation East

EXTERNAL FINISHES	
EX-01	Exterior Cladding "Vulcan" from ACOBIO Nero or colour* or similar *Colour to be selected by Architect, 2.5% (20mm) thickness.
EX-02	Sanitised cladding
EX-03	Aluminium window & door frames painted black or similar
EX-04	Roof standing seam vitriolproof cobalt or similar
EX-05	Curtain & downpipe, windproof or equivalent
EX-06	Timber garage door
EX-07	External self wood floor colour: TBC
EX-08	Strong "Fold" external in-meshable - venetian blinds
EX-09	Light weight wall & standing seam cladding
EX-10	Render Paint "Porphy" or Ghoul Green colour* or similar

NOTE: All colour's to be confirmed and signed off prior to purchase of painting or coating finished surfaces

4 Elevation West

Walter Barda Design
architecture
landscape
interiors
Normanville Architect, Adrian Ball 77 45
2 04 13 15 Wentworth Avenue Sydney NSW 2000
www.walterbarda.design.com ASB: 48 072 136 513
Office: 02 9264 4240

Revisions		
No.	Description	Date
A	Pre-A	08.10.2021
B	Issued to Council	30.11.2022
C	Issued to Council	28.02.2023
D	Issued to BA55X	06.02.2023
E	Issued to BA55X	07.03.2023
F	Issued to Council	30.03.2023

VERONICA & CHRIS STEVENS

NEW DWELLING

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Project Number 2019-01	13 Iluka Road Palm Beach NSW 2108	Elevations
Project Status DA		
Sheet		

[illegible]

ITEM 4.2**DA2022/1548 - 137 RIVERVIEW ROAD, AVALON
BEACH - CONSTRUCTION OF AN INCLINE
PASSENGER LIFT.****AUTHORISING MANAGER****Adam Richardson****TRIM FILE REF****2023/322910****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/1548 for the Construction of an incline passenger lift on land at Lot 1 DP 1191316, 137 Riverview Road, AVALON BEACH, Lot LIC 618131, 137 Riverview Road, AVALON BEACH, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1548
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 1 DP 1191316, 137 Riverview Road AVALON BEACH NSW 2107 Lot LIC 618131, 137 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Construction of an incline passenger lift
Zoning:	C4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes - Zone C4 Environmental Living No - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gregory John O'Neill Bernadette Mary O'Neill
Applicant:	Inclined Lifts Pty Ltd

Application Lodged:	17/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/10/2022 to 07/11/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Refusal

Estimated Cost of Works:	\$ 130,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for the construction of an incline passenger lift at the rear of the dwelling linking it with the water at the rear. The structures is located predominately within the foreshore area.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the application

proposes a variation to the non-numerical development standard contained within Clause 7.8 Limited Development on Foreshore Area of the *Pittwater Local Environmental Plan 2014* (PLEP 2014). This variation is supported by a written Clause 4.6 Variation to Development Standards request.

The written Clause 4.6 Variation to Development Standards request for the non-compliance with Clause 7.8 Limited development on foreshore area arises from the proposed construction of an incline passenger lift within the foreshore area, noting that an 'incline passenger lift' is not a permissible development listed within Clause 7.8. The Applicant's Clause 4.6 written request to vary Clause 7.8 is not considered well-founded as it does not sufficiently set out why it is unreasonable or unnecessary to comply with the development, nor does it contain sufficient environmental planning grounds that warrant departure and cannot be supported.

Critical assessment issues include: additional permitted uses for particular land, the zone objectives for C4 Environmental Living and W1 Natural Waterways, development below mean high water mark, acid sulphate soils, earthworks, biodiversity protection, geotechnical hazards, limited development on foreshore area, (23) use of certain land in the W1 Natural Waterways zone, incline passenger lifts and stairways, building colours and materials, and side and rear building line.

Concerns raised in the objections predominantly relate to the obstruction of continued public access along the foreshore area. This has been addressed within the assessment report and will form a reason for refusal of this application.

This report concludes with a recommendation that the NBLPP **refuse** the application.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the construction of a new incline passenger lift pursuant to the *Pittwater Local Environmental Plan 2011*.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 2.5 Additional permitted uses for particular land
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 23 Use of certain land in the W1 Natural Waterways Zone
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.9 Side and rear building line

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 1191316 , 137 Riverview Road AVALON BEACH NSW 2107</p> <p>Lot LIC 618131 , 137 Riverview Road AVALON BEACH NSW 2107</p>
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Riverview Road.</p> <p>The site is irregular in shape with a frontage of 13.265 metres along Riverview Road and a maximum depth of 80.24 metres. The site has a surveyed area of 1006.0m².</p> <p>The site is located within the C4 Environmental Living zone and the W1 Natural Waterways zone within the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014) and accommodates a two (2) vehicle detached garage, inclinator from the garage to the dwelling house, a two and three storey dwelling house, boat shed, jetty and pontoon within a landscaped setting that includes established garden areas.</p> <p>The site has an easterly orientation toward Riverview road and a westerly orientation toward Pittwater Waterway. The site has a cross fall from the eastern road frontage toward the west of approximately 35.4 metres.</p> <p>The site is not known to contain any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings of a similar scale within a landscaped setting. Some dwellings sited along the western side of Riverview Road have boatsheds, jettys and pontoons, as well as inclinator within the foreshore area.</p>

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:

- **N0137/00.** This application sought consent for alterations and additions to an inclinor. This application was approved, subject to conditions, on 29 May 2000. A Construction Certificate (CC0051/01) was lodged with Council on 31 October 2000.
- **N1004/02.** This application sought consent for demolition of the existing single residence and construction of a new single residence. This application was approved, subject to conditions, on 9 February 2004. A Construction Certificate (CC0213/05) was lodged with Council on 23 April 2005.
- **N0071/09.** This application sought consent for alterations and additions. This application was approved, subject to conditions, on 26 May 2009. A Construction Certificate (CC0267/09) was lodged with Council on 7 July 2009.
- **N1004/02/S96/1.** This modification application sought consent to modify N1004/02 by way of removing condition B27 from the original consent. This application was approved on 17 September 2009.
- **DA2019/1390.** This application sought consent for the construction of a jetty, pontoon and ramp. This application was approved, subject to conditions, on 17 March 2020. A Construction Certificate (CC2020/1168) was lodged with Council on 27 October 2020.

APPLICATION HISTORY

Additional information was requested in relation to the provision of additional information and amended plans to address concerns raised by Council's Coast and Catchments Officer which related to the location of the water front landing being below the Estuarine Planning Level (EPL), as well as concerns raised by Council's Landscape Officer with regards to the extent of pruning of trees on the adjacent property (being 139 Riverview Road), noting that such would require owners consent from 139 Riverview Road. Planning concerns were raised with regards to the amendment of the plans to show the Foreshore Building Line relative to the site's boundaries and the proposed development. Based on

the siting of the incline passenger lift, it was expected that the proposed development would encroach into the foreshore area and, as such, this would require the Applicant provide a Clause 4.6 written request to vary Clause 7.8 Limited development on foreshore area as an 'incline passenger lift' or any such similar development is not permissible within the foreshore area.

These concerns/issues were detailed within a Request for Further Information (RFI) letter on 19 January 2023. Amended plans to show the FBL were provided, so to were additional documentation (a covering letter to address the RFI, an Arborist addendum letter, Clause 4.6 written request to vary Clause 7.8, an Estuarine Risk Management Report and a signed owners consent letter from the owner of 139 Riverview Road to consent to the pruning of trees) was provided to Council, in response to the RFI, on 13 February 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a) (iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a recommended condition of consent, if the application is approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the provision of additional information and amended plans to address concerns raised by Council's Coast and Catchments Officer which related to the location of the water front landing being below the Estuarine Planning Level (EPL), as well as concerns raised by Council's Landscape Officer with regards to the extent of pruning of trees on the adjacent property (being 139 Riverview Road), noting that such would require owners consent from 139 Riverview</p>

Section 4.15 Matters for Consideration	Comments
	<p>Road. Planning concerns were raised with regards to the amendment of the plans to show the Foreshore Building Line relative to the site's boundaries and the proposed development. Based on the siting of the incline passenger lift, it was expected that the proposed development would encroach into the foreshore area and, as such, this would require the Applicant provide a Clause 4.6 written request to vary Clause 7.8 Limited development on foreshore area as an 'incline passenger lift' or any such similar development is not permissible within the foreshore area.</p> <p>These concerns/issues were detailed within a Request for Further Information (RFI) letter on 19 January 2023. Amended plans to show the FBL were provided, so to were additional documentation (a covering letter to address the RFI, an Arborist addendum letter, Clause 4.6 written request to vary Clause 7.8, an Estuarine Risk Management Report and a signed owners consent letter from the owner of 139 Riverview Road to consent to the pruning of trees) was provided to Council, in response to the RFI, on 13 February 2023.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters are capable of being addressed via a recommended condition of consent, if the application is approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters are capable of being addressed via a recommended condition of consent, if the application is approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report, where such impacts are found to be unacceptable.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
	<p>I</p>

Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 Matters for Consideration	Comments
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	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater Local Environmental Plan 2014 (PLEP 2014) particularly Clause 7.8 Limited Development on Foreshore Area, Clause 4.6 Exceptions to Development Standards, particularly relating to the restriction of continued public access along the foreshore area. Further, the proposed development does not meet the objectives of the C4 Environmental Living Zone and the W1 Natural Waterways Zone.</p> <p>As such, the proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

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 24/10/2022 to 07/11/2022 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 1 submission/s from:

Name:	Address:
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

One (1) submission was received outside of the notification period. The following issues were raised in the submission:

- Restriction of continued public access along and to the foreshore area

The above issues are addressed as follows:

- **Restriction of continued public access along and to the foreshore area**

The submissions raised concerns that the location of the bottom inclinor station will block/unreasonably obstruct existing public access along the foreshore. As such, the proposal fails to achieve the objectives of Clause 7.8, and by virtue of this, the Clause 4.6 written request must also fail.

Comment:

The assessment has found that the proposed development will unreasonably impact upon the continuous public access along the foreshore area. As such, this issue will form a reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>Supported, subject to recommended conditions</p> <p>Environmental Health has been requested to comment on this proposal for construction of a single inclined lift and associated minor landscape and platform work, in respect of the potential presence of acid sulfate soils. In support of the proposal a Acid Sulphate Soil Management Plan has been supplied with the proposal documentation.</p>
Landscape Officer	<p>Supported, subject to recommended conditions</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (DCP) controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>It is noted the property falls within the Biodiversity Values Map (BVM) under the Biodiversity Conservation Act, and any tree removal within the BVM may trigger the Biodiversity Offsets Scheme (BOS). This specific matter is deferred to Council's Bushland & Biodiversity Referral team.</p> <p>The Arboricultural Impact Assessment report indicates moderate to heavy pruning for neighbouring tree 1 (Hibiscus) and any development consent approval is limited to 10% permissible pruning and further pruning will require owner consent. Likewise should pruning over 10% to neighbouring trees 6 and 7 (African Olive) be required and owners consent is required.</p>

Internal Referral Body	Comments
	<p>The submitted Arboricultural Impact Assessment report indicates that no prescribed trees or neighbouring trees are proposed for removal, and that the proposed works can be accommodated without impact to existing trees, subject to the recommended tree protection measures. It is noted however that further within the report tree 2 (Wattle) is recommended for possible removal and replacement, and an Addendum is submitted requesting removal of tree 2, and Landscape Referral raise no objections, with replacement tree planting proposed as listed in the Addendum to the Arboricultural Impact Assessment.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to recommended conditions</i></p> <p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 - SEPP (Resilience and Hazards) 2021 - Pittwater LEP 2014 - cl 7.6 Biodiversity Protection - Pittwater 21 DCP - cl. 4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community / 4.15 Saltmarsh Endangered Ecological Community / 4.16 Seagrass Conservation / 4.19 Estuarine Habitat <p>The proposal considers the construction of an incline passenger lift. The site is identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>The Arboricultural Impact Assessment report indicates that no prescribed trees are proposed for removal, and that the proposed works can be accommodated without impact to existing trees. Proposed works might impact Tree 2 which after further review, has been identified as a planted specimen of <i>Acacia convenyi</i> which is approximately 6m tall and in very poor condition. The species is not locally native to Pittwater Spotted Gum Forest or the Northern Beaches. In this instance, Council consider that the proposed works (including removal of the Acacia) will not require preparation of a Biodiversity Development Assessment Report (BDAR).</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Supported, subject to recommended conditions</p> <p>The application has been assessed in consideration of:</p> <ul style="list-style-type: none"> - the plans and documents as well as the further information (Estuarine Risk Management Report) lodged in support of the DA; - the Coastal Management Act 2016; <p>State Environmental Planning Policy (Resilience & Hazards) 2021; and</p> <ul style="list-style-type: none"> - the Pittwater LEP 2014 and Pittwater 21 DCP. <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Chapter 2: Part 2.2: Divisions 3, 4 and 5 of SEPP (R & H) apply to this DA.</p> <p>On internal assessment and as assessed in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 6 January 2023, the DA satisfies requirements under Divisions 3, 4 and 5 of SEPP R&H. As such, it is considered that the application does comply with the provisions of State Environmental Planning Policy (Resilience & Hazards) 2021, subject to conditions.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p><u>Estuarine Risk Management</u></p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>An Estuarine Planning Level (EPL) of 2.81 AHD for a design life of 60 years has been independently derived by Horton Coastal Engineering Pty Ltd for the proposed development. Justification for the design life and calculation of the EPL are accepted by Council.</p>

Internal Referral Body	Comments
	<p>As the carriage floor level at the bottom station is 1.8m AHD and below the EPL, the approved Estuarine Risk Management Report concludes that "If the recommendations in Section 7 are followed, the risks of damage to the inclinators from estuarine inundation would be suitably mitigated, and it would have an adequately low risk of damage.</p> <p>The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP subject to conditions.</p> <p><u>Development on Foreshore Area</u> A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. It is noted that the further information provided has included plans showing the foreshore building line and an application for Clause 4.6 Exceptions to development standards. These matters will be determined by the planning officer.</p> <p>No other coastal planning or development controls relevant to the proposed development were identified.</p>
NECC (Riparian Lands and Creeks)	<p><i>Supported, subject to recommended conditions</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Water Management for Development Policy <p>The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>It is noted that materials will likely be delivered by barge. No equipment is to be placed on any seagrass beds. Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope. Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.</p> <p>Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's</p>

Internal Referral Body	Comments
	<p>water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. The tailwater to be discharged must be compliant 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.</p> <p>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.</p>
	<p>Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>On assessment the application meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.</p>

External Referral Body	Comments
Aboriginal Heritage Office	<p><i>Supported, subject to conditions</i></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

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

Notwithstanding the cost of works exceeding \$50,000, a BASIX certificate is not required for this type of development, as it is not a type or form of development that is 'BASIX affected development'.

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 subject site is located within the Coastal Environment Area map, and as such, the proposed development is required to be considered against the matters as prescribed above. Council's Coast and Catchments Officer has reviewed the proposed development and has not raised any issues. As such, Council, as the consent authority, can be satisfied that the proposed development will not have an unreasonable or adverse impact upon the matters as prescribed above.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The subject site is located within the Coastal Environment Area map, and as such, the proposed development is required to be considered against the matters as prescribed above. Council's Coast and Catchments Officer has reviewed the proposed development and has not raised any issues. As such, it is considered that the proposed development will not have an unreasonable or adverse impact upon the matters as prescribed above.

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 impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) 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 subject site is located within the Coastal Use Area map. As such, the proposed development is required to be considered against the matters as prescribed above. Council's Coast and Catchments Officer has reviewed the proposed development and has not raised any issues. However, the proposed waterfront landing will adversely impact on the existing, safe access to and along the foreshore area for members of the public.

The proposed development **does not** satisfy the assessment criteria listed above.

Division 5 General

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

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

Comment:

The proposed development is unlikely to increase the risk of coastal hazards.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C4 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Zone C4 : No Zone W1 : No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	0.74m - 2.08m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	No
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes

7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes
23 Use of certain land in the W1 Natural Waterways Zone	No

Detailed Assessment

2.5 Additional permitted uses for particular land

Schedule 1 Additional permitted uses within the *Pittwater Local Environmental Plan 2014* permits a variety of additional development types that are otherwise not permitted within the respective zones.

As detailed elsewhere in this report, the subject site is split zoning with W1 Natural Waterways and C4 Environmental Living zones, as detailed in the figure below.



Figure 1. Split zoning - W1 Natural Waterways zone indicated by blue shading, and C4 Environmental Living zone indicated by orange shading.

Where part of the subject site is zoned W1 Natural Waterways, the proposed incline passenger lift is considered a development type that is ancillary to other works and developments that are permissible within the zone, such as a boat house, which is located on the site within the W1 zone.

Zone C4 Environmental Living

Zone objectives

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

Comment:

The subject site is located within an area that is constrained by a variety of special ecological values such as being located within the Biodiversity Values Map (under the Biodiversity Conservation Act), an Estuarine Hazard area, Acid Sulphate Soils map (Class 1 and Class 5), Pittwater Spotted Gum Forest and Saltmarsh and Foreshore Vegetation (other than mangroves), as well as being adjacent to estuarine wetlands. Appropriate reports have been provided which satisfy the requirements stipulated within the Pittwater 21 Development Control Plan (P21 DCP), and Council's internal referrals have not raised concern regarding the proposed development within these special ecological areas. Water front development within the Pittwater Waterway holds an aesthetic value, which relates to ensuring the natural environment is the dominant feature, rather than the built form. In this instance, the proposed development will be appropriately sited on the subject site that will ensure the aesthetic value of Pittwater is not adversely or unreasonably impacted.

The proposed development **does** meet this underlying objective.

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

Comment:

As detailed above, the proposed development is unlikely to have an adverse or unreasonable impact upon those values prescribed above.

The proposed development **does** meet this underlying objective.

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

Comment:

The proposed development will provide for an ancillary development to residential development of a low density. While the proposed development is unlikely to become visually prominent when viewed from Pittwater Waterway by virtue of the development type being discrete and low-lying to the natural ground level and thus being well below the existing tree canopy, the proposal will, however, restrict continued public access along the foreshore area and therefore not appropriately integrating into the landform and landscape.

The proposed development **does not** meet this underlying objective.

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

Comment:

The proposed development is sited entirely within the foreshore area and the proposed development is likely to remove some ground and low-lying vegetation within the foreshore area. However, the existing canopy trees throughout the site will be retained, save for the wattle tree along the water frontage which has been indicated for removal due to ill health. This has been supported by Council's Landscape Officer subject to replacement planting, should this application be approved. As the significant vegetation throughout the site will be retained, the existing wildlife corridors will not be adversely or unreasonably impacted.

The proposed development **does** meet this underlying objective.

Zone W1 Natural Waterways

Zone objectives

- *To protect the ecological and scenic values of natural waterways.*

Comment:

The proposed development is not permissible within this zone and, as detailed elsewhere in this report, the proposal does not benefit from Area 23 within Schedule 1 of the PLEP 2014. By virtue of this, it is unlikely that the proposed development satisfactorily protects the ecological and scenic values of the natural waterway.

The proposed development **does not** meet this underlying objective.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

As above, the proposed development is not permissible within this zone and does not benefit from the flexibility of development type prescribed within Area 23 of Schedule 1 of the PLEP 2014.

The proposed development **does not** meet this underlying objective.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The proposed development seeks to construct a passenger incline lift that is ancillary to a residential dwelling. While the subject site is a split zone with C4 Environmental Living zone and W1 Natural Waterways, the works are sited entirely above the Mean High Water Mark (MHW) and thus will not impact upon sustainable and recreational fishing.

The proposed development **does** meet this underlying objective.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*

Comment:

As above, the proposed development is landward of the MHW and thus will not obstruct the navigation of the waterway or the natural environment of the waterway.

The proposed development **does** meet this underlying objective.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

Comment:

As detailed elsewhere within this assessment report, the proposed waterfront landing of the passenger incline lift will unreasonably impact upon the public access to the foreshore area.

The proposed development **does not** meet this underlying objective.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 7.8 Limited development on foreshore area (FSBL)
Requirement:	The following are exempt development in the foreshore: <i>(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore</i>

	area, (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).
Proposed:	Installation of an incline passenger lift and excavation works
Percentage variation to requirement:	Non-numerical development standard

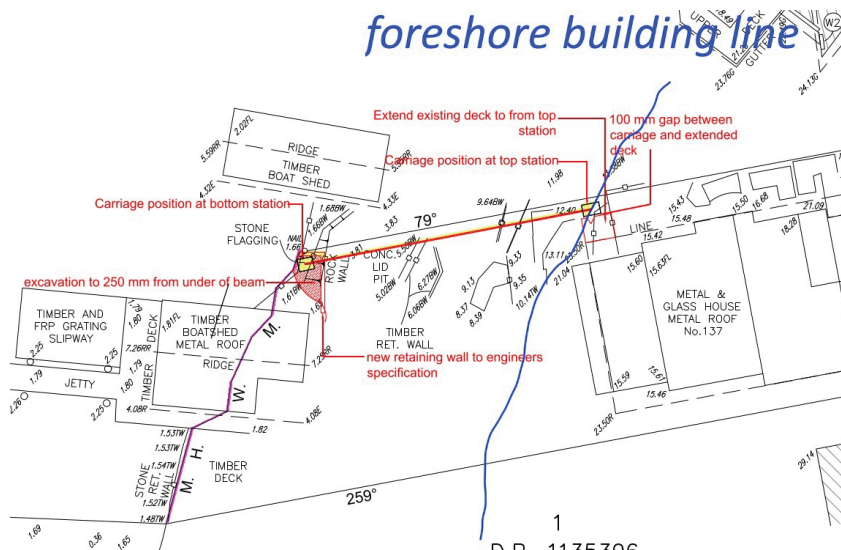


Figure 1. Extent of proposed encroachment within the foreshore area indicated in yellow (foreshore building line indicated by blue line - included on the plan by the Applicant - and the MHWM enhanced by the purple line).

Assessment of request to vary a development standard:

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

NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 7.8 Limited development on foreshore area 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 not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *'The site is located in a foreshore area but is not defined as having special ecological, scientific, cultural, or aesthetic values. The landscape quality of the site and the area will be maintained and the proposal does not involve the removal of any significant native trees or natural features on the site. It does involve the removal of a single wattle tree that is in poor health.*
- *The development will have low impact...and be consistent with the C4 Environmental Living Zone.*
- *The inclined lift is planned to be low to the ground and is located between trees on the applicants property and those on the adjoining neighbours property to the north.*

- *The works will not require excessive excavation for its construction.*
- *The bottom landing is located in an area between two neighbouring boatsheds and the inclined lift will have minimal visual impact when viewed from the waterway. It will be integrated within the existing extensive foreshore landscaping.*
- *The proposed development will not affect riparian and foreshore vegetation or wildlife corridors in this waterfront location.*
- *The proposal for the construction of an inclined passenger lift is consistent with the objectives of the C4 zone and there will not be any adverse impacts or environmental harm. It is in keeping with many other examples of inclined passenger lifts installed in the local vicinity subject to the same zone classification.*
- *Flexibility [to this non-numerical development standard] has previously been granted by Council for similar developments installing inclined passenger lifts within the foreshore building line... There are many examples along the adjacent foreshore of properties with both access stairs and inclined passenger lifts within the foreshore building area. Whilst some of these newer lifts are replacements for older or previously approved lifts, some are also relatively recently approved new lifts. By allowing these developments the development standard has previously been varied by Council's own actions.*
- *Incline passenger lifts are not expressly excluded from the operation of clause 4.6.*
- *...an inclined passenger [sic] will also provide access to the foreshore allowing aged, disabled and people with various health issues to access the foreshore and the boatshed and jetty.*
- *The existing pathway and steps from the house to the boatshed are steep starting at the lowest level of the house, RL 15.6 and finishing at RL 1.80. There is a total of 50 steps integrated into this pathway, much of which is covered by tree canopy. As a result it becomes slippery when wet despite the provision of non-slip strips in strategic positions.*
- *The proposed new works will not have any adverse amenity impacts and the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable. The new works maintain a bulk and scale, which is in keeping with the extent of surrounding development, does not impact on views enjoyed by adjoining properties and causes minimal disruption to the existing foreshore landscaping. There have been no issues raised or submissions to Council made by adjoining owners.*
- *As the proposed development is within private property and is landward of the HMWM above an existing seawall, it will not affect public access.*
- *The proposed development will not cause any significant pollution or siltation of the waterway as suitable environmental controls will be applied. It will not adversely impact on adjacent areas and no remnant riparian vegetation is to be removed as part of the works.*
- *This objection to control specified in Clause 7.8 (2) (b) of the Pittwater LEP 2014 adequately demonstrates that that the intent of allowing waterway access stairs as a means of accessing the foreshore can be also achieved by allowing development of an inclined lift which provides improved safety and the ability for those how otherwise cant to access the foreshore.*
- *The bulk and scale of the proposed development is appropriate for the site and locality.*
- *A variation would be reasonable and appropriate because the proposal does not involve any adverse visual impact when viewed from the waterway or from adjoining properties, and the amenity of the adjoining properties will also be maintained.*
- *The absence or lack of environmental harm in this case, with specific reference to the site, adjoining properties and more generally the locality, is also an appropriate environmental planning ground to justify contravening the development standard.*
- *The proposed development also achieves the objects in Section 1.3 of the EPA Act, specifically: the proposed development also will provide for improved amenity within a built form which is compatible with the surrounding character of Riverview Road foreshore frontages; and, the proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site.*

It is considered that the sufficient environmental planning grounds advanced by the applicant within the Clause 4.6 written request to vary Clause 7.8 Limited development on foreshore area of the PLEP 2014 are inadequate. While the portion of the built form that extends beyond the Foreshore Building Line (FBL) is ancillary to the existing dwelling and will ultimately improve the amenity of the existing residents, the proposed landing at the waterfront level will restrict the continuous public access along the foreshore area, as indicated on the proposed amended plans (prepared by Inclined Lifts, dated 23 June 2022). This is contrary to the statement in the Clause 4.6 written request as detailed above.

Furthermore, the sufficient environmental planning grounds advanced by the applicant are based around an absence of impact. What is not addressed is the cumulative impact of the structure within the FBL, when considered with other structures and development. The site at present has access to the waterway through means that are consistent with the provisions of Clause 7.8. It is considered that there is no specific access or site requirement which necessitates the inclinator, as such the environmental planning grounds advanced are insufficient. An example of this is the slippery nature of the existing stairs due to the tree coverage, this is not an environmental planning ground, rather a maintenance issue.

The remaining sufficient environmental planning grounds advanced by the applicant which seek to justify the variation in this case are not considered to be sufficient to warrant departure in that they argue that the development is of no impact, however compliance with the other applicable controls otherwise necessitates these impacts to be avoided and or mitigated. Accordingly, a sufficient environmental ground is not satisfying the suite of applicable planning controls.

As such, the Applicant's written request to vary Clause 7.8 Limited development on foreshore area is not well-founded and cannot be supported, in this instance.

In this regard, the applicant's written request has not 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 not 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 not 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 non-numeric Clause 7.8 Limited development on foreshore area development standard and the objectives of the C4 Environmental Living zone within the *Pittwater Local Environmental Plan 2014*. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 7.8 – ‘Limited development on foreshore area’ of the PLEP 2014 are:

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

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

Comment:

The subject site is located within an Estuarine Hazard area and, as such, an Estuarine Risk Management Report has been provided and reviewed as part of this assessment. In this instance, as the proposed development is landward of the MHWL, it is unlikely to adversely or unreasonably impact upon the natural foreshore processes. Further, as detailed elsewhere within this report, the proposed development does not require the removal of any substantial vegetation, including canopy trees, save for the wattle tree along the water frontage which has been indicated for removal due to ill health. This has been supported by Council's Landscape Officer subject to replacement planting, should this application be approved. The proposed rail is sited close to the existing natural ground level and, as such, the passenger incline lift is unlikely to adversely or unreasonably affect the significance and amenity of the area.

The proposed development **does** meet this underlying objective.

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

Comment:

The proposed landing at the waterfront level will not allow for the continuous public access along the foreshore area and to the waterway.

The proposed development **does not** meet this underlying objective.

Zone objectives

As detailed elsewhere in this report, the subject site is a split zoning, with the majority of the site being C4 Environmental Living and a small portion of the site at the water frontage being W1 Natural Waterways. As such, the proposal is assessed against both zones below.

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The subject site is located within an area that is constrained by a variety of special ecological values such as being located within the Biodiversity Values Map (under the Biodiversity Conservation Act), an Estuarine Hazard area, Acid Sulphate Soils map (Class 1 and

Class 5), Pittwater Spotted Gum Forest and Saltmarsh and Foreshore Vegetation (other than mangroves), as well as being adjacent to estuarine wetlands. Appropriate reports have been provided which satisfy the requirements stipulated within the Pittwater 21 Development Control Plan (P21 DCP), and Council's internal referrals have not raised concern regarding the proposed development within these special ecological areas. Water front development within the Pittwater Waterway holds an aesthetic value, which relates to ensuring the natural environment is the dominant feature, rather than the built form. In this instance, the proposed development would be appropriately sited on the subject site that will ensure the aesthetic value of Pittwater is not adversely or unreasonably impacted.

The proposed development **does** meet this underlying objective.

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

Comment:

As detailed above, the proposed development is unlikely to have an adverse or unreasonable impact upon those values prescribed above.

The proposed development **does** meet this underlying objective.

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

Comment:

The proposed development will provide for an ancillary development to residential development of a low density. While the proposed development is unlikely to become visually prominent when viewed from Pittwater Waterway by virtue of the development type being discrete and low-lying to the natural ground level and thus being well below the existing tree canopy, the proposal will, however, restrict continued public access along the foreshore area and therefore not appropriately integrating into the landform and landscape.

The proposed development **does not** meet this underlying objective.

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

Comment:

The proposed development is sited entirely within the foreshore area and the proposed development is likely to remove some ground and low-lying vegetation within the foreshore area. However, the existing canopy trees throughout the site will be retained, save for the wattle tree along the water frontage which has been indicated for removal due to ill health. This has been supported by Council's Landscape Officer subject to replacement planting, should this application be approved. As the significant vegetation throughout the site will be retained, the existing wildlife corridors will not be adversely or unreasonably impacted.

The proposed development **does** meet this underlying objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Limited Development on Foreshore Area Development Standard can not be assumed.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 1 and Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. In accordance with subclause (2) development consent is required any works within a Class 1 acid sulfate soil area and an assessment is required to determine if any impact will occur. Further, in accordance with subclause (3), development consent must not be granted for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land unless an acid sulfate soils management plan has been prepared and submitted to the consent authority, at such a time an assessment is required to determine if any impact will occur.

The development proposes to excavate the site to approximately 250 millimetres below the natural ground level. As such, an Acid Sulphate Soil Management Plan has been undertaken by Geotesta (report no. NE1427), dated 5 September 2022. In the assessment, Geotesta found that an Acid Sulphate Soil Unexpected Finds Procedure (UFP) be established and implemented during any future site works. In the event that site conditions or plans for the proposed development change resulting in suspected Acid Sulphate Soil materials being encountered, Geotesta recommends the following protocols be implemented:

- Segregation and placement of suspected Acid Sulphate Soil material onto appropriate plastic lining, isolated and securely covered with additional plastic sheet,
- Additional grab samples to be recovered from isolated material for further detailed analysis in order to determine (if necessary) the liming rates for the appropriate treatment of Actual Acid Sulphate Soil materials.

In this regard, the Acid Sulphate Soil Management Plan prepared by Geotesta, dated 5 September 2022, was provided to Council's Environmental Health Officer who concurred with the findings and imposed a condition which requires compliance with the conclusion and recommendations within the Acid Sulphate Management Plan, prepared by Geotesta dated 5 September 2022.

Should this application be approved, the conditions recommended by Council's Environmental Health Officer and the recommendations made in the Preliminary Assessment would be included within this report.

Based on the above, the proposed development the proposal adheres to the objectives and requirements subclauses (2) and (3) of Clause 7.1 of the PLEP 2014.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

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

Comment:

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

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. Should this application be approved, an appropriate condition would be recommended to ensure compliance with the processes and recommendations within the Waste Management Plan.

(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. Should this application be approved, relevant conditions will be recommended 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. Should this application be approved, an appropriate condition would be recommended to ensure compliance with the processes and recommendations within the Waste Management Plan.

(f) the likelihood of disturbing relics

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments for the proposed development. Should this application be approved, a condition would be recommended that shall ensure the protection of any relics should they be discovered during construction works.

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

Comment:

The subject site is a waterfront property, with direct access to Pittwater Waterway. The proposal has been referred to Council's Environmental Health Officer and Coast and Catchments Officer to ensure that the proposed development does not create or result in adverse impacts on the waterway, and any surrounding drinking water catchment or environmentally sensitive areas. Should this application be approved, relevant and appropriate conditions would be recommended to ensure the proposal does not adversely or unreasonably impact upon the surrounding natural environment (including Pittwater Waterway).

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

Comment:

Should this application be approved, relevant and appropriate conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

Comment:

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

Based on the above, the assessment has found that the proposal can meet the objectives and requirements of Clause 7.2 of the PLEP 2014.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

Comment:

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. As such, it is considered that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

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

Based on the above, the assessment has found that the proposed development can achieve the objectives and requirements of Clause 7.6 of the PLEP 2014.

7.7 Geotechnical hazards

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

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

Comment:

The proposed development is supported by a Geotechnical Assessment Report (prepared by BMB Engineers, dated 30 May 2022) and architectural plans that demonstrate all geotechnical risks have been taken into account. Should this application be approved, conditions would be recommended that

ensures compliance with the recommendations made within the Geotechnical Assessment Report.

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

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

Comment:

The proposed development is supported by a Geotechnical Assessment Report that demonstrates waste water, stormwater and drainage are suitably managed on site. Should this application be approved, conditions would be recommended that ensures compliance with the recommendations made within the Geotechnical Assessment Report.

(b) the consent authority is satisfied that:

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

Comment:

Should this application be approved, conditions would be recommended that ensures compliance with the recommendations made within the Geotechnical Assessment Report. As such, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Based on the above, the assessment has found that the proposal can meet the objectives and requirements of 7.7 Geotechnical Hazards of the PLEP 2014.

7.8 Limited development on foreshore area

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

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

Comment:

The proposed development is for the construction of an incline passenger lift along the eastern boundary of the subject site and excavation works to facilitate the waterfront landing. As the proposal is not a listed a type of development permitted within the foreshore area, a Clause 4.6 written request to vary Clause 7.8 has been made by the Applicant and an assessment has been undertaken in this report.

This assessment has found that the Applicant's request to vary Clause 7.8 is not well founded and, as such, strict compliance with the requirements of Clause 7.8 is considered necessary.

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

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

Comment:

The subject site is a split zoning, with the majority of the site being C4 Environmental Living and a small portion of the site at the water frontage being W1 Natural Waterways within the Pittwater Local Environmental Plan. The plans and survey provided, do not clearly show the demarcation of these zone, however broadly the W1 zone sits seaward of the Mean High Water Mark. As such, the zone to which the proposed location of the waterfront landing cannot be ascertained. The subject site benefits from certain land use permitted in W1 Natural Waterways Zone in accordance with Schedule 1 Additional Permitted Uses [23] (or 'Area 23'), however, the proposed development does not qualify for the requirements within this subclause, which relates only to the following development types: boat sheds, jetties or water recreation structures. In this instance, the proposed development is inconsistent with the objectives of C4 Environmental Living Zone and W1 Natural Waterways Zone (as has been discussed, in detail, elsewhere within this report).

Notwithstanding the above, the appearance of the proposed incline passenger lift is compatible with the surrounding area as incline passenger lifts are a common ancillary structure to dwelling houses located on steeply sloping lots with direct waterfront access.

The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. This application was referred to Council's Environmental Health (Acid Sulphate) Officer, Landscape Officer, Bushland and Biodiversity Officer, Riparian Lands and Creeks Officer and the Coast and Catchments Officer, none of whom raised issues that would warrant refusal of this application.

The location of the waterfront landing has the potential to cause congestion or generate conflict

between people using the adjacent open space or waterway. Further, the proposed development does not retain continue public access along the foreshore. Noting that the ability for people to traverse the public access along the foreshore area will be restricted by the obstruction of the waterfront landing of the incline passenger lift.

Notwithstanding the above, the proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In this instance, Council cannot be satisfied that the proposal can meet the above-listed requirements, and the proposal **cannot** achieve the requirements of this Clause.

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

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

Comment:

The proposed development does not retain or facilitate continuous public access to and along the foreshore and the proposed development impacts upon any public access in that the waterfront landing of the incline passenger lift obstructs such required foreshore access, as it abuts the waterline.

The proposed development is, however, acceptable in relation to maintaining the existing environmental conditions as the removal of canopy trees or significant vegetation is not required to facilitate the incline passenger lift, except for the wattle tree along the water frontage which has been indicated for removal due to ill health. This has been supported by Council's Landscape Officer subject to replacement planting, should this application be approved. The location of the incline passenger lift (being along the eastern side boundary) is appropriately sited from the adjoining dwelling so there is no adverse or unreasonable amenity impact upon the adjoining property, being 139 Riverview Road, particularly visual and acoustic privacy impacts.

However, as continued public access along the foreshore area cannot be retained, it is considered that the proposal can meet the above-listed requirements, and the proposal **cannot** achieve the requirements of this Clause.

23 Use of certain land in the W1 Natural Waterways Zone

As detailed elsewhere in this report, Schedule 1 Additional permitted uses within the *Pittwater Local Environmental Plan 2014* permits a variety of additional development types that are otherwise not permitted within the respective zones.

Where the subject site is zoned W1 Natural Waterways, it is also zoned under 'Area 23' of the additional permitted uses mapping. However, in accordance with the development types listed under

'Area 23' within the PLEP 2014, the proposed incline passenger lift does not qualify and, therefore, the subject site cannot benefit from the provisions of 'Area 23'.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Rear building line	Foreshore Building Line Applies	Within Foreshore Area up to the Mean High Water Mark	N/A	No (see Clause 7.8 & Clause 4.6)
Side building line	Southern Boundary 2.5m	Bottom station 12.3m	N/A	Yes
		Carriage line 19.7m - 19.75m	N/A	Yes
	Northern Boundary 1m	Bottom Station 0.55m	45%	No
		Carriage Line 1.0m	N/A	Yes
		Top Station 0.5m	50%	No
Landscaped area	60% (603.6m ²)	63.45% (638.4m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.1 Avalon Beach Locality	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line		
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The desired future character statement as detailed within this control of the P21 DCP states that *the most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment, and that the development is integrated with the landform and landscape.*

The proposed development does not align with these desired characteristics in that it obstructs and restricts the continued casual and public access to the foreshore area, and the excavation works are not appropriately integrated into the landform and landscape. As such, the proposed development does not align with the desired future character of Avalon Beach.

C1.19 Incline Passenger Lifts and Stairways

Merit consideration

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)*

Comment:

This control requires the following for the construction of an incline passenger lift:

- be designed and located so they do not involve excessive excavation, or the removal of*

- natural rock or trees, and*
- ii. *be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- iii. *be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- iv. *be painted to blend in with surrounding vegetation and screened by landscaping and*
- v. *be set back two (2) metres from the side boundary to the outer face of the carriage*
- vi. *be located wholly on private land, and*
- vii. *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

Comment:

Updated plans were provided on 13 February 2023, which simply added the foreshore building line and no changes were made to the proposed location and/or design of the incline passenger lift. The plans indicate the lower level landing, located in the north-western corner of the subject site, will have a floor level of RL1.81, with minimal excavation required (approximately 250 millimetres). No trees are proposed for removal to facilitate the incline passenger lift. In this instance, the incline passenger lift has been sited and designed in such a way that retains the significant natural features of the site and retain the existing canopy trees.

The highest point of the incline rail, above the existing ground level is 1.17 metres, and the top landing is 2.1 metres (measured from the existing ground level to the top of the landing) above the existing ground level. The rail requires five (5) footings and piers, with the highest pier being 0.81 metres above existing ground level. Based on this, the piers are not considered to be high above the existing ground level. However, and despite this, the the installation of the car landing pit at the bottom of the site necessitates a retaining wall to be constructed, however no details of the height or structure of this wall is provided. Accordingly, this lack of detail forms a recommended reason for refusal.

The dwelling on the adjoining allotment, being 139 Riverview Road, is sited higher up the hill from the dwelling on the subject site, and angled to face north. In this instance, the proposed incline passenger lift, at it's closest point, is approximately 14.82 metres from the dwelling at 139 Riverview Road. Notwithstanding, to ensure the effects of the motor noise are appropriately managed, if this application should be approved, a condition would be recommended to restrict the use of the incline passenger lift during the late evening and early morning.

Should this application be approved, an appropriate condition would be recommended to ensure the proposed incline passenger rail and all ancillary structures are painted dark and earthy tones to seamlessly integrated into the surrounding natural environment. The existing vegetation, including canopy trees, are proposed for retention, save for the wattle tree along the water frontage which has been indicated for removal due to ill health. This has been supported by Council's Landscape Officer subject to replacement planting, should this application be approved. As such, the existing landscaping will provide an appropriate screen of the incline passenger lift. In conjunction with this, the proposed lower landing level of the incline passenger lift is sited between two (2) boatsheds (one on the subject site, and the other on 139 Riverview Road). Based on this, the proposed incline passenger lift, and particularly the lower level landing, will be significantly and appropriately screened from the waterway and adjoining / nearby properties.

As detailed within the Built Form Control table within this report, the outer face of the proposed cab of the incline passenger lift is setback 0.5 metres from the northern side boundary, and the proposed rail is setback 1.0 metres from the northern side boundary. In this instance, the proposal does not achieve compliance with this requirement. The proposal is sited a substantial distance from the southern side

boundary, and achieves compliance with this requirement. Notwithstanding the non-compliance to the side setback requirement, as detailed above, the proposed incline passenger lift is sited approximately 14.82 metres from the dwelling at 139 Riverview Road and is sited close to the existing ground level, ensuring there is minimal amenity impact upon the occupants of this property. The existing vegetation on the subject site and 139 Riverview Road will continue to provide a visual buffer of the proposed incline passenger lift.

The proposed incline passenger lift, inclusive of the rail, is sited entirely within the property boundaries of the subject site, being 137 Riverview Road.

Due to the location of the proposed incline passenger lift and the siting of the dwelling house on 139 Riverview Road, a privacy screen on the passenger cab is not required in this instance.

It is considered that whilst the inclinator lift is generally compliant with the provisions of the DCP, it remains a structure that is unsuited within the foreshore building line.

D1.5 Building colours and materials

A detailed colour schedule has not been provided with this application. Should this application be recommended for approval, a condition would be recommended to ensure the colours of the inclinator are dark and earthy tones so as to seamlessly integrated into the natural environment.

D1.9 Side and rear building line

The side setback non-compliance is discussed in the section of this report relating to Clause C1.19 'Incline Passenger Lifts and Stairways' of the P21DCP. In conclusion, the development is considered to respond to the P21DCP outcomes, notwithstanding the numerical non-compliance.

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 \$ 650 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 130,000.

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for the construction of an incline passenger lift has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the Applicant's request to vary Clause 7.8 of the PLEP 2014, which is a non-numerical development standard.

The concerns raised in the objections have been addressed and, based on the whole assessment, will form a reason for refusal of this application.

The critical assessment issues were: additional permitted uses for particular land, the zone objectives for C4 Environmental Living and W1 Natural Waterways, development below mean high water mark, acid sulphate soils, earthworks, biodiversity protection, geotechnical hazards, limited development on foreshore area, (23) use of certain land in the W1 Natural Waterways zone, incline passenger lifts and stairways, building colours and materials, and side and rear building line.

Council is **not** satisfied that:

- 1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Foreshore Building Line has adequately addressed and demonstrated that:
 - Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - 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 zones in which the development is proposed to be carried out.

Based on the above, this report concludes with a recommendation that the NBLPP **refuse** the application.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/1548 for the Construction of an incline passenger lift on land at Lot 1 DP 1191316, 137 Riverview Road, AVALON BEACH, Lot LIC 618131, 137 Riverview Road, AVALON BEACH, for the reasons outlined as follows:

- 1. Pursuant Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.**

Particulars:

- i) The sufficient environmental planning grounds advanced within the written Clause 4.6 request that seek to justify variation of Clause 7.8 Limited development on foreshore area of the PLEP 2014 are inadequate.
- ii) The environmental planning grounds advanced within Clause 4.6 state that the proposed development will not obstruct or restrict the continued public access to and along the foreshore area. This claim is contrary to the architectural plans provided which indicate the landing at the waterfront level will obstruct the continued public access along the foreshore area. The Applicant's written request in accordance with Clause 4.6 to vary Clause 7.8 is not well-founded and cannot be supported.
- iii) The remainder of the environmental planning grounds advanced within the Clause 4.6 amount to either issues of maintenance, compliance with other controls or a desired built outcome, they are not environmental planning grounds.
- iv) The written Clause 4.6 fails to address the W1 Natural Waterways zone objectives, which is required as part of the development is located within this zone.

- 2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provision of Clause 1.2 Aims of the Plan, Clause Zone C4 Environmental Living zone of the *Pittwater Local Environmental Plan 2014* and A4.1 Avalon Beach Locality of the Pittwater 21 Development Control Plan.**

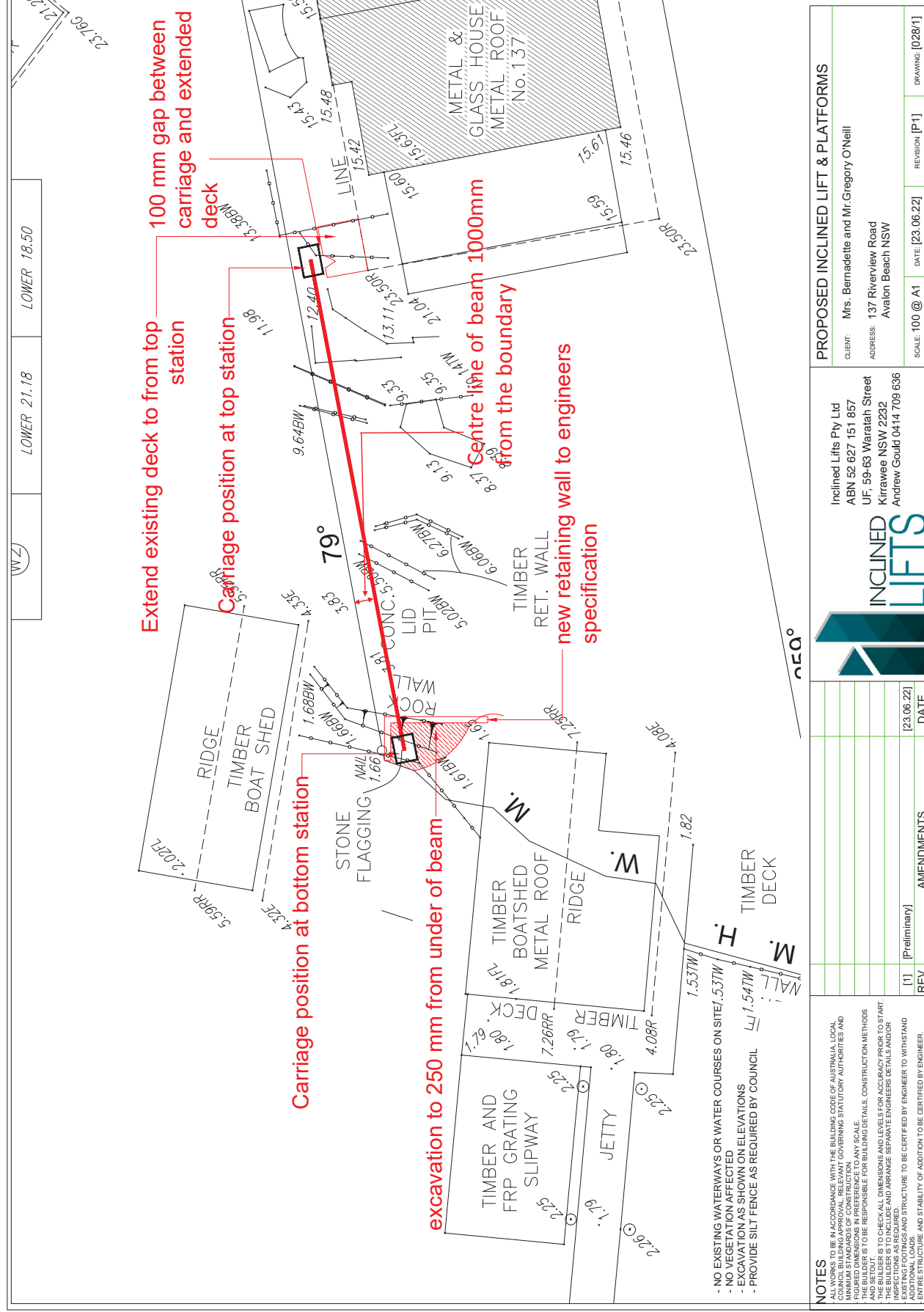
Particulars:

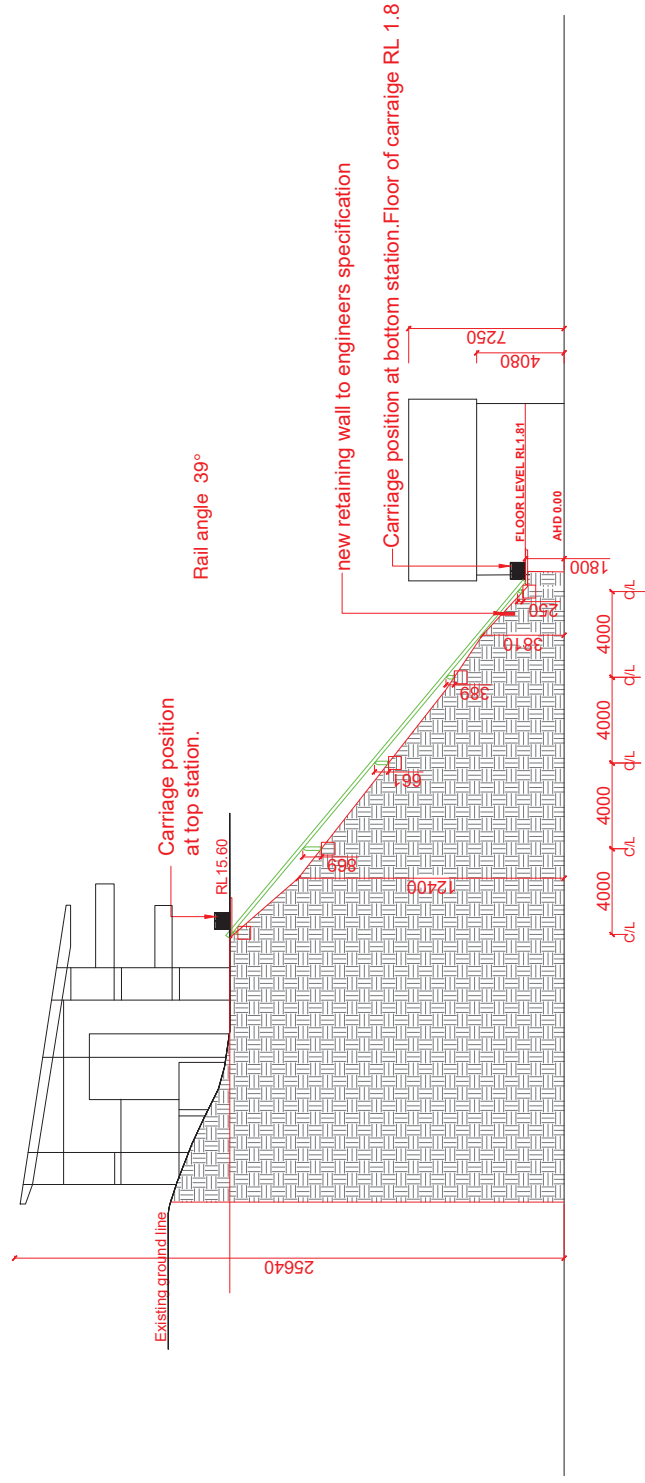
- i) As the proposed development will restrict the continued public access to and along the foreshore area, it fails to be consistent with the provisions of the PLEP 2014 and the zone objectives of C4 Environmental Living zone.
- ii) The proposed development is inconsistent with the character statement of the Avalon Beach locality as prescribed under A4.1 within the Pittwater Development Control Plan.

- 3. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not within the public's interest.**

Particulars:

- i) The proposed development does not satisfy the requirements of State Environmental Planning Policy (Resilience and Hazards) 2021 and Pittwater Local Environmental Plan 2014, specifically relating to Clause 7.8 Limited development on foreshore area. As a consequence, the proposed development is not within the public's interest.
- ii) No detail or information has been included on the submitted architectural set in relation to the proposed retaining wall at the bottom of the inclinators lift for the car lift pit. This absence of information is such that it is not clear what approval is sought and it is not within the public's interest to approve works where there is no clear detail on it.





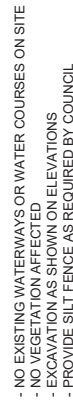
- NO EXISTING WATERWAYS OR WATER COURSES ON SITE
- NO VEGETATION AFFECTED
- EXCAVATION AS SHOWN ON ELEVATIONS
- PROVIDE SILT FENCE AS REQUIRED BY COUNCIL

NOTES

- ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, LOCAL COUNCIL ORDINANCES AND GOVERNING STATUTORY AUTHORITIES AND NATIONAL STANDARDS OF CONSTRUCTION.
- FIGURED DIMENSIONS IN PREFERENCE TO ANY SCALE.
- THE DRAWING IS TO BE RESPONSIBLE FOR BUILDING DETAILS, CONSTRUCTION METHODS AND SETOUT.
- THE BUILDER IS TO CHECK ALL DIMENSIONS AND LEVELS FOR ACCURACY PRIOR TO START OF CONSTRUCTION AND TO REPORT ANY DISCREPANCIES TO THE ARCHITECT.
- ALL DIMENSIONS ARE TO FACE UNLESS SPECIFICALLY NOTED OTHERWISE.
- INSPECTIONS AS REQUIRED.
- EXISTING FOOTINGS AND STRUCTURE TO BE CERTIFIED BY ENGINEER TO WITHSTAND EXISTING STRUCTURE AND STABILITY OF ADDITION TO BE CERTIFIED BY ENGINEER.

[illegible]

PROPOSED INCLINED LIFT & PLATFORMS	
CLIENT: Mrs. Bernadette and Mr. Gregory O'Neill	
ADDRESS: 137 Riverview Road Avalon Beach NSW	
SCALE: 100 @ A1	DATE: [23.06.22] REVISION: [P1] DRAWING: [028/2]



NOTES

ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, LOCAL LAWS AND REGULATIONS, AND ANY OTHER APPLICABLE LAWS, GOVERNMENT STATUTORY AUTHORITIES AND MINIMUM STANDARDS OF CONSTRUCTION.

FIGURED DIMENSIONS IN PREFERENCE TO ANY SCALE.

THE DESIGNER SHALL BE RESPONSIBLE FOR BUILDING DETAILS. CONSTRUCTION METHODS AND SETOUTS TO BE DETERMINED BY THE CONTRACTOR.

THE BUILDER IS TO CHECK ALL DIMENSIONS AND LEVELS FOR ACCURACY PRIOR TO START OF CONSTRUCTION. THE BUILDER IS TO REPORT ANY DISCREPANCIES TO THE ARCHITECT IMMEDIATELY.

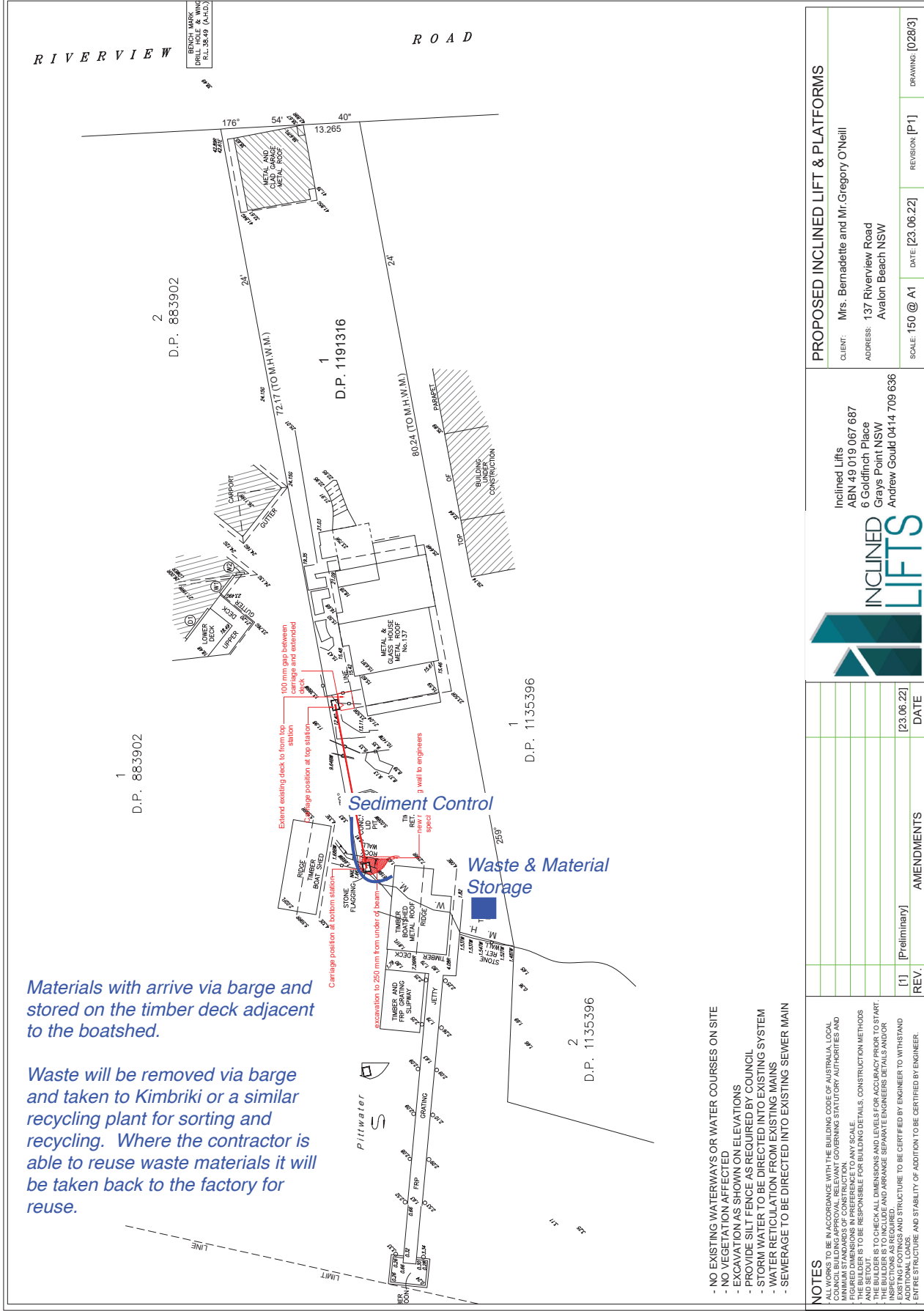
INSPECTIONS AS REQUIRED.

EXISTING FOOTINGS AND STRUCTURE TO BE CERTIFIED BY ENGINEER, TO WITHSTAND THE PROPOSED LOADS.

ENTIRE CONSTRUCTION AND STABILITY OF ADDITION TO BE CERTIFIED BY ENGINEER.

	[1]	Preliminary	AMENDMENTS	(23.06.22)

<p>INCUBATED LIFTS Pty Ltd ABN 52 627 151 857 UF, 59-63 Waratah Street Kirrawee NSW 2232 Andrew Gould U414 / U3 636</p>	<p>PROPOSED INCLINED LIFT & PLATFORMS</p> <p>CLIENT: Mrs. Bernadette and Mr. Gregory O'Neill</p> <p>ADDRESS: 137 Riverview Road Avalon Beach NSW</p> <p>SCALE 150 @ A1 DATE: [23.06.22] REVISION: [P1] DRAWING: [028/3]</p>
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NOTES

- ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, LOCAL GOVERNMENT STANDARDS AND ANY OTHER APPLICABLE GOVERNING STATUTORY AUTHORITIES AND MINIMUM STANDARDS OF CONSTRUCTION.
- FIGURED DIMENSIONS IN PREFERENCE TO ANY SCALE.
- THE BUILDING IS TO BE RESPONSIBLE FOR BUILDING DETAILS, CONSTRUCTION METHODS AND MATERIALS.
- THE BUILDER IS TO CHECK ALL DIMENSIONS AND LEVELS FOR ACCURACY PRIOR TO START.
- THE BUILDER IS TO INCLUDE AND ARRANGE SEPARATE ENGINEERS DETAILS AND/OR EXISTING FOOTINGS AND STRUCTURE TO BE CERTIFIED BY ENGINEER TO WITHSTAND ADDITIONAL LOADS.
- THE BUILDER IS TO PROVIDE DETAILS OF ANY ADDITIONAL WORK TO BE CERTIFIED BY ENGINEER.

- NO EXISTING WATERWAYS OR WATER COURSES ON SITE
- NO VEGETATION AFFECTED
- EXCAVATION AS SHOWN ON ELEVATIONS
- PROVIDE SILT FENCE AS REQUIRED BY COUNCIL
- STORM WATER TO BE DIRECTED INTO EXISTING SYSTEM
- WATER RETICULATION FROM EXISTING MAINS
- SEWERAGE TO BE DIRECTED INTO EXISTING SEWER MAIN

REV.	AMENDMENTS	DATE
[1] [Preliminary]		[23.06.22]



Inclined Lifts
ABN 49 019 067 687
6 Goldfinch Place
Grays Point NSW
Andrew Gould 0414 705 636

PROPOSED INCLINED LIFT & PLATFORMS

CLIENT:	Mrs. Bernadette and Mr. Gregory O'Neill
ADDRESS:	137 Riverview Road Avalon Beach NSW
SCALE:	150 @ A1
DATE:	[23.06.22]
REVISION:	[P1]
DRAWING:	[028/3]



9th of February 2023.

Ref: DA 2022/1137

137 Riverview Rd Avalon Beach.

**Clause 4.6 – Exceptions to Development Standards in relation to Clause 7.8
“Limited development on Foreshore Area” of the Pittwater Local Environmental Plan
2014.**

1. Introduction.

This written application is made pursuant to the provisions of Clause 4.6, Exceptions to development standards, of the Pittwater Local Environmental Plan 2014 (the LEP). A variation is sought in relation to clause 7.8 - Limited Development on foreshore area, at 137 Riverview Road, Avalon Beach.

Clause 4.6 details several objectives initially stating that it aims to provide an appropriate degree of flexibility in applying certain development standards to particular development. It also provides an opportunity for the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

In particular, this application will address section 3 of Clause 4.6.

2. Zoning of the land and the objectives of the zone

The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees.

Objectives of the Zone

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

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

The site is located in a foreshore area but is not identified as having special ecological, scientific, cultural or aesthetic values. The landscape quality of the site and the area will be maintained and the proposal does not involve the removal of any significant native trees or natural features on the site. It does involve the removal of a single wattle tree that is in poor health. The development will have a low impact.

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

The proposed development for an inclined passenger lift will have a low impact, low impact use of the land that is consistent with the C4 Environmental Living Zone.

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

The inclined lift is planned to be low to the ground and is located between trees on the applicants property and those on the adjoining neighbours property to the north. The works will not require excessive excavation for its construction. The bottom landing is located in an area between the two neighbouring boatsheds and the inclined lift will have minimal visual impact when viewed from the waterway. It will be integrated within the existing extensive foreshore landscaping.

The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site.

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

The proposed development will not affect riparian and foreshore vegetation or wildlife corridors in this waterfront location.

No adverse impact

The proposal for the construction of an inclined passenger lift is consistent with the objectives of the C4 zone and there will not be any adverse impacts or environmental harm. It is in keeping with many other examples of inclined passenger lifts installed in the local vicinity subject to the same zone classification.

3. Clause 4.6 Exceptions to development standards

This clause applies to Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan (the LEP) and the following responds to the requirements of Clause 4.6 sections 1 – 3:

(1) 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.

Flexibility has previously been granted by Council for similar developments installing inclined passenger lifts within the foreshore building line.

(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.

Inclined passenger lifts are not expressly excluded from the operation of clause 4.6.

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

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

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

The development of an inclined passenger lift is not listed as a permissible form of development identified in Clause (2) (b) of part 7.8 of the Pittwater LEP 2014. However one of the underlying purposes allowed is to provide waterway access stairs. An inclined passenger will also provide access to the foreshore allowing aged, disabled and people with various health issues to access the foreshore and the boatshed and jetty.

The existing pathway and steps from the house to the boatshed are steep starting at the lowest level of the house, RL 15.6 and finishing at RL 1.80. There is a total of 50 steps integrated into this pathway, much of which is covered by tree canopy. As a result it becomes slippery when wet despite the provision of non-slip strips in strategic positions. There have been several slips and falls and a few years ago a gardener slipped, fell and hit his head on the concrete stairs. He was taken out by the air ambulance crew, initially on a passing boat and then by helicopter to Royal North Shore Hospital. He had bleeding on the brain and was lucky to have survived. In a case like this an inclined lift would have assisted the emergency services team.

4. Clause 7.8 – Limited development on foreshore area

Request for Variation

Is compliance with clause 7.8 (2) (b) unreasonable or unnecessary? Each objective of the Part 7.8 of the Additional Local Provisions (Part 7) is addressed in the following:

CI 7.8 (1) (a): to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area

The proposed new works will not have any adverse amenity impacts and the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable. The new works maintain a bulk and scale, which is in keeping with the extent of surrounding development, does not impact on views enjoyed by adjoining properties and causes minimal disruption to the existing foreshore landscaping. There have been no issues raised or submissions to Council made by adjoining owners.

CI 7.8 (1): (b) to ensure continuous public access along the foreshore area and to the waterway

As the proposed development is within private property and is landward of the HMWM above an existing seawall, it will not affect public access.

The Nature and Extent of the Variation

In requesting a variation to Clause 7.8 (2) (b) to allow an inclined passenger lift in the foreshore area the individual requirements of Clause 7.8 (3) are addressed in the following:

Clause 7.8 (3) Development consent must not be granted under this clause unless the consent authority is satisfied that—

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

The development is located within Zone C4 Environmental Living which requires low density residential development of low impact that retains and enhances riparian and foreshore vegetation and wildlife corridors. The development of an inclined passenger lift is not contrary to those objectives.

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

The development is proposed in a well treed and landscaped area which is partially obscured by two boatsheds when viewed from the waterway.

(c) the development will not cause environmental harm such as—

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or

(iii) an adverse effect on drainage patterns, or

(iv) the removal or disturbance of remnant riparian vegetation, and

The proposed development will not cause any significant pollution or siltation of the waterway as suitable environmental controls will be applied. It will not adversely impact on adjacent areas and no remnant riparian vegetation is to be removed as part of the works.

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

The proposed works would not affect public use of the foreshore and will not cause any conflict with waterway use as they are entirely on private property.

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

The proposed works will not affect public access along the foreshore area.

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

There are no known historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significances of the land on which the development is to be carried out.

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

This is not applicable

(h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.

This has been addressed in the Estuarine Risk management Report dated 6 January 2022 prepared by Horton Coastal Engineering.

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

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

(b) public access to link with existing or proposed open space,

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

(d) public access to be located above mean high water mark,

(e) the reinforcing of the foreshore character and respect for existing environmental conditions

As stated above, the proposed works are entirely on private land and would not affect public access along the foreshore.

There are many examples along the adjacent foreshore of properties with both access stairs and inclined passenger lifts within the foreshore building area. Whilst some of these newer lifts are replacements for older or previously approved lifts, some are also relatively recently approved new lifts. By allowing these developments the development standard has previously been varied by Council's own actions.

5. Conclusion This objection to control specified in Clause 7.8 (2) (b) of the Pittwater LEP 2014 adequately demonstrates that the intent of allowing waterway access stairs as a means of accessing the foreshore can be also achieved by allowing development of an inclined lift which provides improved safety and the ability for those who otherwise can't to access the foreshore.

The bulk and scale of the proposed development is appropriate for the site and locality.

Are sufficient environmental planning grounds to justify contravening the development standard?

In this regard, a variation would be reasonable and appropriate because the proposal does not involve any adverse visual impact when viewed from the waterway or from adjoining properties, and the amenity of the adjoining properties will also be maintained.

The absence or lack of environmental harm in this case, with specific reference to the site, adjoining properties and more generally the locality, is also an appropriate environmental planning ground to justify contravening the development standard

Is the proposed development in the public interest because it is consistent with the underlying purpose of the standards and objectives for development in the zone in which it is proposed to be carried out?

It is considered that notwithstanding the requirements of Clause 7.8 (2) (b) the proposed inclined lift is consistent with the individual objectives of the E4 Environmental Living Zone .

The proposal provides a low impact development in a residential area located with the foreshore area. It is consistent with and will complement the existing detached style dwelling house and will not be a visually prominent element in the area. It accords with, and maintains consistency with the objectives of the E4 Environmental Living Zone and does not have an adverse impact on those values.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard of Clause 7.8 (2) (b) is reasonable and appropriate in the circumstances of the case. There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development also achieves the objects in Section 1.3 of the EPA Act, specifically:

The proposed development also will provide for improved amenity within a built form which is compatible with the surrounding character of Riverview Road foreshore frontages.

The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site.

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2023/0082 - 1A MYOORA ROAD, TERREY HILLS - ALTERATIONS AND ADDITIONS TO AN EXISTING RECREATION FACILITY (OUTDOOR) INCLUDING UPGRADES TO THE EXISTING DRIVING RANGE, INSTALLATION OF NEW NETTING, CONSTRUCTION OF A NEW MINI-GOLF COURSE, CONVERSION OF THE EXISTING BASEBALL NETS INTO A CHILDREN'S PLAY AREA, EXPANSION OF LICENSED AREAS AND SIGNAGE.
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/322913
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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. DA2023/0082 for Alterations and additions to an existing recreation facility (outdoor) including upgrades to the existing driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play area, expansion of licensed areas and signage on land at Lot 51 DP 825753, 1 A Myoora Road, TERREY HILLS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0082
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 51 DP 825753, 1 A Myoora Road TERREY HILLS NSW 2084
Proposed Development:	Alterations and additions to an existing recreation facility (outdoor) including upgrades to the existing driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play area, expansion of licensed areas and signage
Zoning:	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jian Zhu Pty Ltd
Applicant:	Swing Factory Pty Ltd

Application Lodged:	08/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	14/02/2023 to 28/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 446%
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,247,012.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing recreation facility (outdoor), which includes upgrades to the existing golf driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play

area, expansion of licensed dining areas and upgraded business identification signage.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of more than 10% to Clause 4.3 Height of Buildings contained within the Warringah Local Environmental Plan 2011 to a recreation facility (outdoor). The written Clause 4.6 variation request for the non-compliance with height standard arises from the proposed supporting poles and netting which enclose the golf driving range that breaches the maximum building height (46.411 metres), resulting in a variation of 446%. The existing poles and netting is at a maximum height of 25 metres that presents an existing non-compliant height. The proposed poles and netting demonstrate compliant setbacks from adjoining sites to the north, east, and west that is an improvement from the existing non-compliant setbacks. Ultimately, the increased height of the poles and netting and increased side setbacks of the driving range is proposed to capture the golf balls within the subject site and prevent them from entering the adjoining National Park.

The proposal was notified in accordance with Council's Community Participation Plan and no objections were received.

Critical assessment issues included a variation to the height of building development standard, and variation to the front boundary setback control, prescribed by the Warringah Development Control Plan 2011.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Upgrades to the existing driving range landing area. Key features of the proposed upgrades are as follows:
 - grass turfing of the revised 12,218m² landing area;
 - the construction of seven (7) synthetically turfed target greens of varying sizes;
 - the replacement of the existing fence with new, state of the art fence, reaching a maximum height of 42 metres;
- Replacement of the existing mini-golf course with a state of the art new expanded 18 hole course (Stage 1);
- An additional 9 hole mini-golf course to be constructed (27 holes in total) as part of Stage 2;
- Improvements to the existing outdoor entertainment area on the northern side of the existing main building;
- Conversion of the existing baseball nets to an outdoor play area as part of Stage 2;
- Expansion of the licenced area to include the driving bays, function rooms, entertainment area and mini-golf courses, as well as the existing licenced restaurant;
- Construction of vegetated bioswale with discharge to detention/bioretenion basin and associated landscaping works; and
- Construction of two (2) new business identification signs and refurbishment of one (1) existing pylon sign.

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 - 2.5 Additional permitted uses for particular land
 Warringah Local Environmental Plan 2011 - Zone RU4 Primary Production Small Lots
 Warringah Local Environmental Plan 2011 - 5.21 Flood planning
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D10 Building Colours and Materials
 Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

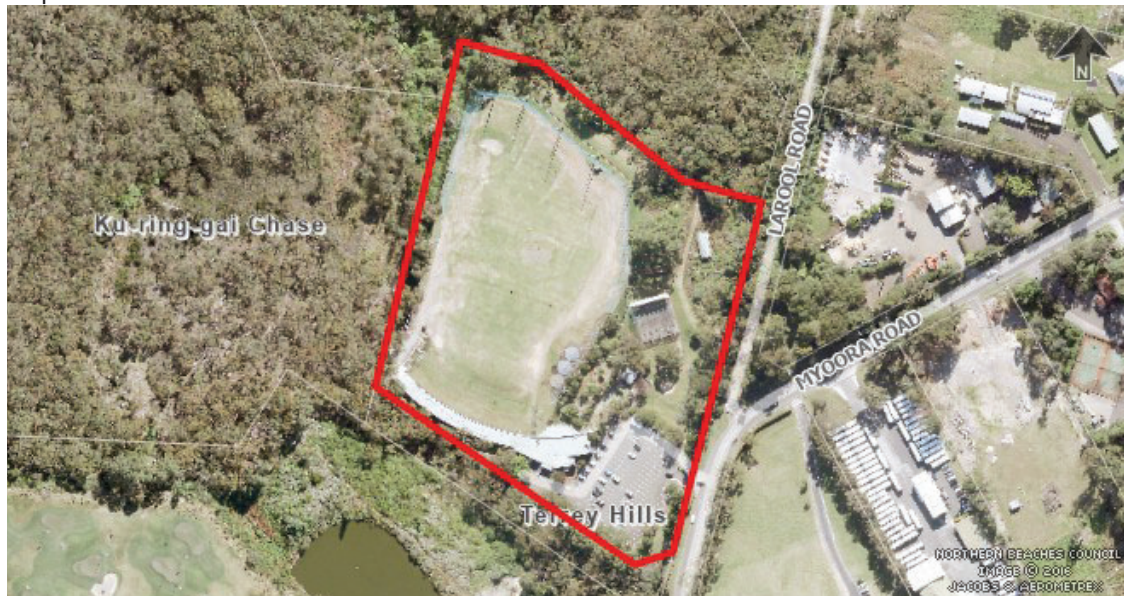
Property Description:	Lot 51 DP 825753 , 1 A Myoora Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-western side of Myoora Road and Larool Road.</p> <p>The site is irregular in shape with a frontage of 204.495m along Myoora Road and Larool road and a depth of 180.88m. The site has a surveyed area of 40,239m².</p> <p>The site is located within the RU4 Primary Production Small Lots from WLEP 2011 and accommodates an existing driving range, car parking area, mini-golf area, baseball nets, and clubhouse.</p> <p>The site slopes from the south downwards to the north over approximately 20 metres.</p> <p>The site contains grass, shrubs, trees, and plantings. There</p>

are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by Ku-Ring-Gai National Park to the North, and West. To the South is Terrey Hills Par 3 Golf Course, and to the East is land comprising of various rural farming uses, commercial uses, and residential dwellings.

Map:



SITE HISTORY

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

1992/63

Development Application for Golf driving range, restaurant, baseball practice nets with ancillary recreation facilities, carparking and landscaping.
Approved 2 June 1992.

Modification of Development Consent for Golf driving range, restaurant, baseball practice nets with ancillary recreation facilities, carparking and landscaping.
Approved 3 December 1992.

Modification of Development Consent for Golf driving range, restaurant, baseball practice nets with ancillary recreation facilities, carparking and landscaping.
Approved 5 August 1993.

1993/553

Development Application for Security Manager's residence to be used in conjunction with golf driving

range.

Approved on 18 January 1994.

1996/305

Development Application for Conversion of retail space to conference rooms.

Approved on 1 November 1996.

1997/332

Development Application for Earthworks and landfill at the rear of the golf driving range to permit vehicular access for net maintenance.

Approved on 22 December 1997.

PLM2021/0168

Pre-Lodgement Meeting for Construction and Use of Premises as a Recreation Facility (Indoor).

Meeting held 22 July 2021.

The meeting notes concluded: *Based on the limited information provided, the proposed building would appear to comply with the relevant development standards and built form controls. The application will need to provide more detailed plans that clearly demonstrate compliance. The proposal is supported in principle, subject to the following issues being resolved:*

- *Demonstration that sufficient parking exists to service the new building and the existing land uses on the site;*
- *Consistency with the BCA; and*
- *No adverse impact on any adjoining vegetation or biodiversity.*

PLM2022/0185

Pre-Lodgement Meeting for Alterations and additions to a recreation facility (outdoor).

Meeting held 4 October 2022.

The meeting notes concluded: *The proposed development includes significant non-compliances to the height of buildings, site coverage and landscaped open space controls. Detailed recommendations are included in these notes to guide the applicant in developing a proposal that would receive support from Council staff and the LPP. This includes contacting the Civil Aviation Safety Authority, once the final height of the netting is known, just to ensure it will not pose an unacceptable risk. Overall, it is recommended that the height of the proposed netting be minimised as much as possible, the landscaped open space be increased and the setback areas be landscaped and free of any structures.*

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 27 April 2023 in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011, Clause 4.6 Exceptions to development standards of Warringah Local Environmental Plan 2011, D1 Landscaped Area & Bushland Setting of Warringah Development Control Plan 2011, and the proposed Kids Play Area. On 2 May 2023 the applicant submitted an amended Statement of Environmental Effects, amended Master Plans, and an amended Clause 4.6 variation request.

Furthermore, additional information was sought from Council's Landscape Officer, and Council's Bushland and Biodiversity Officer. Subsequently, the applicant provided amended Landscape & Biodiversity Plans on 14 April 2023 in response to Council's Landscape Officer, and Bushland and Biodiversity comments.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning 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 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011, Clause 4.6 Exceptions to development standards of Warringah Local Environmental Plan 2011, D1 Landscaped Area & Bushland Setting of Warringah Development Control Plan 2011, and the proposed Kids Play Area. Furthermore, additional information was sought from Council's Landscape Officer, and Council's Bushland and Biodiversity Officer. Subsequently, the applicant provided an amended Statement of Environmental Effects, amended Master Plans, amended Landscape & Biodiversity Plans, and an amended Clause 4.6 Report.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This</p>

Section 4.15 Matters for Consideration	Comments
	<p>matter is not relevant to this application.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning & Design, dated 9 December 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as recommended conditions of consent. As such, the proposal is considered to satisfy the relevant matters for consideration prescribed by Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/02/2023 to 28/02/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported - subject to conditions.</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate</p>
Environmental Health (Contaminated Lands)	<p>Supported - subject to conditions.</p> <p>General Comments</p> <p>This DA seeks development consent for the following works at the Site:</p> <ul style="list-style-type: none"> Upgrades to the existing driving range landing area. Key features of the proposed upgrades are as follows: <ul style="list-style-type: none"> grass turfing of the revised 12,218m² landing area; the construction of seven (7) synthetically turfed target greens of varying sizes; the replacement of the existing fence with new, state of the art fence, reaching a maximum height of 42m, designed to achieve 99.987% ball containment Replacement of the existing mini-golf course with a state of the art new expanded 18 hole course (Stage 1); An additional 9 hole mini-golf course to be constructed (27 holes in total) as part of Stage 2; Improvements to the existing outdoor entertainment area on the northern side of the existing main building; Conversion of the existing baseball nets to an outdoor play area as part of Stage 2; Expansion of the licenced area to include the driving bays, function rooms, entertainment area and mini-golf courses, as well as the existing licenced restaurant; Construction of vegetated bioswale with discharge to detention/bioretenion basin and associated landscaping works; and Construction of two (2) new business identification signs and refurbishment of one (1) existing pylon sign. <p>It is noted that there are no works proposed to the existing Clubhouse as part of this DA.</p> <p>Martens & Associates Pty Ltd P2209224JR02V01 November 2022</p>

Internal Referral Body	Comments
	<p>report states in part:</p> <p>"Based on the findings of the SCA, heavy metal and organic contaminants were not identified in soils at the site at concentrations exceeding public open space land use criteria. PACM was also not identified during intrusive investigation of fill soils or in samples analysed by the analytical laboratory. Localised asbestos coating material (ACM) fragments were, however, identified at the ground surface during the investigation, which will require management, prior to the initiation of development activities.</p> <p>Given localised bonded ACM was identified at the ground surface during the investigation, it is recommended that detailed inspection and hand removal of bonded ACM fragments be conducted within the areas of identified ACM fragments, prior to the initiation of any development works at the site. To allow for adequate inspection of the ground surface in the north-east corner of the site, vegetation will require removal from this area, prior to proceeding with the ACM surface inspection. Certification of surface ACM removal by the issuing of an asbestos clearance certificate for each area will be required before commencing with further development works. Additionally, it is recommended that an unexpected finds protocol be prepared for proposed future works, that outlines the required steps to be implemented should any unexpected contamination be identified during the redevelopment phase of works.</p> <p>Based on available site history records, site observations and the analytical soil data obtained, MA consider there is a low risk to human health and ecological receptors from heavy metals and organics contaminants within the IA. Additionally, bonded ACM identified at the ground surface is unlikely to constrain redevelopment of the site and site soils can be made suitable for the proposed development subject to the completion of the recommended works, outlined above. Where any soil materials require removal from site the during future development works, a formal waste classification of the material, in accordance with the NSW EPA (2014) Waste Classification Guidelines, will be require to legally dispose material from the site."</p> <p>Environmental Health therefore supports the proposal subject to conditions.</p>
Environmental Health (Industrial)	<p>Supported - subject to conditions.</p> <p>General Comments</p> <p>This DA seeks development consent for the following works at the Site:</p> <ul style="list-style-type: none"> • Upgrades to the existing driving range landing area. Key features of the proposed upgrades are as follows: <ul style="list-style-type: none"> ○ grass turfing of the revised 12,218m2 landing area; ○ the construction of seven (7) synthetically turfed target greens of varying sizes; ○ the replacement of the existing fence with new, state of

Internal Referral Body	Comments
	<p>the art fence, reaching a maximum height of 42m, designed to achieve 99.987% ball containment</p> <ul style="list-style-type: none"> • Replacement of the existing mini-golf course with a state of the art new expanded 18 hole course (Stage 1); • An additional 9 hole mini-golf course to be constructed (27 holes in total) as part of Stage 2; • Improvements to the existing outdoor entertainment area on the northern side of the existing main building; • Conversion of the existing baseball nets to an outdoor play area as part of Stage 2; • Expansion of the licenced area to include the driving bays, function rooms, entertainment area and mini-golf courses, as well as the existing licenced restaurant; • Construction of vegetated bioswale with discharge to detention/bioretenion basin and associated landscaping works; and • Construction of two (2) new business identification signs and refurbishment of one (1) existing pylon sign. <p>It is noted that there are no works proposed to the existing Clubhouse as part of this DA.</p> <p>Acoustic Review -Proposed Development The proposal is to build a new minigolf course with a covered outdoor area. The capacity is as follows:</p> <ul style="list-style-type: none"> • Mini Golf 108 Patrons (4 patrons per hole) • Beer Garden 100 Patrons <p>The proposed hours of operation Monday to Sunday for Golf Paradise are as follows: Driving Range and Mini Golf 9:00 am to 10:30 pm Licensed Venue 9:00 am to 12:00 am. Beer Garden 9:00 am to 10:30 pm</p> <p>Rodney Stevens Acoustics Report Number 220824R1 The noise emissions from the proposed works can comply with the required criteria with the implementations of the following recommendations: Sound System</p> <ul style="list-style-type: none"> • All speakers must be installed at a 45° angle facing the ground • The speakers installed must have a maximum 110° wave dispersion, or at least have minimal sound output at the back of the speaker • A noise limiter is to be installed to ensure all speakers in the beer garden and throughout the mini golf course do not exceed 80 dB(A) at 1 meter from the speakers. <p>Environmental Health supports the proposal subject to conditions.</p>
Environmental Health (Food	

Internal Referral Body	Comments
Premises, Skin Pen.)	<p>Supported - subject to conditions.</p> <p>General Comments This DA seeks development consent for the following works at the Site:</p> <ul style="list-style-type: none"> Upgrades to the existing driving range landing area. Key features of the proposed upgrades are as follows: <ul style="list-style-type: none"> grass turfing of the revised 12,218m² landing area; the construction of seven (7) synthetically turfed target greens of varying sizes; the replacement of the existing fence with new, state of the art fence, reaching a maximum height of 42m, designed to achieve 99.987% ball containment Replacement of the existing mini-golf course with a state of the art new expanded 18 hole course (Stage 1); An additional 9 hole mini-golf course to be constructed (27 holes in total) as part of Stage 2; Improvements to the existing outdoor entertainment area on the northern side of the existing main building; Conversion of the existing baseball nets to an outdoor play area as part of Stage 2; Expansion of the licenced area to include the driving bays, function rooms, entertainment area and mini-golf courses, as well as the existing licenced restaurant; Construction of vegetated bioswale with discharge to detention/bioretention basin and associated landscaping works; and Construction of two (2) new business identification signs and refurbishment of one (1) existing pylon sign. <p>It is noted that there are no works proposed to the existing Clubhouse as part of this DA.</p> <p>Environmental Health supports to the proposal subject to conditions.</p>
Environmental Health (unsewered lands)	<p>Supported - subject to conditions.</p> <p>General Comments This DA seeks development consent for the following works at the Site:</p> <ul style="list-style-type: none"> Upgrades to the existing driving range landing area. Key features of the proposed upgrades are as follows: <ul style="list-style-type: none"> grass turfing of the revised 12,218m² landing area; the construction of seven (7) synthetically turfed target greens of varying sizes; the replacement of the existing fence with new, state of the art fence, reaching a maximum height of 42m, designed to achieve 99.987% ball containment Replacement of the existing mini-golf course with a state of the art new expanded 18 hole course (Stage 1);

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • An additional 9 hole mini-golf course to be constructed (27 holes in total) as part of Stage 2; • Improvements to the existing outdoor entertainment area on the northern side of the existing main building; • Conversion of the existing baseball nets to an outdoor play area as part of Stage 2; • Expansion of the licenced area to include the driving bays, function rooms, entertainment area and mini-golf courses, as well as the existing licenced restaurant; • Construction of vegetated bioswale with discharge to detention/bioretention basin and associated landscaping works; and • Construction of two (2) new business identification signs and refurbishment of one (1) existing pylon sign. <p>It is noted that there are no works proposed to the existing Clubhouse as part of this DA.</p> <p>Broadcrest Consulting Pty Ltd has prepared an On-Site Wastewater Report January 2023 which finds in summary:</p> <p>The existing Effluent Management Area (EMA) was located within the driving range landing area, and peripherals thereof, with surface fixed irrigation (pop-up sprinklers) distributed throughout. At the time of inspection vegetation coverage was sparse due to recent earthworks and topsoil application (Figure 2-1 and 2-2). Under the development proposed, this area is to be resurfaced and re-turfed. It is proposed to install a new irrigation system with a new electronically controlled dispersal method to ensure even and moderated effluent dosing over the entire field.</p> <p>It is proposed to install modifications and upgrades to an existing golf facility at 1A Myoora Road, Terrey Hills NSW</p> <ul style="list-style-type: none"> • The anticipated wastewater loading rates generated by the Golf Facility is calculated to be 6,948 L/day. • It is proposed to treat all wastewater generated by the Golf Facility to a Secondary standard with disinfection, this is proposed to be via a new Aerated Wastewater Treatment System (AWTS) or the existing AWTS subject to a quality audit. • Application of the effluent is proposed via 3011 m2 Surface Fixed Spray Irrigation within the area(s) nominated in Appendix A as detailed within Section 4.4. • A reserve EMA has been allocated to be utilised in case of EMA expansion resting or replacement. Specifically (6) x 38.70m2 Pressure Dosed Absorption Beds dimensioned indicated per Appendix A. • The facilities are to be fitted with standard-water reductive fixtures. • Apply recommended site modifications as outlined within

Internal Referral Body	Comments
	<p>Section 4.5</p> <p>Council previously had issues with regard to golf balls in the LAA and required a ball washing process to ensure that if the AWTS disinfection system was not working efficiently that balls were cleaned to prevent treated waste water coming into contact with customers hands and also required :</p> <p>(1) Waste water from the ball washing activity must be not be discharged into a stormwater system and/or the National Park and must be effectively managed on the subject site.</p> <p>(2) Provide ongoing monthly water quality sampling undertaken by a suitably qualified technician of the waste water that is discharged on to the range and waste water that is used to clean the golf balls. The parameters and compliance values required to be achieved include:</p> <p>for waste water discharged on the range:</p> <ul style="list-style-type: none"> a. <i>E.coli</i> <1000 cfu/100mL b. BOD < 20mg/L c. SS <30 cfu/100mL d. pH <6.5 – 8.5 <p>for waste water used to clean the golf balls:</p> <ul style="list-style-type: none"> a. <i>E.coli</i> < 1 cfu/100mL b. BOD < 10mg/L c. SS < 10 cfu/100mL d. pH < 6.5 – 8.5 <p>It would appear that this will no longer be an issue. Environmental Health will support to proposal subject to conditions.</p>
Landscape Officer	<p><i>Supported - subject to conditions.</i></p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 19/04/23:</u> The amended plans are noted.</p> <p>The Arboricultural Impact Assessment (AIA) identified 197 trees, of which 76 trees are proposed for removal. Of the 76 trees to be removed 43 fall under the exempt provisions and as such do not require consent for removal. Of the remaining 33 trees majority are identified in the Flora and Fauna Assessment Report as planted native vegetation, and as such no concern is raised with their</p>

Internal Referral Body	Comments
	<p>removal. Furthermore, 152 native replacement trees are proposed to be installed which is commended.</p> <p>The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.</p> <p><u>Original Comment Summary:</u></p> <ul style="list-style-type: none"> • replacement tree planting locations and quantities were missing from the plans, • removal of an area of Sydney Ironstone Bloodwood-Silvertop Ash Forest (poor condition) was deferred to Council's Bushland and Biodiversity Referral team.
NECC (Bushland and Biodiversity)	<p><i>Supported - subject to conditions.</i></p> <p>AMENDED COMMENTS 17/04/2023</p> <p>The amended landscape plans with a planting schedule indicating species and numbers of plants to be included have been submitted with the application. Species selection is consistent with the Ecological Vegetation Communities identified in the Flora and Fauna assessment report. No objections are raised in relation to proposed landscaping. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p> <p>ORIGINAL COMMENTS 30/03/2023</p> <p>The proposal seeks approval for alterations and additions to an existing recreation facility (outdoor) including upgrades to the existing driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play area, expansion of licensed areas and signage.</p> <p>The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Regulation 2017 • Planning Bushfire Protection 2019 • SEPP (Koala Habitat Protection) 2021 • Warringah DCP Clause E2 - Prescribed Vegetation • Warringah DCP Clause E3 - Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat • Warringah DCP Clause E5 - Native Vegetation • Warringah DCP Clause E6 - Retaining unique environmental features

Internal Referral Body	Comments
	<p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>The proposal has been submitted with the following accompanying reports:</p> <ul style="list-style-type: none"> • Bushfire Hazard Assessment Report (BF) • Arboricultural Impact Assessment Report (AIA) • Flora and Fauna Assessment Report (FFA) • Landscape report <p>As the site is located within Bush fire prone land a BF report has been submitted with the application. The BF report has recommended minor changes to have adequate defendable space for Asset Protection zones: "The driving range enclosure is a steel and concrete open structure and does not warrant significant Defendable Space. The existing access way separating the driving range enclosure from the SW vegetation provides for adequate defendable space." The BF report also recommends that the land between the existing driveway and SW boundary be treated as an APZ to reduce the potential of risk by maintaining it as an APZ (weeds, saplings, grasses and shrubs are to be removed and overhanging tree limbs should be pruned). The report also concludes that "The existing concrete access drive around the south western corner of the building provides ample defendable space without necessitating any additional vegetation removal."</p> <p>The AIA has recommended the removal of a total of 10 high category trees and 66 low category trees. However, a total of 43 of the low category trees being proposed for removal are exempt under the current Northern Beaches Council exemptions. The AIA also states that an additional 72 high category trees and 49 low category trees will be impacted if the appropriate tree protection measures are not taken. A total of 28 exotic trees are being proposed for removal as opposed to a total of 48 native trees therefore representing a net loss of native canopy.</p> <p>The FFA report has concluded that a total of 2.57 ha of vegetation (0.35 ha of native vegetation) will require removal for the proposed development application. The following vegetation groups and the total proposed removal areas are:</p> <ul style="list-style-type: none"> • 0.12 ha of Sydney Ironstone Bloodwood-Silvertop Ash Forest (Good Condition). • 0.05 ha of Sydney Ironstone Bloodwood-Silvertop Ash Forest (Poor Condition).

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • 0.18 ha of Planted Native Vegetation. • 2.22 ha of Weeds and Exotics. <p>The removal of 0.35 ha of native vegetation does not trigger entry into the BOS as the minimum lot size associated with the property is within 1 to 40 hectares, therefore, requiring the removal of 0.5 ha of native vegetation to trigger entry into the BOS. The FFA report has also a table of impact mitigation and minimisation recommendations which are to be adhered to.</p> <p>A site inspection was conducted on 13/03/2023 to review impacts of proposed works and no significant impacts could be observed. The proposed tree removals are not objected to as the majority of trees being removed have been planted. However, a high presence of weeds along the Northern boundary, batting cages and old keepers cottage was recorded including Weeds of National Significance (WONS) such as <i>Cortaderia sp</i> (pampas grass), <i>Cestrum parqui</i> (green cestrum) and <i>Hyparrhenia hirta</i> (Coolatai grass). Impacts to BV Map areas are therefore unlikely as the presence of groundcovers and mid-story is compromised by presence of existing weeds on the site.</p> <p>Lastly, the Landscape plan proposes a broad range of adequate species for replanting that follow the recommendations set out in the FFA report but focuses on the drainage easement located on the Northern boundary of the site. Most of these species belong in the Duffys Forest Endangered Ecological Community. However, no planting schedule has been provided. In order to make a complete assessment, the number of each species and locations proposed for planting are to be provided that no net loss of canopy results, as per relevant WDCP controls. The Biodiversity assessment will recommence once the amended landscape plan is submitted.</p>
NECC (Development Engineering)	<p>Supported - subject to conditions.</p> <p>The proposed redevelopment of the existing driving range incorporates a number of stormwater management upgrades to better manage the current stormwater flows . These include the construction of a stormwater detention basin on the northern boundary to limit flows from the development to state of nature flows pre development flows. The two existing major discharge points allow stormwater flows to the adjoining national park.</p> <p>The stormwater management plans also allow for the inclusion of water quality control measures and a Music model has been also submitted to demonstrate compliance with Councils water management policy for development.</p> <p>No objections to the driving range redevelopment subject to conditions.</p>
NECC (Water Management)	<p>Supported - subject to conditions.</p>

Internal Referral Body	Comments
	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses <p>The proposed water quality strategy is satisfactory for the proposed activity, location and receiving environment.</p> <p>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.</p>
Traffic Engineer	<p><i>Supported - subject to conditions.</i></p> <p>The proposed development is for alterations and additions to the existing golf driving range at 1A Myoora Road. The alterations and additions proposed include upgrades to the netting and landing area for the driving range, replacement of the existing mini golf area and an extension to it to from 18 holes to 27 holes, an expansion of the licensed area and improvements to the outdoor entertainment area and replacement of the existing baseball nets with a new children's play area. The parking area is to be increased in capacity to accommodate 111 parking spaces a slight increase from the existing 101 spaces.</p> <p>The applicant's Parking and Traffic Assessment report has been reviewed and provides an analysis of the traffic and parking demands generated by the development.</p> <p>In terms of traffic generation, the only change which is likely to result in an increase in vehicle trips to and from the site is the expansion of the mini golf area. It is accepted that there is likely to be multiple persons sharing the one car for trips to and from the facility and the traffic consultant has adopted an occupancy rate of 2.5 persons per vehicle which is considered reasonable. As there is no RMS traffic generation rate for this type of facility using a first principle analysis the applicant's traffic consultant has estimated that the mini golf expansion will result in an increase in 9 vehicle trips per hour which is not anticipated to have a noticeable impact upon the operation of the surrounding road network with SIADR analysis verifying that no changes to level of service of surrounding intersections will result.</p> <p>With regard to parking, occupancy surveys were conducted by the traffic consultant between 8am and 8pm on Friday, Saturday and Sunday 28th to 30th October 2022 which revealed a peak parking occupancy at 10:30am on the Friday. i.e 49 vacant car parking</p>

Internal Referral Body	Comments
	<p>spaces. Noting that there will be a small increase in the quantum of parking available on site, the increased patronage generated by the expanded mini golf and improvements to the other facilities on the site (estimated from a first principles analysis to be a parking demand for 9 additional vehicles) is unlikely to result in a shortage of parking on the premises.</p> <p>Given the above there are no traffic engineering concerns preventing approval of the development subject to conditions.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported - subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>Supported - subject to conditions.</p> <p>Development Application No. DA2023/0082 Description: Alterations and additions to an existing recreation facility (outdoor) including upgrades to the existing driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play area, expansion of licensed areas and signage Address: 1A Myoora Road TERREY HILLS</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
NSW Police - Crime Prevention Office (Local Command matters)	<p>No response to referral</p> <p>The application was referred to the NSW Police for comment. No response was provided within the prescribed 14 day period in accordance with the response provisions included within Memorandum of Understanding (MoU) between the Northern Beaches Local Area command and Northern Beaches Council and, therefore it is assumed that no comments will be provided.</p>

External Referral Body	Comments
NSW Police - Licensing (Clubs, Hotels, Pubs)	<i>No response to referral</i> The application was referred to the NSW Police for comment. No response was provided within the prescribed 14 day period in accordance with the response provisions included within Memorandum of Understanding (MoU) between the Northern Beaches Local Area command and Northern Beaches Council and, therefore it is assumed that no comments will be provided.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

The proposal comprises of the installation of two (2) new wall signs (Signage 1 and Signage 2) and refurbishment of one (1) existing pylon sign (Signage 3). The proposal also includes illuminated lights around the perimeter of driving range targets (Signage 4). However, Signage 4 is not considered signage in accordance with the *Warringah Local Environmental Plan 2011* Dictionary definition.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	It is considered the proposed signage is compatible with the existing and desired future character of the locality.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is consistent with the theme for the site, and the signage is to identify the nature of the business known as Swing Factory.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage is not likely to detract from the amenity, or visual quality of the site. The signage is located within the site boundaries, and is not considered to impact upon any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure, or comprise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is not of a scale that will will dominate the skyline, or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact upon any viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion of form of the proposed signage is consistent with the streetscape, setting, and landscape of the site.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage contribute to the visual interest of the setting, and landscape. The proposed signage is located within the subject site, and therefore will not impact upon the streetscape.	YES

Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage includes the refurbishment of a pylon signage, and as such it is considered the proposal will simplify the existing signage.	YES
Does the proposal screen unsightliness?	The proposed signage is not used as a visual screen, and does not screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage will not protrude above buildings, or above structures or tree canopies.	YES
Does the proposal require ongoing vegetation management?	The proposed signage does not require ongoing vegetation management.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is compatible with the scale, proportion, and characteristics of the site and building on which the proposed signage is to be located.	YES
Does the proposal respect important features of the site or building, or both?	It is considered the proposed signage will not impact upon any important features of the site or building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage has been designed to respect the existing built form relationship, and complement its design by providing appropriate business identification.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed signage does not include any safety devices, or platforms. The signage includes back lighting illumination on Signage 1, and the logo for Swing Factory are included on all proposed signs.	YES
7. Illumination Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation?	The proposed Signage 1 includes back lighting illumination. The proposed Signage 1 is located against the existing exterior wall of the clubhouse, and as such is unlikely to result in unacceptable glare, safety, or detract from any residential accommodation.	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination of Signage 1 is not able to be adjusted. However, given the significant distance from any residential accommodation it is not likely to result in adverse amenity impacts.	YES
Is the illumination subject to a curfew?	There is no curfew proposed for the illumination. As detailed above, the location of the sign will not result in any unacceptable amenity impacts from the illuminated sign. Notwithstanding, a condition is recommended to restrict the hours of illumination to be in	YES

	accordance with the hours of operation.	
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage would not reduce the safety for any public road, pedestrians or bicyclists given the signs are located within the site boundaries.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage would not reduce the safety for pedestrians including children, as there are no sightlines that are obscured as a result of the signage.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

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.

In response to the above requirements of Chapter 4, the applicant has submitted a Site Contamination Report (Phase 1 and Phase 2 analysis) dated 30 November 2022 and prepared by Martens Consulting Engineers. In its conclusion, the report and its subsequent investigations states:

Based on available site history records, site observations and the analytical soil data obtained, MA (Martens & Associates) consider there is a low risk to human health and ecological receptors from heavy metals and organics contaminants within the IA (Investigation Area). Additionally, bonded ACM (Asbestos Containing Material) identified at the ground surface is unlikely to constrain redevelopment of the site and site soils can be made suitable for the proposed development subject to the completion of the recommended works, outlined above.

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, sub-section 4.6 (1)(b) and 7(1)(c) of this chapter must be considered.

Sub-section 4.6(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

A Phase 1 and Phase 2 Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to a standard acceptable for its foreshadowed continuing use so as to enable the development to be safely carried out. In this regard, It is considered that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as recommended conditions. Essentially remediation of the site involves the collection and removal of visible ACM fragments.

Sub-section 4.6 (1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

It is considered that subject to the remediation measures set out in the Phase 2 report that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as recommended 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	46.411m (Pole Height)	446% (37.911m)	No

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.20 Standards that cannot be used to refuse consent – playing and performing music	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

As detailed under Schedule 1, Section 18 of Warringah Local Environmental Plan 2011 the following applies to the subject site:

18 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills

(1) This clause applies to land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills, shown as "Area 18" on the Additional Permitted Uses Map.

(2) Development for the purposes of educational establishments, garden centres, hospitals, hotel or motel accommodation, places of public worship, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), registered clubs and restaurants or cafes is permitted with consent.

Comment:

As such, the subject site is proposed to be used as a recreation (facilities) outdoor as per the existing

use on site, and as detailed above is permitted with consent under Schedule 1, Section 18 of Warringah Local Environmental Plan 2011 as the site is located within Area 18 on the Additional Permitted Uses Map.

Zone RU4 Primary Production Small Lots

Under Clause 2.5 Additional permitted uses for particular land of Warringah Local Environmental Plan 2011, the proposal is permitted with consent as the site is located in "Area 18" on the Additional Permitted Uses Map.

Please refer to Clause 2.5 of Warringah Local Environmental Plan 2011 contained within this report for further detail.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	46.411m
Percentage variation to requirement:	446%

The proposed maximum height of buildings is detailed in Figure 1 below, with Pole 6 presenting the greatest variation to the maximum height of buildings development standard.

It is noted that the proposed 16 new poles all breach the 8.5 metres required height of buildings. The heights of the poles varying from Pole 1 (12.112 metres) to Pole 6 (46.411 metres) and located with significantly larger setbacks to the site boundaries. This proposal replaces existing poles and netting of approximately 20 metres in height and the new poles are located with significantly larger setbacks to the site boundary

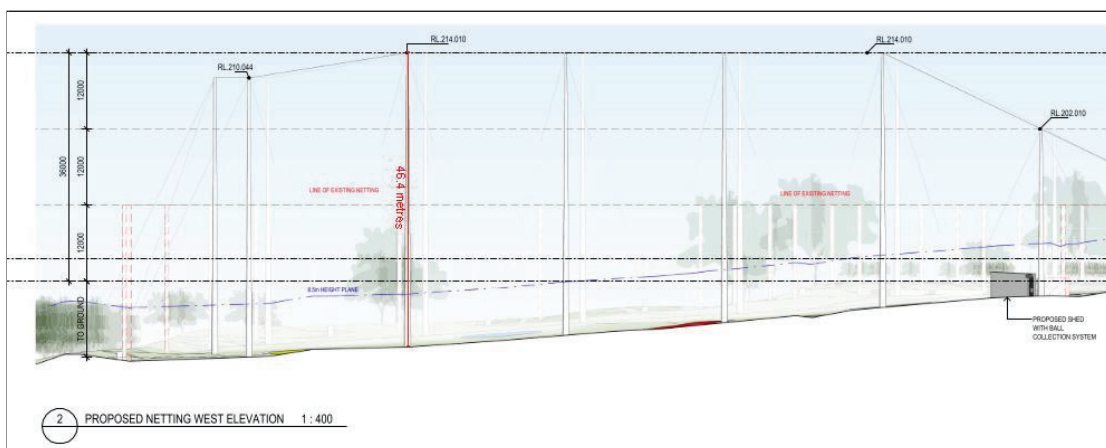


Figure 1. Proposed Netting West Elevation (maximum height variation of 46.411 metres for Pole 6).

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 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:

- *"Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the proposed poles and netting will exhibit an outcome that is preferable to the existing.*
- *There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development seeks to serve the aims and objectives of WLEP2011 and the RU4 Zone.*
- *The proposed height provides more consistency with the existing development and ensure that the application is not rendered as not supportable, which would therefore hinder the operations*

of the recreation facility. Noting that the recreational use is specifically envisaged for the Site as an Additional Permitted Use.

- *The proposal has been designed to provide the most appropriate planning and design outcome for the Site, with a forefront design driver of minimising impacts to the sensitive land in the National Park whilst providing a development which is consistent with the existing land use. Based on the data, the proposed net height at 46.411m will capture 99.987% of all balls hit, presenting a far better outcome than existing.*
- *The development does not negatively impact on any matters of State and regional significance.*
- *The public benefit in maintaining strict compliance with the development standard would prevent the Site from being developed which in turn affects the economic viability of the Site user and surrounding area.*

Further to this, it is submitted that:

- *The proposed development is permissible with consent within the zone;*
- *Strict compliance with the standards would hinder the achievement of the objects provided within Section 1.3 of the EP&A Act;*
- *The proposed development is consistent with the surrounding locality; and*
- *No unreasonable environmental or amenity impacts are associated with the proposed development."*

It is agreed that the proposed height variation is reasonable, and that structures compliance with the development standard is unnecessary in the circumstances of the case. The proposed height variation is for the containment of golf balls by way of the proposed netting to ensure appropriate management of the recreational facility and the minimisation of impacts, risks upon adjoining lands, including National Park. The existing facility and height is not fit for purpose in this regard. The proposed height variation has been supported by a sufficient environmental planning ground to this effect and that is unique to the site, and land use of the site. Therefore, it is considered that the written request to vary the height of buildings development standard is supportable.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the RU4 Primary Production Small Lots 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 proposed variation to the maximum height is isolated to the proposed height of poles for the purpose of the driving range netting. It is important to note, there is no variation to the existing clubhouse, and the variation is isolated to the driving range netting, and associated poles. It is considered that the proposed height of the poles will not detract from the surrounding and nearby development, given the size of the allotment.

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

Comment:

The proposed poles and netting are not considered to visually impact on views, privacy or solar access of adjoining properties. The proposal is accompanied with shadow diagrams, that demonstrates compliance with access to sunlight, noting the shadows largely fall within the subject site.

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

Comment:

The proposed poles and netting will provide a benefit to the surrounding bush environment, as the increased height of the poles and netting will minimise the impact of golf balls entering the adjoining bushland. The subject site is distanced from the coastal environment, and as such will not result in any scenic impact.

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

Comment:

The proposed poles and netting will not adversely impact on the visual impact when viewed from public places, such as parks, reserves, roads, or community facilities. The accompanied Visual Impact Photo-montage assists to demonstrate the visual appearance as viewed from Myoora Road. It is considered that the visual impact is acceptable, noting that the poles and netting will not detract from the current visual outlook. Furthermore, the site is largely surrounded by existing trees, and landscaping that will assist in softening the built form.

Zone objectives

The underlying objectives of the RU4 Primary Production Small Lots zone are:

- ***To enable sustainable primary industry and other compatible land uses.***

Comment:

The proposal retains the existing use of the site as a recreation facility (outdoor). The land use is permitted with consent under Schedule 1 of Warringah Local Environmental Plan 2011.

- ***To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.***

Comment:

The proposal will continue to encourage and promote diversity and employment opportunities at the recreation facility (outdoor). The proposal includes upgrades to the existing site that will provide ongoing opportunities for employment.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

Comment:

The proposal is consistent with the existing use of the site, and as such will not result in conflict between land uses within the zone, and land uses within adjoining zones.

- ***To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.***

Comment:

The proposed poles and netting will not significantly detract from the long distance views of the area, or views to and from adjacent national parks, and bushland. It is acknowledge that the increased height of the poles and netting will result in some visual impact, however this impact is considered acceptable as the increased height will ensure the golf balls are largely retained within the site.

- ***To maintain and enhance the natural landscape including landform and vegetation.***

Comment:

The proposal will enhance the natural landscape including landform, and vegetation. Whilst the proposal includes the removal of some vegetation, there is a greater number of native replacement trees, and plantings proposed to provide for an overall improved nature landscape. Council's Landscape Officer, and Biodiversity Officer have reviewed the proposal, and are supportable subject to recommended conditions.

- ***To ensure low intensity of land use other than land uses that are primary industry enterprises.***

Comment:

The intensity of land use is retained as per the existing use of the site.

- ***To maintain the rural and scenic character of the land.***

Comment:

The proposal will provide an improved outcome to the rural and scenic character of the land, through the increased height of poles and netting that will capture most of the golf balls.

Therefore, it is considered the proposal will ensure the rural and scenic character of the land, and adjoining land is maintained, and enhanced.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU4 Primary Production Small Lots 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

5.23 Public Bushland

Under Clause 5.23 of Warringah Local Environmental Plan 2011, Clause 5.23(8) stipulates the following:

(8) This clause does not apply to the following land that is public bushland—

(a) land in Zone RU1, RU2, RU3, RU4 or RU5,

(b) land reserved, dedicated or acquired under the National Parks and Wildlife Act 1974,

Comment:

As the subject site is land Zone RU4 of Warringah Local Environmental Plan 2011 and is adjoined by land owned by National Parks & Wildlife Service Of NSW this clause does not apply. Specifically, the requirements under Clause 5.23(2), Clause 5.23(3), and Clause 5.23(7) are not applicable.

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

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

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

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
B1 Wall height	7.2m	unaltered	-	N/A
B4 Site Coverage	total building footprint must not cover more than 20% of the site area (8,047.8m ²)	4.25% (1708.6m ² - unaltered)	-	Yes
B5 Side Boundary Setbacks	7.5m (North)	20.0m (Driving Range Pole)	-	Yes
	7.5m (South)	unaltered	-	Yes
B7 Front Boundary Setbacks	20.0m (East)	10.0m (Mini Golf)	50% (10.0m)	No
B9 Rear Boundary Setbacks	7.5m (West)	8.6m (Shed)	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	70% (28,167.3m ²)	77.20% (31,065m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	No	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The proposed mini golf facility is located 10.0 metres from the front boundary line, presenting a variation of 50% to the 20.0 metres front setback requirement.

The proposal has been assessed against the objectives of the control, and in this circumstance the variation is supportable.

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 proposed mini golf course located within the front setback will accommodate only a portion of the front setback area. Furthermore, the proposed mini golf course is at ground level, and as such will present as an open space.

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

Comment:

The proposal will maintain the visual continuity and pattern of buildings and landscape elements. The proposal is accompanied with a Landscape Plan that details proposed vegetation within the front setback area that will assist with supplementary screening to the mini golf course.

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

Comment:

The visual quality of the streetscape and public spaces will be protected through the retention of existing trees that will largely screen the mini golf course.

- ***To achieve reasonable view sharing.***

Comment:

The proposed mini golf course is at ground level, and as such will not obstruct any views.

C3 Parking Facilities

The proposal provides for 111 car parking spaces, that is an increase from the existing 101 car parking spaces on site.

Under Appendix 1 Car Parking Requirements of Warringah Development Control Plan 2011 there is no specified rate for recreation facilities (outdoor). Furthermore, there is no specified car parking requirements under RMS traffic generation rate for recreation facilities (outdoor).

A Traffic and Parking Report (prepared by Varga Traffic Planning, dated 17 January 2023) has been submitted with the application. Council's Traffic Engineer has reviewed the report, and proposal, and is supportable of the proposal, subject to recommended conditions. The comments provided by Council's Traffic Engineer are contained under the Internal Referrals section of this report.

A merit assessment has been undertaken in this instance, and it is considered the proposal has satisfied the objectives of the control as detailed below.

Merit consideration

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

- ***To provide adequate off street carparking.***

Comment:

It is considered the proposal provides adequate off street car parking spaces to accommodate the recreation facility. The Traffic and Parking Report submitted with the application concludes that the proposed car parking spaces will satisfy the parking demands generated by 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 existing open car park is retained, and as such will not result in any changes to visual impact on the street frontage or other public place.

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

Comment:

The existing open car park is retained, and as such will not result in any changes that would dominate the street frontage or other public spaces.

D10 Building Colours and Materials

Merit consideration

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

- ***To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.***

Comment:

A visual analysis presented by the applicant indicates that the new netting will largely be below the treeline when viewed from surrounding public spaces. Whilst the surrounding environment is largely bushland, darker recessive colours may be the obvious response for the transparent netting. However, the overriding factor is the protection of the nature environment with the request from Council's Bushland and Biodiversity teams preference for a more visible colour to reduce the risk of flying wildlife is reduced. Given the context of the site with the adjoining National Park, a condition is recommended for the driving range netting to be bright coloured (white). As detailed in the Flora and Fauna Report (prepared by Narla Environmental dated January 2023), "Bright coloured (white) netting should be used for the ball fencing so that it is visible to fauna to minimise the amount of fauna accidentally flying into it". Further, there are ongoing arguments for public infrastructure which significantly exceed height limits, such as water towers, telecommunications towers, or as appears on an adjoining site, a Doppler Radar (31.5 metre high and coloured white), to be white, which blends in with a cloudy sky, as opposed to blue, which blends with a cloudless sky, or darker recessive colours which contrast

with a blue sky or clouds. In this regard and given the existing white coloured Doppler Radar on the adjoining site, the proposal will be consistent with this objective.

D23 Signs

Description of non-compliance and/or inconsistency

The application proposes three (3) pieces of signage consisting of the following:

Sign	Requirement	Width	Height	M ²	Complies
Signage 1 - Entry Wall Signage Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	2.0m	1.5m	3m ²	Yes
Signage 2 - Exterior Wall Signage Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	2.7m	2.0m	5.4m ²	Yes
Signage 3 - Existing Pylon Signage	Shall not be less than 2.6 metres above	3.5m	3.5m	12.25m ²	No (exceeds 6 metres in

Pole or pylon sign (erected on a pole or pylon independent of any building or other structure)	<p>ground level; Shall not exceed 6 metres in height above the existing natural ground level; Must have a maximum area of no more than 4sqm on any single face; Shall not project beyond the boundary of the premises; and No more than one pole/pylon sign per site is permitted.</p>				height about existing natural ground level, and obtains a maximum area of more than 4m ²)
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Merit consideration

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

- ***To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.***

Comment:

The proposed signage encourages well designed, and suitably located signs that allow for the identification of the land use, business, and activity to which the signs related.

- ***To achieve well designed and coordinated signage that uses high quality materials.***

Comment:

The proposed signage is well designed, and includes the logo of Swing Factory for consistency amongst the proposed signage. The proposed materials include laser cut steel, and painted signage that is considered to be of quality materials.

- ***To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.***

Comment:

The proposed signage will not result in any unacceptable adverse visual impacts to the streetscape, or surrounding locality. The proposed signage is located within the site boundaries, and as such will not be visually dominant to the streetscape.

- ***To ensure the provision of signs does not adversely impact on the amenity of residential properties.***

Comment:

The proposed signage is located within the subject site, and as such is not likely to impact on the amenity of residential properties, given the large scale allotment of the subject site.

- ***To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.***

Comment:

The proposed signage will not result in any adverse impacts to open space areas, heritage items or conservation areas.

An assessment of the application has also found the development to be consistent with the requirements of *State Environmental Planning Policy (Industry and Employment) 2021*. 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 \$42,470 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,247,012.

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 Alterations and additions to an existing recreation facility (outdoor) including upgrades to the existing driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play area, expansion of licensed areas and signage has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of more than 10% to Clause 4.3 Height of buildings of Warringah Local Environmental Plan 2011 to a recreation facility (outdoor).

The proposal was notified in accordance with Council's Community Participation Plan and no objections were received.

The critical assessment issues include a variation to the height of building development standard, and variation to the front boundary setback control.

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 DA2023/0082 for Alterations and additions to an existing recreation facility (outdoor) including upgrades to the existing driving range, installation of new netting, construction of a new mini-golf course, conversion of the existing baseball nets into a children's play area, expansion of licensed areas and signage on land at Lot 51 DP 825753, 1 A Myoora Road, TERREY HILLS, 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
Demolition Plan - DA050, Rev A	24 November 2022	SBA Architects
Proposed Site Plan - DA100, Rev D	1 May 2023	SBA Architects
Driving Range Proposed Elevations & Sections - DA201, Rev C	17 January 2023	SBA Architects
Driving Range Proposed Section - DA202, Rev C	17 January 2023	SBA Architects
Existing & Proposed Signage - DA400, Rev A	17 January 2023	SBA Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
General Arrangement and Sheet Layout Plan - C0201, Rev 01	18 November 2022	Northrop Consulting Engineers
Bulk Earthworks Cut and Fill Plan - C2001, Rev 02	23 November 2022	Northrop Consulting Engineers
Bulk Earthworks Cut and Fill Sections - Sheet 01 - C2201, Rev 02	23 November 2022	Northrop Consulting Engineers
Bulk Earthworks Cut and Fill Sections - Sheet 02 - C2202, Rev 02	23 November 2022	Northrop Consulting Engineers
Bulk Earthworks Cut and Fill Sections - Sheet 03 - C2203, Rev 02	23 November 2022	Northrop Consulting Engineers

Bulk Earthworks Cut and Fill Sections - Sheet 04 - C2204, Rev 02	23 November 2022	Northrop Consulting Engineers
Bulk Earthworks Cut and Fill Sections - Sheet 05 - C2205, Rev 02	23 November 2022	Northrop Consulting Engineers
Siteworks and Stormwater Management Plan - Sheet 01 - C3001, Rev 04	20 January 2023	Northrop Consulting Engineers
Siteworks and Stormwater Management Plan - Sheet 02 - C3002, Rev 04	20 January 2023	Northrop Consulting Engineers
Siteworks and Stormwater Management Plan - Sheet 03 - C3003, Rev 04	20 January 2023	Northrop Consulting Engineers
Siteworks and Stormwater Management Plan - Sheet 04 - C3004, Rev 04	20 January 2023	Northrop Consulting Engineers
Siteworks and Stormwater Management Plan - Sheet 05 - C3005, Rev 04	20 January 2023	Northrop Consulting Engineers
Siteworks and Stormwater Management Plan - Sheet 06 - C3006, Rev 04	20 January 2023	Northrop Consulting Engineers
Basin Plan - C3011, Rev 02	20 January 2023	Northrop Consulting Engineers
Stormwater Longitudinal Sections - Sheet 01 - C4001, Rev 02	23 November 2022	Northrop Consulting Engineers
Stormwater Longitudinal Sections - Sheet 02 - C4002, Rev 02	23 November 2022	Northrop Consulting Engineers
Stormwater Longitudinal Sections - Sheet 03 - C4003, Rev 02	23 November 2022	Northrop Consulting Engineers
Stormwater Longitudinal Sections - Sheet 04 - C4004, Rev 01	18 November 2022	Northrop Consulting Engineers
Stormwater Longitudinal Sections - Sheet 04 - C4005, Rev 01	18 November 2022	Northrop Consulting Engineers
Stormwater Catchment Plan - C4201, Rev 03	20 January 2023	Northrop Consulting Engineers
Stormwater Catchment Plan - Distribution - C4211, Rev 01	18 November 2022	Northrop Consulting Engineers
Stormwater Catchment Plan - Predevelopment - C4212, Rev 01	20 January 2023	Northrop Consulting Engineers
Stormwater Calculations - Sheet 01 - C4401, Rev 03	20 January 2023	Northrop Consulting Engineers
Stormwater Calculations - Sheet 02 - C4402, Rev 03	20 January 2023	Northrop Consulting Engineers
Stormwater Calculations - Sheet 03 - C4403, Rev 03	20 January 2023	Northrop Consulting Engineers
Details - Sheet 01 - C6101, Rev 01	23 November 2022	Northrop Consulting Engineers
Details - Sheet 02 - C6102, Rev 01	23 November 2022	Northrop Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	20 January 2023	Naturally Trees
BCA and Accessibility Report (22000692)	19 January 2023	MBC Group
Bushfire Report (BR-558922-C)	9 December 2022	Bushfire Planning & Design
Flora and Fauna Report	20 January 2023	Narla Environmental
Geotechnical Report (P2209224JR01V01)	1 December 2022	Martens Consulting Engineers
Noise Report (R220824R1)	18 January 2023	Rodney Stevens Acoustics
Operational Waste Management Plan - Rev D	19 January 2023	Elephants Foot Consulting
Plan of Management	November 2022	Swing Factory
Site Contamination Report (P2209224JR02V01)	30 November 2022	Martens Consulting Engineers
Stormwater Management Report	20 January 2023	Northrop Consulting Engineers
Traffic and Parking Report (22488)	17 January 2023	Varga Traffic Planning
Waste Water Report (2141-WW-A-06)	23 January 2023	Broadcrest Consulting
Waterway Impact and National Park Assessment (SY222189-00-WE-RP1) - Rev B	24 January 2023	Northrop Consulting Engineers

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
Landscape Master Plan - L-01, Rev D	20 March 2023	Space Landscape Designs
Landscape Plan-Bioretenion Basin - L-02, Rev D	20 March 2023	Space Landscape Designs
Landscape Plan-Swales - L-03, Rev C	20 March 2023	Space Landscape Designs
Landscape Plan-Perimeter Area - L-04, Rev	20 March 2023	Space Landscape Designs
Landscape Plan-Mini Golf Area - L-05, Rev D	20 March 2023	Space Landscape Designs
Landscape Plan-Major Vegetation Swale - L-06, Rev A	20 March 2023	Space Landscape Designs
Landscape Details & Specifications - L-07,	20 March 2023	Space Landscape

Rev B	Designs
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Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Construction and Demolition Waste Management Report - Rev E	31 January 2023	Elephants Foot Consulting

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
Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - 1A Myoora Road Terrey Hills	18 April 2023
Ausgrid	Ausgrid Referral Response - OH and UG Cables	3 May 2023
	Ausgrid Referral Response - Overhead Cables	3 May 2023

(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. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the offstreet parking. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

4. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained.

5. **Prescribed Conditions**

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments

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

- (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.

6. 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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**7. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$42,470.12 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 \$4,247,012.00.

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.

8. 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**9. 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.

10. **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 CIVIL ENGINEERING PACKAGE 222189 rev3 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.

11. **Car Parking Finishes**

All driveways, car parking areas and pedestrian paths are to be surfaced and sealed. Details of treatment to these areas are to be submitted to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

12. **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.

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 routes 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.

13. **Access and Facilities for Persons with Disabilities**

Access and facilities are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. 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.

14. **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 Northrop, drawing number C3001-04, C3002-04, C3003-04, C3004-04, C3005-04, C3006-04, C3011-02, C4002-C4004, C4201-03, C4211-01, C4212-01, C4401-C4403-03, C6101-C6102-01. 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 (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Minimum information requirements in accordance with Clause 9.7.3 of Councils Water management for Development Policy.
- ii. 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.

15. **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 Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

16. **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.

17. **Ball Fencing Netting Colour**

Bright coloured white netting shall be used for the ball fencing in order to minimise the amount of fauna accidentally flying into it.

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

Reason: To ensure protection of surrounding fauna.

18. **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:

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

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

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

19. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) any tree work required for the APZ along the south-western boundary,
- b) tree protection requirements and works under section 4 Arboricultural Method Statement,
- c) works under Appendix 7 Schedule of works and responsibilities.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

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.

21. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment under Appendix 2 Tree Schedule. A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project 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/Project 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 AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work

commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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.

Reason: Tree and vegetation protection.

23. **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 an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

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

Any mitigating measures and recommendations required by the Arborist/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.

24. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

25. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

26. **Compliance with approved Flora and Fauna impact mitigation table to minimise impacts – During Construction**

The approved Flora and fauna assessment report includes a Table of mitigation measures (Table 13), which must be implemented before, during and after construction to avoid and minimise the impacts of the proposal.

All biodiversity-related measures are to be implemented during construction, as specified in the approved FFA and these conditions of consent.

Reason: To protect native flora and fauna.

27. **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.

28. **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.

29. **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.

30. **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.

31. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

32. **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.

33. **Compliance with the Site Contamination Assessment Requirements**

The requirements of the site contamination review and findings as well as recommendations by Martens and Associates Pty Ltd P2209224JR02V01 November 2022 are to be fully implemented from commencement of any excavation, demolition or development works until the issue of an Occupation Certificate.

Reason: Protection of the environment, SEPP (Resilience and Hazards) 2021 compliance.

34. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

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

35. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

36. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings L-01, L-02, L-03, L-04, L-05, L-06 by Space Landscape Design dated 20/03/2023), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the

requirements of Natspec - Specifying Trees; 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 or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),

d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) 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.

37. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

38. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) 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.

39. **Priority Weed Removal and Management**

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

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 weeds.

40. **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 CIVIL ENGINEERING PACKAGE 222189 rev3. 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.

41. **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 visitsAdditionally 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.

42. **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.

43. **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.

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

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 restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 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 the on-site stormwater disposal system is maintained to an appropriate operational standard.

45. **Compliance with the Site Contamination Assessment, Findings and Recommendations**

Prior to the issue of an Occupation Certificate, certification from an appropriately qualified environmental consultant is to be provided stipulating that the requirements of the Site Contamination Assessment, findings and recommendations by Martens and Associates Pty Ltd P2209224JR02V01 November 2022 have been complied with throughout excavation, demolition and development work stages.

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

Reason: Protection of the environment, SEPP (Resilience and Hazards) 2021 compliance.

46. **Kitchen Design, construction and fit out of food premises certification where any upgrading is being carried out**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen, storeroom and kiosk is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the Food Business complies with Australian Standard design requirements.

47. **Waste Water System**

1. Prior to the issuing of an Occupation Certificate, or the business operating in any part, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System issued by Council, must be activated and effectively operating to the satisfaction of the Principal Certifier.
2. All recommendations and required works as contained within the report by Broadcrest Consulting Pty Ltd REF: 2141-WW-A-06 being implemented.

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

Reason: To ensure the Waste Water disposal system is compliant and will not create a risk to public health.

48. **Removal of All Temporary Structures/Material and Construction Rubbish**

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

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

Reason: To ensure bushland management.

49. **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.

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

50. **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(s) and any conditions of consent.

Reason: To maintain local environmental amenity.

51. **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.

52. **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.

53. **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 1m

Reason: To maintain unobstructed sight distance for motorists.

54. **Site Occupancy**

That the number of (customers/visitors/patients/guests/patrons) on the site at any one time be limited to 285.

Reason: To ensure that all parking generated by the site is contained on the site.

55. **Ball washing and water disposal - ongoing only where appropriate in LAA**

Where golf balls have the potential to be within the Land Application Area (LAA) then:
A system for ball washing (for balls falling within the Waste Water Land Application Area) and disposal of used washing water, being implemented, achieving standards not less than:
(1) Waste water from the ball washing activity must be not be discharged into a stormwater system and/or the National Park and must be effectively managed on the subject site.
(2) Provide ongoing quarterly water quality sampling undertaken by a suitably qualified technician of the waste water that is discharged on to the range and waste water that is used to clean the golf balls. The parameters and compliance values required to be achieved include:
for waste water discharged on the range:

- a. E.coli <1000 cfu/100mL
- b. BOD < 20mg/L
- c. SS <30 cfu/100mL
- d. pH <6.5 – 8.5

for waste water used to clean the golf balls:

- a. E.coli < 1 cfu/100mL
- b. BOD < 10mg/L
- c. SS < 10 cfu/100mL

d. pH < 6.5 – 8.5

Reason: To minimise any potential contamination to patrons through use of golf balls on the Land Application Area and also prevent water pollution from washing water.

56. **Light Spill**

External lighting is to be positioned inward facing within the boundaries of the development to avoid light spill and glare to any neighbouring residential receiver and comply with relevant Australian Standards including *Performance and design requirements* and *Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting*.

Reason: To avoid light spill and glare to any neighbouring residential receiver.

57. **Noise Minimisation Ongoing**

Compliance with the findings and recommendations contained within the report by Rodney Stevens Acoustics Report 220824R1 including:

Sound System

- All speakers must be installed at a 45° angle facing the ground
- The speakers installed must have a maximum 110° wave dispersion, or at least have minimal sound output at the back of the speaker
- A noise limiter is to be installed to ensure all speakers in the beer garden and throughout the mini golf course do not exceed 80 dB(A) at 1 meter from the speakers.

Reason: To minimise disturbance to residential receivers

58. **Hours of Operation**

The hours of operation are to be restricted to Monday to Sunday including Public Holidays:

- Clubhouse Areas – 7:00AM to 12:30AM
- Driving Range Hitting Bays – 7:00AM to 11:00PM
- Entertainment Garden Areas – 7:00AM to 12:30AM
- Mini Golf – 7:00AM to 11:00PM
- Mini Golf Kiosk – 7:00AM to 11:00PM

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

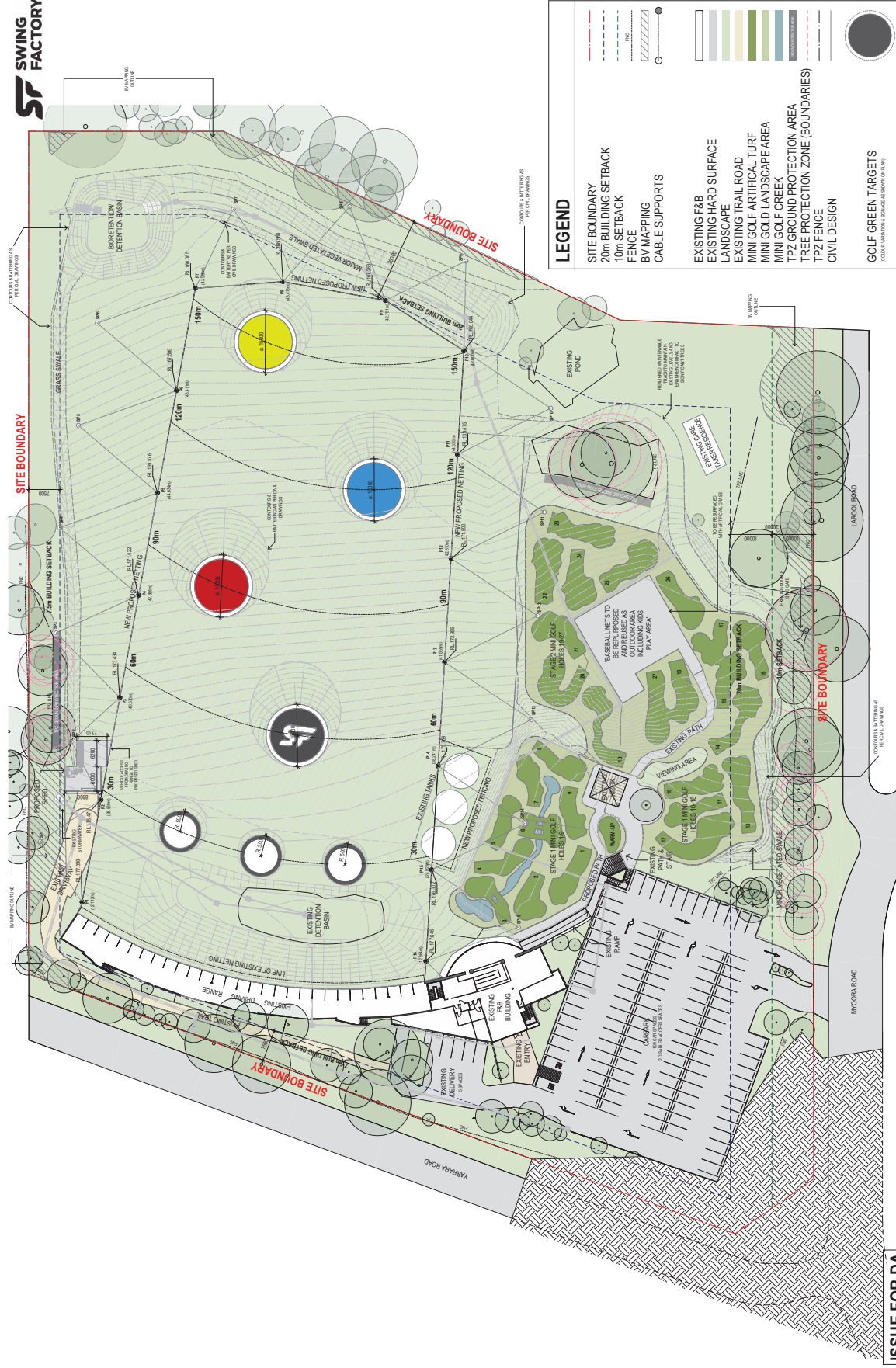
Reason: Information to ensure that amenity of the surrounding locality is maintained.

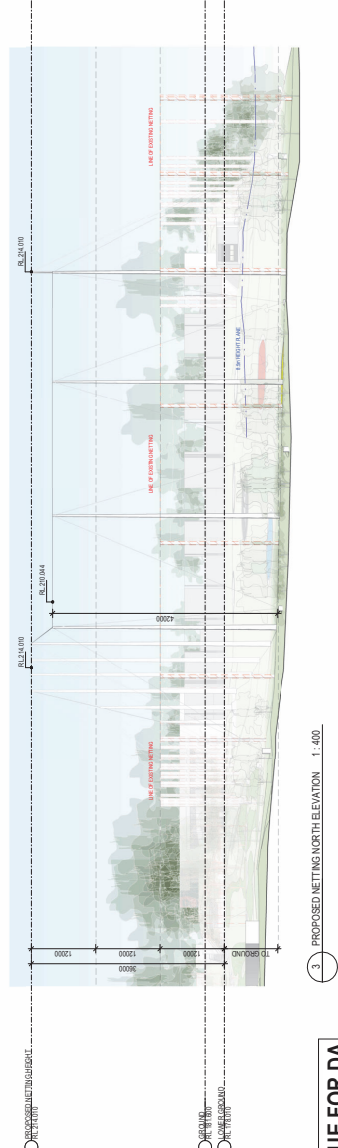
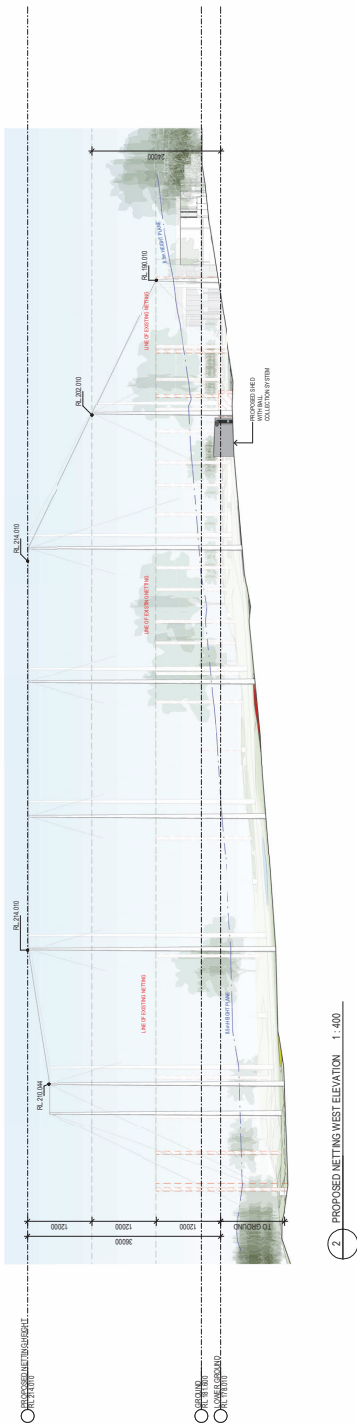
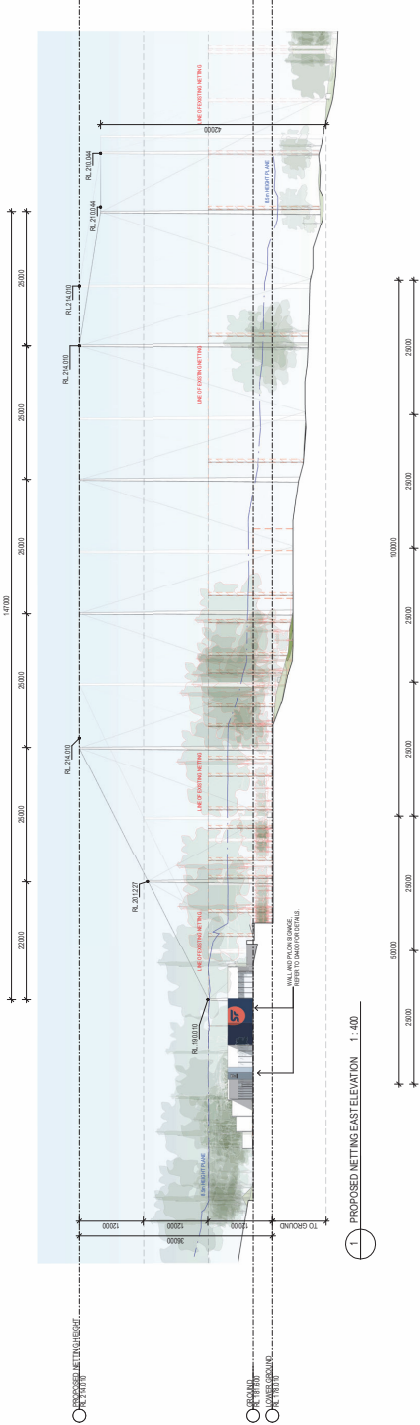
59. **Hours of Illumination**

Illumination of signage at the subject premises shall only illuminate during hours of operation.

Signs must not flash, move or be constructed of neon materials.

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination.





LEGEND	
EXISTING NETTING LINE	---
PROPOSED NETTING LINE	---
PROPOSED NETTING GRID LINES & LEVELS	---

ISSUE FOR DA



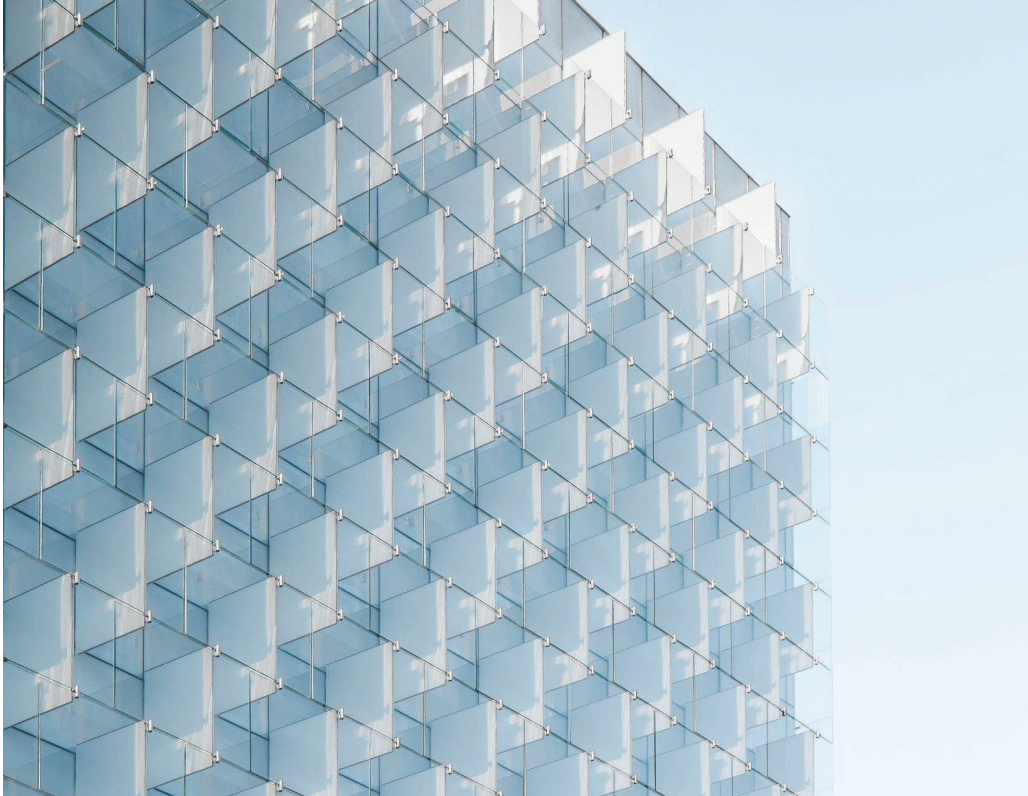
SWING FACTORY DRIVING RANGE
1411B MYCOORA RD, TERREY HILLS NSW

DRIVING RANGE PROPOSED ELEVATIONS & SECTION	
DATE	17/01/2023
PROJECT	22173
DESIGN	DA001
REVISION	C

WILLOWTREE PLANNING

1 May 2023

Ref: WTJ22-367



CLAUSE 4.6 VARIATION REQUEST

Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2012

Upgrades to an Existing Recreation Facility (Outdoor)




1A Myoora Road, Terrey Hills
Lot 51 DP 825753

Prepared by Willowtree Planning Pty Ltd
on behalf of Swing Factory Terrey Hills

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Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

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Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

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Upgrades to an Existing Recreation Facility (Outdoor)
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PART A PRELIMINARY

1.1 INTRODUCTION

The following written request has been prepared in accordance with the provisions of Clause 4.6 - *Exceptions to development standards* of the *Warringah Local Environmental Plan 2011* (WLEP2011) to support the Development Application (DA) for the proposed upgrades to an existing recreation facility (outdoor) on land at 1A Myoora Road, Terrey Hills (the Site). The Site is legally described as Lot 51 in DP 825753.

The Site is zoned RU4 Primary Production Small Lots under the WLEP2011 and development for the purposes of a driving range and mini-golf, a type of *recreation facility (outdoor)*, is permitted with consent within the zone, as an Additional Permitted Use (APU), pursuant to Schedule 1 of the LEP.

In summary, the proposal provides a technical non-compliance to the following development standards applying to the Site under WLEP2011:

- **Clause 4.3 Height of Buildings** - maximum 8.5m – proposed 46.411m (variation of 446%) - **Refer to Part C**

This request is prepared in consideration of the following objectives provided within Clause 4.6 of the WLEP2011:

- (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.*

The objectives of Clause 4.6 of the WLEP2011 are considered to be achieved in this case, for the reasons outlined below, however it is important for the consent authority to be aware that these objectives are non-operative provisions of clause 4.6 and therefore their achievement is not a requirement of clause 4.6: *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [88].

1.2 PLANNING JUSTIFICATION

This Request has been prepared in accordance with the requirements of Clause 4.6 of the WLEP2011. It considers the various planning controls, strategic planning objectives and existing characteristics of the Site, and demonstrates that compliance with the development standard 'is unreasonable or unnecessary in the circumstances of the case.'. Further, this Request has demonstrated that there are 'sufficient environmental planning grounds to justify contravening the development standard'. This clause 4.6 request also enables the consent authority to be satisfied that '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'.

In this respect, this Clause 4.6 Variation Request has provided the following:

- Identified the specific aspect or feature of the development that contravenes the relevant development standard;

Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

- Justified why the contravention of the development standard is acceptable, rather than simply promoting the benefits of carrying out the development as a whole; and
- Demonstrated that the development is consistent with the objectives of the particular standard and the objectives for development within the zone; and
- Explained on what basis there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

PART B PLANNING THRESHOLDS AND FRAMEWORK

2.1 INTERPRETING CLAUSE 4.6 OF THE WLEP2011

In accordance with Clause 4.6 of WLEP2011 a written request that seeks to justify a contravention to a development standard must demonstrate compliance with the following subclauses:

- 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 Planning Secretary has been obtained.*
- 5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b) *the public benefit of maintaining the development standard, and*
 - c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

These matters are responded to in **Part C** and **D** of this Request.

2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions have established the following principles:

- Most recently, in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 (which was subsequently upheld by Chief Justice Preston of the Land and Environment Court in a s.56A appeal), Acting Commissioner Clay upheld two clause 4.6 variation requests allowing in excess of 40% over both the height and FSR controls applying to a site in the Double Bay town centre. In doing so, he held that Clause 4.6 **is as much a valid part of the LEP, as are the development standards themselves**: As such, there should be no general reluctance to allow clause 4.6 variations where they are justifiable and appropriate:

"...it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome." [at 73].

Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
 - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
 - There are sufficient environmental planning grounds to justify contravening the development standard;
 - The development is in the public interest;
 - The development is consistent with the objectives of the particular standard;
 - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 found that the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole;
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 reiterates the findings of Initial Action, but held that the consent authority must “in fact” be *directly* satisfied of the above matters – it is not sufficient that the clause 4.6 written request merely contain those matters. A subjective state of satisfaction must be achieved by the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which sets out five non-exhaustive ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows (noting that it is only necessary to satisfy *one of these 5 paths*, although in some instances more than one may be relevant and achieved):
 - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
 - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
 - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in **Part D** of this Clause 4.6 Variation.

This report provides an analysis of proposed development having regard to decisions reached within the above Land and Environment Court (LEC) judgements.

Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The proposed development seeks an exception to Clause 4.3 – *Height of Buildings* and Clause 4.3A *Height of Buildings (Additional Height Provisions)*.

3.1 IDENTIFICATION OF NON-COMPLIANCE – CLAUSE 4.3

The maximum height of buildings development standard is identified in **Figure 1** below under the WLEP2011.

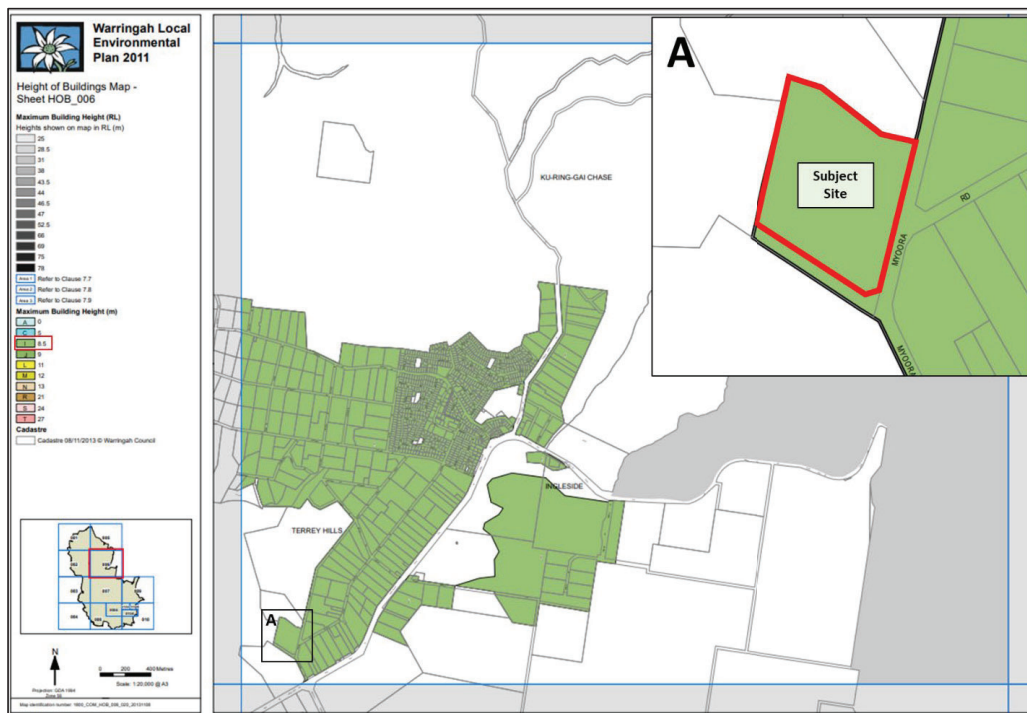


Figure 1. HOB Map (Source: NSW Legislation, 2022)

A summary of Height of Buildings development standard having regard to the proposed development is provided in **Table 1** below.

TABLE 1. CLAUSE 4.3 HEIGHT SUMMARY (WLEP2011)		
WLEP2011 Clause	Maximum Permissible	Proposed extent of non-compliance
Clause 4.3 Height	8.5m	46.411m (variation of 446%)

The departure to maximum height of building development standard is identified in **Figure 2** below.



Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

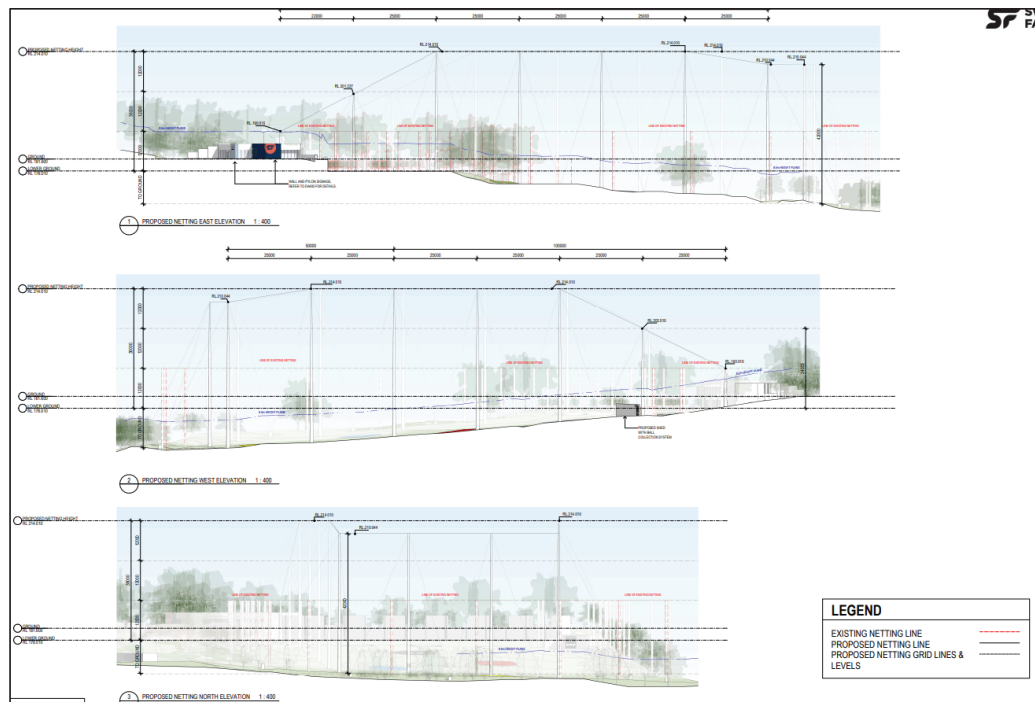


Figure 2. Proposed Height Non-Compliance - Elevation (Source: SBA Architects, 2023)

In the circumstances of this case, it is noted that the proposed departure from the height control is a direct response to identified operational requirements, pertaining to the driving range component and where the Site is located, directly adjoining a National Park. The increased height of the poles and associated netting has been identified as a solution to numerous golf balls entering the Ku-ring-Gai Chase National Park to the north and west of the Site. Swing Factory have installed the Top Tracer Technology into all bays of the range providing valuable information of ball flight paths from 12 December moving forward. The data verifies the current ball retention/loss and the likely ball retention loss from the proposed net height. Based on the data, the proposed net height at 46.411m will capture 99.987% of all balls hit.

As detailed throughout, the proposal has been designed to provide the most appropriate planning and design outcome for the Site, with a primary design driver of minimising adverse impacts to the adjoining National Park and neighbouring properties where possible whilst providing a development which is consistent with the character of the area. The resulted outcome of the proposal provides for a development which is considered more appropriate and drastically improves the status quo.

The following Sections consider the proposed variation against the relevant planning framework described earlier, the circumstances of case and the provisions of Clause 4.6 of the WLEP2011.



Clause 4.6 Variation Request (Clause 4.3 of WLEP2011)
Upgrades to an Existing Recreation Facility (Outdoor)
1A Myoora Road, Terrey Hills (Lot 51 DP 825753)

3.2 CLAUSE 4.6 (3) (a) – IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Clause 4.6(3)(a) of the WLEP2011 requires that the request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case. In the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ sets out five ways in which compliance with a development standard can be established as unreasonable or unnecessary in the preparation of a SEPP 1 objection as follows (**Our emphasis**):

1. ***Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.***
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it Clause 4.6 Variation – Sun Access Planes Façade Upgrade to Existing Commercial Premises 2 - 26 Park Street, Sydney (Lot 12 DP 1048563) 9 applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests, only one of the above rationales is required to be established.

The principles established in *Wehbe* are applied to clause 4.6(3)(a). This approach has been adopted by the Court, most notably in the decision of the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

In consideration of the above tests, the development standard is considered both unreasonable and unnecessary in the circumstances of the case for the following reasons:

- The Clause generally relates to the height of buildings in the LGA. The proposal does not incur a variation to the height of a building per say, however it does incur a variation to the Clause, based on the proposed height of the poles. Notwithstanding, the impact with regard to overshadowing on the existing Site and the neighbouring properties is minimal, as demonstrated in the Overshadow Diagrams provided by SBA Architects. It is demonstrated in these diagrams that the overshadowing on adjoining allotments is negligible with the majority of shadowing impacting the driving range itself. The overshadowing is minimal in comparison to that of any building of the same height and therefore it would be unreasonable to limit the poles and netting to the permitted height.

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- Strict compliance with the Clause would engender a detrimental and unnecessary effect on the environment and surrounding area. In its existing state, the net captures approximately 70% of the golf balls hit, with the remaining balls entering the adjoining National Park, effecting the sensitive wildlife and surrounding area. The proposed additional height is expected to capture the remaining 30% of the golf balls and minimise the effect on the surrounding environment. In this instance, the raised netting will provide a better outcome than that of the existing. As previously noted, data collected would indicate that the proposed net height of 46.411m will capture 99.987% of all balls hit, which is 44 times better than the existing netting configuration.
- The RU4 zoning expressly permits recreation facilities (outdoor) as an APU, to which driving ranges are expressly defined. To support the operational needs of the existing driving range, a significant net is required, and as such the supporting poles. This netting is not only consistent with the existing use, but it will also ensure a mitigated impact on the adjoining National Park and surrounding area.
- The proposed departure to the height development standard is not considered out of character for development and is consistent with the existing operations of the Site. The resultant-built outcome will improve aesthetics of the nets and poles.
- In light of the reasons provided above, strict compliance with the Clause would render the application not supportable and therefore hinder the operations of the recreation facility, which is located within the RU4 zone, to which the recreational use is specifically envisaged as an APU. This would be contrary to the objects of the EP&A Act, specifically Section 1.3(c) in the promotion of orderly and economic use of land.
- The proposed development is a permissible land use within the RU4 zone under Schedule 1 of the WLEP2011 and would largely meet the objectives of Clause 4.3.

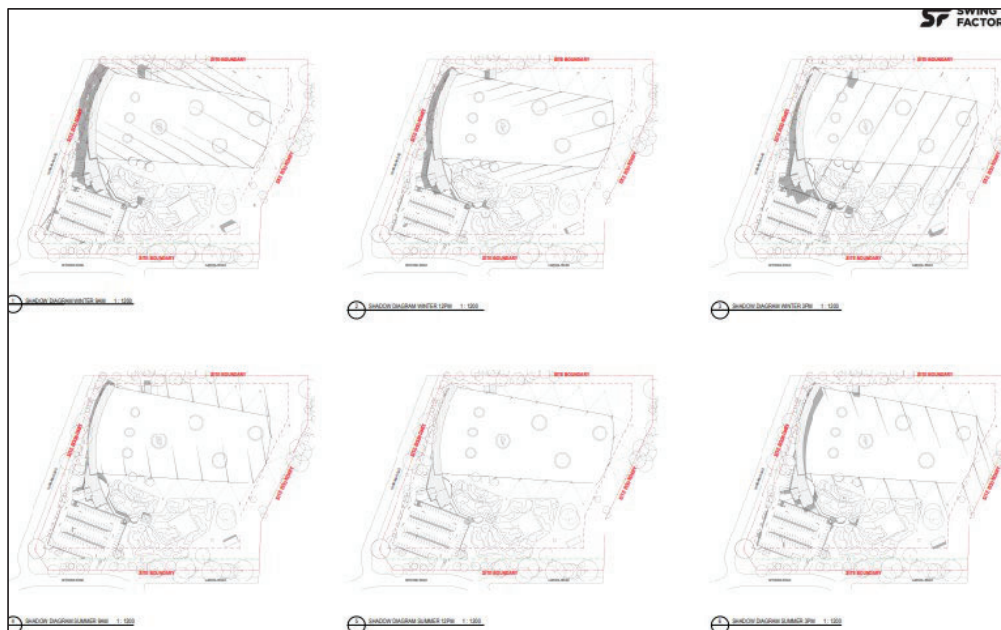


Figure 3. Shadow Diagrams (Source: SBA Architects, 2023)

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In light of the above, compliance with the development standard is considered both unreasonable and unnecessary in the circumstances of the case.

3.3 CLAUSE 4.6 (3)(b) - ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

In Initial Action, Preston CJ found that Clause 4.6(3)(b) does not require a 'better environmental planning outcome for the site' relative to a development that complies with the standard, rather the test established in the LEP requires there to be "sufficient" environmental planning grounds to justify the proposed contravention of the standard. What is "sufficient" is a matter that is entirely for the decision-maker to determine for itself (albeit the clause 4.6 written request must contain those "sufficient" grounds within it).

The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24]).

The variation to the development standard is considered well founded and has demonstrated sufficient environmental planning grounds for the following reasons:

- Existing site conditions result in a slope in the Site, falling to the northern boundary (**Figure 2**). As such, the poles are required to be higher towards the lowest portion of the allotment, which is located in the north-west corner (rear boundary) of the Site. The proposed height of the poles has been designed based on the trajectory of the balls and as such the height variation is deemed to be appropriate with regard to the slope of the land. Further, the driving range is suitably distanced from the frontage and as such exhibits a visual impact that is suitable to the surrounding area.
- The Visual Impact Assessment prepared by Deneb Design, demonstrates that overall, the proposed poles and netting do not have a significant impact on the visual amenity of the area. The netting will be most visible to the public from the corner of Myoora Road and Larool Road, along the frontage of the Site (refer to **Table 2**). Although there will be some visual impact from this viewpoint, there is no disruption of views or view loss. Further, there is no residential development interfacing the Site that will be detrimentally affected from a visual standpoint. It is noted that the netting has been designed to suitably interface with the surrounding area and is mostly covered by existing trees and landscaping along the frontage of the Site.
- Overall, the upgrade of the driving range, will provide a development outcome that is far more appropriate for the surroundings, through preserving the National Park surrounding the Site. As previously noted, the higher nets will provide full containment of the golf balls, ensuring minimal impact on the National Park. It is noted that no works will be undertaken on land designated for the National Park. A Report has been provided by Northrop as **Appendix 9**, addressing each of the requirements under the *National Parks and Wildlife Act 1974*, as relevant. Overall, the proposed works should not greatly impact the adjoining National Park, with the development implementing strategies to ensure the smooth transition from the Site into the National Park.



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TABLE 2. VISUAL IMPACT VIEWS	
Existing	Proposed
PO1: Myoora Road and Mona Vale Road Intersection	
	
PO4: Myoora Road	
	
PO6: Myoora Road	
	
PO9: Myoora Road	

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For the reasons outlined above, it is considered that there are sufficient environmental planning grounds to justify a departure to the maximum height development standard and is therefore worthy of support having regard to the matters listed within Clause 4.6 under WLEP2011.

3.4 CLAUSE 4.6 (4) (a) (ii) - IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST AND CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND LAND USE ZONE?

3.4.1 OBJECTIVES OF CLAUSE 4.3 HEIGHT OF BUILDINGS

As outlined in **Section 3.1** above, a key determination of the appropriateness of a Clause 4.6 Variation is the proposed development's compliance with the underlying objectives and purpose of that development standard.

The objectives of Clause 4.3 are evaluated in **Table 3** below.

TABLE 3. CLAUSE 4.3 OBJECTIVES	
Objective	Comment
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,	The Clause generally relates to the height of buildings in the LGA. The proposal does not incur a variation to the height of a building per say, however it does incur a variation to the Clause, based on the proposed height of the poles. Notwithstanding, the impact with regard to overshadowing and bulk and scale on the existing Site and the neighboring properties is minimal, as demonstrated in the Overshadow Diagrams provided by SBA Architects. It is demonstrated in these diagrams that the overshadowing on adjoining allotments is negligible with the majority of shadowing impacting the driving range itself. Overall, the proposed poles and netting are compatible with the surrounding and nearby development, generally consisting of bushland in nature.
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,	The proposed poles and netting will not engender a disruption in views, loss of privacy or solar access. As demonstrated in the Visual Impact Assessment, the

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	proposed poles and netting do not have a significant impact on the visual amenity of the area. The netting will be most visible to the public from the corner of Myoora Road and Larool Road, along the frontage of the Site. Although there will be some visual impact from this viewpoint, there is no disruption of views or view loss. Further, there is no residential development interfacing the Site that will be detrimentally affected from a visual standpoint.
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,	The proposed poles and netting will have a minimal impact on the scenic quality of the coastal and bush environments in Warringah. The netting will not result in any view loss and is appropriately designed to interface with the adjoining bushland. The installation of the higher net will minimise the existing impact on the National Park interfacing the Site, through ensuring fewer balls enter the National Park and impact the wildlife.
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.	The proposed netting is visible from Myoora Road, along the frontage of the Site. As previously noted, although there will be some visual impact from this viewpoint, there is no disruption of views or view loss. Further, there is no residential or community-based development interfacing the Site that will be detrimentally affected from a visual standpoint. A majority of the netting is diffused by existing trees and landscaping.

3.4.2 OBJECTIVES OF THE RU4 PRIMARY PRODUCTION SMALL LOTS ZONE

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

The Site is zoned RU4 under WLEP2011 and the proposed development is permissible with consent. The proposed development is consistent with the following RU4 objectives as outlined in **Table 4** below.

TABLE 4. ZONE OBJECTIVES	
Objective	Comment
To enable sustainable primary industry and other compatible land uses.	Development for the purpose of a recreation facility (outdoor) is permitted with consent, under Schedule 1 of WLEP2011 and was approved pursuant to DA 1991/401 . This application seeks to maintain the use of the Site as a recreation facility (outdoor), with the proposed poles and netting compatible with the use of the Site and zone objectives.



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<i>To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.</i>	The primary use of the Site as a recreation facility (outdoor) and proposed upgrade works would overall contribute to the zone through facilitating a land use which is compatible with the surrounding context and will ultimately add to the desired diversity in employment opportunities. The proposed poles and netting are not considered to create any adverse amenity impacts for surrounding land uses or impact negatively on employment opportunities, given that they are consistent with the existing use of the Site. The proposed development would support the existing development on the Site and would not result in the objectives of the zone being compromised.
<i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i>	The proposal is consistent with the existing use of the Site and is supportive of the adjoining land uses. These being the National Park to the north and west boundaries and the interface to Terrey Hills Golf Club to the south, which exhibits a land use that is consistent with the Site.
<i>To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.</i>	<p>The proposed poles and netting will not engender a disruption in views or result in a view loss. Although the netting does have some visual impact, it is considered that it will not greatly affect any long-distance views or disrupt any view corridors adjacent to the National Park. Further, there is no residential development interfacing the Site that will be detrimentally affected from a visual standpoint.</p> <p>The slope in the Site means that the poles are at their highest towards the lowest portion of the allotment, which is located in the north-west corner (rear boundary) of the Site. The proposed height of the poles has been designed based on the trajectory of the balls and as such the height variation is deemed to be appropriate with regard to the slope of the land. Further, the netting has been designed to ensure the operational needs of the Site have been addressed, whilst ensuring visual impact is minimised.</p>
<i>To maintain and enhance the natural landscape including landform and vegetation.</i>	The proposed poles and netting will not have a significant impact on the existing vegetation and landscaping. It is noted that the proposed netting is deemed to support the adjoining National Park, by ensuring most of the golf balls are captured, therefore minimising the effect on the surrounding environment. In this instance, the raised netting will provide a better outcome than that of the existing.



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To ensure low intensity of land use other than land uses that are primary industry enterprises.	The use of the Site is consistent with that approved under DA 1991/401 . There is no proposed increase in the intensity of the land use.
To maintain the rural and scenic character of the land.	As noted previously, the proposed netting is deemed to support the adjoining National Park, by ensuring most of the golf balls are captured, therefore minimising the effect on the surrounding environment. In this instance, the raised netting will provide a better outcome that is complementary to the rural and scenic character, than that of the existing.

3.4.3 PUBLIC INTEREST

In *Lane Cove Council v Orca Partners Management Pty Ltd* (No 2) [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- The proposed development would provide a high-quality outdoor recreation facility for the wider locality;
- There will be minimal negative social and economic impacts as a result of the proposal. The refurbishment of the Site as an outdoor recreation facility will encourage healthy participation and socialisation, whilst also creating jobs within the area.
- The local economy will benefit from the increase in patrons in the area stopping at local shops on their journey to and from the Site. In addition, companies supplying the facility will also benefit from increased business, facilitating jobs during a time of economic vulnerability.

It is clear that when assessed against WLEP2011 and the Strategic Planning framework, the development provides significant public benefits.

In light of the above, the development is considered to be in the public interest and no public disadvantages have been identified which would render an unfavorable outcome for the application.

3.5 Clause 4.6(4)(b) - SECRETARY'S CONCURRENCE

In Initial Action, Preston CJ held at [28-29] that:

"Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl



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4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council [1999] NSWCA 19; (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41]."

It is therefore noted that concurrence is to be assumed, but the relevant matters for consideration are assessed below for completeness.

3.6 CLAUSE 4.6 (5) (a) - DOES THE PROPOSED DEVELOPMENT RAISE ANY MATTERS OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING?

The proposed non-compliance with Clause 4.3 would not give rise to any matters of significance for State or Regional Environmental Planning. It would also not conflict with any State Environmental Planning Policy or Ministerial Directives under Section 9.1 of the EP&A Act. For completeness,

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by a Local Planning Panel rather than under delegation. It is noted that this variation exceeds 10% and will therefore be determined by the Northern Beaches Local Planning Panel (NBLPP).

3.7 CLAUSE 4.6 (5) (b) IS THERE A PUBLIC BENEFIT IN MAINTAINING THE DEVELOPMENT STANDARD?

Strict compliance with Clause 4.3 of WLEP2011 would result in:

- Prohibiting development at the Site for the recreation facility (outdoor) which is permissible with consent under the RU4 zone, pursuant to Schedule 1 of the WLEP2011.
- As previously noted, the local economy will benefit from the increase in patrons in the area stopping at local shops on their journey to and from the Site. In addition, companies supplying the facility will also benefit from increased business, facilitating jobs during a time of economic vulnerability.
- Preventing orderly and economic development of the land under Section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

As such, there is no genuine public benefit in maintaining the strict compliance with Clause 4.3 of WLEP2011.

3.8 CLAUSE 4.6 (5) (c) ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE PLANNING SECRETARY?

No other matters have been identified which require to be taken into consideration by the planning secretary.



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PART D SUMMARY AND CONCLUSION

4.1 SUMMARY

For the reasons outlined above, it is considered that the objections to Clause 4.3 of the WLEP2022 are well-founded in this instance and the granting of a Clause 4.6 variation to this development standard is appropriate in the circumstances of the case. Furthermore, the objection is considered to be well-founded for the following reasons:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the proposed poles and netting will exhibit an outcome that is preferable to the existing.
- There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development seeks to serve the aims and objectives of WLEP2011 and the RU4 Zone.
- The proposed height provides more consistency with the existing development and ensure that the application is not rendered as not supportable, which would therefore hinder the operations of the recreation facility. Noting that the recreational use is specifically envisaged for the Site as an APU.
- The proposal has been designed to provide the most appropriate planning and design outcome for the Site, with a forefront design driver of minimising impacts to the sensitive land in the National Park whilst providing a development which is consistent with the existing land use. Based on the data, the proposed net height at 46.411m will capture 99.987% of all balls hit, presenting a far better outcome than existing.
- The development is consistent with the objectives for development within the zone through provision of compatible and commensurate residential development and responds to the call of the Regional and Local strategic planning framework with unused capacity within R3 Medium Density Residential Zoned Land.
- The development does not negatively impact on any matters of State and regional significance.
- The public benefit in maintaining strict compliance with the development standard would prevent the Site from being developed which in turn affects the economic viability of the Site user and surrounding area.

Further to this, it is submitted that:

- The proposed development is permissible with consent within the zone;
- Strict compliance with the standards would hinder the achievement of the objects provided within Section 1.3 of the EP&A Act;
- The proposed development is consistent with the surrounding locality; and
- No unreasonable environmental or amenity impacts are associated with the proposed development.

Overall, it is considered on balance, that the proposed Clause 4.6 Variation Request to Clause 4.3 of WLEP2011 is appropriate and is justified having regard to the matters listed within Clause 4.6 of the WLEP2011.

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4.2 CONCLUSION

For the reasons outlined within this request, it is considered that the exception to Clause 4.3 of WLEP2011 is worthy of support in this instance and appropriate in the circumstances of the case.

In conclusion, it is requested that Northern Beaches Local Planning Panel exercise their discretion and find that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by subclause 4.6(3) of the WLEP2011.

ITEM 5.2

DA2023/0195 - MANLY WHARF RETAIL WHARVES AND JETTIES, MANLY - USE OF PREMISES (SHOP 11) AS A CAFE INCLUDING FIT-OUT AND SIGNAGE.

AUTHORISING MANAGER Adam Richardson

TRIM FILE REF 2023/322919

ATTACHMENTS

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development involving the demolition of a heritage item.

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. DA2023/0195 for Use of premises (Shop 11) as a café including fit-out and signage on land at Lot 1 DP 1170245, 0 Wharves And Jetties, MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0195
Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Use of premises (Shop 11) as a cafe including fit-out and signage
Zoning:	Land Zoned W2 Environmental Protection – State Environmental Planning Policy (Biodiversity and Conservation) 2021
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Transport for NSW TMG Developments Pty Ltd
Applicant:	Keeplan Pty Ltd
Application Lodged:	07/03/2023
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	29/03/2023 to 26/04/2023
Exhibited Clause 56 EP&A Regulations:	29/03/2023 to 26/04/2023
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 234,998.50

EXECUTIVE SUMMARY

This development application seeks approval for the use of one tenancy (shop 11) within Manly Wharf as a café/restaurant, including a new internal fit-out, signage and minor external alterations.

Manly Wharf is a State Heritage Item, with the development being Nominated Integrated Development pursuant of the *Heritage Act 1977*. Accordingly, the proposal was referred to Heritage NSW, with

General Terms of Approval being issued, subject to recommended conditions.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal including partial demolition of a heritage item, in particular the existing shop fit-out, which involves removing (demolition) of some building fabric being flooring, shop front and fixtures such as counter/servery. The demolition works do not significantly affect any original building fabric and is restricted to one small tenancy within the larger heritage structure. However, any form of demolition associated with a heritage item is defined as a form of Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the *Environmental Planning and Assessment Act 1979* as it constituted nominated integrated development. No submissions were received.

As the subject site is within the Sydney Harbour Catchment, and is located on land within Zone 2 Environment Protection of the Foreshores and Waterways Area Map. Therefore, the provisions of Chapter 6 - Water Catchments of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, apply to this development. The application has also been assessed against other relevant State Environmental Planning Policy's, the Manly Local Environmental Plan 2013, and the planning controls listed under both the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

Based on a detailed assessment of the application, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for Shop 11, Manly Wharf as a café/restaurant premises, including an internal shop fit out, installation of signage and minor external shop front alterations.

Specially, the works comprise of the following:

- **Operational Hours:** 7.00am - 11:00pm Monday to Sunday;
- **Staff:** Up to 8 staff members;
- **Shop Fit-out:** Internal amendments including; new storeroom, joinery, equipment, tables and benches;
- **Demolition works:** Demolition of existing shop fit out;
- **Signage:** The installation of a new business identification sign to the existing tenancy wall/window facing the internal mall (illuminated), alterations to the lettering to an existing under awning sign; and various window decals and new external finishes.

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 - 5.7 Development below mean high water mark

Manly Local Environmental Plan 2013 - 5.10 Heritage conservation

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095
Detailed Site Description:	<p>The subject site is legally identified as Lot 1 in Deposited Plan 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly. The site within Manly Wharf is known as Shop 11. The subject site is identified as an item of State Heritage significance.</p> <p>The area of the site where the proposed development is located is within the boundaries defined as the Manly Wharf Lease Line and the line of the Mean High Water Mark. This site has an estimated area of 13,405m².</p> <p>The site is within Zone 2- Environment Protection zone under the provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021. The surrounding waters and nearby harbour foreshore are known to provide habitat for Little Penguins, and seagrass has been identified within the vicinity of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Opposite the subject site to the north is Manly Corso. The Corso is a wide open promenade and public open space between Manly Beach and Many Wharf and provides for street furniture, public art and a focal point for the Manly</p>

	<p>Town Centre.</p> <p>Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The Corso. The scale of development along The Corso is varied between two (2) to four (4) storeys.</p> <p>The uses opposite the site along East Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. several developments along East Esplanade consist primarily of multi-storey commercial developments. The scale of development along East Esplanade is predominately between three (3) to six (6) storeys.</p> <p>The uses opposite the site along West Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. The scale of development along West Esplanade is predominately between three (3) to eight (8) storeys.</p>
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Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for Shop 11 within Manly Wharf.

The land has been used for commercial 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	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)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>

Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the	(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 4.15 Matters for Consideration	Comments
locality	2013 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 29/03/2023 to 26/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. This exhibition period included the required public consultation for nominated integrated development under Clause 56 of the Environmental Planning and Assessment Regulations 2021.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported, subject to conditions.</i> The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.

	<p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p>Supported, subject to conditions.</p> <p><u>General Comments</u></p> <p>The proposed works involve the internal refurbishment of an existing food and drink premise including new storeroom, joinery, equipment, shop front and signage. Minor external works of the façade facing the wharf are also proposed involving new glazing and entry door.</p>
NECC (Bushland and Biodiversity)	<p>Supported, without conditions.</p> <p>The proposal seeks approval for Use of premises (Shop 11) as a cafe including fit-out and signage.</p> <p>The comments on this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment NSW Biodiversity Conservation Act 2016 <p>The proposed development has been assessed for potential impacts to the endangered population of Little Penguins at Manly. Individual penguins associated with this population have been recorded within the aquatic and terrestrial environment surrounding Manly Wharf. Whilst the proposed use of the existing shop as a café will not directly impact upon penguin habitat, night time operations could potentially impact penguins due to noise and light "pollution".</p> <p>It is recommended the applicants review the National Light Pollution Guidelines for Wildlife available on:</p> <p>https://www.dcceew.gov.au/environment/biodiversity/publications/national-light-pollution-guidelines-wildlife</p>

NECC (Coast and Catchments)	<p>Supported, without conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • Relevant LEP and DCP clauses; and • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.12) • State Environmental Planning Policy (Biodiversity and Conservation) 2021 (sections 6.6 & 6.7) <p>Note: Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP apply for this DA.</p> <p>On internal assessment against the relevant Environmental Planning Instruments and Statement of Environmental Effects report prepared by</p>
Internal Referral Body	Comments
	<p>Metro Planning dated November 2022, the DA satisfies requirements under clauses 2.12 of the SEPP.</p> <p>Manly LEP 2013 and Manly DCP 2013</p> <p>Development on Foreshore Area</p> <p>The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area.</p> <p>The DA proposes works involving the internal refurbishment of an existing food and drink premise including new storeroom, joinery, equipment, shop front and signage. Minor external works of the façade facing the wharf are also proposed involving new glazing and entry door, all within the foreshore line. All these proposed works are consistent with Clause 6.10 (2).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Metro Planning dated November 2022 , the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.</p>

NECC (Riparian Lands and Creeks)	<p><i>Supported, without conditions.</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy. <p>On assessment against the relevant Environmental Planning Instruments and policies, the proposal is acceptable.</p>
Parks, reserves, beaches, foreshore	<p><i>Supported, subject to conditions.</i></p> <p>The plans indicate that no works are proposed on Council reserves or foreshore.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is a heritage item</p>
	<p>SHR No 01434 - Manly Wharf</p>
	Details of heritage items affected
	<p><u>Statement of Significance</u></p> <p>Of environmental significance as a visually prominent man-made feature. Of historical significance for its associations with the maritime activities at Manly as a tourist destination and suburb of Sydney,</p>

Internal Referral Body	Comments		
	<p>dependent on the ferry link to the CBD. Together with Circular Quay, the wharf is the only substantial older style ferry wharf surviving in Port Jackson: association with Manly's history as a recreational centre.</p> <p><u>Physical Description</u> A broad wharf supported on timber piers and with a concrete platform. The superstructure is constructed of steel and timber. The facade and side walls form an important architectural design, similar to the Circular Quay ferry terminals</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	Yes	Manly Wharf is heritage item number 52 in the SEPP.
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	Manly Wharf is on the state register
	National Trust of Aust (NSW) Register	Yes	Manly Wharf is on the National Trust Register
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for the fitout and use of a tenancy at Manly Wharf for a Max Brenner food and drink premise. The proposed works also include changes to the external facade of the tenancy facing the harbour and signage. As the wharf is a state heritage item, the proposal is integrated development and was referred to Heritage NSW who have provided their General Terms of Approval. Heritage has also reviewed the proposal and raises no objections. The proposal is also considered to be without impact to adjoining heritage items in the immediate vicinity.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? Manly Wharf already has a CMP Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>		

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions.</i> The proposal was referred to Ausgrid who provided a response
External Referral Body	Comments
	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.
Nominated Integrated Development - Heritage NSW - Heritage Act 1977	<i>Supported, subject to terms of approval.</i> Heritage NSW have considered the nominated integrated development application, in accordance with Section 4.47 of the <i>Environmental Planning and Assessment Act 1979</i> . The general terms of approval have been included within this assessment and form part of the recommended conditions 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 (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 5.0 metres of an overhead electricity power line.

Comment

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

SEPP (Biodiversity and Conservation) 2021

The subject site is located within the Sydney Harbour Catchment therefore the provisions of Chapter 6 apply to this development.

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

Section 6.25 Consent Authority

In accordance with Section 6.25(2)(c) of the Biodiversity and Conservation SEPP 2021 (SEPP BC), development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of 'Restaurants or cafes', the Minister administering the *Environmental Planning and Assessment Act 1979* is the consent authority.

However, the Minister for Planning, under Section 2.4 of the *Environmental Planning and Assessment Act 1979*, delegated consent authority functions to Council of the local government area, in which the development is proposed to be carried out, or to Council of the local government area that is nearest to the land where the development is proposed to be carried out, for the uses specified under Section 6.25 (2)(c) of the SEPP BC. Therefore, Northern Beaches Council is the consent authority for the proposed development.

Division 2 Zoning of Foreshores and Waterways Area

Section 6.26 Zoning of Foreshores and Waterways Area

The subject site is located on land within Zone 2 Environment Protection of the Foreshores and Waterways Area Map, under the provisions of the SEPP BC.

The objectives of Zone 2 Environment Protection are considered with respect of the proposal, as follows:

- ***To protect the natural and cultural values of waters in the zone.***

Comment

The proposed works within this application, in consideration of Manly Wharf as a whole, is comparatively minor in nature. The works include an internal shop fit out, and external material changes to part of the front façade, which is consistent with the existing theme of the site. Therefore, will not cause impact to the cultural or natural values of the waterway. Heritage NSW has reviewed the proposal and is in support, subject to General Terms of Approval, which form part of the recommended conditions of consent.

- ***To prevent damage to, or the possibility of long term adverse impact on, the natural and cultural values of waters in the zone and adjoining foreshores.***

Comment

The proposed works are confined to Shop 11 within Manly Wharf and are not likely to create a long term adverse impact on, the natural and cultural values of waters in the zone and adjoining foreshores.

- ***To enhance and rehabilitate the natural and cultural values of waters in the zone and adjoining foreshores.***

Comment

The proposed works include the use of materials that will aid in enhancing Manly Wharf, as well as creating further activation to the wharf and surrounding foreshore areas, without attributing to any adverse impacts upon the natural or cultural values of waters in the zone and adjoining foreshores. As the proposal does not interfere with the natural quality or value of the waterway, rehabilitation is not considered to be required in this instance, given the scale of the proposal.

- ***To provide for the long term management of the natural and cultural values of waters in the zone and adjoining foreshores.***

Comment

The subject site forms part of the greater wharf structure, which is subject to an ongoing lease from Transport for NSW that includes long-term management strategies and requirements, which satisfies this objective.

As demonstrated above, the proposal is consistent with the objectives of the Zone 2 Environment Protection.

It is noted that the Zone 2 permissible land use table does not refer to 'Restaurants or cafes' as being development permitted with consent. However Section 6.27(2) notes the following:

(2) Development not specified in the Table in relation to a zone may be carried out with development consent in the zone if the consent authority is satisfied that the development—

- (a) is not inconsistent with the objectives for development in the zone, and*
- (b) is not inconsistent with the provisions of another environmental planning instrument, and*
- (c) will not otherwise have adverse impacts.*

Comment

As demonstrated above, the proposal is consistent with the objectives of the Zone 2 Environment Protection. Moreover, the proposal is not inconsistent with other environmental planning instruments that apply to the land (i.e. SEPP (Industry and Employment) 2021), and will not be considered to have any adverse impacts to the natural, cultural or heritage values of the site or surrounding waterway. Therefore, it is considered that the proposal is a permissible and acceptable land use.

Division 3 Development in Foreshores and Waterways Area

Section 6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—

- (a) whether the development is consistent with the following principles—*
 - (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*

- (ii) the public good has precedence over the private good,*
- (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
- (b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*
- (c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*
- (d) whether the development promotes water-dependent land uses over other land uses,*
- (e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*
- (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*
- (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*
- (2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*
 - (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
 - (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
 - (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
 - (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
 - (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
 - (i) the Foreshores and Waterways Area, and*
 - (ii) public places, landmarks and heritage items.*

Comment

The above has been considered as part of the assessment of this application. Having regard to both current and future demand, the character and functions of a working harbour will be retained. The development site adjoins land used for commercial maritime purposes; the proposed works are compatible with the use of the adjoining land. The proposed works will not interfere with public access to and along the foreshore. As Manly Wharf includes multiple commercial uses, the proposal is not considered to adversely impact on traffic congestion in the zoned waterway and along the foreshore. The foreshores and waterways area will be enhanced, protected and maintained, in relation to its unique visual qualities.

The proposal is satisfactory when considered against the matters for consideration as prescribed within SEPP BC.

Part 6.4 Heritage conservation in Sydney Harbour

The subject site is located within Sydney Harbour catchment and is of State Heritage Significance.

Section 6.56 Demolition of nominated State heritage items

(1) Development consent must not be granted to the demolition of a nominated State heritage item unless the consent authority has—

- (a) notified the Heritage Council of the demolition, and*
- (b) considered any submissions made by the Heritage Council within 28 days after the notice*

Comment

Heritage NSW have considered the nominated integrated development application, in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979. The general terms of approval have been included within this assessment and form part of the recommended conditions of consent.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The Sydney Harbour Foreshores and Waterways Area Development Control Plan, continues to apply to the foreshores and waterways area as identified in Part 6.3 of the Biodiversity and Conservation SEPP 2021. The development control plan includes design guidelines for development and criteria for natural resource protection.

Chapter 2 Ecological Assessment

The overall aims of this chapter is to conserve biological diversity within and around Sydney Harbour and its tributaries.

- *Ecological communities, particularly those which form wildlife habitats, are protected and where feasible enhanced;*
- *Development is sited to retain native vegetation, wetlands and natural foreshores;*
- *Development is accompanied by revegetation and rehabilitation of degraded foreshores, where appropriate; and*
- *development does not impact adversely on water quality.*

Comment

The proposed works have been considered against the aims and criteria of Chapter 2. The works will not impact the ecological communities or the water quality of the area. The works are located within the existing structure Manly Wharf, and does not necessitate any vegetation removal, or impacts on the natural foreshore. The proposal complies with Chapter 2 of the Sydney Harbour Foreshores and

Waterways Area DCP 2005.

Chapter 3 Landscape Assessment

The overall aims of this chapter is to consider the visual impact of development from the waterway and foreshores. The chapter stipulates that 'Landscape Character Type 8' applies to the Manly Area. *These areas have a high level of built form with waterside commercial, industrial and residential uses.* These areas have a high level of built form with waterside commercial, industrial and residential uses, which should be maintained. The following criteria is to be satisfied:

- *Vegetation is integrated with land-based development to minimise the contrast between natural and built elements;*
- *Design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;*
- *The maritime uses on the Harbour are preserved. Pressure for these uses to relocate is minimised. New developments adjoining maritime uses are designed and sited to maintain compatibility with existing maritime uses; and*
- *Remaining natural features that are significant along the foreshore are preserved and views of these features are maintained.*

Comment

The proposed works are for the use and fit out of a café/restaurant, within an already existing structure. The works will involve internal alterations and minor façade changes to a shop front. The works will not impact the existing contrast between natural and built environments. Additionally, the proposal includes measures to mitigate any unacceptable amenity impacts such as noise and lighting.

Chapter 4 Design Guidelines for Water-Based and Land/Water Interface Developments

Chapter 4 contains guidelines for specific types of development that are water-based or located at the land/water interface.

Comment

The use of premises as a café/restaurant and the accompanying alterations proposed under this application have been considered against the relevant design guidelines of this chapter. This includes the overall built form of the development, lighting and signage. The proposed physical works will complement the existing character of Manly Wharf, and is considered consistent with surrounding shop fronts and existing uses. The colours and materials are considered acceptable for the area and the heritage value of the site as supported by Heritage NSW. The proposed signage is minimal and not obtrusive, and is acceptable. Signage will be assessed under the SEPP (Industry and Employment) 2021 and Manly Development Control Plan 2013.

Council is satisfied that the proposal is consistent with all relevant requirements and objectives of the SEPP (Biodiversity and Conservation) 2021.

SEPP (Industry and Employment) 2021

Section 3.6 and 3.11 of Chapter 3 require Council to determine consistency with the objectives stipulated under Subsection 3.1 (1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5.

The objectives of this chapter aim to ensure that the proposed signage is compatible with the desired

amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 5 of Chapter 3, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is generally consistent with the existing signage surrounding the premises and is consistent with the desired future character of the Manly Wharf. The premise as viewed externally and internally from Manly Wharf, does not succumb to significant changes in overall appearance, to that of what currently exists but rather an enhancement, which is supported by both Council's Heritage Officer's and Heritage NSW.	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is consistent with the current theme for outdoor advertising of retail premises within Manly Wharf.	Yes
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The premises is situated within the State Heritage listed Manly Wharf. The proposed signage remains consistent with the surrounding premises, and is compatible with the area. The signage is considered to achieve visual interest, enhancing the visual quality of the vicinity, and will not disrupt the surrounding environment. No concerns have been raised by the relevant internal or external referral bodies, in this regard.	Yes
3. Views and vistas Does the proposal obscure or compromise important views?	The signage does not protrude further than the built form, and will therefore not disrupt or obscure any significant views.	Yes
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage is modest in nature, and will be attached to the existing built structures. Therefore, no domination of the skyline or reduction in the quality of vistas shall occur.	Yes
Does the proposal respect the viewing rights of other advertisers?	The proposal does not disrupt the viewing rights of other advertisers.	Yes

4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed scale, proportion and form of the signage is considered acceptable for Manly Wharf, given the several commercial/retail uses established within the vicinity.	Yes
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The scale and design of the signage respects the heritage values of the site, and has incorporated materials and finishes that will achieve an acceptable level of visual interest to the setting and landscape. The works will not viewed from the street.	Yes
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal does not result in visual clutter.	Yes
Does the proposal screen unsightliness?	The proposal includes refurbishment and visual improvement of the façade of the premises.	Yes
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	Yes
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal is considered compatible with the scale, proportion and characteristics such as the State Heritage Significance, given the context of this part of Manly Wharf and the surrounding premises. As mentioned above, Council's Heritage Officer's and Heritage NSW support the proposal.	Yes
Does the proposal respect important features of the site or building, or both?	Yes, as discussed above.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage expresses slight variation, yet is consistent with the overall motif of their design. Exhibiting innovation and imagination in relation to the site and building.	Yes
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposal consists of several signs to be illuminated and will be fitted to the shopfront.	Yes
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The illumination of several signs will not result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation. The illumination is consistent to other premises, with the signage being acceptably placed.	Yes

Can the intensity of the illumination be adjusted, if necessary?	The application indicates that the signage will be illuminated only during the hours of operation of the premises.	Yes
Is the illumination subject to a curfew?	Illumination of the signage will be switched off when the premises closes.	Yes
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No.	Yes
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	Yes

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of this chapter and its underlying objectives.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Environment and Coastal Use Areas pursuant to Chapter 2 of this SEPP.

Division 3 Coastal environment area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.10 (3) stipulates that *"This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6"*.

Division 4 Coastal use area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.11 (2) stipulates that *"This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6"*.

Division 5 General

Section 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 is confined to the existing building footprint and is not likely to increase the risk of coastal hazards within the locality.

Section 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 is not inconsistent with relevant coastal management programs

As such, it is considered that the application with the relevant 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 commercial 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 as it is located above the waterline on piers 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 commercial land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*.

Refer to the discussion, under the section of this assessment report titled '*State Environmental Planning Policy (Biodiversity and Conservation) 2021*'.

Compliance Assessment

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

5.7 Development below mean high water mark

Clause 5.7 applies to this application as the works are located below the mean high water mark.

(1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.

(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).

Comment

Appropriate environmental assessment for the proposed development has been carried out, by assessing the works against and demonstrating compliance with the State Environmental Planning Policy (Biodiversity and Conservation) 2021, and the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005. In addition, the works were assessed against the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013, and has been reviewed by Councils' Biodiversity, Coastal, and Riparian Lands Officers. As discussed elsewhere within this report, Northern Beaches Council is the consent authority for the proposed development.

5.10 Heritage conservation

Clause 5.10 applies to this application as the works are located on a site of State Heritage Significance (Item of I145 - Manly Wharf), that is listed within Schedule 5 of Manly Local Environmental Plan 2013. Development consent is required as the works include altering a heritage item that is a building by making structural changes, altering the exterior and interior of the item. Therefore, the proposed works will be assessed as follows:

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

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

Comment

The proposed development works will conserve the environmental heritage of Manly and its heritage significance, as the proposal has been designed to utilise materials and finishes that will complement the existing character of Manly Wharf. The use of premises (food and drink premises) is consistent with the existing uses with Manly Wharf. The works will not disrupt archaeological sites, Aboriginal objects and Aboriginal places of heritage significance.

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Comment

The proposal was referred to Heritage NSW, who are in support of the application, subject to their general terms of approval, which have been included within this assessment and form part of the recommended conditions of consent. In addition, Council's Heritage Officer has reviewed the proposal, and considered any effects of the proposed development on the heritage significance of the item.

(5) Heritage assessment

The consent authority may, before granting consent to any development—

(a) on land on which a heritage item is located.

The consent authority may, before granting consent to any development require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

Comment

The proposal is accompanied by a Heritage Impact Statement, which has been reviewed by both Heritage NSW and Council's Heritage Officer.

(9) Demolition of nominated State heritage items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item—

(a) notify the Heritage Council about the application, and

(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

Comment

The proposal was referred to the Heritage Council (Heritage NSW), and has incorporated their general terms of approval, which have been included within this assessment and form part of the recommended conditions of consent.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment

The proposal will not result in overshadowing of the foreshore nor any loss of views from a public place to the foreshore, as the works are predominantly internal with minor external material changes. The proposed works have been designed to complement the existing character, use of premises and building materials of the subject site (Manly Wharf), and its surrounds. Shop 11 previously included a similar use of premises (food and drink premises), therefore it is considered that the proposal is acceptably located and designed to complement the relationship with the foreshore. The proposal will not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

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

(a) the supply of water,

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

Comment

The proposed works are located within an existing building (Manly Wharf), with Shop 11 previously being used as a food and drinks premise. The works do not increase the building foot print of the site, and does not propose any changes to the existing stormwater, sewerage, vehicular access, water supply or electricity systems. The proposed works will be connected to these systems as they currently exist, which is deemed acceptable.

The proposal does not seek an increase to the overall floor area of the premises. Further, given the lack of opportunity to provide new on-site parking and the extent of the existing underground car parking, the current parking situation is appropriate of the proposed use. Additionally, the proposed premises is in close vicinity to public transport including a bus station and ferry terminal.

Manly Development Control Plan

Built Form Controls

Manly Wharf is located outside the land application map for the *Manly Local Environment Plan 2013*.

Refer to the discussion, under the section of this assessment report titled '*State Environmental Planning Policy (Biodiversity and Conservation) 2021*'.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes

Detailed Assessment

4.4.3 Signage

Merit Consideration

The proposal includes two (2) business identification signs to the western elevation (internal shop frontage). One (1) sign will be attached below the awning, with the other attached to the window display. Window signage for business identification are also proposed, however these are considered exempt under *Subdivision 7 Window signs*, of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. These window signs that are considered exempt development, will therefore not require further assessment.

The maximum signage to any shop frontage is two (2) business identification signs. Only two (2) signs in total are proposed to be illuminated.

Having regard to the above, it is concluded that the proposal complies with the requirements of this clause. Furthermore, an assessment against State Environmental Planning Policy (Industry and Employment) 2021, has concluded that the proposed signage aligns with the requirements of the SEPP.

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.

Section 7.12 conditions subject to contributions plan (*Environmental Planning and Assessment Act 1979*)

Development contributions do not apply to this development application as the subject site is located outside of the Manly Land Application Map, and that the works proposed, will not increase the existing gross floor area. Therefore, the proposal is exempt from development contributions.

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 the use of premises as a café/restaurant, including a new internal fit-out, signage and minor external alterations at Shop 11 Manly Wharf, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to demolition of part of a State Heritage Item. Therefore, meets the requirements for the determination by the NBLPP for Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

The critical assessment included a detailed consideration of the relevant provisions under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, as well as several other relevant State Environmental Planning Policy's, the Manly Local Environmental Plan 2013, and the planning controls listed under both the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

In addition, the proposal was referred to Heritage NSW, who responded with General Terms of Approval, subject to relevant conditions.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation 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 DA2023/0195 for Use of premises (Shop 11) as a cafe including fit-out and signage on land at Lot 1 DP 1170245, 0 Wharves And Jetties, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A002, Lease and Location Plan, Revision A	1 September 2021	Anouk & Co
A100, Demolition Plan, Revision B	12 September 2022	Anouk & Co
A101, Proposed Floor Plan, Revision E	16 November 2022	Anouk & Co
A103, Equipment Plan, Revision E	16 November 2022	Anouk & Co
A104, Shopfront 01, Revision D	10 November 2022	Anouk & Co
A105, Shopfront 02, Revision D	10 November 2022	Anouk & Co
A106, Internal Elevations 01 & 02, Revision E	16 November 2022	Anouk & Co
A107, Internal Elevation 03, Revision A	1 September 2022	Anouk & Co
Signage Schedule (Page 3 of 6)	10 November 2022	Anouk & Co
Signage Schedule (Page 4 of 6)	10 November 2022	Anouk & Co
Signage Schedule (Page 5 of 6)	10 November 2022	Anouk & Co
Signage Schedule (Page 6 of 6)	10 November 2022	Anouk & Co
Finishes Schedule (Page 3 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 4 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 5 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 6 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 7 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 8 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 9 of 10)	20 February 2023	Anouk & Co
Finishes Schedule (Page 10 of 10)	20 February 2023	Anouk & Co

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Heritage Impact (No. 9740)	November 2022	Heritage 21
National Construction Code Review (No. 8146)	15 February 2023	Certis (NSW) Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	-	-

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	29 March 2023
Heritage NSW	Heritage NSW General Terms of Approval	28 April 2023

(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 'Food and Drink Premises', in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

'Food and drink premises' means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar."

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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage

system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

6. **Heritage NSW General Terms of Approval**

The proposal shall strictly comply with the General Terms of Approval prepared by the Heritage Council of NSW as dated 28 April 2023. The General Terms of Approval, are referenced under Condition 2 of this consent.

Reason: Statutory Requirement.

7. **No Approval to Window Signage**

No approval is granted for the proposed window signage (decals) that constitute exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: Works considered as exempt development to comply with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

FEES / CHARGES / CONTRIBUTIONS

8. **Security Bond**

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

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

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

9. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

10. **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.

11. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

Reason: Public safety and environmental protection.

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

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

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

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

14. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

15. **Demolition Works - Asbestos**

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

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

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

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

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

16. **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.

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

17. **Registration of food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to

Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

18. **Removal of All Temporary Structures/Material and Construction Rubbish**

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

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

Reason: To ensure bushland management.

19. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Reason: To ensure that the kitchen complies with Australian Standard design requirements.

20. **Mechanical Ventilation certification**

Where Mechanical ventilation is required to be installed in the food premises it must comply with the following:

- i Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings"; and
- i Any external exhaust discharge must be above the roofline and discharged in a manner that is not likely to cause an amenity impact.

Certification is to be provided to the Principal Certifier prepared by a suitably qualified person to demonstrate that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2 and to prevent amenity impacts.

21. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

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

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

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

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

22. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

23. **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.

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

24. **Proposed Outdoor Dining Condition**

No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Any outdoor dining that is consistent with the SEPP shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

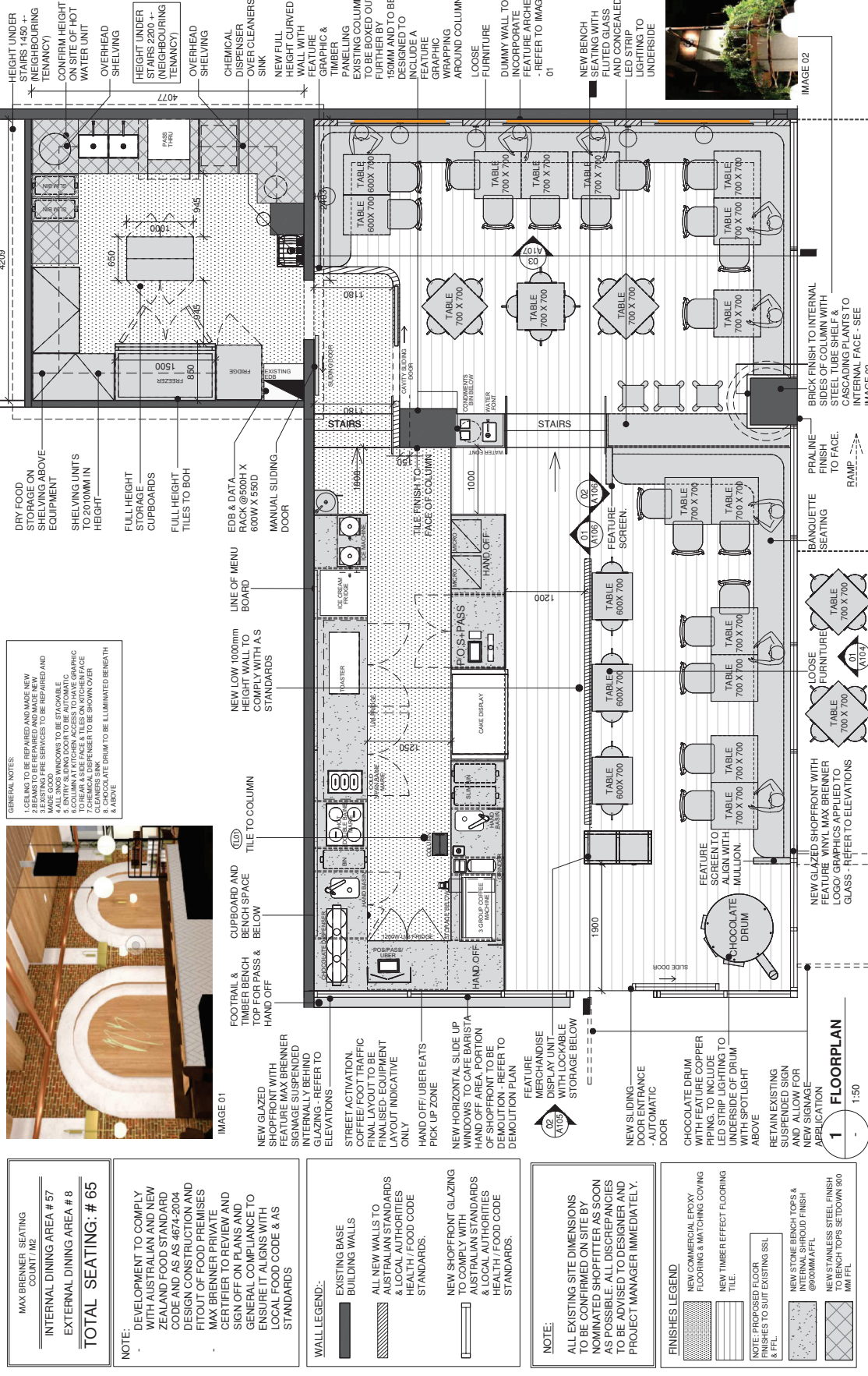
25. **Hours of Operation**

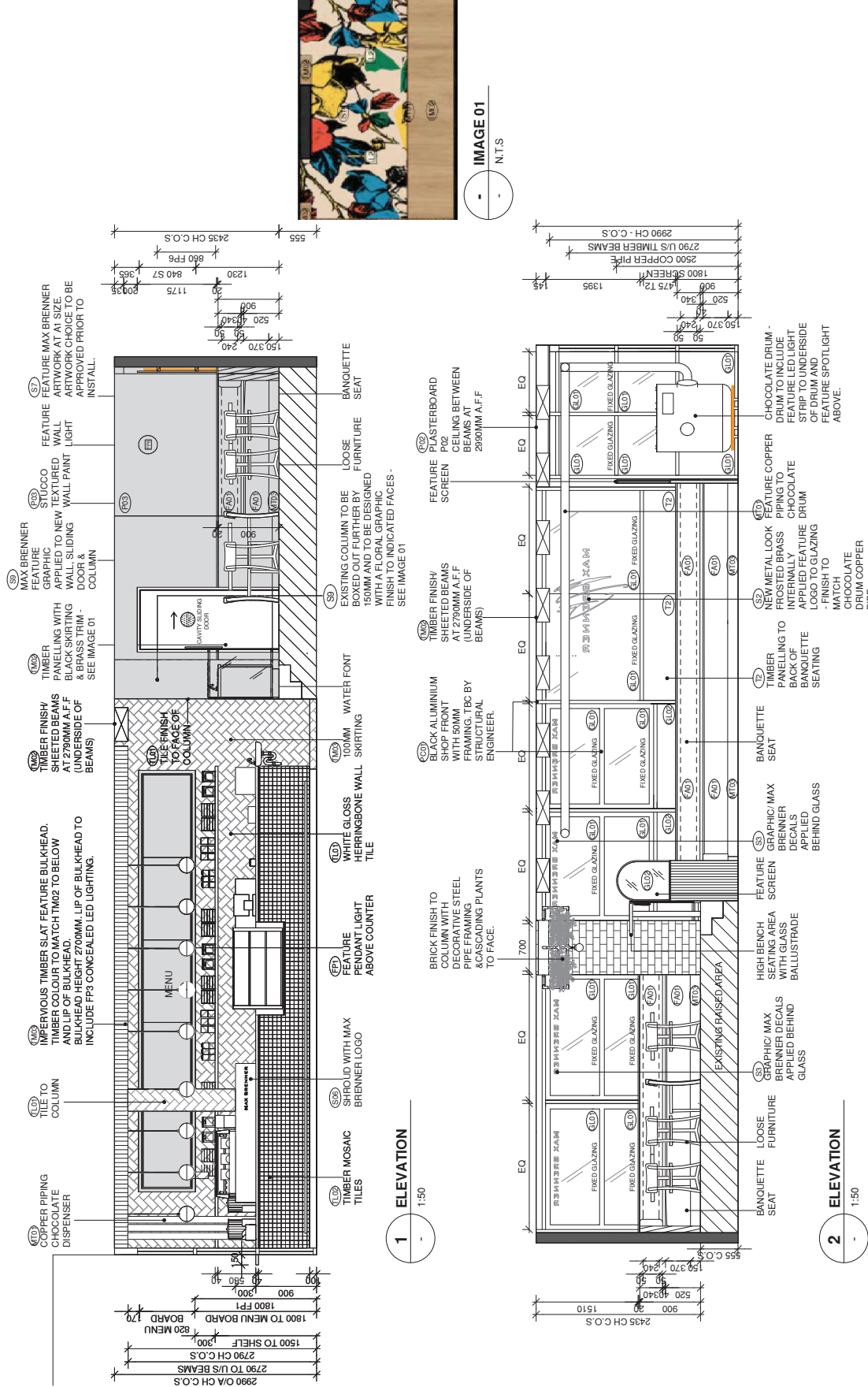
The hours of operation are to be restricted to:

- i Monday to Sunday – 7:00am - 11:00pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

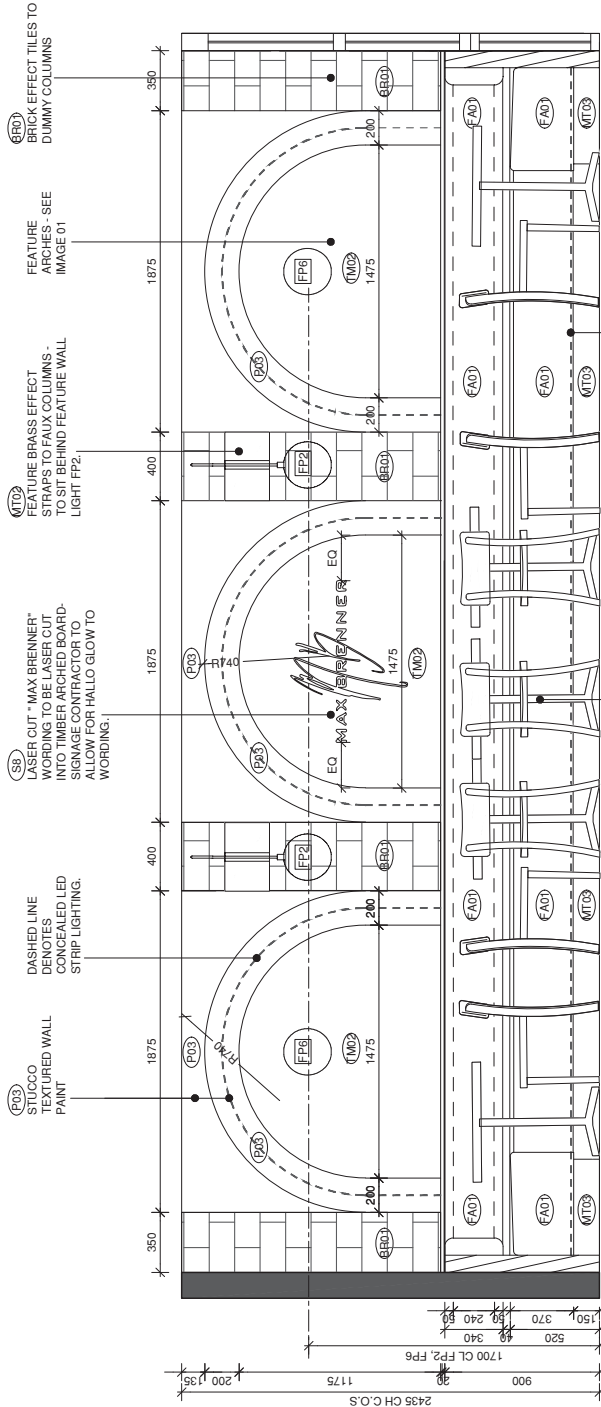




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amendment		drawing number: A106		
E		DA DOCUMENTATION	AAC	16.11.22
G		DA DOCUMENTATION	AAC	27.09.22
B		DA DOCUMENTATION	AAC	12.09.22
A		DA DOCUMENTATION	AAC	01.09.22
		issue	by	date



IMAGE 01
N.T.S.



3 ELEVATION
1:25

ALLOW FOR CONCEALED
LED STRIP LIGHTING TO
UNDERSTREET LIGHTING TO
BANQUETTE SEATING.

LOOSE TABLES
& CHAIRS

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		drawing title: INTERNAL ELEVATION 03				scale: A3@1:25
		drawing number: A107				
		A DA DOCUMENTATION		A&C	01.09.22	
		issue description		by	date	
		amendment				